

The Arnold Law Practice

News from the Practice

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San Francisco Bay Area Air Quality Management District Will Collect Fees for Carbon Dioxide Emissions



By a 15 to 1 vote, the elected officials on the Board of the Bay Area Air Quality Management District agreed to put a “carbon tax” of 4.4 cents per metric ton on carbon dioxide emissions from

“stationary sources.” The tax will take effect on July 1, 2008. Carbon emissions create global warming, which is a generally accepted phenomena. The companies paying the tax range from a refinery with an estimated fee of \$195,000 per year to less than \$1 per year for most of the 2,500 businesses affected. The intent of the tax is to encourage reducing carbon dioxide emissions. Vehicles are not subject to the tax. *San Francisco Chronicle*, May 22, 2008.

Canada – First Bisphenol-A (polycarbonate drinking bottles); now 11 more chemicals

Canada started a process last year that could lead to banning of bisphenol-A from baby bottles. The result is that similar polycarbonate sports drinking bottles are being withdrawn from the marketplace by equipment companies. Now, Canada is listing 11 more chemicals, include vinyl acetate (used in chewing gum), cyclohexasiloxane (silicone breast implants, antiperspirants, silky hair shampoos, etc.). Canada does not believe these products are health risks, but that they should be declared as toxic to the environment. *Ottawa Citizen*, May 17, 2008.



Comments? We would appreciate your comment on our newsletter. Please email us at comments@arnoldlp.com

Court Affirms that Contracts Are Interpreted By Judges, Not Juries

A California appeals court recently took Roger Rabbit back from a jury. Gary Wolf had created Roger Rabbit and other characters in a novel. Wolf sold the rights to Disney. Disney did not fully pay Wolf, so he sued. The trial judge asked the jury to interpret a key phrase in the contract. The jury did, and the verdict was for Wolf. Disney appealed. The appeals court reversed, because interpreting the phrase did not depend on evidence outside the contract, and so the jury had no question of fact to decide. *Wolf v. Walt Disney Pictures, etc.* May 9, 2008.



Do It Yourself Brownfields Cleanups?

When property owners become frustrated with government brownfields programs, they look at “do it yourself” cleanups. We have seen this approach by sewer agencies, gas station operators, and transportation companies. The major question for such cleanups is getting “liability releases” from government oversight agencies. Property owners should ask themselves, “How sure can we be that the level of cleanup will be satisfactory to the government, lenders, and possible buyers?”



New Law Requires Considering Vapor Intrusion Pathways In Cleanups

In October, California Governor Arnold Schwarzenegger signed AB 422 requiring assessments of vapor intrusion pathways for volatile organic compounds (“VOCs”) as part of responses or cleanup actions. California thus is the first state to pass a law specifically requiring consideration of vapor intrusion pathways in contaminated site cleanups. (New York and New Jersey require the same by regulations.) See Sect. 25356.1.5, H&S Code and Sect. 13304.2, Water Code.

Air Quality District Sniffs Out Hexavalent Chromium in Clinker Dust from Cement Plant – Two Miles Away

Environmental attorneys know about the Erin Brockovich movie. In real life, a power company paid \$333 million for the rust inhibitor, hexavalent chromium, which it allowed to foul drinking water in a small desert town. Hexavalent chromium has long been known



to be an airborne carcinogen, so doubts existed for some about its effect in water. The South Coast Air Quality Management District now reports finding the source of significant levels of hexavalent chromium in dust from a cement plant. The plant is two miles from the District’s air sampling station. The District is requiring the cement company to control dust emissions and reduce risk. *California Environmental Insider* May 15, 2008. This news report adds to the growing controversy over hexavalent chromium in cement dust, with research from both Japan and the European Union resulting in more controls on workplace exposures and water and soil pollution.

The Arnold Law Practice Three Decades of Environmental Law

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The Arnold Law Practice represents companies and individuals in brownfields redevelopment litigation with claims of pollution, USTs, waste disposal practices, Prop. 65, claims as to site audits, Fish & Game civil penalty proceedings, condemnation for road expansion, failures of seller to disclose buried contamination, compliance with air pollution control laws, civil penalties from air quality management districts, spill response claims, toxics reporting and disclosure requirements, and UST closure and lost fund matters.

The Arnold Law Practice represents companies and individuals in state and federal courts in a variety of lawsuits, including civil penalty claims as to permits, complaints for specific performance of real estate contracts, quiet title, defending permits issued by the National Marine Fisheries Service, defending and prosecuting construction claims, breach of contract, negligence, fraud, property trespass and damages, and related matters.

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.

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