CERCLA Trends & Controversies

Supreme Court Review

• Guam v. United States (2021): Allowing Guam to pursue contribution claim under CERCLA against the U.S. because previous settlement was under CWA

• Atlantic Richfield Co. v. Christian (2020): Section 113 does not bar party seeking more stringent remedy under state law, subject to EPA approval under section 122

• CTS Corp. v. Waldburger (2014): State statute of repose (as opposed to statute of limitation) not preempted by CERCLA


• U.S. v. Atlantic Research Co. (2007): Allows PRP to seek pre-enforcement contribution under section 107 for voluntary cleanups

• Cooper Industries, Inc. v. Aviall Services, Inc. (2004): Bars contribution action under section 113 absent civil action under section 106 or 107
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Abandoned Mines and Good Samaritan Cleanups

• GAO estimates more than 160,000 abandoned hardrock mines
  – EPA estimates 40% of headwaters in west threatened by pollution from abandoned mines
• Gold King Mine was undergoing CERCLA response action at time of 2015 blowout
  – Renewed interest in cleanup of abandoned mines by mining companies and Good Samaritans
  – Biden administration has proposed mine cleanups as part of infrastructure plan
• Concerns about CERCLA joint and several liability for contributing to release/threatened release of hazardous substances have inhibited “Good Sams”
  – Alternatives to On-Scene Coordinator oversight
  – Clean Water Act NPDES permit shield
  – Purpose and scope of the “Good Sam” cleanup
  – Involvement of mining companies
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CERCLA 108 Financial Assurance Rulemakings

• Statutory Language
  – Establish regulations for classes of facilities to maintain evidence of financial responsibility consistent with the degree and duration of risk
  – Level of financial responsibility shall be set against the level of risk which [Administrator] in his discretion believes is appropriate based on several factors

• Litigation to Force EPA to take Regulatory Action

• Obama EPA proposed financial assurance rules; Trump EPA reverses course
  – DC Circuit upholds Trump EPA “no rule” approach based on payment history, states

• Trump EPA finalized “no rule” rules for petroleum, chemical, and manufacturing sectors based on DC Circuit hardrock decision
CERCLA Trends & Controversies

**Superfund Tax**
- History of tax
- Controversies
- Reauthorization Debate

**Environmental Justice**
- Public Participation
- Impact on Remedy Selection

**Emerging Contaminants**
- Designation of PFAS as Hazardous Substance