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#### 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In an unpublished opinion on March 21, 2018, the Ninth Circuit Court of Appeals affirmed the trial court's dismissal of a lawsuit citing the application of CERCLA's petroleum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.

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**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.

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**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.

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**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.

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**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.

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**03.27.2016** [New OSHA Silica Dust Rule to Impact Over 675,000 Workplaces, Biggest Impact on Construction Industry](#)

By Andrew C. Brought

On March 25, 2016, 81 Fed. Reg. 16286, OSHA issued a new final rulemaking to reduce silica dust exposure that will directly affect more than 2 million construction workers who drill, cut, crush, or grind silica-containing materials such as concrete and stone, and 300,000 workers in general industry operations such as brick manufacturing, foundries, and hydraulic fracturing. OSHA explains that silica dust exposure occurs in common workplace operations involving cutting, sawing, drilling, and crushing of concrete, brick, block, rock, and stone products (such as construction tasks), and operations using sand products (such as in glass manufacturing, foundries, sand blasting, and hydraulic fracturing).

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**02.27.2016** [EPA Releases National Enforcement Initiatives](#)

By Andrew C. Brought

Beginning October 1, 2016, the U.S. Environmental Protection Agency (EPA) will target its enforcement efforts in seven different focused areas, including three areas designed to protect water quality, two initiatives aimed at reducing toxic air pollutants and reducing air pollution, an initiative to reduce accidental chemical releases from industrial facilities, and an enforcement initiative geared at energy extraction activities.

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**06.25.2015** [EPA Issues Final Vapor Intrusion Guidance and Declares EPA, not OSHA, in Charge of Indoor Air Quality at the Workplace](#)

By Baerbel E. Schiller

At long last, after operating under the draft Vapor Intrusion Guidance of 2002 for almost 13 years, EPA finally issued final vapor intrusion guidances on June 11, 2015, a specific guidance for petroleum vapor intrusion at leaking underground storage tank sites, and a more general technical guide for assessing and mitigating the vapor intrusion pathway at chlorinated solvent sites. (Technical Guide). In response to criticism that EPA did not subject the guidances to the public scrutiny of the administrative rule-making process, EPA allowed for a longer public comment period than is customary for guidances. Additionally, both vapor intrusion guidances were the subject of extensive discussions between EPA, various sister agencies, private industry, environmentalists, and the White House.

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**04.07.2015** [EPA Revises its Supplemental Environmental Project – SEP Policy](#)

By Andrew C. Brought

On March 10, 2015, EPA issued a new revised 2015 Update to its Supplemental Environmental Project (SEP) Policy, thereby superseding prior SEP policies.

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**02.25.2015** [Next Generation Compliance—EPA Strategy to Delegate Enforcement to Third Parties?](#)

By Baerbel E. Schiller

In a recent January 2015 Memorandum to EPA's Regional Enforcement Managers from Cynthia Giles, EPA Assistant Administrator for Enforcement, EPA is touting its Next Generation Compliance strategy as "an integrated strategy" intended to "bring together the best thinking from inside and outside EPA."

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