

2015 – 2016

Solid and Hazardous Waste

Developments

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Discussion will address:

- A variety of federal and state decisions litigation, rulings, regulations, policies, etc. either directly or indirectly related to solid or hazardous waste (including recycling) that have arisen over the last 12 months or so.

Source of information that often
addresses issues relevant to
solid/hazardous waste and recycling
issues:

Arkansas Environmental, Energy and
Water Law Blog

<http://www.mitchellwilliamslaw.com/category/environmental-blog>

Three posts five days a week

Resource Conservation and Recovery Act Regulations Proposed Export/Import Subtitle C Revisions

- EPA issued an October 19th Federal Register Notice proposing to amend existing RCRA regulations in regards to the export and import of hazardous waste.
- The proposed RCRA export and import revisions are stated to generally affect:
 - All person who export or import (or arrange for the export or import) hazardous waste for recycling or disposal, including those hazardous wastes subject to the alternate management standards for certain activities.
 - Spent lead-acid batteries being shipped for reclamation
 - Industrial ethyl alcohol being shipped for reclamation
 - Hazardous waste samples of more than 25 kilograms being shipped for site characterization/treatability studies.

Resource Conservation and Recovery Act Regulations

Proposed Export/Import Subtitle C Revisions

(Continued)

- Hazardous recyclable materials being shipped for precious metal recovery
- All recycling and disposal facilities who receive imports of such hazardous wastes for recycling or disposal
- All persons who export or provisions addressing cathode ray tubes
- All persons who transport any export and import shipments described above.
- EPA states that the revisions will consolidate and streamline some of the requirements and enhance the documentation of the movement and disposition of hazardous waste and other materials.
- The agency also states its belief that there will be benefits in making existing export and import related requirements more consistent with the current import-export requirements for the shipments between members of the Organization for Economic Cooperation and Development.
- Affects a number of Arkansas facilities

Resource Conservation and Recovery Act - Pharmaceuticals

- EPA proposed rule – *Management Standards for Hazardous Waste Pharmaceuticals*. 80 Fed. Reg. 58013 (Sept. 25, 2015)
- EPA proposed the revisions to address “hazardous waste pharmaceuticals.”
- EPA proposed “a tailored, sector-specific set of regulations for the management of hazardous waste pharmaceuticals by health care facilities (including pharmacies) and reverse distributors.
- Restrict health care facilities from disposing of hazardous waste pharmaceuticals into drains (including pharmaceutical reverse distributors)
- Clarification of the relationship between the RCRA Subtitle C hazardous waste program and the Drug Enforcement Administration rules for controlled substances
- Improve management of hazardous waste pharmaceuticals at a wide variety of health care related facilities
- Note: Arkansas Environmental Federation filed extensive comments.

Petition to Expand RCRA Corrosivity Characteristic

- EPA on April 11, 2016 proposed to deny a petition to expand the definition of “corrosive” wastes under RCRA.
- Public Employees for Environmental Responsibility petitioned EPA in 2011 to modify the RCRA corrosivity characteristic in two ways;
 - By changing the pH threshold for alkaline corrosive wastes from 12.5 to 11.5 (a ten-fold change, given that pH is measured on a logarithmic scale), and
 - By applying the pH thresholds for both alkaline and acidic corrosive wastes to non-aqueous wastes
- Solid wastes are characteristic corrosive if a representative sample (a) is aqueous and has a pH less than or equal to 2.0, or greater than or equal to 12.5, or (b) is liquid and corrodes steel at a rate greater than 6.35 mm/year.
- Petition references concerns about dust from demolition, cement manufacturing, and cement transport
- Note – Environmental groups often driving through litigation or petitions new federal rules/initiatives.

Oil and Gas Exploration/Development Waste: Environmental Groups Send U.S. Environmental Protection Agency Notice Letter Alleging Failure to Fulfill RCRA Obligations

- The Environmental Integrity Project and other groups (collectively, “EIP”) sent an August 26, 2015 letter to the Administration of the United States Environmental Protection Agency providing notice of their intent to sue the agency for alleged failure to perform nondiscretionary duties required by RCRA.
- EIP alleged that EPA failed:
 - to meet its duty under RCRA Subtitle D criteria regulations, 40 C.F.R. part 257, for waste associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy.
 - to meet its duty under Section 4002(b) for solid waste management plans, 40 C.F.R. Part 256, not less frequently than every three years and revise [as may be appropriate]

Oil and Gas Exploration/Development Waste (Continued)

- The organizations allege that both of the referenced set of regulations are “outdated and contain generic provisions that do not specifically address issues relevant to the modern oil and gas industry, failed to adequately protect against potential harm to health and the environment.”
- The “Bentsen Amendment” conditionally exempts oil and gas waste from regulation pursuant to RCRA’s hazardous waste provisions under Subtitle C.
- After undertaking the analysis required by the Bentsen Amendment, the EPA published in 1988 a Regulatory Determination that oil and gas waste did not require regulation under Subtitle C of RCRA.
- EIP’s letter provides it perspective on:
 - State plan guidelines for oil and gas waste
 - The current waste disposal practices in the oil and gas industry
 - EPA’s alleged failure to perform certain non-discretionary duties

RCRA Regulations/Oil and Gas Industry

Governmental Groups RCRA Citizen Suit Alleges U.S. Environmental Protection Agency Failure to Meet Nondiscretionary Duties Regarding Oil and Gas Industry Waste

- The Environmental Integrity Project and a number of other organizations filed a May 4th Complaint for Declaratory and Injunctive Relief in the United States District Court for the District of Columbia alleging that the United States Environmental Protection Agency failed to fulfill certain nondiscretionary duties and promulgate revised regulations and guidelines for the disposal, storage, transportation, and handling of oil and gas waste.
- The Complaint references the oil and gas industry's growth and generation of what are characterized as:
 - Vast amounts and wide varieties of liquid and solid wastes during exploration and production, including wastewater, drill cuttings, residual waste, and drilling muds.
- Also referenced is the use of horizontal drilling and hydraulic fracturing technologies and the application of such technologies to unconventional oil and gas formations

RCRA Regulations/Oil and Gas Industry (continued)

- The groups allege EPA:
 - ... has failed to meet the nondiscretionary duty under section 2002(b) of RCRA, 42 U.S.C. § 6912(b), to review and, if necessary, revise at least once every three years the Subtitle D criteria regulations, 40 C.F.R. part 257, for wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy (oil and gas wastes).
 - EPA last conducted a review of the Subtitle D regulations for oil and gas wastes on July 6, 1988, when it determined that it was necessary to revise the general Subtitle D regulations to promulgate “tailored” regulations for oil and gas wastes.
- Additional example of environmental groups attempting to drive federal regulatory movement.

RCRA Guidance: Reuse or Reclamation/Spent Refractory Bricks

- RCRA Compendium contains EPA responses to queries regarding interpretations of various Subtitle C regulations.
- Compendium can be key source of guidance for both specific and general RCRA issues.
- March 30, 2015 letter to EPA requesting a regulatory determination under the RCRA regulations for spent refractory bricks being used to make new refractory brick to be used in the manufacture of industrial wool glass melting furnaces.
- The company asked whether the recycling process, which converts hexavalent chromium in the spent refractory brick into trivalent form, as described below, is defined as reuse or reclamation under RCRA regulations.
- Saint-Gobain SEFPRO/Corhart Refractories is a manufacturer of commercial grade chromium refractory bricks used in the construction of industrial wool glass melting furnaces.
- These furnaces have a limited life cycle and the refractory bricks must be replaced when a furnace is rebuilt.
- While the chromium contained in a new, unused bricks is a trivalent form, a small part of the trivalent chromium in the refractory bricks turns to hexavalent chromium over time in the industrial wool glass melting furnaces.

RCRA Guidance: Reuse or Reclamation/Spent Refractory Bricks (continued)

- According to the information provided, EPA says Saint-Gobain developed a technology which would allow for hexavalent chromium containing bricks, when spent, to be used to make new trivalent chromium refractory bricks, thereby allowing these bricks to be recycled rather than being land disposed.
- One question is whether this recycling activity could be defined as “reuse,” which is an important question because a spent material that is used or reused is excluded from RCRA regulation.
- The RCRA regulations at 40 C.F.R. 261.2(c) involving the direct use/reuse of a secondary material as an ingredient or as an effective substitute in a manufacturing process do not apply when the material is being reclaimed and therefore are not applicable in this situation.
- EPA’s understanding is that the spent refractory bricks must first be treated to regenerate new trivalent brick material used as an ingredient in the production of commercial grade chromium refractory bricks.
- EPA’s also understands Saint-Cobain’s spent refractory bricks would have to be managed as a hazardous waste from the point of generation at the generating facility to the receiving facility in France where the hexavalent chromium containing bricks are ultimately regenerated to produce a feedstock into the manufacturing of commercial grade chromium refractory bricks.

Superfund/CERCLA: Court Orders EPA To Prepare Timeline For Financial Responsibility Rulemaking

- Congress required EPA to issue financial assurance rules pursuant to Section 108(b) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.
- The U.S. Court of Appeals for the District of Columbia Circuit ordered EPA to update its schedule for rulemaking to impose financial assurance rules on the hardrock mining industry in *In re: Idaho Conservation League*, No. 12-1149 (May 19, 2015).
- CERCLA Section 108(b) requires EPA to promulgate rules for classes of facilities that must demonstrate and maintain financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances.
- Examples of Financial Assurance in other programs are RCRA TSD mandates for demonstrating financial ability for closure, underground storage tank (ability cleanup), Ark. Reg. 22 mandates for landfills, etc.
- The court also ordered EPA to provide a date by which the agency will decide whether it will issue similar rules for other industries that EPA has identified as needing financial assurance requirements
 - the chemical manufacturing industry,
 - petroleum and coal products manufacturing, and
 - the electric power generation, transmission and distribution industry.

Superfund/CERCLA: Court Orders EPA To Prepare Timeline For Financial Responsibility Rulemaking (Continued)

- Congress intent was presumably to ensure funds available for hazardous substance response should a company become insolvent or be otherwise unable to conduct the necessary response activities.
- EPA did not promulgate financial responsibility rules until 2009 when, pursuant to court order, the agency first identified portions of the hardrock mining industry as its priority for a future rulemaking, to be followed by rules for the chemical manufacturing, petroleum and coal products manufacturing, and the electric power generation, transmission, and distribution industries.
- The court's order comes in response to a 2014 petition filed by several environmental groups.

Superfund/CERCLA: Court Orders EPA To Prepare Timeline For Financial Responsibility Rulemaking (Continued)

- EPA anticipates that the cost to comply with the Hardrock Mining 108(b) rulemaking will largely stem from a limited number of requirements of the rule, including:
 - Establishing a cost estimate
 - Demonstrating evidence of financial responsibility
 - Recordkeeping and reporting
- The cost to demonstrate evidence of financial responsibility will depend on the cost estimate established for the facility and on the choice of method (e.g., financial test/corporate guarantee, third-party instrument, or trust fund).
- EPA anticipates consideration of at least the following financial responsibility instruments:
 - Surety bond
 - Letter of Credit
 - Insurance
 - Trust Fund
 - Credit rating-based financial test/corporate guarantee

Interstate Movement/Solid Waste – Proposed Restrictions

- United States Senator Bob Casey of Pennsylvania introduced Senate Bill 1953 that targets interstate solid waste movement.
- Issue that has been around for many years.
- Senator Casey in a news release stated Legislation would “restrict the flow of out-of-state trash into Pennsylvania.”
- The bill would allow states to impose higher fees on out-of-state waste.
- Allows states to set higher standards for waste handling through its solid waste management plan to restrict imports.
- Obvious problems when you start walling off states from each other
- Unanticipated consequences? (Ex. – Texarkana, Arkansas facility cannot receive waste from across state line?)
- Every state must have specialized waste facility (hazardous waste incinerator, injection well, etc.?)
- Likelihood of enactment presumably small.

Enforcement

EPA Announces 2017-2019 National Enforcement Initiatives (Indication of How EPA Will Allocate Enforcement Sources)

- Air
 - Reducing Air Pollution from the Largest Sources
 - Cutting Hazardous Air Pollutants (Expanded initiative for FY17-19)
- Energy Extraction
 - Ensuring Energy Extraction Activities Comply with Environmental Laws
- Hazardous Chemicals
 - Reducing Pollution from Mineral Processing Operations (Returning to base program level in FY17)
 - Reducing Risks of Accidental Releases at Industrial and Chemical Facilities (New initiative for FY17-19)
- Water
 - Keeping Raw Sewage and Contaminated Stormwater Out of Our Nation's Waters
 - Preventing Animal Waste from Contaminating Surface and Ground Water
 - Keeping Industrial Pollutants Out of the Nation's Waters (New initiative for FY17-19)
- Note – Arkansas is delegated state but federal enforcement does occur.

Federal RCRA Civil Enforcement Example (Healthcare)

- Regional hospitals and laboratories have been an EPA focus.
- Not a typical RCRA Defendant
- Issues include misclassification of RCRA generator status
- EPA Region 6 facilities include:
 - Denison, Texas Hospital: \$79,310 penalty
 - Laredo, Texas Medical Center: \$79,310 penalty
 - Eagle Pass, Texas Medical Center: \$101,970 penalty
 - Amarillo, Texas Hospital: \$101,970 penalty
 - Edinburg, Texas Hospital: \$79,310 penalty
 - McAllen, Texas Hospital: \$79,310 penalty
 - Montgomery, Texas Laboratory: \$199,432 penalty
 - Oklahoma City Diagnostic Laboratory: \$79,310 penalty
 - Enid, Oklahoma Medical Center: \$113,300 penalty
 - Houston, Texas Medical Laboratory: \$110,000 penalty

RCRA Citizen Suit Addressed Agricultural Operation's Manure Management

- RCRA (Like almost every federal environmental statute) includes a provision that allows a group or person meeting procedural requirements (provide notice, no pending government enforcement) to file a federal district court action alleging violations seeking to impose penalties.
- 2015 federal district court decision *Community Association for Restoration of the Environment v. Cow Palace* (Washington 2015) held that manure from a dairy is solid waste regulated by RCRA and that over spreading of manure on fields, and leachate from storage lagoons can present an imminent and substantial endangerment that can be enjoined.
- RCRA criteria do not apply to agricultural wastes, including manures and crop residues, returned to the soil as fertilizers or soil conditions. 40 CFR 257-1(c)(1).
- Manure improperly managed and stored, as well as over-applied to agricultural fields, is discarded and not returned to the soil as fertilizer or soil conditions.
- Court held manure improperly managed, stored and “discarded” in three ways:

RCRA Citizen Suit Addressed AG Operation's Manure Management (Continued)

- Over-application of manure (not tied to nutrient management plan, discarding/not beneficial, failure to account for residual)
- Lagoon storage (permeable storage)
- Compost area (unlined)
- Case allowed to proceed.
- According to the court, the dairy's operations "may present an imminent and substantial endangerment to the public who may be consuming the water."

Solid Waste Enforcement: Arkansas Department of Environmental Quality and Crittenden County Enter Into Consent Administrative Order to Address Alleged Violations (Violation of Reg. 22 Due to Alleged Leachate Leaks and Overfills)

- Crittenden County (“CC”) owns and contracts for the operations a Class 1 Landfill near the City of West Memphis.
- CC and ADEQ entered into a CAO to address alleged leachate leaks and overfill conditions at the landfill.
- On July 30, 2012 CC’s operator reported to ADEQ, in an Overfill Management Plan that an overfill condition existed on the north slope of the permitted footprint.
- 17,210 cubic yards had been relocated and that a recent survey had determined additional overfill relocation was required to comply with the OMP.
- On March 5, 2014, CC’s Annual Engineering Inspection Report was submitted to ADEQ reflecting operations during the calendar year 2013.
- Item 5(c) of the AEIR notes: “On the north and south ends of the landfill are areas that exceed permitted grades.”
- The OMP submitted on July 30, 2012 did not reference an area in the south slope exceeding permitted grades, therefore, this would be a new overfill condition and would require an additional OMP.
- CC allegedly never submitted an OMP for the south slope, which is a violation of Regulation 22.309(c), and therefore is a violation of Ark. Code Ann. § 8-6-205(a)(1).

Solid Waste Enforcement (continued)

- On February 10, 2015, an ADEQ Solid Waste Management Division Inspector conducted a quarterly inspection of CC's Class 1 Landfill.
- During this inspection the Inspector observed the following violations of Reg. 22:
 - Leachate leaks were observed on the north end of the west slope and in the central portion of the south slope of the active unit.
 - Site conditions were dry and nothing was noted that would hinder or delay the repair of the leaks.
 - This is a violation of Reg. 22.411(o), and therefore is a violation of Ark. Code Ann. § 8-6-205(a)(1).
 - Reg. 22.411(o) states: "The owner or operator shall be responsible for maintaining the cover system integrity, and shall promptly repair erosion, washout, tracking, or other defects that result in exposed refuse in either daily or intermediate cover, or exposure of the barrier system of the final cover. Areas of leachate seepage, or areas exhibiting evidence of leachate seepage such as staining and discoloration of the cover system shall also be promptly repaired."
- CAO requires that a report addressing issues be submitted to ADEQ
- CC agrees to pay a civil penalty of \$4,000.

Hazardous Waste Enforcement
Arkansas Department of Environmental Quality and Pulaski County Arkansas
Distribution Center and Auto Parts Store Enter Into Consent Administrative Order to
Address Alleged Violations
(Returned Merchandise/Contiguous Operations)

- O'Reilly Automotive Stores, Inc. and Ozark Automotive Distributors, Inc. entered into a Consent Administrative Order dated January 19, 2016 addressing alleged violations of Arkansas Pollution Control and Ecology Commission Regulation 23 involving hazardous waste management.
- The CAO provides that Ozark and O'Reilly both have facilities located on a property in Pulaski County, Arkansas.
- O'Reilly is stated to operate a distribution center at the Site that packs and ships automotive products to O'Reilly stores in addition to collecting returned merchandise to be redistributed and resold or to be disposed of as hazardous waste.
- The Site is owned by O'Reilly and Ozark's operation is physically connected to an O'Reilly store.
- Both O'Reilly and Ozark share a Resource Conservation and Recovery Act ("RCRA") Environmental Protection Agency identification number.
- Ozark is stated to have reported as a RCRA Small Quantity Generator of hazardous waste.
- ADEQ conducted a Compliance Evaluation Inspection at the Site on September 21, 2015 that identified violations described in the Compliance Evaluation Inspection..

Hazardous Waste Enforcement (Continued)

- During the CEI, an O'Reilly employee indicated that the O'Reilly store at the Site has previously accepted small quantities of hazardous waste paint solvent from Custom Colors of Arkansas, a mobile paint shop that is a Conditionally Exempt Small Quantity Generator of hazardous waste.
- The hazardous waste paint solvent from Custom Colors was then added to Ozark's hazardous waste stream.
- In order to accept and store hazardous waste from other generators, Respondents must possess an ADEQ hazardous waste permit as a treatment, storage, and disposal facility.
- At the time of the CEI, neither Respondent was permitted as a TSDF.
- Failure to possess a TSDF permit while accepting and storing hazardous waste from other generators is a violation of APC&EC Regulation 23 § 270.1(c) which states in part, "RCRA requires a permit for the 'treatment', 'storage', and 'disposal' of any 'hazardous waste' as identified or listed in § 261 of this regulation ..."
- Consequently, this is also a violation of Ark. Code Ann. § 8-7-205(1).
- Ozark and O'Reilly informed ADEQ on October 29, 2015 that "acceptance and storage of hazardous waste from outside generators had ceased."
- The CAO provides that O'Reilly and Ozark jointly are severally liable for failure to comply with any and all obligations contained in the CAO.
- Ozark and O-Reilly are required to submit documentations (including disposal manifests) to ADEQ for review and approval that all hazardous waste generated off-site is no longer accepted or stored at the Site.

Is Use, Storage and Disposal of Large Quantities of TCE and VOCs an “Abnormally Dangerous” Activity? (Common Law Damage Suit)

Kirk v. Schaeffler Group

- Court determined it was not
- Why important? (no proof of negligence is required)
- Missouri courts consider the following factors to determine whether an activity is abnormally dangerous:
 - The existence of a high degree of risk of harm;
 - The likelihood that the harm will be great;
 - The inability to eliminate the risk by exercise of reasonable care;
 - The extent to which the activity is not a matter of common usage;
 - The inappropriateness of the activity to the place where it is carried on; and
 - The extent to which its value to the community is outweighed by its danger.
- Court notes only two activities have been found to be abnormally dangerous in Missouri: blasting and radioactive nuclear emissions.

Can Air Monitoring Data Developed by Environmental Consultants for a Client be Obtained in Litigation Discovery?

- Environmental consultants and other independent professionals often develop documents and data for their clients.
- A question that sometimes arises is whether this information can be obtained by another party through discovery or other means.
- A Pennsylvania Court in *Haney v. Range Resources – Appalachia, LLC* held that the Defendant natural gas operator could not object to discovery of ambient monitoring of other evaluations undertaken on its behalf by its consultant in regards to a drilling site.
- The Court held the Defendant had failed to provide any meaningful evidence that the consultant was retained in anticipation of litigation in preparation for trial.
- The Court also noted that even if the consultant had been engaged as an expert consultation in anticipation of litigation, it also had been retained in other non-expert roles for certain functions that natural gas sites for the lawsuit began.

Can Air Monitoring Data Developed by Environmental Consultant for a Client be Obtained in Litigation Discovery? (continued)

- The decision serves as a reminder that companies that have relationships with environmental consultants must carefully delineate the work and tasks associated with litigation support and the formulation of expert opinions to document engagements with separate and specific contracts.
- Issues equally applicable to sampling data associated with contamination investigations/remediation, etc.

(Criminal Enforcement)

U.S. Department of Justice and Labor Announces Expansion of Worker Endangerment Initiative to Address Environmental and Worker Safety Violations

- The U.S. Justice Department's Environment and Natural Resources Division and the U.S. Attorneys' Offices will work with the Department of Labor's Occupational Safety and Health Administration, Mine Safety and Health Administration and Wage and Hour Division to investigate and prosecute worker endangerment violations.
- Decision is to consolidate the authorities to pursue worker safety statutes within the Department of Justice's Environment and Natural Resource Division's Environmental Crimes Section.
- The Justice Department Environment and Natural Resources Division states it has also been strengthening its efforts to pursue civil cases that involve worker safety violations under statutes such as the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act and the Toxic Substances Control Act.
- The Justice Department says violations of a number of provisions under these statutes can have a direct impact on workers tasked with handling dangerous chemicals and other materials, cleaning up spills and responding to hazardous releases.

Federal Criminal Enforcement (Hazardous Materials)

Montana Man Sentenced for Illegal Transportation of Hazardous Materials

- On December 29, 2012, Steen, a driver for Woody's Trucking, loaded natural gas condensate from a pipeline station that transports products from the Bakken oil fields in Montana and North Dakota.
- Hauled from Watford City, North Dakota, to a slop-oil processing/recycling company, Custom Carbon Processing, Inc., based near Wibaux, Montana.
- The bill of lading that accompanies the shipment identified the produce as "slop oil and water," which is a non-hazardous substance.
- Condensate is a hazardous material and the truck was not placarded to indicate it held a flammable liquid.

Federal Criminal Enforcement (Failure to Notify Appropriate Federal Agency of Hazardous Waste Spill)

- Walter Oil & Gas Corporation was charged in an one-count Bill of Information with a felony violation of failing to immediately notifying the proper agency of a hazardous waste spill in connection with its oil and gas production activities in the Gulf of Mexico.
- According to the Bill of Information:
 - ... on or about March 31, 2014, in the navigable waters of the United States and within the Eastern District of Louisiana, Walter Oil & Gas Corporation, an entity in charge of an offshore facility from which hazardous substances were discharged in a quantity which may be harmful into navigable waters of the United States, failed to immediately notify the appropriate agency of the United States government as soon as it had knowledge of the discharge.
- Note – Clean Water Act violation
- Similar Issues/Responsibilities with Superfund/CERCLA releases
- Tight time frames (“immediately”)

Federal Criminal Enforcement
(Hazardous Waste Storage)

Roanoke, Virginia Chemical Distributor, Chem-Solv Inc., Pleads Guilty to Illegally Storing and Transporting Hazardous Waste and Agrees to Pay \$1.5 Million in Penalties

- Chem-Solv agreed to pay a \$1 million criminal fine for violations as well as an additional \$250,000 to fund environmental community service projects.
- Chem-Solv agreed to serve five years' probation, during which time it must develop and implement an environmental compliance plan and be subjected to yearly independent environmental audits.
- Chem-Solv operates a chemical blending and distribution facility.
- Chem-Solv is in the business of purchasing chemicals and then reselling them to customers, either directly or after repackaging.
- As part of its ordinary business practices, Chem-Solv generated hazardous waste.
- A spill of several hundred gallons of ferric chloride occurred on the Chem-Solv facility in Roanoke in June 2012.
- Although most of the waste was cleaned up using vacuum trucks, some of the ferric chloride flowed from the Chem-Solv facility onto an adjoining property both before and during the cleanup.
- Pleadings allege that, although Chem-Solv was aware of the hazardous nature of ferric chloride, it did not properly test the waste and instructed the transporter to transport the waste as non-hazardous, without the proper placards and manifests.

Federal Criminal Enforcement (Hazardous Waste Storage) (continued)

- Count two of the information charges Chem-Solv with the improper storage of hazardous waste.
- Chem-Solv was given advance notice of an EPA inspection in December 2013.
- At the time the advance notice was given, Chem-Solv was storing numerous containers of chemical waste on its facility that should have been disposed of properly.
- The pleadings allege that Chem-Solv directed its employees to load three trailers with the chemical waste in an attempt to prevent EPA inspectors from discovering it.
- Two of the three trailers were taken offsite.
- The third trailer, which was not road worthy, was stored on the Chem-Solv property for almost a year and its contents were discovered by law enforcement officers on Nov. 19, 2014, while executing a search warrant.
- That trailer was found to contain hazardous waste that Chem-Solv did not have a permit to store on its facility.

Competition/Solid Waste: National Waste & Recycling Association and Warrick County Waste Management District

- NWRA filed a November 13th Complaint for Declaratory and Injunctive Relief against Warrick County Solid Waste Management District (Indiana) in a United States District Court (Indiana).
- The District had granted Renewable Resources, LLC a monopoly of the curbside collection and processing of solid waste and recyclable material in Warrick County, Indiana.
- The Complaint sought injunctive relief.
- The Complaint alleged that the District violated the dormant Commerce Clause by granting a local private contractor the exclusive right to *process* solid waste and recyclable materials generated in Warrick County, Indiana.
- It alleged that the District violated the dormant Commerce Clause by granting that same contractor the exclusive right to *collect* solid waste and recyclable materials in certain portions of Warrick County because the District did not allow out-of-state companies to compete on an even playing field.

Competition/Solid Waste: National Waste & Recycling Association and Warrick County Waste Management District (continued)

- Count III alleged that the District exceeded its statutory authority under Indiana law when it established the exclusive curbside collection program.
- Count IV alleged that the District violated certain Indiana statutes when it issued the request for proposal for the curbside collection program.
- The Court held the District is enjoined from enforcing Resolution 2015-03 against NWRA's members or any other person who desires to collect solid waste and recycling in Warrick County.

Recycling/State Tax Credit

California Enacts Credit Provision

- California legislature enacted AB 199 which provides financial assistance in the form of a sales tax exemption on equipment purchased to businesses that process or utilize recycled feedstock.
- AB 199 would expand projects eligible for sales and use tax exclusion to include projects that process or utilize recycled feedstock.
- Does not include a project that processes or utilizes recycled feedstock in a manner that constitutes disposal
- One more reason that what constitutes “disposal” can be a highly debated issue (not just for regulatory reasons).
- Arkansas has had a 30% tax credit for equipment or machinery purchased for many years that recyclers or recovers solid waste.
- Many Arkansas facilities and companies have utilized the credit.

Scrap/Recycling: Institute of Scrap Recycling Industries Economist Testifies at U.S. Trade Representative/Department Against Exclusive Warrick County, Indiana Curbside Solid Waste and Recycling Collection Program

- The National Waste & Recycling Association filed a November 13, 2015 Complaint for Declaratory and Injunctive Relief against Warrick County Solid Waste Management District (Indiana) in a United States District court.
- The NWRA alleged that the District's resolutions granted Renewable Resources, LLC a monopoly of the curbside collection and processing of solid waste and recyclable materials in Warrick County, Indiana.
- The United States District Court in a March 29th opinion grants NWRA's motion for a preliminary injunction.
- NWRA was granted a motion for preliminary injunction:
 - Irreparable harm is established because if Renewable is able to provide exclusive services
- The Court found that NWRA had a high probability of success on Count III of its Complaint because it exceeded its authority under Indiana law when it adopted Resolution 2015-03, which created the exclusive curbside collection program.
- NWRA had alleged that by adopting this Resolution the District had allegedly
 - (1) engaged in franchising or established a territory within Warrick County,
 - (2) established the type of service Renewable must provide in Warrick County, and/or
 - (3) establish the fees that Renewable must charge in Warrick County.

Commodity Prices/Industrial Activity Affect Resource Recovery and Recycling Rates (continued)

- Joe Pickard, Chief Economist of ISRI, testified at a United States Trade Representative/U.S. Department of Commerce hearing titled “Policy Recommendations on the Global Steel Industry Situation and Impact on U.S. Steel Industry and Market.”
- Addressed global steel industry situation and its impact on the United States steel industry (and related industries such as the ferrous scrap industry).
- Testimony noted:
 - Ferrous scrap (recycled iron and steel products) is typically processed at a rate between 70-75 million tons annually
 - Total value of ferrous scrap processed in the United States in 2014 was 26.1 billion
 - U.S. Geological Survey estimates multi-billion dollar decline in steel scrap processed in the United States declined to 18.3 billion (due to the decline of scrap prices and volumes because of domestic global market factors)

Commodity Prices/Industrial Activity Affect Resource Recovery and Recycling Rates (Continued)

- The United States is the single largest exporter of ferrous scrap but most of the material processed in this country is utilized here.
- Ferrous scrap accounted for 11% of the raw material supplied for steel producers in China in 2014 (i.e., the vast amount of steel production in China is currently made from iron ore and primary materials)
- the environmental benefits of using scrap v. primary material
- Energy consumption and GHG emissions means the production of steel in China has both significant economic costs along with environmental costs
- United States exports of ferrous scrap to China dropped significantly.
- Because of global and domestic market factors, scrap processors profit margins have been “erased” and industry consolidation scrap facilities have closed.
- Vigorous enforcement of trade laws and other efforts by U.S. and other trade leaders are needed to address illegal dumping by other countries.

Recycling/Resource Recovery

Making Biofuels from Whisky Waste?

- September 10th Biofuels Journal links to a Telegraph article that references the United Kingdom's decision to provide funding for a Scottish company (Celtic Renewable) that will make biofuels from whisky waste
- Company will receive funding from the UK for a demonstration facility at Grangemouth.
- The company is stated to produce bio butanol, from pot ale and draff.
- These materials are by-products of malt whisky production.
- The potential supply source is apparently 500,000 tonnes of draff and 1,600m liters of pot ale, which are generated by distilleries annually.

Animal Waste-to-Energy: \$120 Million Missouri Facility Slated for 2016

- Roeslein Alternative Energy of St. Louis, Missouri is constructing a \$120 million animal waste-to-energy facility in the State of Missouri.
- The company states that waste from finishing hogs would be utilized to create and inject large quantities of renewable natural gas into the national grid system.
- Phase One is stated to be nearly 50% complete and involves installation of impermeable covers and flare systems on 88 existing manure lagoons at Smithfield Foods hog finishing farms in northern Missouri.
- Phase Two is stated to involve fabricating and installing technology to purify the captured biogas.
- Renewable natural gas is projected to enter the pipeline in the summer of 2015.
- The hog manure from the project will produce approximately 2.2 billion cubic feet of pipeline quality RNG.

Is a Contamination Plume Moving Toward a Property (But Not Currently Impacting it) a Recognized Environmental Condition?

- Blog *Commonground* had an April 4th post which addresses a scenario in which an ASTM Phase I Environmental Site Assessment on an undeveloped/proposed residential property determined that an underground storage leak resulted in a plume of contamination.
- The plume associated with the release may be moving toward the property being assessed but has not impacted it.
- The question is whether this scenario is an ASTM Recognized Environmental Condition (“REC”)?
- One response opined that “it could be a REC if you determined the migrating plume is a ‘material threat of a release’.”
- Another commenter expresses skepticism about whether this scenario constitutes a REC noting: “And yet many Eps still think every UST represents a material threat of a release because they might leak at some time.

Hexavalent Chromium and Vanadium: North Carolina
Department of Environmental Quality
Report Addressing Standards/Health Screen Levels (2016)

- Legislatively mandated report titled *Final Report on the Study of Standards and Health Screening Levels for Hexavalent Chromium and Vanadium* issued.
- The *Report* compares North Carolina's criteria and other southeastern states for these substances.
- The *Report* discusses:
 - Groundwater quality standards established by the North Carolina Environmental Management Commission
 - Background standards established by DEQ
 - Health screening levels established by DHHS
 - Maximum contaminant levels established by the Safe Drinking Water Act
 - Survey of other states' criteria
 - Naturally occurring concentrations
- Various recommendations are included in the *Report*.