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## Recent Developments—Cases, Proposed Legislation, Articles

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## RECENT DEVELOPMENTS

### RECENT DEVELOPMENTS—CASES

#### *Hazardous Waste*

*U.S. v. Wade*, No. 79-1426, 12/20/83. Not generally reported yet.

The Comprehensive Environmental Response, Compensation & Liability Act (CERCLA) authorizes the government to undertake emergency cleanup of hazardous waste disposal sites, and then seek reimbursement of cleanup costs from waste generators. The government brought this suit for reimbursement against owners, waste transporters, and generators allegedly responsible for creating a hazardous waste dump which the government cleaned up with funds provided by CERCLA. The defendants relied on the traditional tort law theory of proximate causation to argue that the government must prove a link between costs incurred in cleanup and a given generator's waste before liability may be established. The U.S. Supreme Court rejected the argument, holding that the government need only prove that the generator dumped its waste at the site and that hazardous substances found in generator's waste are also found at the site. The Court said that to require government to "fingerprint" wastes is to eviscerate CERCLA.

Additionally, the Court held that users of a hazardous waste dumpsite may be held jointly and severally liable for cleanup costs unless the generators can establish that a reasonable basis exists for apportioning the harm. The liability issue had been decided by the court on October 11, 1983, in *U.S. v. Chem-Dyne Corp.*, 52 L.W. 2241.

#### *Nuclear Energy*

*Van Dissel v. Jersey Central Power & Light Co.*, No. 81-2065.

The U.S. Supreme Court vacated the New Jersey Superior Court Appellate Division's ruling that the Atomic Energy Act's licensing scheme, which requires federal approval of the operation of a nuclear power plant's cooling system, preempts riparian landowner's common law tort claims against the plant for environmental damages caused by thermal pollution of local waters.

#### *Water*

In *Southeastern Colorado Water Conservancy District v. Huston*, Case 79SA38 (Colo. July 18, 1983, modified on denial of Petition for Rehearing, Nov. 7, 1983), a large number of applications had been filed with Colorado's water courts, seeking decrees for great amounts of non-

tributary groundwater outside of designated groundwater basins. The cases were consolidated and eventually heard by the Colorado Supreme Court. The Court held that the waters of the state which are subject to appropriation under the Colorado Constitution and subject to adjudication in the water courts under Colo. Rev. Stat. §§ 37-92-101 (1969) do not include non-tributary groundwater outside of designated groundwater basins. Therefore, the well permit procedure set out in Colo. Rev. Stat. § 37-90-137 (1969) is the only scheme regulating rights to non-tributary groundwater outside designated basins. For an analysis, see CARLSON AND HAMMOND, 16 WATER LAW NEWSLETTER 1 (No. 3 1983).

#### RECENT DEVELOPMENTS—PROPOSED LEGISLATION IN CONGRESS

##### *Water*

S 2006 was introduced to amend the Clean Water Act to provide a program for reduction of nonpoint sources of pollution.

Bills were introduced in both houses to prohibit diversions of Great Lakes water, except as approved by all the Great Lakes States and the International Joint Commission for use outside a Great Lakes State, and to prohibit federally sponsored studies of the feasibility of diverting Great Lakes water. S 2026, H 4366.

##### *Nuclear Wastes and Hazardous Substances*

A measure proposed in the House was introduced to amend the Toxic Substances Control Act to provide a federal cause of action for damages caused by toxic substances.

Both houses will consider whether to grant Congressional consent to the Rocky Mountain low-level radioactive waste compact. S 1991, H 4388.

##### *Fishing and Fisheries*

A bill introduced in the Senate would establish a National Fisheries Marketing Council to enable the U.S. fish industry to establish a coordinated program of research, education and promotion to expand markets for fisheries products. S 2160.

##### *Air Pollution*

S 2001 proposes amendments to the Clean Air Act to assure compliance with mobile source emissions standards.

## RECENT DEVELOPMENTS—ARTICLES

*Increase in DDT Contamination:*

Despite a 1972 ban on use of DDT in the United States, residues of the insecticide increased between 1976 and 1979 in areas of New Mexico and Arizona. The highest concentration among sites tested in 1979 was 15.80 parts per million, far exceeding the national average of 0.17 parts per million.

The increased contamination is attributed partly to residue from pre-ban use of DDT and to contamination of migratory birds that winter in Latin America. Evidence suggests, however, that the contamination may be originating in New Mexico and Arizona. For details of the findings, see Clark and Krynitzky, DDT: Recent Contamination in New Mexico and Arizona, 25 ENVIRONMENT 27 (June 1983).

*Infiltration Galleries as Desert Water Source:*

A 3,000 year old method of tapping groundwater is currently being studied in the Middle East. Qanats are gently sloping underground tunnels dug through alluvial fans to reach the water table. Groundwater flows into the tunnel and down the gentle slopes to emerge as a surface stream. The Qanat requires no power source, allows water to be transported underground over distances without evaporative loss and may provide dependable, sustainable water supplies. An interesting article on Qanats and their construction, operation, and effectiveness is Amin, Qazi, and Downing, Efficiency of Infiltration Galleries as a Source of Water in Arid Lands, 8 WATER INTERNATIONAL 154 (Winter 1983).

*Sedimentation Problems in River Basins:*

The International Hydrological Programme set up a project to investigate sedimentation and erosion in relation to fishing, forestry, wildlife, agriculture, grazing, mining, and construction work. The international dimensions of the environmental problems and their remedies are discussed in Sundborg, Sedimentation Problems in River Basins, 19 NATURE AND RESOURCES 10 (April-June 1983).