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Solid and Hazardous Waste Developments from 2016-2017: Walter G. Wright (Mitchell Williams) Arkansas Environmental Federation Regulated Waste Seminar Presentation

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I undertook a presentation at the Arkansas Environmental Federation Regulated Waste Seminar held on March 30th titled:

Solid and Hazardous Waste/Recycling Developments: 2016-2017 ("Presentation")

The *Presentation* addressed a variety of federal and state decisions, litigation, rulings, regulations and policies either directly or indirectly related to solid or hazardous waste (including recycling) that have arisen over the last 12 months.

The topics addressed include:

- Federal Water Infrastructure Improvements for the Nation (WINN Act)/Amending Resource Conservation and Recovery Act Addressing Coal Ash
- Establishes framework for the United States Environmental Protection Agency ("EPA") to approve state coal ash or coal combustion residual state programs
- EPA rules previously enforceable from a federal standpoint primarily by Resource Conservation and Recovery Act ("RCRA") citizen suits
- Regulated community expressed concern about uncertainty association with the enforcement of citizen suits
- Provides flexibility for states to use either 2015 EPA standards or develop their own state specific criteria at least as protective as the EPA rule
- Federal "Zero Waste" Standard bill introduced (H.R. 1034) establishing a grant program for communities attempting to obtain a "zero waste" standard
- Hazardous Materials Transportation Act/ Common Law Action
- Chaves v. Federal Express Corporation addressing whether private right of action for alleged damages is available under the Hazardous Materials Transportation Act or the Airline Deregulation Act
- Superfund/Comprehensive Environmental Response Compensation Liability Act
- EPA final rule adding subsurface intrusion as a component of the hazardous ranking system ("HRS")
- EPA determined that an HRS assessment is not complete without an evaluation of threats proposed by subsurface intrusion contamination

- EPA/Environmental Integrity Project Consent Decree addressing oil and gas waste
- December 28th Consent Decree between EPA and environmental groups resolving allegations that the agency failed to fulfill certain non-discretionary duties in regards to regulations for disposal, storage, transportation and handling oil and gas waste
- Schedule established
- RCRA guidance
- U.S. EPA November 8th letter addressing engineered fuel processed from municipal waste
- U.S. EPA October 3rd letter addressing manufacturing process unit exemption
- Superfund/CERCLA memorandum requesting “greener cleanup activities” in the Superfund removal/remediation process
- Hazardous Waste Enforcement
- EPA actions addressing alleged violations by Baylor University, Texas A&M, Texas Christian University
- Returned products – Whole Foods, Inc. settlement with EPA for alleged RCRA violations
- Railcars – EPA and South Carolina hazardous waste facility address alleged violations regarding management of railcars holding hazardous waste
- Waste transfer – EPA and Louisiana manufacturing facility resolution of alleged violations associated with transfer of hazardous waste streams to a neighboring phosphoric acid manufacturing plant
- Reactivity/Criminal Challenge to RCRA Criminal Charges – Federal District Court addressing challenges to criminal charges involving fireworks explosion addressing characteristics of reactivity)
- Federal court decision addressing whether a methane gas leak constitutes solid waste (no)
- E-waste enforcement
- Washington electronics recycler assessed \$444,000 penalty for alleged violations
- Addresses alleged illegal disposal of flat-screen televisions and monitors with fluorescent tubes containing mercury
- Apple, Inc. and California environmental Protection Agency enter into a Settlement Agreement addressing alleged violations of universal waste regulations in regards to mismanagement of metal-shredder operations (company is stated to have processed about 1.1 million pounds of electronic waste at an Apple facility before it closed)
- New York letter to EPA requesting drinking water standard for 1,4-Dioxane
- Common law litigation addressing whether destruction of pipe/sump pit constitutes evidence spoliation
- Plaintiff sought recovery of costs incurred in investigating and remediating contamination discovered after they had purchased a commercial property
- Contamination involved tetrachloroethylene
- Items of evidence that plaintiff attempted to introduce included a pipe that had originally been located beneath a building slab
- Second and third pieces of stored evidence pertaining to structures within an acid dilution sump pit in a concrete slab floor
- Plaintiff’s expert opinion was based solely on photographs of the structures and data derived from the sludge
- Defendants argued that plaintiff had spoliated material evidence
- The court determined that probability of litigation, rather than intent to bring suit, triggers the obligation to preserve evidence
- The court held that plaintiff knew before purchasing the property in 2006 that the site had hosted printing activities for decades and those operations had relied on chemical substances
- In 2008 prior to the destruction of evidence it had been confirmed that a high concentration of VOCs were on the property
- Plaintiff was held to have had an obligation to preserve the lateral pipe, dilution sump and concrete floor materials and that their destruction was spoliation of relevant evidence
- Federal court addresses demolition material collector challenge to Solid Waste Ordinance

- Challenge by a private firm that collected and hauled construction demolition debris and industrial solid waste within the City of Hopkinsville, Kentucky to an ordinance placing certain restrictions on solid waste collection
- The court addresses whether the ordinance applied to its business of construction demolition debris (did such material constitute solid waste?)
- The basis for the challenge included arguments regarding flow control and tortious interference with business relationship
- The court held that the company could not maintain a cause of action for tortious interference because it had never obtained a required permit from the City for the handling of such material

[A copy of the slides from the complete *Presentation* can be downloaded here.](#)