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BLOG EDITORS

[Andrew C. \(Drew\) Brought](#)

T 816.292.8886

abrought@spencerfane.com

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Latest Posts

07.26.2018 [Upcoming Proposition 65 Changes May Catch Companies Without Warning](#)

By Paul Jacobson

All companies in supply chains for products sold in California need to be aware of the law known as California's Proposition 65. This is especially true because significant changes to Proposition 65 requirements go into effect on August 30, 2018, increasing potential liability.

04.10.2018 [The Superfund Petroleum Exclusion – Alive and Well in the Ninth Circuit](#)

By John Watson

In an unpublished opinion on March 21, 2018, the Ninth Circuit Court of Appeals affirmed the trial court's dismissal of a lawsuit citing the application of CERCLA's petroleum exclusion. The Court held that the site investigation at a former gas station did NOT identify anything other than petroleum or fractions thereof. Consequently, the Plaintiff did not plausibly allege any CERCLA "hazardous substances" were present at the site. The case was dismissed.

02.07.2018 [Colorado Supreme Court Will Address Oil and Gas Development in its Review of the *Martinez* Case](#)

By John Watson

On January 29, 2018 the Colorado Supreme Court agreed to hear the appeal of the *Martinez* case. The state's high court will decide whether, in the agency's review of oil and gas permit applications, the Colorado Oil and Gas Conservation Commission ("COGCC") must elevate "public health and the environment" over other factors identified in the agency's organic statute.

02.01.2018 [EPA Asks States to Take the Lead in Environmental Enforcement](#)

By Baerbel E. Schiller, Ryan Pulkrabek

Recently, EPA issued an Interim OECA Guidance on EPA and state roles on managing enforcement and compliance assistance. See, [Interim OECA Guidance on Enhancing Regional—State Planning and Communication on Compliance Assurance Work in Authorized States](#). While EPA is seeking to emphasize cooperative federalism in modifying the emphasis of the [1986 revised policy on state/EPA enforcement agreements](#), as provided in the first footnote of the Guidance, the policy issued on January 22, 2018, appears to make the states the primary enforcer of environmental laws and provides a secondary role for EPA in that regard.

07.27.2017 [Federal Court Says EPA Too Stringent on Recycling and Reclamation of Hazardous Secondary Materials](#)

By Ryan Pulkrabek

Companies that beneficially reuse hazardous secondary materials by recycling or reclaiming those materials rather than discarding them as hazardous waste need to be aware of a new federal court ruling that may provide additional flexibility in the reuse and recycling of those materials. In its July 7, 2017, opinion in *Am. Petroleum Inst. v. EPA*, No. 09-1038, slip op. (D.C. July 7, 2017), the U.S. Court of Appeals for the District of Columbia struck down two key elements of the EPA's 2015 Final Rule aimed at revising EPA's "Definition of Solid Waste": Factor 4 of the legitimacy test (i.e., "toxics along for the ride") and, in pertinent part, the Verified Recycler Exclusion pertaining to reclamation under RCRA.

03.12.2017 [Stormwater Runoff from Construction Activities Subject to New EPA 2017 General Permit](#)

By Shelby Wood, Andrew C. Brought

Construction companies, general contractors, developers, and property owners involved in land clearance and disturbance activities will want to take note of the new Stormwater Construction General Permit ("Construction General Permit") issued by the United States Environmental Protection Agency ("EPA") on February 17, 2017. As with earlier Construction General Permits, the 2017 permit applies to land clearance and disturbance activities greater than one acre and requires site operators to comply with best management practices ("BMPs"), effluent limits, and other permit requirements, including developing a Stormwater Pollution Prevention Plan ("SWPPP").

02.05.2017 [EPA and OSHA Increase Civil Penalties – Days Before New Administration](#)

By Andrew C. Brought

In January 2017, both EPA and OSHA increased civil penalties for new enforcement cases. While the increases became effective just days before the new Administration took office, the increases are a result of Congressional action in 2015 to annually adjust civil penalties for inflation by January 15 of each new calendar year.

12.11.2016 [EPA Issues Final Hazardous Waste Generator Improvements Rule](#)

By Paul Jacobson, Baerbel E. Schiller

On November 28, 2016, EPA published the final version of the Hazardous Waste Generator Improvements Rule (the Rule) in the Federal Register. Promulgated under the Resource Conservation and Recovery Act (RCRA), the Rule updates EPA's regulations governing generators of hazardous waste, most of which EPA promulgated in the 1980s. The Rule significantly revises the hazardous waste generator requirements.

09.20.2016 [EPA Issues Guidance Encouraging Greener Cleanup Activities](#)

By Paul Jacobson

On August 2, EPA issued a guidance document encouraging parties to opt for "greener cleanup activities" when conducting CERCLA response actions, to reduce the environmental costs associated with these cleanups. The guidance document defines "greener cleanup activities" as "practices or technologies that reduce or mitigate the environmental impacts of CERCLA removal and remedial actions, while meeting regulatory and other cleanup requirements." Examples include generating renewable energy on-site, using energy-efficient equipment, and choosing land management methods that do not require mowing. The guidance document builds on EPA's 2009 Principles for Greener Cleanups, a general statement of intention to manage CERCLA cleanups in a more environmentally sustainable manner.

09.18.2016 [Retail and Consumer Product Hazardous Waste – Update on Reverse Distribution and Aerosol Cans by EPA](#)

By Andrew C. Brought

On September 12, 2016, EPA issued its "Strategy for Addressing the Retail Sector under RCRA's Regulatory Framework." The strategy document sets forth three actions the agency is expected to finalize in the short-term to help ease the RCRA burden on managing retail and consumer products that may trigger RCRA hazardous waste characteristics or RCRA listings once a decision to discard is made.

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