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Emerging Environmental Constituents: Legal and Technical Challenges

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Topics Outline

- Overview of issues presented when environmental constituents of concern change
- How to keep on top of those changes
- How to manage them
- Legal vs. technical perspectives



Facility operations or remediation requirements are based on fixed set of conditions, assumptions

- What constituents are important
- What levels are important
- Question: What happens if those change? What can you do about it or to anticipate it?



Regulatory views of constituents evolve

- The environmental times, they are a' changin' (with apologies to Bob Dylan)
 - Changes in latitude, changes in attitude (apologies to Jimmy Buffet)
- New constituents are identified as important
 - 1,4-dioxane
 - PFAS, PFOA
- New levels are identified as important
 - Changing toxicological assessments
 - Changing analytical methods
- New pathways are identified as important
 - Example: Vapor intrusion



Regulatory views of constituents evolve, cont'd

- New levels are identified as important
 - Changing toxicological assessments
 - EPA's IRIS program
 - Example: PCBs undergoing review
 - Changing analytical methods
- New pathways are identified as important
 - Example: Vapor intrusion



Impacts

- Operational plans get reopened, changed
 - Monitoring programs
- Remediation requirements
 - Lower levels
- Consent agreements, consent decrees; BVCP clean letters
 - Check the current ones
 - When drafting new ones
 - Scope of coverage, reopeners
- Public perception



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Wheeler's Promise Of EPA 'Certainty' Agenda Draws Skepticism, Derision

March 14, 2019

EPA Administrator Andrew Wheeler's promise that the agency's agenda will bring regulatory "certainty" is drawing a mix of skepticism and derision from observers including industry and state officials who say it either exaggerates the benefit of some actions or ignores controversial -- and legally uncertain -- rollbacks that risk creating more uncertainty.

Risk communication



Missouri Risk-Based Cleanup Guidance

- MRBCA
- 2006 BVCP MRBCA guidance undergoing revision
 - Note: Tanks are different
- Some numbers going up; some down
- Impact of vapor intrusion pathway
 - VOCs: Indoor air
 - Impacts determined differently, eliminating subsoil column values
- Petroleum hydrocarbon impacts: New science



Long-Term Stewardship

- In Missouri, often integral for risk-based cleanups
- Flexibility vs. prescriptive
- How will Environmental Covenant account for changing science, property uses?

Managing, anticipating changes

Know where changes are coming from

- Reevaluation of toxicological data, pathways impacts

- EPA's IRIS database

- European Union assessments

- EPA's Regional Screening Levels (RSLs)

- Missouri Risk-Based Cleanup guidance



Managing, anticipating changes, cont'd

--Implementing changes is a process; may not be clear at first what needs to be done, if anything

--Determining your facility's goals: Meet requirements? Avoid new requirements? Address long-term project viability? Avoid Institutional Controls?

--Addressing reopeners

In drafting Consent Agreements, BVCP correspondence

In responding to requests to evaluate previous work

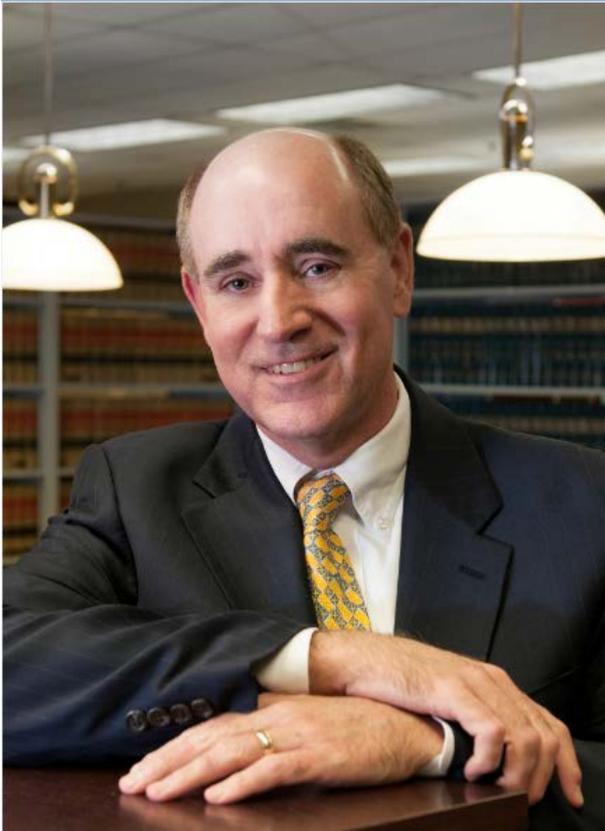


Response strategies



Conclusions

Questions?



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