Federal Laws

Hazardous Materials

Thursday, February 2, 2017
8:30 – 10:30 AM

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Defining Hazardous Waste
Union of Medical Marijuana Patients, Inc. v. City of Upland

(Cal. App. 2016)

- Mobile medical marijuana dispensaries.
- Does prohibiting them *create* hazardous waste?
Lessons Learned

• Increased indoor grow operations does not trigger California Environmental Quality Act review

• Driverless pot delivery?
Search Engine that Identifies Treatment, Storage, and Disposal Facilities and Recycling Facilities

http://www.envcap.org/statetools/tsdf/
Train Wrecks
Water Quality Issues in the 114th Congress

- Regulatory Protection of Wetlands
- Judicial Proceedings Involving Section 404
- Authorization of Clean Water Infrastructure Funding
- Issues Affecting Legislative Efforts
- Pilot Program and State Revolving Fund Amendments in P.L. 113-121
- Clean Water Act Issues
- Mountaintop Mining in Appalachia

https://fas.org/sgp/crs/misc/R43867.pdf
Environmental Justice

MY NEIGHBORHOOD IS KILLING ME
Inclusive Communities Project, Inc., v. Texas Department Of Housing and Community Affairs
(USDC ND Tex. 2016)

• On remand.

• “[A]pplying a materially different (and more onerous) prima facie case burden of proof than the one applied originally...”

• ICP did not prove prima facie case.
Lessons Learned

• Applied burden-shifting approach:
  – Plaintiff must show practice causes discriminatory effect.
  – If yes, then defendant must prove practice necessary to achieve “substantial, legitimate, nondiscriminatory interests”
  – Burden then shifts to plaintiff to show available, less discriminatory practice.
Nuisance Claims
Contamination threatened.

May be sufficient to state nuisance claim.

“The amended complaint sufficiently alleges the threat of future harm, as it is plausible that contaminated subsurface water could migrate to the surface through the portions of the Texaco Station uncovered by asphalt or through adjacent properties to which the contamination has migrated and is migrating.”
Lessons Learned

• Proximity may be enough.
• "[i]mminence does not require an existing harm, only an ongoing threat of future harm."
Lautenberg Act of 2016
On June 22, 2016, President Obama signed into law the Frank R. Lautenberg Chemical Safety for the 21st Century Act which amends the Toxic Substances Control Act (TSCA), the Nation’s primary chemicals management law.

The new law, which received bipartisan support in both the U.S. House of Representatives and the Senate, includes much needed improvements such as:

• Mandatory requirement for EPA to evaluate existing chemicals with clear and enforceable deadlines;
• New risk-based safety standard;
• Increased public transparency for chemical information; and
• Consistent source of funding for EPA to carry out the responsibilities under the new law.

Waters of the United States
“For too long, we’ve been held back by burdensome regulations on our energy industry. President Trump is committed to eliminating harmful and unnecessary policies such as the Climate Action Plan and the Waters of the U.S. rule. Lifting these restrictions will greatly help American workers, increasing wages by more than $30 billion over the next 7 years.”

President Trump 1/20/17 [whitehouse.gov](http://whitehouse.gov)

In 2015, the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers issued a final rule to clarify what are waters of the United States under the CWA.


• Issue: Whether the U.S. Court of Appeals for the 6th Circuit erred when it held that it has jurisdiction under ... the portion of the Clean Water Act's judicial review provision that requires that agency actions “in issuing or denying any permit” under Section 1342 be reviewed by the court of appeals, to decide petitions to review the waters-of-the-United-States rule, even though the rule does not “issu[e] or den[y] any permit” but instead defines the waters that fall within Clean Water Act jurisdiction.