



**Walter Wright, Jr.**  
wwright@mwlaw.com  
(501) 688.8839

# NESHAP Site Remediation Rule: U.S. Environmental Protection Agency Federal Register Notice Proposing Elimination of CERCLA Site Remediation/RCRA Corrective Action Exemptions

## Arkansas Environmental, Energy, and Water Law Blog

05/17/2016

The United States Environmental Protection Agency ("EPA") published a May 13<sup>th</sup> Federal Register Notice stating that it is proposing to amend the Clean Air Act National Emissions Standards for Hazardous Air Pollutants ("NESHAP") Site Remediation Rule ("Rule") by removing exemptions applicable to:

- Site remediation activities performed in the authority of the Comprehensive Environmental Response and Compensation Liability Act ("CERCLA")
- Site remediation activities performed under a Resource Conservation and Recovery Act ("RCRA") corrective action or other required RCRA order.

See 81 Fed. Reg. 29821.

EPA is also proposing to remove the applicability requirement that site remediations be co-located with at least one other stationary source regulated by another NESHAP.

EPA previously received a petition from certain environmental groups arguing that:

- EPA lacks statutory authority to exempt site remediation activities conducted under the authority of CERCLA or RCRA from NESHAP requirements
- EPA had a duty to set standards for each listed HAP admitted from a source category.

The rule was originally promulgated in 2003.

Besides proposing to remove the previously referenced exemption, also established are requirements and compliance dates for site remediation activities conducted under the authority of CERCLA and RCRA that would be affected by the changes.

EPA is specifically proposing to remove 40 C.F.R. 63.7881(b)(2) and (3) which expressly exempts site remediations conducted under CERCLA or RCRA from the Rule's requirement. The agency also notes that in order to make the Rule applicable to CERCLA and RCRA site remediations, it is proposing to remove the requirement in 40 C.F.R. 63.7881(a)((2) that affected site remediation to be co-located with the facility that is regulated by other NESHAP (i.e., by a separate subpart under 40 C.F.R. Part 63). The agency

believes this action is necessary to ensure that site remediation activities that are themselves major sources of HAPs, without regard to co-location with another facility, are now covered by the Rule.

[Click here to download a copy of the Federal Register Notice.](#)