

INTRODUCTION

Special Issue of The Journal of Hazardous Materials

In this special issue we offer eight papers dealing with regulation, legislation, and litigation specific to hazardous materials.

The first paper (Habicht) sets forth several explicit statutory overlaps between the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 that can effect the negotiation and litigations of federal hazardous waste cases. Written by a Deputy U.S. Attorney (Law and Natural Resources Division), this paper shows the relationship between cleanup standards and requirements under RCRA and CERCLA and one example of this overlap.

In addition, the article addresses several basic policy determinations that may import enforcement such as the RCRA/CERCLA listing policy.

The Nott paper examines several requirements and subtleties of implementing the Superfund "Amendments and Reauthorization Act (SARA) of 1986. Nott discusses how Congress used SARA to codify EPA's offsite disposal policy for CERCLA waste and CERCLA compliance with the environmental law.

Molten examines the apportionment of tort liability among multiple polluters in the United States. He discusses the increasing numbers of law suits over injuries caused by a chemical, drug, or other substance that was definitely produced and sold by many, distinct companies.

Molten finds that the biggest issue that evolves is that in most rush cases there is some doubt as to whether there is a sufficient link between exposure and injury. Molten looks in detail at the 1986 settlement in San Jose, California against Fairchild, alleging teratogenic effects from a leak of DES (diethyl stilbesterol).

Severns demonstrates that well prepared Environmental Assessments can be effective tools to estimate the environmental liabilities associated with real estate transactions. Severns suggests that the three factors that most strongly influence the quality of environmental assessments are the

1. time schedule allowed for its completion;
2. financial resources a client is willing to devote to the task; and
3. expertise of the analysts.

In Solomon's first paper, he examines the sources of radio activity in the ocean environment. He examines a number of sources (low level nuclear reactor waste to nuclear weapons testing) and several responsible countries in the context of international law treaties.

Stewart, a practicing real estate attorney, examines the environmental laws most frequently at issue in real estate transactions. While Stewart's list is not complete, it does provide an excellent basis for future analysis. Stewart looks at Federal Laws as well as related State and Local Laws.

In Solomons's second paper he examines the quantitative analyses that support the definition of an exclusionary population zone surrounding a nuclear reactor

Of interest is that Solomon looks at a number of prior analyses that recommend a rather diverse set of zone radii from one mile up to 40 or more miles surrounding the reactor. Federal, State, and Local officials must be able to arrive at a single zone radius from a host of many zone radii estimates by different analysts.

The Colen paper offers some thoughts on how to sue risk/benefit analyses in decision involving hazardous materials. As a practicing attorney with an engineering background, Mr. Colen examines a rather interesting case study.

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