

2024 Arkansas SWANA Annual Meeting
Solid
Waste/Recycling/Judicial/Administrative
Developments

MITCHELL | **WILLIAMS**

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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/blog>

Three posts five days a week

Authorizing the Sale of Cannabis Waste: State of Washington Legislation

The Washington State Legislature has passed legislation which would allow in certain circumstances the sale of cannabis waste.

The cultivation and production of cannabis generates a variety of waste.

SB 5376 would allow a licensed cannabis producer and a licensed cannabis processor to sell cannabis waste to a person not licensed under certain circumstances.

Like many states, the relevant Washington state agency outlines the methods by which solid and liquid wastes generated during cannabis production and processing must be stored, managed, and disposed of. The methods differ based on the type of waste and whether the waste is designated as dangerous (i.e., a hazardous waste).

The waste generator is responsible for evaluating the waste to determine if it is designated a dangerous (i.e., hazardous) waste. Some of the wastes that are evaluated against the dangerous (i.e., hazardous) waste regulation include waste from cannabis flowers, trim, and solid plant material used to create an extract, waste solvents used in the cannabis process, discarded plant waste, and cannabis extract that fails to meet quality testing.

Authorizing the Sale of Cannabis Waste: State of Washington Legislation

Cannabis waste that is not designated as dangerous (i.e., hazardous) waste (like in most states) must be rendered unusable by grinding and incorporating the waste with other specified ground material so the resulting mixture is at least 50% non-cannabis waste by volume. After the waste is rendered unusable, it must be properly disposed of at a permitted facility.

SB 5376 provides that a licensed cannabis producer and a licensed cannabis processor may sell cannabis waste to a person not licensed by the Washington state agency if:

- The cannabis waste would not be designated as dangerous or hazardous waste under any rules adopted by the Washington Department of Ecology and Cannabis Waste Disposal Rules adopted by the Washington state agency; and
- The licensee notifies the Washington state agency and the Washington State Department of Agriculture before the sale.

Lithium-Ion Batteries: New Hampshire Legislature Passes Legislation Prohibiting Placement in Solid Waste Landfills or Incinerators

The New Hampshire Legislature has passed legislation that would prohibit the disposal of lithium-ion batteries and electronic devices in any solid waste landfill or incinerator in New Hampshire. See House Bill 1386-FN.

Current New Hampshire law prohibits the disposal of wet-cell batteries such as automotive batteries. The legislation would add a specific prohibition on disposal of lithium-ion batteries. Such batteries are typically found in laptops, phones, and power tools.

This prohibition would presumably therefore require management of such items through recycling.

Tennessee Waste Reduction Recycling Act: Legislation Introduced

Establishing Producer Responsibility Requirements

Tennessee Waste Reduction and Recycling Act has been introduced into the Tennessee General Assembly which would require sellers, distributors, and importers of certain packaging materials to take actions to reduce the amount of packaging materials that become litter.

The Act would require the following:

- Establishment of a Producer Responsibility Organization
- Creation of an Advisory Board for the PRO
- Development of periodic needs assessments and plans to address recycling
- Tennessee Department of Environment and Conservation to perform certain duties in relation to the Act
- Establishment of a penalty scheme
- TDEC to regularly review and update a list of chemicals of high concern in packaging
- Provide it is a violation for a person to sell or distribute in Tennessee any packaging designed to include certain chemicals of high concern

Reconditioning/Used Drum Management: Addressing U.S. Environmental Protection Agency Advance Notice of Proposed Rulemaking

The United States Environmental Protection Agency issued an Advance Notice of Proposed Rulemaking titled:

- Used Drum Management Reconditioning 88 Fed. Reg. 54537 (Aug. 11, 2023)

EPA's ANPR solicits information/requests comments to assist the Federal Agency in the potential development of:

- non-regulatory and regulatory options that would ensure the proper management if used industrial containers that held hazardous chemicals or hazardous waste, up to and including the drum reconditioning process.

Drum reconditioning facilities clean and recondition metal and plastic type intermediate bulk containers for resale and re-use by cleaning, restoring, testing, and certifying the industrial containers. The containers may have held substances such as chemicals, resins, tars, adhesives, oils, soaps, solids, and related materials.

Reconditioning/Used Drum Management: Addressing U.S. Environmental Protection Agency Advance Notice of Proposed Rulemaking

EPA has described the two main processes used for reconditioning as:

- Burning residuals for metal drums in a burn-oven or furnace
- Washing metal or plastic drums with water and/or a caustic solution to remove residues.

A key Resource Conservation and Recovery Act provision is relevant to drum reconditioning.

The so-called “empty container” provision exempts RCRA hazardous waste residues remaining in the drum or other container if certain conditions are met. See 40 C.F.R. 261.7.

EPA’s concern is that the volume of containers handled by reconditioning facilities could result in some non-RCRA empty containers being accepted.

The Federal Agency describes the potential options for revising its regulation of drum reconditioning as:

- Revising the RCRA regulations
- Non-regulatory options

Reconditioning/Used Drum Management: Addressing U.S. Environmental Protection Agency Advance Notice of Proposed Rulemaking

Some concerns have been expressed:

- Potential unintended consequences on the existence compliance framework within which permitted treatment storage and disposal facilities successfully operate
- Basis on which EPA is considering potential changes is flawed/outdated
- EPA resources would be better used on education/compliance assistance efforts to improve implementation of existing standards
- Existing standards when complied with are both effective and protective of human health in the environment
- The changes to the “RCRA empty standards being contemplated by EPA will not improve the management of used containers and will add unnecessary burden to container generators, particularly those already permitted treatment storage and disposal facilities, and reconditioners

Solar Panels/Lithium Batteries/RCRA: U.S. Environmental Protection Agency Announces Plan to Craft/Modify Universal Waste Regulations

EPA announced that it is planning to propose new rules to improve the management and recycling of end-of-life solar panels and lithium batteries.

EPA states it is considering proposing:

- Adding hazardous waste solar panels to the Resource Conservation and Recovery Act universal waste regulations.
- Establishing a new/distinct category of universal waste specifically tailored to lithium batteries.

Because of the explosion of clean energy infrastructure in projects, EPA focused attention on the disposition of these two clean energy components at end-of-life.

Solar Panels/Lithium Batteries/RCRA: U.S. Environmental Protection Agency Announces Plan to Craft/Modify Universal Waste Regulations

EPA indicated that hazardous waste testing of solar panels has determined that different varieties may have varied metals present in the semiconductor and solder.

Metals such as lead and cadmium are projected to be present in some circumstances such that they could be considered characteristic RCRA hazardous waste (but may vary).

Similar concerns apply to lithium batteries because of their use in electric vehicles.

Lithium-ion batteries are already typically deemed RCRA hazardous waste (and are designated as universal waste).

EPA's concern is that the possibility for fires when improperly managed represents a risk that needs to be addressed by modified universal waste regulations.

Lithium Battery Recycling Regulatory Status: US Environmental Protection Agency Issues Memorandum Addressing Frequently Asked Questions

The United States Environmental Protection Agency (“EPA”) issued a May 24th Guidance Memorandum titled:

- *Lithium Battery Recycling Regulatory Status and Frequently Asked Questions*

The stated purpose of the Memorandum is to clarify how the hazardous waste regulations for universal waste and recycling apply to lithium-ion batteries.

Transportation/Hazardous Materials: U.S. Pipeline and Hazardous Materials Safety Administration Interpretive Letter Addressing Lithium Batteries

The United States Pipeline and Hazardous Materials Safety Administration addressed in a July 2nd Interpretive Letter clarification of the Hazardous Materials Regulations applicable to the transportation of damaged and defective lithium batteries. See Reference No. 24-0050.

Scopelitis asked whether all damaged or defective lithium batteries must be transported in accordance with the requirements of § 173/185(f). PHMSA responded in the affirmative, stating that such batteries have the potential of producing a dangerous evolution of heat, fire, or short circuit and must be transported in accordance with the cited regulation.

PFOA/PFOS/CERCLA: U.S. Environmental Protection Agency Final Rule Designating as Hazardous Substances

The United States Environmental Protection Agency (“EPA”) issued a prepublication version of a Final Rule that would designate two of the Per- and polyfluoroalkyl substances (“PFAS”) as Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) hazardous substances.

Final Rule designates perfluorooctanoic acid (“PFOA”) and perfluorooctanesulfonic acid (“PFOS”) as CERCLA hazardous substances.

This designation as hazardous substances will trigger certain corresponding CERCLA requirements such as:

- Application of the potentially responsible liability categories (i.e., current owner or operator, former owner or operator [in certain circumstances], transporter [in certain circumstances], and generators).
- Hazardous substance release reporting requirements (if reportable quantities are released).

PFOA/PFOS/CERCLA: U.S. Environmental Protection Agency Final Rule Designating as Hazardous Substances

The water, wastewater, and solid waste management sectors have expressed concern about their potential liability despite their self-described status as passive receptors. For example, the National Waste and Recycling Association and Solid Waste Association of North America have stated that regulation under CERCLA would assign environmental cleanup liability to essential public services and their customers. They have asked Congress to provide municipal solid waste landfills and other passive receivers with a narrow exemption.

PFAS/CERCLA: U.S. Environmental Protection Agency Enforcement Discretion and Settlement Policy

Simultaneously with the prepublication of a final rule designating two of the Per- and Polyfluoroalkyl substances as Comprehensive Environmental Response, Compensation and Liability Act hazardous substances, EPA issued an April 19th memorandum titled:

PFAS Enforcement Discretion and Settlement Policy Under CERCLA.

The policy also states that EPA does not intend to:

. . . pursue entities where equitable factors do not support seeking response actions or costs under CERCLA, including farmers, municipal landfills, water utilities, municipal airports, and local fire departments.

PFAS/CERCLA: Recycled Materials Association (Formerly Institute of Scrap Recycling Industries, Inc.) Files Judicial Challenge to U.S. Environmental Protection Agency Hazardous Substance Designation

The Recycled Materials Association (formerly the Institute of Scrap Recycling Industries, Inc.) filed a Petition before the United States Court of Appeals for the District of Columbia on July 30th challenging the United States Environmental Protection Agency's designation of perfluorooctanoic acid and perfluorooctane sulfonic acid as Comprehensive Environmental Response Compensation and Liability Act hazardous substances.

The EPA final rule being challenged is styled Perfluorooctanoic Acid and Perfluorooctane Sulfonic Acid as CERCLA Hazardous Substances. 89 Fed. Reg. 39, 124 (May 8, 2024).

ISRI and other organizations have expressed concern about CERCLA liability because designation of PFAS and PFOS triggers certain corresponding report requirements such as:

- Application of the potentially responsible liability categories.
- Hazardous substance release reporting requirements.

ISRI in a news release states that designating these two chemicals as hazardous substances under CERCLA will impose significant liabilities for recyclers even though they do not generate, transport, or use PFAS or PFOS in their recycling processes.

PFAS/CERCLA: Associated General Contractors of America, Inc./National Waste & Recycling Association/Chamber File Judicial Challenge to Hazardous Substance Designation

Three organizations filed a petition in the United States Court of Appeals for the District of Columbia challenging the United States Environmental Protection Agency's ("EPA") designation of perfluorooctanoic acid ("PFOA") and perfluorooctanesulfonic acid as Comprehensive Environmental Response Compensation and Liability Act hazardous substances. See Case No. 24-1193.

The challenge has been filed by:

- Associated General Contractors of America, Inc.
- National Waste & Recycling Association.
- Chamber of Commerce of the United States.

PFAS/CERCLA (Superfund) Liability: U.S. Senator John Boozman (Arkansas) Legislation Exempting Noncontributing Industries/Municipalities

United States Senators John Boozman (Arkansas) and Cynthia Lummis (Wyoming) introduced five bills to ensure industries and municipalities are not subject to Comprehensive Environmental Response, Compensation, and Liability Act liability if the United States Environmental Protection Agency (“EPA”) PFAS compounds as hazardous substances.

The rationale for exempting such entities is that they either:

- Do not contribute to PFAS contamination; or
- Are required to use PFAS-containing substances through regulations

Designation of PFAS as a CERCLA hazardous substance would trigger corresponding requirements such as:

- Application of the potentially responsible liability categories (i.e., current owner or operator, former owner or operator [in certain circumstances], transporter [in certain circumstances], and generators).
- Hazardous substance release reporting requirements (if reportable quantities are released)

PFAS/CERCLA (Superfund) Liability: U.S. Senator John Boozman (Arkansas) Legislation Exempting Noncontributing Industries/Municipalities

The Five bills are:

- Agriculture PFAS Liability Protection Act
- Airports PFAS Liability Protection Act
- Fire Suppression PFAs Liability Protection Act
- Resource Management PFAS Liability Protection Act (Landfills/Composting)
- Water Systems PFAS Liability Protection Act

RCRA Corrosivity Hazardous Waste Characteristic: Federal Appellate Court Addresses Denial of Petition Requesting Expansion

The United States Court of Appeals for the District of Columbia addressed in a July 25th decision an issue involving the Resource Conservation and Recovery Act hazardous waste characteristic of corrosivity.

See *Public Employees for Environmental Responsibility v. Environmental Protection Agency*, 2023 WL 4714021.

The question addressed was whether the United States Environmental Protection Agency (“EPA”) properly declined to revise its definition of corrosive.

RCRA Corrosivity Hazardous Waste Characteristic: Federal Appellate Court Addresses Denial of Petition Requesting Expansion

The Public Employees for Environmental Responsibility (“PEER”) and an individual had submitted a petition in 2011 seeking two changes which include:

1. Revision of pH regulatory value for defining a waste as corrosive hazardous waste from the current pH 12.5 or higher, to pH 11.5 or higher; and
2. Expansion of the scope of the corrosivity regulation to apply to non-aqueous waste in addition to the aqueous waste addressed by the current regulation

EPA denied PEER’s petition for rulemaking and determined that changes to the corrosivity characteristic regulation were not supported by available information.

Variance from Classification as RCRA Solid Waste: U.S. Environmental Protection Agency Grants Tucson, Arizona, Facility Petition

EPA in a July 5th Federal Register Notice granted a petition for variances from the classification as RCRA solid waste for HVF Precious Metals, LLC.

40 C.F.R. 260.30(c) provides the EPA Administrator the ability to determine on a case-by-case basis that materials that have been reclaimed but must be further reclaimed before the materials are fully recovered are not solid wastes.

EPA had previously public noticed HVF's petition on July 26, 2022. See 88 Fed. Reg. 9277.

The HVF petition described two partially-reclaimed materials described as "Solution Sweeps" and "Filter Sweeps."

Such materials are stated to be produced at HVF's Tucson, Arizona, facility from precious metal-bearing waste from cyanide-based electroplating operations.

EPA states it determined that the two materials are "commodity-like" under the criteria listed in 40 C.F.R. § 260.31(c).

National Enforcement and Compliance Document: U.S. Environmental Protection Agency Announces Initiatives for Years 2024-2027

The United States Environmental Protection Agency announced its National Enforcement and Compliance Initiatives for fiscal years 2024-2027.

EPA chooses every four years national initiatives on which to focus resources on what it believes are serious and widespread environmental problems for which federal enforcement can make a difference.

The NEICs include for the first time initiatives to:

- Methane emissions from landfills
- Address exposure to PFAS contamination
- Address industrial parties that significantly contribute to the release of PFAS into the environment

Address coal ash

- Address on-site landfills
- Address settling ponds
- Address other coal plant surface impoundments

EPA notes that environmental justice concerns will be a component of these initiatives.

Illegal Dumping/Environmental Justice: U.S. Department of Justice and City of Houston, Texas, Enter into Settlement

The United States Department of Justice entered into a Settlement Agreement with the City of Houston, Texas, in response to illegal dumping in Black and Latino neighborhoods.

DOJ had opened on July 26th an environmental justice investigation into the City of Houston's operations, policies, and practices related to illegal dumping.

DOJ's Civil Rights Division was stated to be examining whether Houston responded to requests from municipal services (including illegal dumping) in a manner that discriminated against Black and Latino Houston residences and in violation of federal civil rights laws.

Title VI prohibits entities receiving federal assistance from engaging in activities that subject individuals to discrimination on the basis of race, color, or national origin.

Illegal Dumping/Environmental Justice: U.S. Department of Justice and City of Houston, Texas, Enter into Settlement

The Settlement Agreement is stated to establish:

- A three-year period of federal monitoring
- Daily reporting obligations
- Enhanced community outreach with impacted neighborhoods (including an engagement with residences with limited English proficiency)
- Consideration of actions to combat commercial sources of illegal dumping
- Reduced restrictions for residents seeking to use waste depositories
- Federal civil rights training program for specified civil employees

Refrigerants/Air Enforcement: U.S. Environmental Protection Agency and Colorado Springs Scrap Metal Recycling Facility Enter into Consent Agreement

The United States Environmental Protection Agency (“EPA”) and American Iron and Metal (“American Iron”) entered into a May 9th Consent Agreement and Final Order (“CAFO”) addressing an alleged violation of the regulations found at 40 C.F.R. Part 82 Subpart F applicable to recycling and emissions reductions of ozone-depleting substances.

The Colorado Springs facility is stated to accept for recycling and disposal, among other things, small appliances and MVACs within the meaning of 40 C.F.R. § 82.152, that contain or once contained ozone-depleting substances or substitutes. Such depleting substances or substitutes in the small appliances and MVACs that are accepted for recycling are stated to be “refrigerants” within the meaning of 40 C.F.R. § 82.152. Further, the facility’s recycling of small appliances and MVACs is stated to constitute disposal within the meaning of 40 C.F.R. § 82.152.

EPA is stated to have conducted an inspection of the Colorado Springs facility on June 22, 2022. The inspection is stated to have determined that the facility did not recover refrigerant from small appliances or MVACs delivered to the facility. EPA inspectors are stated to have observed at least one small appliance delivered for recycling from which the refrigerant had not been recovered. In addition, EPA inspectors are stated to have observed at least one small appliance that had been delivered to recycling from which refrigerant had not been recovered, and that had cut refrigeration lines.

OSHA Enforcement: Houston, Texas, Glass Recycling Company Proposed Penalty Assessment

The United States Occupational Safety and Health Administration issued a September 13th news release and link to a Citation and Notification of Penalty for Strategic Materials, Inc., d/b/a Strategic Materials.

Strategic is described as a recycled glass contractor based in Houston, Texas.

OSHA is stated to have identified serious violations, one willful violation, and three repeat violations related to the following safety failures:

- Not having required lockout/tagout procedures in place.
- Exposing employees to fall hazards.
- Not enclosing sprocket wheels and chains.
- Allowing unguarded projecting shaft ends.

OSHA Enforcement: Franksville, Wisconsin Disposal/Recycling Company Proposed Penalties for Alleged Violations

The Occupational Safety and Health Administration (“OSHA”) issued a July 18th news release stating that it had proposed penalties for alleged violations for John’s Disposal Service Inc. and John’s Recycling Inc.

The companies are stated to operate waste removal and recycling facilities in Franksville and Brookfield, Wisconsin.

Alleged violations cited include:

- Lacking energy control procedures.
- Not providing fall protection on an elevated platform.
- Failing to train forklift operators.
- Not providing hazardous communication training.
- Lack of a hearing conservation program.
- Failure to adequately install emission guards.

OSHA has proposed penalties in the amount of \$367,401.00.

Hazardous Waste Enforcement: Arkansas Department of Energy & Environment - Division of Environmental Quality and Magnolia Fuel Cell/Coated Fabric Product Manufacturing Facility Enter into Consent Administrative Order

The Arkansas Department of Energy & Environment – Division of Environmental Quality and LB Amfuel Real Estate, LLC entered into a June 17th Consent Administrative Order addressing alleged violations of the Arkansas Hazardous Waste Regulations. See LIS No. 24-103.

The Facility is stated to be a Large Quantity Generator of hazardous waste .

Alleged violations include:

- Failure to mark or label containers with an accumulation start date.
- Failure to mark or label containers with the words “Hazardous Waste.”
- Accumulated hazardous waste for greater than 90 days.
- Failed to keep a container holding hazardous waste closed during accumulation.
- Failure to list the hazards of the contents on the label.
- Failure to conduct weekly inspections.
- Failure to train employees.
- Failure to maintain certain documentation.

PFAS/CERCLA: New Mexico Department of Justice Files Contribution Claim Against the U.S. Departments of the Air Force/Army

The New Mexico Department of Justice (“NMDOJ”) amended a complaint in the United States District Court against the United States, the United States Department of the Army, the United States Department of the Airforce alleging they contaminated natural resources and endangered public health with PFAS.

The amended complaint is notable because it utilizes the United States Environmental Protection Agency’s (“EPA”) rule that recently designated perfluorooctanoic acid and perfluorooctanesulfonic acid as Comprehensive Environmental Response Compensation Liability Act (“CERCLA”) hazardous substances. See 89 Fed. Reg. 39, 124 (May 8, 2024).

EPA’s designation of certain PFAS as a hazardous substance triggers certain corresponding requirements such as:

- Application of the potentially responsibility liability categories.
- Hazardous substance release reporting requirements.

Single-Use Plastic Packaging/Buffalo River (New York): New York Attorney General Files Judicial Action Against PepsiCo, Inc., Alleging Environmental Harm

New York Attorney General Letitia James filed a November 15th Complaint in the Supreme Court of the State of New York (County of Erie) against PepsiCo, Inc., Frito-Lay, Inc., and Frito-Lay North American, Inc. alleging harm to the public and the environment caused by its single-use plastic packaging.

The Complaint alleges that Single-Use Plastic manufactured by PepsiCo contributes significantly to what it describes as high levels of plastic pollution along the Buffalo River in New York.

The Complaint alleges that:

- Single-Use Plastic beverage bottles, bottlecaps, and snack food wrappers manufactured, distributed, and sold by PepsiCo are collectively the most abundant forms of plastic waste along the shores of the Buffalo River.
- Plastic does not biodegrade in the environment but fragments into microplastic or nano plastic.
- The Buffalo River and public water supplies, along with public health, freshwater species, and the ecosystem are alleged to be endangered.

Single-Use Plastic Packaging/Buffalo River (New York): New York Attorney General Files Judicial Action Against PepsiCo, Inc., Alleging Environmental Harm

- A survey of plastic in the Buffalo River conducted by the AG in 2021 is stated to have indicated PepsiCo's plastic packaging exceeded other sources of identifiable waste.
- PepsiCo's bottled beverages are stated to represent approximately 20% of the retail market for comparable beverages sold in the United States.
- PepsiCo has failed to abate the harm or warn the public that its plastic packaging is a potential source of plastic pollution.

Causes of action alleged in the Complaint include:

- Public Nuisance
- Strict Products Liability: Failure to Warn
- Violation of New York General Business Law § 349
- Repeated and Persistent Illegality in Violation of New York Executive Law § 63(12)

PFAS/Clean Water Act Enforcement: Michigan Attorney General Files Action Against Grand Rapids Airport for Alleged Contamination

Michigan Attorney General filed a September 11th lawsuit in the Kent County 17th Judicial Circuit against the Gerald R. Ford International Airport Authority in Grand Rapids, Michigan

The Alleged basis for the lawsuit is stated to involve:

- PFAS releases into the below-ground water supply

PFAS consist of a large group of man made-chemicals that include perfluorooctanoic acid, perfluorooctane sulfonate, and Gen X chemicals.

PFAS/Clean Water Act Enforcement: Michigan Attorney General Files Action Against Grand Rapids Airport for Alleged Contamination

Of relevance here is their use in firefighting at airports

The AG's news release states that the lawsuit contends the Airport Authority is liable for its previous and known releases of the PFAS-containing firefighting material known as aqueous film-forming foams pursuant to:

- Part 201 (Environmental Remediation) of the Michigan Natural Resources and Environmental Protection Act
- Violations of its National pollutant Discharge Elimination System Permit

The Alleged PFAS releases are stated to have impacted nearby properties and been discovered in residential drinking water wells in Cascade Charter Township, as well as in streams and other groundwater downgradient of the Airport

Federal/State Environmental Criminal Enforcement

- New Hampshire indictment at C and D facility
 - Between March 30, 2020, and March 22, 2023, failure to report to the New Hampshire Department of Environmental Services exceedance of permit capacity for unprocessed construction and demolition debris.
 - On March 22, 2023, March 18, 2022, and March 11, 2021, submission of an annual facility report with false quantities of waste received by the facility and false representation of compliance with permit terms.
- California felony charges for waste fuel collected at scrap yards and sold to gasoline stations.
 - Treatment of hazardous waste at an unauthorized facility.
 - Transportation of hazardous waste to an unauthorized facility.

Federal/State Environmental Criminal Enforcement

- Federal prosecution of hazardous waste collection/disposal facility addressing Georgia and North Carolina facilities involved in knowingly storing carbon sulfide in the amount found at a warehouse.
 - CEC was sentenced after it pleaded guilty to one count of knowingly storing carbon disulfide (a hazardous material) without a permit.
 - The knowing storage of the carbon disulfide in the amount found at the warehouse was in violation of the provisions of RCRA.
 - The integrity of certain drums and totes is stated to have been compromised, resulting in leakage and potential spillage.

Electronic Waste/Criminal Enforcement: New York Attorney General Announces Convictions of Recycling Companies/Individuals for Alleged Illegal Processing/Disposal

The New York Attorney General and New York Department of Environmental Conservation Commissioner announced in a September 14th news release the convictions of ALPCO Recycling, Inc., Alton Plumb, Jr., Finger Lakes Cleanup and Recycling Consultants, Inc., and Craig Foster.

The corporations are alleged to have illegally processed and disposed of 800 tons of electronic waste (e-waste) in Wayne County, New York.

The news release states that in 2015 a large amount of e-waste was abandoned at the Geneva Enterprise Development Center in Seneca County. The abandoned waste is stated to have included television and computer monitors with Cathode Ray Tubes. The Cathode Ray Tubes are hazardous and contain lead.

Medical Waste/Environmental Criminal Enforcement: Maryland Special Medical Waste Incinerator Enters into Guilty Plea Addressing State Charges

The Maryland Attorney General announced on October 17th that Curtis Bay Energy, LP entered into a guilty plea to a forty-count criminal information resulting from an investigation that had been conducted by his Office of Environmental and Natural Resources Crimes Unit.

The guilty plea is stated to address Curtis Bay's special medical waste incinerator facility located in South Baltimore City, Maryland.

Charges to which Curtis Bay pled guilty are allegedly related to:

- Insufficient treatment and improper handling of special medical waste.
- Operation and concealment of an unpermitted discharge outlet.

Environmental Criminal Enforcement/Solid Waste: New Hampshire Attorney General Announces Indictment of Grafton County Construction and Demolition Debris Facility

The Office of the Attorney General of the New Hampshire Department of Justice announced in a January 25th news release the indictment of Hammond Grinding and Recycling Inc. a/k/a F.C. Hammond & Son Lumber Co.

Hammond operates a permitted solid waste facility which accepts construction and demolition debris in Grafton County, New Hampshire.

Indictments included:

- Between March 30, 2020, and March 22, 2023, failure to report to the New Hampshire Department of Environmental Services exceedance of permit capacity for unprocessed construction and demolition debris.
- On March 22, 2023, March 18, 2022, and March 11, 2021, submission of an annual facility report with false quantities of waste received by the facility and false representation of compliance with permit terms.

Underground Storage Tank Fund/California State Water Resources Control Board: Los Angeles Environmental Consulting Firm Enters into Settlement Addressing Alleged Inflated Invoices

California State Water Resources Control Board and Associated Consulting Civil & Environmental Services, Inc. along with an individual entered into a January 17th document styled:

Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order.

Settlement Agreement resolves allegations that Associated Consulting inflated invoices submitted to the Board's Underground Storage Tank Cleanup Fund for remediation work.

A number of states (including Arkansas) have UST funds that provide reimbursement for certain investigative and/or corrective action costs related to releases from petroleum USTs.

Underground Storage Tank Fund/California State Water Resources Control Board: Los Angeles Environmental Consulting Firm Enters into Settlement Addressing Alleged Inflated Invoices

Environmental professionals of various types are often utilized to perform the required work and submit the invoices for reimbursement.

Settlement Agreement alleges that Associated Consulting made certain misrepresentations in multiple reimbursement requests to the California UST Fund.

Settlement Agreement provides that Associated Consulting and the individual dispute the allegations and admit no wrongdoing.

The Settlement Agreement also provides the following:

1. Assessment of \$150,000 in penalties.
2. Disqualification of Associated Consulting and the individual from participating in future Board funding programs.

Medical Waste/Hazardous Waste Enforcement: California Attorney General and California Hospital Organization/Health Plan Enter into Settlement

The California Attorney General and six State District Attorneys entered into a Settlement on September 8th with Kaiser Foundation Health Plan, Inc., and Kaiser Foundation Hospitals addressing alleged violations of regulations involving both hazardous waste and medical waste management requirements.

The California Attorney General's Office states that the Settlement was the result of undercover inspections conducted by the referenced District Attorneys' Offices of dumpsters from 16 different Kaiser facilities.

They are stated to have reviewed the contents of unsecured dumpsters destined for disposal for publicly accessible landfills.

Medical Waste/Hazardous Waste Enforcement: California Attorney General and California Hospital Organization/Health Plan Enter into Settlement

Allegedly discovered were items such as:

- Hazardous and medical waste (aerosols, cleansers, sanitizers, batteries, electronic wastes, syringes, metal tubing with bodily fluids, and pharmaceuticals)
- 10,000 paper records containing the information of over 7,700 patients

The Settlement requires that Kaiser:

- Pay a \$47,250,000 penalty that includes:
- An additional \$1.75 million in civil penalties if within five years of the entry of the final judgment Kaiser has not spent \$30.5 million at its California facilities to implement enhanced environmental compliance measures to ensure compliance with relevant provisions of the law that are alleged to have been violated
- Retain an independent third-party auditor to conduct 520 trash compactor audits at Kaiser's California facilities.

Criminal Enforcement/Beverage Container Recycling Program: California Attorney General Files Felony Complaint Against Eight Individuals for Alleged Fraud

The AG alleges that the suspect individuals defrauded California's Beverage Container Recycling Program.

The California Redemption Value fee objective is to incentivize recycling at privately-owned centers with a 5- or 10-cent return on eligible beverage containers.

Only material from California is eligible for redemption under this program.

The Complaint alleges that the individuals smuggled 178 tons of aluminum cans and plastic bottles from Arizona.

The felonies charged in the Complaint include:

- Recycling fraud
- Grand theft
- Conspiracy

Analysis of MSW Landfill Tipping Fees/2023: Environmental Research & Education Foundation Report

The Environmental Research & Education Foundation (“EREF”) has released its annual report titled:

Analysis of MSW Landfill Tipping Fees – 2023.

The Report undertakes the analysis of Municipal Solid Waste (“MSW”) landfill tipping fees in the United States.

National trends described in this Report include:

- The unweighted average tip fee decreased to \$56.80 in 2023, marking a 3% decline from the previous year’s \$58.47.
- Similarly, the ton-weighted average tip fee saw a slight decrease to \$57.63, down from \$57.73 in 2022.
- This decrease marks the first reduction in average tip fees since 2020, following two years of increases.

The Report also addresses tipping fees by region. The Report places Arkansas in the “Southeast Region”. It states that the average tipping fee in this region decreased by \$1.56. This is stated to constitute \$43.18.

Solid Waste Removal Service/Temporary Waste Projects: Carroll County, Arkansas, Circuit Court Complaint Filed Alleging City of Holiday Island Unconstitutional Monopoly

Steven Hedrick and X-Dumpsters filed an August 22nd Complaint in Carroll County, Arkansas, Circuit Court against the City of Holiday Island, Arkansas, alleging a violation of civil rights under the Arkansas Constitution. See Case CV No. 2023-85.

The Complaint alleges that an Ordinance adopted by the Holiday Island City Council violates the Arkansas Constitution's prohibition on monopolies and guarantees Plaintiffs due process.

The Complaint alleges that Ordinance 2022-004 adopted in April 2022 by the Holiday Island City Council requires all residents and businesses within the City to contract with the selected entity for the collection of solid waste in Holiday Island.

The Ordinance is stated to authorize the City Council to award an exclusive franchise for the collection of solid waste.

Solid Waste Removal Service/Temporary Waste Projects: Carroll County, Arkansas, Circuit Court Complaint Filed Alleging City of Holiday Island Unconstitutional Monopoly

The selected contractor is stated to be Carroll County Solid Waste District.

Plaintiffs state that their initial understanding of the Ordinance was it only applied to regularly-scheduled trash collection services (as opposed to ad-hoc or temporary trash collection services that the Plaintiffs claims to provide).

The Complaint argues that:

- There is no legitimate basis for the exclusive monopoly granted to Carroll County Waste Management District
- Violation of the Arkansas Constitution's Prohibition Against Monopolies
- Violation of the Arkansas Constitution's Guarantee of Due Process
- Violation of the Arkansas Constitution's Guarantee of the Fundamental of Life, Liberty, and Property

Flow Control/Construction and Demolition Waste: Washington Appellate Court Addresses Challenge to King County Code

The Court of Appeals of Washington, Division 2 (“Court of Appeals”) addressed in a February 13th Opinion a challenge to a King County Code (“KCC”) involving flow control. See *SkyCorp Ltd. v. King County*, 2024 WL 562169.

The KCC addresses nonrecyclable construction and demolition waste.

KCC 10.30.020 requires that anyone who:

. . . generates, handles, or collects mixed or nonrecyclable construction and demolition waste within King County must dispose of such waste in county designated facilities.

King County is stated to have designated facilities in three counties for this purpose.

Flow control describes a scenario in which local government utilizes a law or regulation to direct one or more types of solid waste to a particular disposal, processing, or other facility.

Flow Control/Construction and Demolition Waste: Washington Appellate Court Addresses Challenge to King County Code

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The KCC is arguably an ordinance that involves “flow control.”

Flow control describes a scenario in which local government utilizes a law or regulation to direct one or more types of solid waste to a particular disposal, processing, or other facility.

Interstate Waste Movement/Municipal Ordinance: Shreveport, Louisiana, Prohibits Transportation of Waste Collected in the City Out of State

Shreveport, Louisiana, City Council enacted an ordinance which prohibits private sanitation companies from moving waste collected in the city to out-of-state landfills.

The ordinance mandates that waste haulers use Shreveport's landfill (i.e., Woolworth Road Landfill).

Several million dollars in revenue from private waste hauling companies taking waste out of state, leaving the city in a shortfall.

In 2021 Shreveport enacted an ordinance requiring that any person who hauls waste from any place of building for hire within the city limits of Shreveport to obtain a permit from the city.

Interstate Waste Movement/Municipal Ordinance: Shreveport, Louisiana, Prohibits Transportation of Waste Collected in the City Out of State

Note that in 2021 Shreveport enacted an ordinance (74-53) requiring that:

. . . any person who hauls waste from any place of building for hire within the city limits of Shreveport to obtain a permit from the city.

74.52.1 then required (with limited exceptions) that:

. . . all persons required to obtain a permit pursuant to Sec. 74-53 “shall dispose of” all solid waste only at Woolworth Road Landfill.

Shreveport filed in 2021 a judicial action in the First District Court/Caddo Parish against six waste haulers alleging a failure to utilize Woolworth. It alleged that they were required to dispose of all waste collected within the city limits of Shreveport at Woolworth.

The trial judge refused to enforce the ordinance.

The KTBS Article states that a Councilman is quoted as stating regarding the new ordinance:

. . . We can’t stop the DeSota Parish traffic, but we can stop it from going to Texas. And I think that’s what we did today, so I am happy about that (citing Councilman Grayson Boucher). 54

Environmental Services Agreement: Federal Court Addresses Limitation of Liability Clause

The United States District Court addressed in an April 27th Order issues arising out of an environmental services agreement. See *Thiele Kaolin Company v. Environmental Resources Management—Southeast, Inc.*, 2023 WL 3137991.

One of the issues addressed was a limitation of liability clause.

Thiele Kaolin Company entered into an agreement with Environmental Resources Management—Southeast, Inc.

ERM was tasked to provide certain environmental due diligence services related to Thiele's potential acquisition of mining sites in Sandersville, GA.

Thiele alleged discovery of several instances of actual or potential non-compliance with federal and state environmental laws and regulations after the purchase

Environmental Services Agreement: Federal Court Addresses Limitation of Liability Clause

ERM cited a limitation of liability clause reading:

UNLESS OTHERWISE AGREED AND EXPRESSLY SET FORTH IN A PROJECT CONTRACT, IN NO EVENT SHALL ONE PARTY, ITS AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, BE LIABLE TO THE OTHER PARTY AND/OR ANYONE CLAIMING BY, THROUGH OR UNDER IT, INCLUDING WITHOUT LIMITATION INSURERS, FOR ANY LOST, DELAYED OR DIMINISHED PROFITS, REVENUES, BUSINESS OPPORTUNITIES OR PRODUCTION OR FOR ANY INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY, FINANCIAL, CONSEQUENTIAL OR ECONOMIC LOSSES OR DAMAGES OF ANY KIND OR NATURE WHATSOEVER, HOWEVER CAUSED.

Environmental Services Agreement: Federal Court Addresses Limitation of Liability Clause

The Court denied ERM's interpretation of the limitation of liability provision given that their desired meaning ignored many other relevant sections in the contract including the indemnification, insurance, standard of care, and dispute resolution clauses.

The Court also held that ambiguity of certain clauses in the Agreement could not be resolved in the context of a motion to dismiss.

ERM argued that the damages Thiele identified were "de minimis" in comparison to the scope of the project it was assigned.

Alternative Daily Cover/Mississippi County Class I Landfill: Request to Use dried Drop Box Steel Sludge

Mississippi County, Arkansas, submitted a March 2nd request to the Arkansas Department of Energy and Environment – Division of Environmental Quality to continue the use of dried Drop Box sludge from the Nucor – Yamato steel mill as an alternative daily cover.

The Sludge would be used as ADC at the Mississippi County Class I Landfill.

ADC is sometimes described as cover material other than earthen material placed on the surface of the active face of a solid waste landfill at the end of each operating day to control vectors, fire, odors, blowing litter, and scavenging.

Reg. 22.413(b) states:

- Alternative Cover Materials – Alternative cover materials of an alternative thickness (other than at least six inches of earthen material) may be approved by the Director either through an individual request or through generalized Department approval upon demonstration that the alternative material and thickness controls disease vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment.

Alternative Daily Cover/Mississippi County Class I Landfill: Request to Use dried Drop Box Steel Sludge

Materials approved as ADC can differ from state to state based on regulations and policies. However, examples can include:

- Shredded tires
- Green waste or compost
- Foam products
- Fabric panels
- Construction waste
- Automobile shredder residue
- Geosynthetic covers
- Hydro-mulching or spray on
- Sludge
- Cement kiln dust
- Contaminated sediment
- Demolition waste
- Bark and chipped wood

A number of Arkansas landfills have obtained DEQ permission to use certain materials as ADC.

Arkansas Regional Solid Waste Management District: Arkansas Appellate Court Addresses Fee Assessment Issue

The Court of Appeals of Arkansas addressed in a November 29th Opinion the Arkansas Regional Solid Waste Management Districts' ("ARSWMD") ability to assess certain fees. See *Benton County Regional Solid Waste Management District v. Waste Management of Arkansas, et al.*, Ark. App. 538.

The ARSWMDs' statutory authority addressed involved the following fee setting provisions:

- Service fee which can be a levy on each resident or business for which the Arkansas Regional Solid Waste Management Board ("Board") makes solid waste collection or disposal services available. See Ark. Code Ann. § 8-6-714(b).
- Waste assessment fee assessed against the generator, transporter, or disposal facility for any solid waste generated within the ARSWMD or brought into the District for disposal. See Ark. Code Ann. § 8-6-714(4)(A), (B).

The Appellate Court upholds the Circuit Court. It determines that the Benton County ARSWMD could not unilaterally deny the Boston Mountain ARSWMD its statutory right to assess and collect its own waste assessment fee. Further, it upheld the Circuit Court's determination that the Benton County ARSWMD lacked the authority to assess a service fee on haulers and require haulers to collect and remit the service fee.

Arkansas Regional Solid Waste Management District: Arkansas Appellate Court Addresses Fee Assessment Issue

The Appellate Court noted:

. . . After purporting to reduce its Waste Assessment Fee to \$0.01 per ton, Benton County RSWMD recharacterized the remaining \$1.49 per ton of the Waste Assessment Fee as a Service Fee under this provision of the Fee Statute.

The service fee adopted by Benton County ARSWMD was noted to not be levied on residents or businesses. Nor was it triggered by the Board's making solid waste collection or disposal services available. As a result, the Circuit Court was stated to have correctly held that the Benton County ARSWMD lacked statutory authority to assess a per ton service fee on waste haulers.

The Appellate Court stated that:

. . . The plain language of the fee statute provides that the service fee is to be levied on residences and businesses for which the Board makes solid waste collection or disposal services available – not on haulers.

Arkansas Recycling Tax Credit: Arkansas Department of Energy and Environment - Division of Environmental Quality Update

The Arkansas Recycling Equipment Tax Credit Program was created by Act 654 of 1993. The program encourages recycling by allowing Arkansas taxpayers a 30 percent state income tax credit for the purchase of equipment used exclusively for collecting, separating, processing, modifying, converting, or treating solid waste or for manufacturing products containing at least 50 percent recovered materials, of which at least 10 percent is post-consumer waste.

The tax credit reduces a participant's Arkansas income tax amount due by 30 percent of the amount paid for eligible recycling equipment and installation. For example, if the total cost for equipment and installation is \$10,000, the participant can subtract \$3,000 from the amount they owe the state.

Arkansas Scrap/Recycling Personnel Moves: Jack Grundfest Promoted to Expanded Role of President/Chief Executive Officer of Alter Trading

Little Rock, Arkansas, native Jack Grundfest has added the role of Chief Executive Officer to his current position of President of St. Louis, Missouri, based Alter Trading.

Jack initially joined Alter in 2018 as its Senior Vice President and Chief Administrative Officer and was subsequently promoted to President.

Alter is one of the largest recyclers of ferrous and non-ferrous metals in the United States serving a variety of industrial client and salvage operations. Company has operations in Alabama, Arkansas, Illinois, Iowa, Minnesota, Mississippi, Missouri, Nebraska, and Wisconsin.

Fifteen of its facilities utilize on-site automobile shredders.

Jack joined Alter after it acquired Tenenbaum Recycling Group, LLC, of Little Rock, Arkansas, in 2019. Serving as President and Chief Executive Officer at Tenenbaum for almost 14 years.