

crowell  moring



# CERCLA Trends & Controversies

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## Supreme Court Review

- *Guam v. United States* (2021): Allowing Guam to pursue contribution claim under CERCLA against the U.S. because previous settlement was under CWA
- *Atlantic Richfield Co. v. Christian* (2020): Section 113 does not bar party seeking more stringent remedy under state law, subject to EPA approval under section 122
- *CTS Corp. v. Waldburger* (2014): State statute of repose (as opposed to statute of limitation) not preempted by CERCLA
- *Burlington Northern & Santa Fe Railway Co. v. U.S.* (2009): limiting the scope of arranger liability
- *U.S. v. Atlantic Research Co.* (2007): Allows PRP to seek pre-enforcement contribution under section 107 for voluntary cleanups
- *Cooper Industries, Inc. v. Aviall Services, Inc.* (2004): Bars contribution action under section 113 absent civil action under section 106 or 107

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## Abandoned Mines and Good Samaritan Cleanups

- GAO estimates more than 160,000 abandoned hardrock mines
  - EPA estimates 40% of headwaters in west threatened by pollution from abandoned mines
- Gold King Mine was undergoing CERCLA response action at time of 2015 blowout
  - Renewed interest in cleanup of abandoned mines by mining companies and Good Samaritans
  - Biden administration has proposed mine cleanups as part of infrastructure plan
- Concerns about CERCLA joint and several liability for contributing to release/threatened release of hazardous substances have inhibited “Good Sams”
  - Alternatives to On-Scene Coordinator oversight
  - Clean Water Act NPDES permit shield
  - Purpose and scope of the “Good Sam” cleanup
  - Involvement of mining companies

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## CERCLA 108 Financial Assurance Rulemakings

- Statutory Language
  - Establish regulations for classes of facilities to maintain evidence of financial responsibility consistent with the degree and duration of risk
  - Level of financial responsibility shall be set against the level of risk which [Administrator] in his discretion believes is appropriate based on several factors
- Litigation to Force EPA to take Regulatory Action
- Obama EPA proposed financial assurance rules; Trump EPA reverses course
  - DC Circuit upholds Trump EPA “no rule” approach based on payment history, states
- Trump EPA finalized “no rule” rules for petroleum, chemical, and manufacturing sectors based on DC Circuit hardrock decision

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## Superfund Tax

- History of tax
- Controversies
- Reauthorization Debate

## Environmental Justice

- Public Participation
- Impact on Remedy Selection

## Emerging Contaminants

- Designation of PFAS as Hazardous Substance