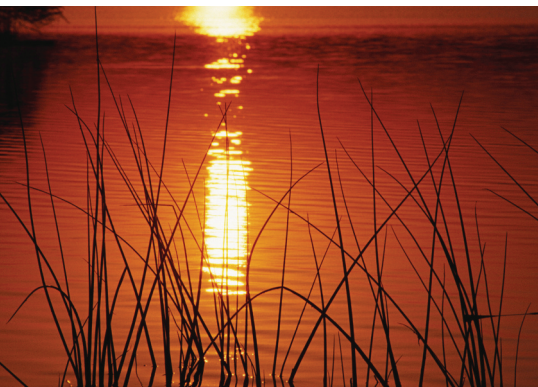


ENVIRONMENTAL LAW AND LITIGATION UPDATE

SUMMER 2012

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The Environmental Law and Litigation Practice Group handles an array of complex Environmental Litigation claims, ranging from landfill contamination and hazardous spills, to leaking underground storage tanks and misdelivery of home heating oil. Our attorneys represent clients in State and Federal Courts, as well as in non-traditional settings such as in Mediations/Arbitrations/Alternative Dispute Resolution.

This Practice Group works often with regulatory agencies in resolving claims to the benefit of our clients and also has experience in representing clients in obtaining government approval for remediation activities.

Given the complex issues involved in these matters, our goal is always to ensure that our clients are kept fully involved throughout the fact-finding and decision-making stages.

CDC SEVERELY LOWERS CHILD BLOOD LEAD LEVELS

In a recent decision affecting Environmental Tort claims, the Center for Disease Control (CDC), substantially revised downward the threshold for what constitutes as "lead poisoning," in children. The CDC lowered the threshold for lead poisoning in children to **five milligrams per decimeter**. The CDC reports that this recommendation was based upon a "growing number of cases" that "proved" that long term health effects (like decreased intelligence and impaired hearing) can be "caused by" **even such very low blood-lead levels**. (Certainly, **very high** levels of lead in the bloodstream can have deleterious effects such as coma, convulsions, immunological, endocrine, and (in the **most** egregious cases) possibly death. The State currently with the highest percentage of children with elevated lead levels is **Pennsylvania**, with over 2.17% of children or over 3,000 diagnosed cases. However, such low levels will have a negative litigation defense impact upon remodelers, Landlords, contractors, housing inspectors, etc.; where personal injury will now be alleged for what was, until now, non-significant, non-actionable levels.

ENVIRONMENTAL PROTECTION AGENCY (EPA) EXTENDS ITS REGULATORY POWER

In a controversial administrative decision, The Environmental Protection Agency just used the Clean Water Act to control land alongside ditches, gullies, and other "ephemeral spots." The EPA has done this on the grounds that such areas "ultimately lead to" navigable waterways. The EPA justified their move by saying that "smaller waterways" (like gullies and ditches) can feed pollution into larger, (already) regulated waterways. Some Federal lawmakers are claiming that this is an improper "expansion of federal jurisdiction," and will fight the EPA's administrative decision.

NEW YORK FOIL DEFINES "AGENCY" AS STATE AND MUNICIPAL; BARRING NONDISCLOSURE BETWEEN FEDERAL AND STATE/MUNICIPAL AGENCIES

The town of Waterford, which gets its water from the Hudson River, sought records on joint project between the Environmental Protection Agency (EPA) and the New York Department of Environmental Conservation (DEC). The records were concerning PCBs in the Hudson River, which the EPA and the DEC were working to clean up. The DEC refused to disclose some records when served with a Freedom of Information Law (FOIL) request for those records. Those records had been exchanged with the EPA and the town of Waterford. The DEC claimed that the Public Officers Law exempts disclosure of "inter-agency" materials. The Court of Appeals ruled that "agency" is only applicable to state and municipal agencies, so non-disclosure of inter-agency exchanges do not apply to the EPA or any Federal agency, under the Freedom of Information Law (FOIL), in New York, and therefore ordered the documents to be disclosed.



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Richard S. Ranieri
Chair of the Environmental Law
and Litigation Practice Group

973-242-2230
rranieri@wglaw.com