

The Arnold Law Practice

News From the Practice

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“Environmental Professionals” Not Listed by EPA

We recently prepared an article on EPA’s new “all appropriate inquiries rule” (“AAI Rule”) which guides due diligence for protections against Superfund liability. 2006 *California Environmental Law Reporter* at pp. 159-166 (LexisNexis).

The AAI Rule requires that only qualified “Environmental Professionals” (“EPs”) do or supervise Phase I environmental assessments. Qualified EPs include:

- With 3 years experience, either registered professional engineers or geologists, or certified by the government; or
- With 5 years experience, with at least a BA degree in engineering or environmental or earth science; or
- With 10 years experience as an EP.

On May 9, 2006, USEPA stated that “Neither EPA, nor EPA’s Brownfields Program is compiling a list or registry of environmental professionals.”

Jim Arnold explained in a recent program that “It is up to buyers and lenders to decide whether the Environmental Professionals they use are qualified for the AAI Rule.”

June and July Events

- The Arnold Law Practice has organized the second annual Enforcement Update program for the Environmental Law Section of the Bar Association of San Francisco for June 29.
- In July in Sacramento, San Francisco and San Jose, Jim Arnold will be presenting a review of the law of public and private roads.

For information or complimentary copies of papers and program materials contact Parker Hill or Jim Nunn at The Arnold Law Practice.

EU’s New “REACH” Law

Last month’s newsletter showed how California included the “Precautionary Principle” in Prop. 65. “*Look before you leap*” is the easy way to understand the Principle. When applied to chemicals, the Principle says that chemicals should not be marketed unless they are proved to be safe. The US system generally is to allow chemicals until they are proved to be unsafe.

The Principle originated in Europe. Now, the European Union (“EU”) has proposed a new regulation called the Registration, Evaluation and Authorization of Chemicals (“REACH”). REACH will require industry to prove that a chemical is safe before it can be marketed in products sold in the EU.

Under REACH’s new system, companies will be required to register 30,000 listed substances that are imported into Europe. Importing companies will have to compile comprehensive risk assessment data on the listed substances, many of which have escaped review before. (Pharmaceuticals, pesticides, fuels, and nuclear materials are controlled by other laws.) The risk assessment data will be in a centralized public database. Some chemicals (*i.e.*, those blamed for cancer, reproductive toxicity, bioaccumulative, *etc.*) will require special review and authorization for sale or use.

The costs? About \$403 million annually (0.06% of chemical sales). The EU also estimates possible savings of \$64 billion in costs for health-care and \$11.3 billion for cleanups. Advocates for the Precautionary Principle point to the costs of fixing the mess caused by use of asbestos in factories, homes, and ships.

“To improve is to change. To be perfect is to change often.”

Winston Churchill



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The Arnold Law Practice represents individuals in state and federal courts in a variety of lawsuits, including complaints for specific performance of real estate contracts, quiet title, breach of contract, adverse possession, negligence, fraud, property trespass and damages, *etc.*

The Arnold Law Practice represents business owners who are food processors, petroleum fuel distributors, computer manufacturers, cell phone importers, banks, real estate developers, and others in wastewater discharge matters; questions as to UST compliance (and UST Fund reimbursements); Phase I and II Environmental Site Assessments; civil penalty proceedings with USEPA, Air Quality agencies, California Fish & Game, the State and Regional Water Quality Control Boards and local health departments; redevelopment issues with cleanups and "sign-offs;" condemnations of businesses and roads; questions of disclosure and reporting of buried contamination; compliance with Prop. 65 and how to interpret the California Rigid Plastic Packaging Law.

The Arnold Law Practice associates with specialized counsel in complex real estate closings, estate and trust planning, partition actions involving contamination, and transfers of real estate with indemnities and cleanup rights under the California UST Fund.

Enforcement Highlights

\$500K Fine for Violations of Construction Permit

According to California's State Water Resources Control Board (Board), runoff from construction sites into storm drains is a major cause of water pollution. The Board has a program to control construction runoff. All developers of projects bigger than 1 acre must get a permit for such construction activities as clearing, grading, stockpiling, or excavating.

The Board has been cracking down on violators. In one recent case, the Board wants \$500,000 in fines from a home-builder in Roseville (near Sacramento) for construction runoff. The builder faced a similar enforcement action from the Board in 2004 and installed a water treatment system. (Developers in the Sierra foothills near Sacramento have to deal with heavy clay soils with such systems to control runoff.)

But the builder didn't keep the system up. Inspectors in 2005 found dirty water going straight into a storm drain. The result? A large fine the Board will consider at a hearing later in June.

For information about permits and hearings and appeals with California agencies contact The Arnold Law Practice.

\$63,000 for Injection Well Violations By Pickle Company

On the federal front, the USEPA recently fined a pickle, relish, and peppers company in Stockton for nearly \$63,000. The company, founded in 1930, has an USEPA permit to pump salty wastewater into underground wells on its property. The wells are deep, but there is a concern groundwater could become tainted.

The 1974 Safe Drinking Water Act requires USEPA to regulate injection waste wells to protect groundwater. USEPA controls injection waste wells with permits and monitoring.

The pickle company here had a permit, but failed to file two quarterly reports and didn't analyze the wastewater it was injecting. The company has made the reports to USEPA and appears to be meeting the terms of its permit.

Whether it is old pickle juice, or wastewater from a tofu processing plant, wastewater disposal is a major issue for California's food processors. Real estate developers compete with them for capacity, urbanization crowds out spreading fields, and injection wells are expensive and tightly controlled by USEPA.