TRENDS

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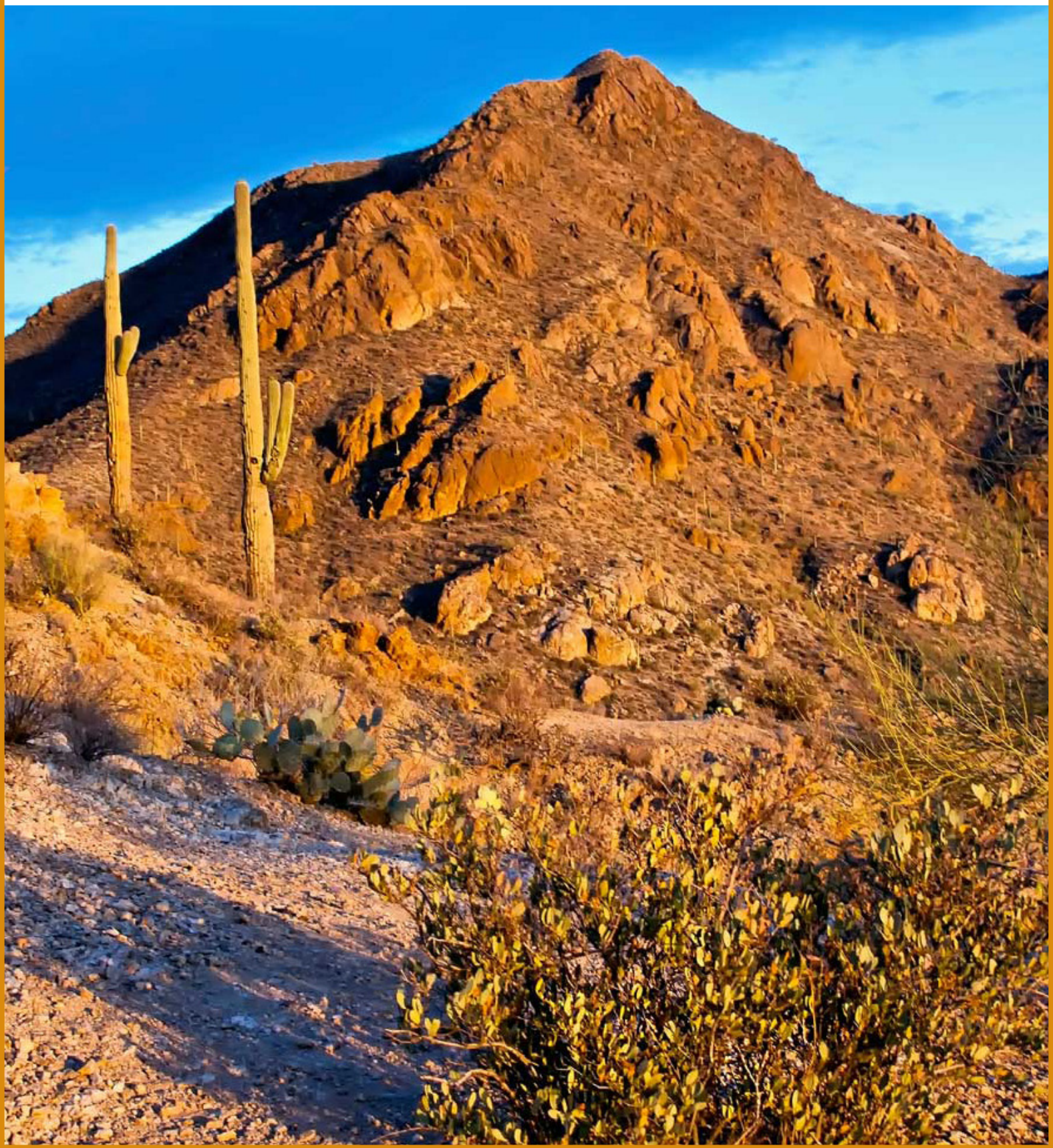

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Lima climate negotiations shed light on a future climate framework

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International climate change negotiations concluded in December 2014 in Lima, Peru, at the 20th Conference of the Parties (COP 20) to the United Nations Framework Convention on Climate Change (UNFCCC or Convention). At Lima, countries around the world agreed on the substance and procedure to submit their proposed measures to combat climate change for inclusion in a future agreement applicable to all countries. The Parties also commenced work on a draft text to form the basis for the agreement to be decided in Paris in December 2015 and implemented by 2020.

Individual country action at the heart of a future agreement

At Lima, the Parties reached an agreement lacking many mandatory provisions but providing a roadmap and draft for a 2015 agreement. The Lima decision, called the "Lima Call for Climate Action," contains the outline of a future agreement and represents a significant departure from over 20 years of international climate legal norms.

The Parties agreed for the first time ever to a process whereby nearly every nation in the world would undertake measures to combat climate change. Unlike the Kyoto Protocol, the new agreement would not require countries to adopt specific emissions-reductions targets for subsequent ratification at home. Instead, each country will promulgate domestic policies to reduce greenhouse gas (GHG) emissions and communicate its *intended* plans to combat climate change by no later than June 2015. The hope is that Parties can collectively push one another to take ambitious action and, through international pressure, ratchet up weaker proposals. Thus, to a large degree, unilateral action may be the new norm, supplemented by international climate finance, market, and nonmarket mechanisms.

The nature of each country's proposed contribution

The Lima Call for Climate Action outlines the information each country may submit as part of its proposed measures to combat climate change (i.e., "Intended Nationally Determined Contributions" or INDCs). First, it enshrines the principle of "anti-backsliding," providing that all INDCs "will represent a progression beyond the current undertaking of that Party." Further, it invites all Parties to communicate their INDCs well in advance of COP 21 (by the first quarter of 2015 for Parties ready to do so).

As to content, the decision envisions that Parties focus their INDCs on mitigation efforts (i.e., GHG reductions), but also invites Parties to consider a component to address adaptation to climate change. In a concession to developing countries, the decision does not specify the minimum information that must be included in all countries' INDCs. Instead, the decision merely states that the information provided in support of a country's INDC *may include*, among other things, a base year for emissions reductions, time frames or periods for implementation, scope and coverage, and assumptions and approaches for measuring GHGs.

A move away from differentiation?

Lima marks a turning point in many respects, steadily shifting international climate obligations under the UNFCCC away from bright-line differences between developed and developing countries. Notably, the Lima Call for Climate Action does not provide for explicit differences in obligations between historically developed (Annex I) and developing (Non-Annex I) parties. This signifies a subtle shift away from a world where climate obligations are divided based on a country's historical status as an industrialized nation as of 1992. Instead, the Lima Call for Climate Action ultimately lets each country decide its appropriate and most ambitious level of climate action.

These developments and other similar language serve to shift the global responsibility for combatting climate change from the developed world to *a shared responsibility for every nation*. Although Least Developed Countries (LDCs) and Small Island Developing States (SIDS) may not be expected to significantly reduce their GHGs or rate of emissions growth, the same can no longer be said for developing countries like China or Brazil. Similarly, the agreement's legal form and lack of internationally binding commitments through emphasis on *intended* contributions may broaden participation among all Parties. Thus, instead of requiring ratification of prior agreed-upon targets as under Kyoto, the future agreement will accept a country's domestic measures as legally satisfactory. For the United States, this means that a 2015 agreement would not necessarily need Senate ratification and thereby empowers an active executive branch.

The draft 2015 agreement

The Lima Call for Climate Action also sets forth the principles to be incorporated into a future agreement and it includes a draft negotiating text for the 2015 agreement. Principally, it provides that a future agreement "shall address in a balanced manner, *inter alia*, mitigation, adaptation, finance, technology development and transfer, and capacity-building, and transparency of action and support." Unlike the Lima Call for Climate Action, the draft negotiating text leaves open for further negotiation the question of whether and how the new agreement will differentiate between developing and developed countries. Several contentious issues remain unsettled. These include the scope and legal nature of the Parties' commitments to act, transparency of actions and support, whether to include provisions governing loss and damage associated with climate change, and the operational details of a proposed compliance mechanism.

Climate finance developments

The Parties declined to take more dramatic action to support the increased flow of climate finance to the developing world. Developed countries had pledged to collectively provide $100 billion per year in climate finance by 2020 but have thus far declined an interim target (beyond the annual amount of $30 billion previously agreed upon in 2012) and have generally been slow to ramp up funding approaching such levels.

The Green Climate Fund (GCF), the UNFCCC's primary mechanism for distributing climate financing to developing countries, became operational in 2014. In the first half of 2015, the GCF has had the authority to commit funds to mitigation and adaptation projects in the developing world. The GCF is thus presenting opportunities for governments (and by extension for private contractors) seeking GCF funding for mitigation and adaptation projects in developing countries.

Future negotiations

The Parties met again at negotiations in February and June 2015 to continue their work to develop the negotiating text for the Parties to consider at COP 21 in early December 2015. If all goes as planned, COP 21 in Paris should produce the next legally binding climate change agreement under the Convention.

Oklahoma regulators implement evolving regulatory directives in response to earthquakes

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Oklahoma experienced 585 magnitude 3+ earthquakes in 2014, a five-fold increase from 2013. Seismologists and other academics have documented the relationship between produced water disposal from oil and gas production operations and triggered seismic activity. As the rise in the number of earthquakes in the state quickly exceeded the range of historical trends and concerns about disposal wells and seismicity were raised by seismologists, the Oklahoma Corporation Commission set in motion an evolving regulatory response to address the issue.

Producing more water

In Oklahoma and other oil and gas producing states, underground disposal of produced water is a common, well-accepted, cost-effective, and often necessary result of oil and gas production. In general terms, unconventional production practices in Oklahoma's resource plays produce high volumes of water, which co-exist with oil and gas in the subsurface. Operators face disposing of more water, often at higher pressures, in the same Class II underground injection control (UIC) wells that have been in

use for decades. Class II UIC wells in Oklahoma have not traditionally been permitted based on seismicity risk considerations because the primary purpose of the program is to protect underground sources of drinking water.

Water disposal and seismicity concerns

Scientists and regulators have had some difficulty confirming clear connections between individual well operations and seismic events—a challenge that is exacerbated by the vast number of both UIC wells and earthquakes in the area. On April 21, 2015, the Oklahoma Geological Survey (OGS) determined that the majority of recent earthquakes in central and north-central Oklahoma are very likely triggered by produced water disposal. The OGS noted that recent seismicity patterns are unlikely to represent naturally occurring processes, based on observed seismicity rates and the geographical relationship to major oil and gas plays with large amounts of produced water.

Oklahoma Corporation Commission jurisdiction

The Oklahoma Corporation Commission (OCC) is an independent agency with three statewide elected commissioners and is statutorily granted exclusive jurisdiction over the conservation of oil and gas and Class II UIC wells. 52 Okla. Stat. §139 (B). Oklahoma law gives OCC the authority to take extraordinary measures in the interest of public safety, without notice and hearing, though OCC normally operates under its general authority to permit oil and gas and UIC well operations. 52 Okla. Stat. §139 (D).

Regulatory response

OCC opened a standard rulemaking in 2014 aimed at enhancing the agency's ability to collect data necessary to address the relationship between UIC wells and seismic events. OCC finalized the rule, which took effect in September 2014 and requires UIC well operators in the state's deepest geologic formation, the Arbuckle, to report well pressure and volumes daily and to utilize modern technology to determine true well depth. The rules also require annual mechanical integrity tests for wells disposing of 20,000 barrels a day or more.

An evolving "traffic light" system

OCC also instituted a parallel permitting framework to address both new UIC well applications and existing wells in seismically active areas. Recommended by the National Academy of Sciences and known as the "traffic light" system for UIC well permitting, OCC staff now reviews well permit applications on a case-by-case basis to determine the risk of seismicity in the area. "Yellow light" permits are recommended for wells that present seismicity concerns and "red light" permit situations occur when OCC determines that a well should not be permitted due to the known seismic risks. "Yellow light" permits are temporary, contain certain restrictions aimed at mitigating seismicity, and are considered in the adjudicative process rather than through administrative approval. These requirements are not set out in agency rules, but are set forth as staff directives for operators.

A key component of the traffic-light system is OCC's delineation of "areas of interest" which are determined by proximity to recent "seismic swarms," or groups of seismic events. "Areas of interest" are areas within which both permit applications and existing wells are now subject to new agency directives. These directives are aimed at addressing and mitigating seismicity risks based on the most recent studies and new data. Wells operating under existing, pre-traffic-light permits could be required to alter operations or shut-in based on the new directives.

Latest developments

Seismologists generally agree that disposal of produced water in the basement rock (i.e., the hardened layer of rock that lies beneath most oil and gas operations) presents a potential risk for triggered seismicity. In the latest round of directives, OCC addressed this concern by directing well operators within areas of interest to prove that wells are not disposing into the basement rock and required wells found to be in contact with the basement rock to "plug back." Plugging back, or using cement to elevate the total depth of the well, is meant to ensure that the injected fluid is not in communication with the basement rock. Entities with permitted disposal well operations subject to the new directives could appeal OCC's staff's actions and request a hearing before an administrative law judge. This option has not yet been exercised.

Voluntary compliance vs. backstop authority

OCC is establishing directives that can evolve based on changing events and scientific study. Though it may take some time to determine the efficacy of the directives, the success of the traffic-light system relies on voluntary compliance by operators, especially those operating under existing, pre-traffic-light permits. Should the directives face legal challenge, OCC could feasibly prevail under its public safety backstop authority, though this theory has not yet been tested in the courts when addressing seismicity concerns. An evolving framework with robust voluntary compliance may prove to be preferred when addressing concerns raised by recent scientific study, mitigating risk, and continuing operations safely.

Prosecutorial discretion and environmental crime

David M. Uhlmann

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More than 30 years after the Environmental Protection Agency (EPA) began hiring criminal investigators, questions persist about when the Justice Department and EPA will bring criminal charges for environmental violations. Congress made few distinctions under the environmental laws between acts that could result in criminal, civil, or administrative enforcement. The only mental state required for most environmental crimes is knowledge of the facts (not knowledge of the law), which also does little to differentiate criminal violations from civil or administrative violations. As a result, even the most technical violation theoretically could result in criminal prosecution.

If the same violation could give rise to criminal, civil, or administrative enforcement, what determines which environmental violations result in criminal prosecution? The answer is the exercise of prosecutorial discretion, which exists in all areas of the criminal law, but assumes a particularly critical role in environmental cases. Practitioners therefore often struggle to predict which environmental violations will result in criminal charges, and claims persist about the over-criminalization of environmental violations.

Reserving criminal enforcement for egregious violations

To address the challenges facing practitioners—and to delineate an appropriate role for criminal enforcement in the environmental regulatory scheme—I proposed in 2009 that prosecutors should exercise their discretion to reserve criminal enforcement for violations that involve one or more of the following aggravating factors:

- significant environmental harm or public health effects,
- deceptive or misleading conduct,
- operating outside the regulatory system, or
- repetitive violations.

By doing so, prosecutors could focus on violations that undermine pollution prevention efforts and avoid targeting defendants acting in good faith or those who committed technical violations.

In 2010, I created the Environmental Crimes Project at the University of Michigan to determine how often the aggravating factors I identified were present in criminal prosecutions. With the assistance of more than 150 law students, I analyzed all defendants charged in federal court with pollution crime or related Title 18 offenses from 2005 to 2014. We have examined court documents for 1,228 cases involving 1,562 defendants. In addition to analyzing aggravating factors, we compiled data regarding the types of defendants charged, the judicial districts and EPA regions involved, the statutes charged, and case outcomes.

Data on aggravating factors in environmental prosecutions

Our research for 2013 to 2014 is not complete, but the results for the first eight years of our study are striking. For 96 percent of the defendants prosecuted for pollution crime and related Title 18 offenses from 2005 to 2012, prosecutors charged violations involving at least one of the aggravating factors. For 78 percent of the defendants, the violations involved repetitive conduct; for 64 percent of the defendants, the violations involved deceptive or misleading conduct. These findings support at least three significant conclusions about the role of aggravating factors in environmental prosecutions.

1. Prosecutors almost always focus on violations that include one or more of the aggravating factors.
2. Violations that do not include one of those aggravating factors are not likely to be prosecuted criminally.
3. Although there are exceptions, prosecutors generally do not charge isolated conduct, and prosecutors often focus on violations involving deceptive or misleading conduct.

We also found that 71 percent of the defendants charged with environmental crimes engaged in conduct that involved multiple aggravating factors. The fact that such a high percentage of defendants had multiple aggravating factors suggests a higher level of egregiousness. For 93 percent of the defendants with multiple aggravating factors, one of the first three factors (harm, deceptive conduct, or operating outside the regulatory system) was present along with repetitiveness. This finding suggests that prosecutors often reserve criminal charges for repetitive violations that involve one of the first three factors.

The role of aggravating factors analysis for practitioners

I cannot say whether the presence of the aggravating factors I have identified will trigger criminal prosecution. Declined cases are not public, so we do not have a control group of cases where prosecutors decided not to pursue criminal charges; we also do not have a comparison group of civil or administrative cases, because those matters involve notice pleading that does not lend itself to aggravating factor analysis. Indeed, I would expect that civil and administrative cases would also involve significant harm and repetitive violations but not deceptive or misleading conduct. The latter, in my experience, would be more likely to result in criminal enforcement.

Nonetheless, my findings should provide greater clarity about the role of environmental criminal enforcement and reduce uncertainty in the regulated community about which environmental violations might lead to criminal charges. For practitioners handling cases that do not involve one of the aggravating factors I have identified, the research may help convince prosecutors to exercise their discretion to decline criminal enforcement in favor of civil or administrative enforcement, particularly in cases involving isolated misconduct and no evidence of deceptive or misleading behavior by the client.

For more details on our empirical research, please see my recent Harvard Environmental Law Review article.

Hot clean water act topics for all practitioners

Alexandra Dapolito Dunn and Sarah Stillman

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The finest workers in stone are not copper or steel tools, but the gentle touches of air and water working at their leisure with a liberal allowance of time. —Henry David Thoreau

Thoreau's words reflect on how nature—in particular water—makes its own impact on the landscape over the course of time. It also reminds us that water is a natural substance and something that humans cannot completely control. Notwithstanding this reality, courts, regulators, legislators, and policymakers are regularly taking actions to manage the effects of water on landscapes and to advance and protect its quality through a variety of new requirements, regulations, and programs. This article outlines some key developments in the water quality arena that are shaping the landscape of this practice area today.

Waters of the U.S.

Preeminent in the minds of water lawyers is the final rule released late spring by the Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) designed to better define which types of water are considered jurisdictional under the Clean Water Act (CWA), triggering section 303 water quality standards and requirements to obtain section 404 dredge and fill permits for wetlands and section 402 permits for discharges, among other requirements. The rulemaking was prompted by a series of U.S. Supreme Court cases, most notably *Rapanos v. United States*, 547 U.S. 715 (2006). In *Rapanos*, a 4–1–4 opinion attempting to determine the scope of the CWA's coverage noted a need for "more specific regulations." This reference was amplified by calls from stakeholders representing all sectors of the economy seeking the kind of clarity that can only be accomplished through rulemaking. Nonetheless, legal challenges to the final rule are underway and implementation guidance is needed to avoid another string of fact-specific and challenging cases.

NPDES reporting rule

As technology advances and information and data are more easily transferred in every facet of life, the CWA is no exception. This fall, the National Pollutant Discharge Elimination System (NPDES) will move into the electronic age with the finalization of the NPDES E-Reporting rule. The rule will make reporting easier for NPDES-regulated entities, streamline permit renewals, and enhance public access to pollutant monitoring results and inspection and enforcement history. Practitioners in this field should familiarize themselves with this rule, which will be implemented in phases over the course of a number of years. The NPDES E-Reporting rule might affect some new activities, as more courts are asked to find nontraditional discharge points to be "discernible, confined and discrete conveyance[s]" discharging pollutants. A recent Hawaii case, *Hawaii Wildlife Fund v. County of Maui*, No. 12-00198, 2015 WL 16720 (D. Haw. Jan. 23, 2015), explored whether undersea formations constitute point sources, while the plaintiff in an ongoing Washington case alleges that train cars transporting coal are point sources given their possible release of coal dust into waterways. *Sierra Club v. BSNF Railway Co.*, No. 13-cv-00272, 2014 WL 53309 (E.D. Wash. Jan. 2, 2014). Savvy practitioners should be on the lookout for similar cases in the future.

Fracking and oil/gas extraction

As the water-energy nexus continues to be front and center, CWA practitioners should watch for EPA's release of a study of the impacts of hydraulic fracturing on drinking water sources, as well as EPA's finalization of an effluent limitation guideline that would prevent the discharge of pollutants in wastewater from onshore oil and natural gas extraction facilities to publicly owned treatment works (POTWs).

Water infrastructure

Speaking of POTWs, water infrastructure is another topical area. Title V of the 2014 Water Resources and Reform Development Act added the Water Infrastructure Finance and Innovation Act (WIFIA) to the CWA. WIFIA establishes a new federal loan authority at EPA for drinking water, wastewater, and water resources infrastructure projects. A five-year pilot, WIFIA will leverage federal funds to promote increased development of large-scale clean water, drinking water, and Corps projects, with a right of first refusal for the Clean Water and Drinking Water State Revolving Fund (SRF) programs. To date, Congress has not made appropriations for WIFIA loans, but EPA is staffing the program at headquarters. Beginning in October, WIFIA requires municipalities taking SRF loans to certify that their projects are sustainable—and they can now receive loans with up to 30-year terms. In a related development, EPA recently established a Water Infrastructure and Resiliency Finance Center as a resource for communities, municipal utilities, and private entities as they address water infrastructure needs with limited budgets. Of course, integrated planning—a new approach to municipalities spreading out and prioritizing their investments in water infrastructure over time—remains a vital new tool in a CWA practitioner's toolbox.

Numeric nutrient criteria

Reducing nutrient pollution remains one of the most pressing water pollution control issues facing our nation today. Practitioners are awaiting a final decision of the U.S. District Court for the Eastern District of Louisiana in *Gulf Restoration Network v. McCarthy*, No. 12–677 (E.D. La.), on remand from the U.S. Court of Appeals for the Fifth Circuit (No. 13-31214, 5th Cir.), involving the Mississippi River Basin and a battle over whether EPA or states should be leading nutrient control efforts, as well as for the U.S. Court of Appeals for the Third Circuit's final decision in *American Farm Bureau Federation v. McCarthy*, No. 13-4079 (3d Cir.). At issue in *American Farm Bureau Federation* is whether EPA's Chesapeake Bay Total Maximum Daily Load (TMDL) goes too far and usurps state authority. Last summer's nutrient-related harmful algal bloom outbreak in Toledo, Ohio, also put EPA on course to release new guidance this summer to give dischargers, regulators, and the public important information on this public health risk and various response options.

Stormwater

Of course, much nutrient pollution comes from runoff—and thus practitioners should be following stormwater developments at the city, state, and national levels. EPA recently decided not to propose a postconstruction stormwater rule. At the same time, cities are stepping up to the plate with programs and regulations designed to reduce the extent of impervious surfaces and improve water quality. For example, the District of Columbia Department of the Environment recently approved its first trade of stormwater retention credits while the Philadelphia Water Department is changing its rate structure for stormwater fees by charging nonresidential properties based on the ratio of impervious surface area to

gross property area. As some localities are making progress, nongovernmental organizations are seeking to have EPA exercise its CWA residual designation authority to find that currently nonpermitted stormwater discharges from commercial, industrial, and institutional facilities require permits. Practitioners should note this historically little utilized CWA provision at 402(p)(2)(E)—and expect to see instances of its application increase.

These issues are just a sample of what can keep a CWA lawyer busy. To stay up to date, be sure to join the Section's Water Quality and Wetlands Committee and participate in water-related teleconferences and webinars throughout the year. Also plan to attend an upcoming Section conference where you are assured to find a panel of experts offering a deep dive into one of these—and many other—hot CWA topics.

The rise of mandatory product stewardship programs

Steven Sarno and Lauren Hopkins

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Long after the introduction of "bottle bills" in the 1970s, which created some of the first industry-managed product return programs, many states are revisiting the initial concept and expanding the scope of both voluntary and mandatory product stewardship initiatives. Modern Extended Producer Responsibility (EPR) laws first emerged in Europe with the targeting of packaging, batteries, and electronics and have quickly expanded to other countries. In the United States, over 30 states have enacted EPR laws that firmly place the responsibility for collecting and disposing of unwanted consumer products on the companies that make them. Different states have focused on different products, but the trend is towards rapid expansion resulting in the patchwork of regulation often seen with early-actor, state-based adoption of new regulatory programs.

Early EPR programs

In 1971, Oregon passed the first bottle bill, requiring refundable deposits on certain beverage containers. Ten states followed suit over the next 15 years. Despite attempts by proponents of bottle bill programs to pass legislation in over half of U.S. states (as of March 2015 there were bills pending in Indiana and Maryland), the number of bottle bill states has remained steady. While deposit programs are generally successful in creating a financial incentive to return used products, their isolated, state-specific

nature can be a drawback. The lack of uniformity prevents a harmonized response from manufacturers and contributes significantly to the costs of compliance. Moreover, most bottle deposit programs rely on individual beverage distributors and require expensive sorting by brand and distributor.

A notable exception to this is Oregon, the bottle bill pioneer, which in 2011 substantially expanded its bottle deposit law. It switched from a program based on individual beverage distributor/brand responsibility to a collective system run by a private, for-profit administrator: the Oregon Beverage Recycling Cooperative (OBRC). In addition, the expansion included a provision that directed OBRC to establish independent collection centers in order to relieve the burden on grocers and retailers. OBRC essentially acts like a statewide industry consortium of the entities responsible for the creation and the ultimate recycling of the product. Together these changes give more control to the manufacturers while simultaneously expanding manufacturer responsibility.

The development of industry-consortium responses to EPR mandates

The collective, financial responsibility model underlying Oregon's 2011 bottle bill expansion was not the first of its kind. In the early 1990s, several states adopted EPR laws for certain batteries (primarily the rechargeable kind, and lead-acid). These programs, led by Minnesota and New Jersey, required manufacturers to collect, transport, recycle, or properly dispose of batteries they sold in the state. After several states passed similar EPR laws, in 1994 manufacturers formed the Rechargeable Battery Recycling Corporation (RBRC), now Call2Recycle, Inc., to oversee battery collection and disposal. Despite the formation of this industry consortium clearinghouse, recycling rates for rechargeable batteries remain low (10 to 12 percent on average) in part because the underlying state laws vary widely and many lack specific performance targets and reporting mechanisms.

A similar industry reaction occurred in the early 2000s, following the introduction of EPR programs to address electronic waste (primarily computers and televisions). California instituted an Advanced Recycling Fee (ARF) program in 2003 to fund the reimbursement of collection and recycling costs for covered electronic devices by charging the customer at the point of sale. Maine followed in 2004 with an EPR program that required manufacturers to shoulder the responsibility for managing the collection and recycling process. Twenty-two other states have since followed Maine's lead.

Although a decade had passed since the first rechargeable battery program, EPR laws for electronic devices again preceded the formation of an industry response. In neither instance was the program driven by a single, industry-led program or model legislation. But that is changing. States have now moved on to other product groups including mercury thermostats (11 states), pesticide containers (CA), pharmaceuticals (three counties), carpets (CA), paints (eight states), and mattresses (three states).

Many of these EPR programs take a mandatory, collective-responsibility approach. In some cases (mercury thermostats, paint, and carpet), the EPR mandates were absorbed by a preexisting, voluntary industry consortium. The mercury thermostat EPR programs mirror earlier product programs in their state-to-state variation and corresponding success rates, and the industry consortium functions more as an information clearinghouse. By contrast, the carpet and paint industries took a more active role in establishing a model framework that could be replicated across states as those states adopted EPR requirements. By getting involved early, Carpet America Recovery Effort was initially designated as the

sole "carpet stewardship organization" for California and developed the first carpet stewardship plan, which, practically speaking, will set the contours of future plans by individual companies and other stewardship organizations. PaintCare, the paint manufacturer consortium, went one step further by affirmatively advocating for mandatory EPR programs and developing model legislation that could be used by any state seeking to address paint recycling. Most recently, in the case of mattresses, industry groups formed the Mattress Recycling Council, a nonprofit organization intended to plan and operate compliant mattress stewardship programs, at the same time that California, Connecticut, and Rhode Island passed their respective EPR laws.

By getting out in front of state legislatures, manufacturers have been able to offer interested states a uniform, streamlined option for bringing a new product into the EPR fold. This move from reaction to proaction has now come full circle back to the battery industry. In 2014, Vermont passed the first-in-the-nation mandatory EPR program for primary, single-use batteries. Once the law becomes effective in 2016, primary battery producers will not be allowed to sell directly (or through retailers) unless they (by themselves or with others in a stewardship organization) register under an approved and implemented primary battery stewardship plan.

Following the successful enactment of Vermont's law, the Corporation for Battery Recycling, National Electric Manufacturers Association, Rechargeable Battery Association, and Call2Recycle, Inc., released the Model Consumer Battery Stewardship Act, which will be put forward in Connecticut in 2015. Success in Connecticut may lead to other states following suit using the industry-designed model bill.

It is clear that mandatory EPR laws are here to stay and will likely continue to expand at the state level to include additional categories of products or product packaging. Whether early industry action will continue to be the model for anticipating such future regulation remains to be seen, as does the corresponding success of the EPR effort overall as a mechanism to drive sustainable product design and end-of-life producer responsibility.

Encryption: Basic security you should be using now

David G. Ries

Dave Ries is a member in the Pittsburgh office of Clark Hill PLC, where he practices in the areas of environmental, commercial, and technology law and litigation. He has used computers in his practice since the early 1980s and since then has strongly encouraged attorneys to embrace technology—in appropriate and secure ways. Mr. Ries is a co-author, with Sharon Nelson and John Simek, of Encryption Made Simple for Lawyers (American Bar Association 2015).

Encryption is now a generally accepted security measure to protect confidential data. Yet many attorneys have either ignored encryption or offered pretexts for avoiding it. Attorneys often dismiss encryption, stating that "I don't need encryption," "Encryption is too difficult," and "Encryption is too expensive." These excuses, however, are misplaced and all attorneys should generally understand encryption, use it when appropriate, and make informed decisions regarding when encryption should be used and when it may be avoided.

Encryption basics

Encryption is an electronic process to protect data using two steps—encryption and decryption.

- *Encryption* is the conversion of data from a readable form, called plaintext, into a form, called ciphertext, which cannot be understood by unauthorized people.
- *Decryption* is the process of converting encrypted data back into its original form (plaintext), so it can be understood.

Encryption can protect stored data (on servers, desktops, laptops, tablets, smartphones, portable devices, etc.) and transmitted data (over wired and wireless networks, including the Internet and e-mail).

Encryption uses a mathematical formula to convert the readable plaintext into unreadable ciphertext. The mathematical formula is an **algorithm** (called a cipher). Decryption is the reverse process that uses the same algorithm to transform the unreadable ciphertext back to readable plaintext. The algorithms are built into encryption programs—users don't have to deal with them when they are using encryption.

Encryption keys are used to implement encryption for a specific user or users. A key generator that works with the selected encryption algorithm is used to generate a unique key or key pair for the user(s). A key is just a line or set of data that is used with the algorithm to encrypt and decrypt the data. Protection is provided by use of the algorithm with the unique key or keys.

The process is called **secret key** or **symmetric key encryption** where the same key is used with an algorithm to both encrypt and decrypt the data. With secret key encryption, it is critical to protect the security of the key because it can be used by anyone with access to it to decrypt the data.

Where a **key pair** is used, one to encrypt the data and a second one to decrypt the data, the process is called **asymmetric encryption**. For this kind of encryption, a key generator is used to generate a unique key pair, one for encryption (a public key) and the other for decryption (a private key). With key pairs, it is critical to protect the private decryption key since anyone with access to it can decrypt the data.

For a simplified comparison to the physical world, the encryption program is like a lock, the algorithm is like the internal mechanism of the lock, and the key is like a physical key or combination.

Attorneys need encryption

Threats to data in information systems and computers used by attorneys are at an all-time high and growing. Electronic communications and wired and wireless network traffic can be intercepted. Cyberspace is a dangerous place. The FBI has repeatedly warned that hundreds of law firms are being targeted by hackers.

Encryption, as part of a robust security program, can provide strong protection against many current threats.

Encryption is particularly important for laptops, smartphones, tablets, and portable media because they can easily be lost or stolen. The *Verizon 2014 Data Breach Investigation Report* explains it this way:

> **Encrypt devices**
>
> Considering the high frequency of lost assets, **encryption is as close to a no-brainer solution as it gets for this incident pattern**. Sure, the asset is still missing, but at least it will save a lot of worry, embarrassment, and potential lawsuits by simply being able to say the information within it was protected.

(Emphasis added.)

Encryption is generally easy

Fortunately, easy-to-use encryption options are available. Encryption and decryption are often automatic, after setup, or are as easy as point and click. In many applications of encryption, data is automatically decrypted when a user logs on and automatically encrypted when a user logs off or shuts down. Encrypting e-mail, after setup, is often automatic or requires a simple click or checking a box. Many attorneys will need technical assistance to install and set up encryption, but it's generally easy from there.

Encryption can be so transparent that users don't even know that they are using it. For example iPads and current iPhones automatically enable encryption when a user sets a passcode. (On Android phones and tablets and Blackberries, encryption is enabled by clicking a button or buttons.)

Encryption is affordable

There are currently many affordable options available for encryption, including free options. Some examples include:

- Encryption is built in to iPhones, iPads, Android phones and tablets, and Blackberries.
- The current business versions of Windows (e.g., Windows 8 Professional and Enterprise) have built in encryption, called BitLocker—included at no cost. It does require the extra cost of the business version, but that provides additional functionality beyond encryption. BitLocker works best with more expensive business class laptops and desktops that have hardware called a TPM (Trusted Platform Module) chip installed. Again, this grade of PC provides additional features beyond encryption support.

- Apple laptops and desktops have built in encryption called FileVault 2—included at no cost.
- Reasonably priced encryption software is available from suppliers like Symantec, McAfee, Check Point, WinMagic, and Sophos.
- Low-cost portable drives are available with built in encryption or they can be encrypted with File-Vault 2, BitLocker, or encryption software.
- Gmail and Yahoo have announced that they will be offering end to end encryption for their e-mail.
- E-mail encryption is available with Microsoft Office 365.
- Reasonably priced secure e-mail service is available from providers like Zixcorp, Mimecast, Voltage, and Data in Motion.

Conclusion

Encryption is a generally accepted security practice for protection of confidential data. Attorneys should understand encryption and use it in appropriate situations. All attorneys should use encryption on laptops, portable storage media, smartphones, and tablets that contain information relating to clients. They should also make sure that transmissions over wired and wireless networks are secure. Attorneys should have encryption available for e-mail or secure file transfer and use it when appropriate. Although attorneys may need technical assistance to get started and install and set up encryption, use of encryption is generally easy.

In Brief

Theodore L. Garrett

Theodore L. Garrett is a partner of the law firm Covington & Burling LLP in Washington, D.C. He is a past chair of the Section and is a contributing editor of Trends.

Enforcement/Fish story

***Yates v. United States*, 135 S. Ct. 1074 (2015).**

A federal agent conducting an offshore inspection in the Gulf of Mexico found that a ship had undersized, harvested red grouper on board and instructed Yates, the ship's captain, to keep the undersized fish segregated from the rest of the catch until the ship returned to port. Federal conservation regulations designed to protect against overfishing required the release of undersized red groupers. After the agent departed, Yates told a crew member to throw the undersized fish overboard. Yates was convicted of violating the "anti-shredding" provision of the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1519, passed in the wake of the Enron collapse. That statute makes it a crime for anyone who knowingly alters, destroys, conceals, or falsifies "any record, document, or tangible object with the intent to impede or obstruct or influence" a federal investigation. The Supreme Court reversed the Eleventh Circuit's deci-

sion upholding the conviction. The plurality and concurring opinions conclude that, based on traditional tools of statutory construction, the anti-shredding provision is appropriately read to refer to the set of tangible objects used to record or preserve information, and not an across-the-board ban on the destruction of physical evidence. As the plurality opinion emphasized, "But it would cut §1519 loose from its financial-fraud mooring to hold that it encompasses any and all objects, whatever their size or significance, destroyed with obstructive intent." The plurality opinion also invoked the rule that ambiguity in criminal statutes should be resolved in favor of lenity.

Review of changed agency policies

***Perez v. Mortgage Bankers Ass'n*, 135 S. Ct. 1199 (2015).**
A decision in the labor arena has increased attention on the extent to which courts should defer to an agency's interpretation of laws and rules. In the *Perez* case, the Supreme Court upheld the Labor Department's amendment of an interpretation of rules concerning overtime pay without formal notice and comment, holding that because an agency is not required to use notice and comment procedures to issue an initial interpretive rule, it is also not required to use those procedures to amend or repeal that rule. The Court cited the "longstanding recognition that interpretive rules do not have the force and effect of law." However, the majority opinion also stressed that the Administrative Procedure Act requires an agency to provide more substantial justification when "its new policy rests upon factual findings that contradict those which underlay its prior policy; or when its prior policy has engendered serious reliance interests that must be taken into account." In concurring opinions, Justices Scalia, Alito, and Thomas expressed concerns over deference to agency interpretations of regulations. Justice Scalia stated that an agency should be "free to interpret its own regulations with or without notice and comment; but courts will decide—with no deference to the agency—whether that interpretation is correct."

CERCLA

Anderson v. Teck Metals, Ltd., No. 13-cv-420-LRS, 2015 WL 59100 (E.D. Wash. Jan. 5, 2015).
A district court held that Superfund displaces a federal common law nuisance suit by Washington residents against a Canadian metal smelter and fertilizer manufacturing facility. The plaintiffs alleged personal injury caused by air emissions from the facility. The court stated that by enacting the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Congress provided a comprehensive liability and remediation scheme to address releases and threatened releases of hazardous substances by making polluters strictly liable for response costs to clean up the hazardous substances and liable for natural resource damages. Congress "has provided a 'sufficient legislative solution' to warrant a conclusion that CERCLA occupies the field to the exclusion of federal common law." Therefore, the court held that any federal common law nuisance claims have been "displaced" by CERCLA and, thus, must be dismissed. The court also held that Washington's public nuisance statute cannot be applied extraterritorially to defendant's smelting activities in Canada.

***AmeriPride Services Inc. v. Texas Eastern Overseas Inc.*, 782 F.3d 474 (9th Cir. 2015).**
The Ninth Circuit held that courts have discretion to use "the most equitable method" for allocating liability to a nonsettling defendant in a CERCLA contribution action among private parties. The court rejected arguments that courts must use either the proportionate share approach of the Uniform Com-

parative Fault Act or the *pro tanto* approach of the Uniform Contribution Among Tortfeasors Act. Although courts have discretion in allocating liability to nonesettling defendants in private-party contribution actions, the Ninth Circuit held that: "[C]hoosing a method that would discourage settlement or produce plainly inequitable results could constitute an abuse of discretion." 782 F.3d at 488. Because the district court did not explain the basis for using the *pro tanto* approach, the case was remanded for further proceedings. The court also held that the trial court erred in failing to determine the extent to which the settlement costs sought by plaintiff were incurred consistent with the National Contingency Plan, as required by CERCLA section 9607(a).

Consolidation Coal Co. v. Georgia Power Co., 781 F.3d 129 (4th Cir. 2015).
A divided Fourth Circuit panel held that a party selling used transformers containing spent oil contaminated with polychlorinated biphenyls (PCBs) was not liable under CERCLA as an arranger for disposal. The Ward Transformer Company refurbished used transformers and resold them. The Environmental Protection Agency (EPA) listed the Ward site on the National Priorities List as a result of contamination from oil spills containing PCBs. Various parties that settled with EPA then sued Georgia Power, which had sold the used transformers at a "scrapping" auction to Ward. The Fourth Circuit affirmed the district court's ruling in favor of Georgia Power, concluding that the company did not have the required intent to dispose of PCBs. Relying on the Supreme Court's decision in Burlington Northern, the majority opinion stated that "intent to sell a product that happens to contain a hazardous substance is not equivalent to intent to dispose of a hazardous substance under CERCLA." The court noted that Georgia Power received a profit on the sale of the transformers, the spills of oil containing PCBs occurred during Ward's actions to refurbish the transformers for re-sale, and Georgia Power had neither control over Ward's actions nor knowledge of spills at the Ward facility.

Air quality

Citizens for Pennsylvania's Future v. Ultra Resources, Inc., No. 11-cv-1360, 2015 WL 769757 (M.D. Pa. Feb. 23, 2015).
A federal district judge in Pennsylvania rejected environmentalists' suit challenging eight Clean Air Act permits for compressor stations operated by an oil and gas production company. The citizen group plaintiffs argued that the eight compressor stations should have been combined for review, which would have required a major source permit instead of minor source permits for each facility. The district court's opinion granting summary judgment held that the stations did not have to be aggregated because they were too far apart to be adjacent. Citing Pennsylvania Department of Environmental Protection Guidance recommending that a determination of whether two or more facilities constitute a single source for purposes of regulatory standards be done on a "case-by-case basis," the court noted that while the plain meaning of the terms adjacent and contiguous would normally be dispositive, it declined to hold that functional interrelatedness can never be considered in determining contiguousness or adjacency. In this case, however, the court found that the stations were operated independently and were not interrelated.

Sierra Club v. EPA, 781 F.3d 299 (6th Cir. 2015).
The Sixth Circuit held that states must include reasonably available control methods to regulate emissions controls in areas seeking re-designation from nonattainment to attainment for fine particulates ($PM^{2.5}$), despite an EPA finding that the areas comply with the national ambient air quality standards

(NAAQS). EPA had determined that the Cincinnati-Hamilton metropolitan area had attained national air quality standards for fine particulates, due in part to regional cap and trade programs. EPA also re-designated the area to attainment status, even though the states of Ohio and Indiana had never implemented reasonably available control measures (RACT) applicable to nonattainment areas, because such controls were not needed to meet the air quality standard for PM2.5. The court ruled that states can rely on regional emission cap and trade programs to ensure NAAQS compliance, rejecting the Sierra Club's argument that the reductions must be from the nonattainment area in question. However, a state seeking re-designation must provide for implementation of RACT, the court ruled, "even if those measures are not strictly necessary to demonstrate attainment with the PM2.5 NAAQS." Disagreeing with a contrary decision of the Seventh Circuit, the court stated that "the Act unambiguously requires RACT in the area's SIP as a prerequisite to re-designation."

Water quality

***Hawkes Co. v. U.S. Army Corps of Engineers*, 782 F.3d 994 (8th Cir. 2015).**
The Eighth Circuit has held that an Army Corps of Engineers jurisdictional determinations of the applicability of Clean Water Act requirements to a wetlands area is subject to judicial review. The plaintiff sought review of the Corps' determination that a wetland that the plaintiff intends to use for peat mining is jurisdictional. The court rejected the government's claims that jurisdictional determinations are not final agency action under the Administrative Procedure Act because they do not have immediate legal consequences. The court was not persuaded by the government's distinction "between an agency order that compels affirmative action, and an order that prohibits a party from taking otherwise lawful action."

The court relied on the Supreme Court's decision in Sackett v. EPA, emphasizing that the jurisdictional determination "requires appellants either to incur substantial compliance costs (the permitting process), forego what they assert is lawful use of their property, or risk substantial enforcement penalties." The concurring opinion notes that while a jurisdictional determination does not begin the accumulation of penalties, judicial review is appropriate under Sackett because other avenues provide the plaintiff with no acceptable options for challenging the need for a permit. The Eighth Circuit's decision disagreed with a contrary opinion of the Fifth Circuit, Belle Co., LLC v. Army Corps of Engin'rs, 761 F.3d 383 (5th Cir. 2014).

***Sierra Club v. McLerren*, No. 11-cv-1759 –BJR, 2015 WL 1188522 (W.D. Wash. Mar. 16, 2015).**
A district court sustained a citizen's suit against EPA for failure to prescribe Total Maximum Daily Loads (TMDLs) for pollutants discharged in to a water body after the state failed to submit any draft TMDLs to EPA. The court accepted that the state had sufficient reasons for not completing a 2006 draft TMDL for PCBs discharged to the Spokane River. But, in 2011 the state environmental agency changed course and gave a series of reasons why it was declining to issue a TMDL with waste load allocations for PCBs. The Washington Department of Ecology explained in part: "Setting wasteload allocations through a TMDL would set a target well below the 'background' PCB concentrations observed in remote bodies of water with no obvious source of contamination other than aerial deposition." Notwithstanding this explanation, however, the court agreed with plaintiffs that EPA abused its discretion in approving a Task Force to address PCBs as an alternative to completing the TMDL, since the Task Force was not designed to complete or assist in completing a TMDL: "There comes a point at which continual delay of

a prioritized TMDL and detours to illusory alternatives ripen into a constructive submission that no action will be taken." The matter was remanded to EPA for further consultation with the state Department of Ecology to create a definite schedule with concrete goals.

***Gulf Restoration Network v. McCarthy*, 783 F.3d 227 (5th Cir. 2015).**
EPA rejected a petition by a number of environmental groups to regulate nitrogen and phosphorous discharges under section 303(c)(4)(B) of the Clean Water Act. It did so without deciding whether numeric nutrient criteria were "necessary" for the Mississippi River basin. The district court found that EPA had an obligation to address the issue of necessity, but that EPA could properly consider factors, such as cost, feasibility, and administrative burdens in making a determination of necessity. Rejecting EPA's argument that its decision was a matter of unreviewable discretion, the Fifth Circuit held that the courts may review an EPA decision not to render a determination that water quality standards are necessary for a water body. The Fifth Circuit reasoned that the language in the Clean Water Act was similar to provisions in the Clean Air Act discussed in Massachusetts v. EPA, 549 U.S. 497 (2007), in which the Supreme Court held that EPA could simply not avoid any decision as to whether air quality standards were "necessary" under that act.

However, the Fifth Circuit ruled that EPA is not required to render a decision on "necessity" in response to a citizen petition if it can provide a reasonable explanation for its failure to make such a finding. The case was remanded to the district court to decide whether EPA adequately justified not reaching the issue of necessity.

RCRA

***The Little Hocking Water Ass'n, Inc. v. E. I. duPont De Nemours & Co.*, No. 2009-cv-01081, 2015 WL 1038082 (S.D. Ohio Mar. 10, 2015).**
A Resource Conservation and Recovery Act (RCRA) suit may be brought to address an "imminent and substantial endangerment" caused by air pollution deposited on land, a district court held. A rural water system brought a suit alleging that its well field, as well as the soil and groundwater beneath the land, had been contaminated by deposits from a chemical plant's air emissions. Declining to follow a decision of the Ninth Circuit, the court found that RCRA's legislative history and purpose support a conclusion in this case that air emissions which fell onto plaintiff's well field and contaminated the groundwater constitutes the disposal of solid waste under RCRA. The opinion states that "this type of soil and groundwater contamination is precisely the type of harm RCRA aims to remediate in its definition of 'disposal.'"

Views from the Chair: Why Section membership matters to your practice

Steven T. Miano

Steven T. Miano is chair of the Environmental Practice Group at Hangley Aronchick Segal Pudlin & Schiller in Philadelphia and is chair of the ABA's Section of Environment, Energy, and Resources.

There is a great diversity of interests and practice areas in our Section. There is also a broad array of experience and resources. From air, water, and waste—to mining, gas, and energy markets—and from traditional private interests to tribal interests—we are a diverse group. For many years lawyers have labored in their respective practice areas as if they existed in individual silos. We now know that this doesn't work. Our practices have evolved. Environmental law practitioners must now possess more than a passing knowledge of energy or resources law. Likewise, anyone practicing energy or resources law must understand and work with traditional environmental legal issues.

Our Section's unique breadth is invaluable

There are a number of very strong professional organizations throughout the U.S. Many do a terrific job of educating their members on specific practice areas. However, what makes membership in our Section unique and so valuable is the breadth of our practice areas and our ability to come together, under a unified tent, to inform our members about all aspects of environment, energy, and resources law.

My focus this year—integration and outreach—was, in part, intended to break down individual practice area silos so that the full potential, and, hence, the full value of our Section resources would be available to our members. Focusing on integration and outreach better assures that we weave together the many diverse disciplines our members need today to succeed professionally. While we have more to do on this front, we have moved forward in integrating our various practice areas in significant and meaningful ways. For example, we revised the traditional environment, energy/resource, and cross practice area committee liaison groups. We now have liaison groups that foster discussion and activities across all Section practice areas. As a result, more committees are cooperating on calls, programs, and publications. Future efforts along these lines will bring additional value to our members. And as there is great value in incorporating varied perspectives, we continue to encourage collaboration among all of our member constituents, including seasoned lawyers, young lawyers, in-house counsel, NGO lawyers, government lawyers, and academics.

Value in outreach beyond the Section and the ABA

This past year, I challenged our Section leaders to work with other ABA sections and with groups beyond the ABA. Of note:

- We held our first ABA Super Conference on Environmental Law, in conjunction with a number of ABA entities. It was incredibly successful partnership.
- We continued to deepen our relationships with organizations such as the Environmental Law Institute, Rocky Mountain Mineral Law Foundation, American Council on Renewable Energy, and state and local bars. Our recent Cyber Security Summit in Washington, D.C. focusing on environmental and energy issues is a good example of working beyond the ABA. We collaborated with George Washington University Law School and several other organizations in planning and promoting this program.

- Finally, we continued significant outreach internationally, highlighted by our work this year on the Sustainability Task Force and the World Justice Project, and with the consortium Presidential Precinct. And we continue to build our relationships with international bar associations, including the Canadian Bar Association's National Environmental and Resources Law Section and the United Kingdom Environmental Law Association.

As part of the Section's mission to be the "premier forum" in our practice areas, we need to extend our outreach to other organizations and bar associations, both nationally and internationally. In doing so, we will bring more value to our members by assuring the broadest range of information and perspectives is made available.

My gratitude for your efforts this year

This is my final "Views from the Chair" column. I am deeply honored to have had the opportunity to lead an organization that I've been part of since I was a young lawyer. Early in my career, I recognized that SONREEL—as the Section was then called—was a unique organization that would be important for my career development. The Section has not disappointed. As with any organization, the more you give, the more you get. To that end, I urge you to actively participate in the Section and gain even greater value from your membership.

Thank you for working with me this year and I hope you believe our collective efforts have brought value to your membership. The Section is in great hands next ABA year. Our incoming chair, Pam Barker, will continue to strengthen the Section, as will Seth Davis in the year after her. In closing, let me add my deep appreciation to our staff and our sponsors. We could not accomplish what we do without them.

People on the Move

James R. Arnold

Jim Arnold is the principal in The Arnold Law Practice in San Francisco and is a contributing editor to Trends. Information about Section members' moves and activities can be sent to Jim's attention in care of ellen.rothstein@americanbar.org.

David M. Bullock has established a solo practice in Brentwood, Tennessee, after practicing in Nashville with Tune, Entrekin & White, P.C., and with Miller & Martin PLLC. Bullock's practice focuses on environmental law and civil litigation (principally environmental and commercial litigation). The Tennessee Supreme Court Alternative Dispute Resolution Commission lists him as a general civil mediator. Bullock's clients have included large corporations, family-owned businesses, individuals, municipal governments, and nonprofits such as hospitals.

JoAnne Dunec has joined Old Republic Title Company in San Francisco as Vice President, Underwriting Counsel. Dunec was formerly a shareholder with Miller Starr Regalia in Walnut Creek, California. She is a member of the editorial board of the Section's *Natural Resources & Environment* publication.

Jonathan Clyde has recently relocated to the Bend, Oregon office of Clyde Snow & Sessions to support the expansion of the firm's natural resources practice group and its growing clientele. An associate in the Salt Lake City office since 2009, Clyde focuses his practice on natural resources and water law, providing solutions for individuals, corporations, and municipalities in matters of energy, water rights, water quality, and real property.

Pamela K. Elkow has joined Carmody Torrance Sandak & Hennessey LLP as a partner in its Stamford, Connecticut office. Elkow was formerly with Robinson Cole in Stamford. She is an environmental advisor and attorney with nearly 25 years of experience in brownfields, due diligence, transactions, enforcement, and permitting, as well as experience with occupational health and safety issues (responding to citations, negotiating with OSHA). Elkow is chair of the Section's Environmental Transactions and Brownfields Committee.

Frank Erisman has joined Schwabe, Williamson & Wyatt in its Portland, Oregon office. Erisman was formerly with Holme Roberts & Owen in Denver, before its merger with Bryan Cave LLP. A member of the Colorado and Oregon Bars, his practice includes mining and other natural resources issues. He is a former chair of the Section.

Theodore L. (Ted) Garrett was recently honored with the first Lifetime Achievement Award presented by Who's Who Legal. Garrett is a longtime contributing editor to *Trends* and a former chair of the Section.

Sheila Slocum Hollis was recently named as one of the top 50 Women Super Lawyers in Washington, D.C. Hollis is a partner at Duane Morris LLP in Washington, D.C. She is the Section's representative to the ABA House of Delegates, a member of the Section's World Justice Project Task Force and the Sustainable Development Task Force, and a former chair of the Section.

Roger R. Martella was recently honored as the 2015 Environmental Lawyer of the Year by Who's Who Legal. Martella is a partner at Sidley Austin LLP in Washington, D.C. He is a vice chair of several Section committees, including the International Environmental and Resources Law Committee; the 2015 Fall Conference Planning Committee; the Special Committee on Communications and External Relations; the Special Committee on Section, Division, and Forum Coordination; and the World Justice Project Task Force.

Pamela (Pam) Nehring of Daley Mohan Groble in Chicago was elected chair of the American Railway Development Association (ARDA) law committee. Nehring leads her firm's environmental practice with a focus on brownfields development and environmental remediation claims and litigation involving private parties, communities, and government agencies. She focuses on environmental compliance counseling, permitting, audits, and enforcement matters.