

2018 and The Brave New World: Federalism for Some; SACM v. SWAMPUM and taking the dusty Gopher

By: Norman A. Dupont, Esq.

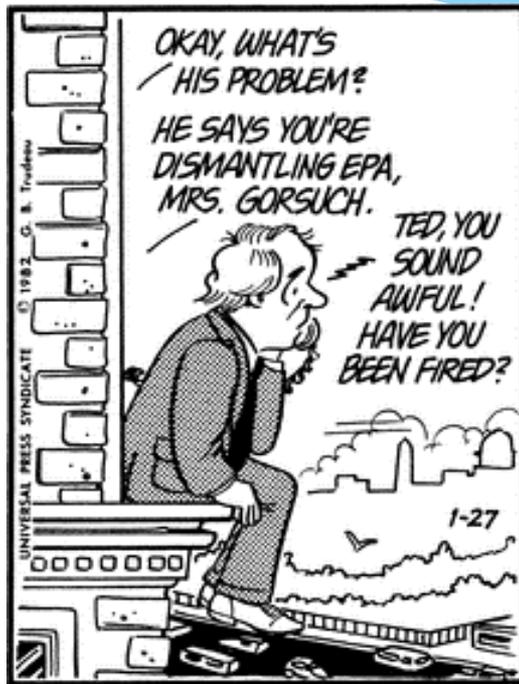
Ring Bender LLP

(Offices in California, Oregon & Pennsylvania)



RING/BENDER

Is past prologue? A view of a prior Republican EPA Administrator who resigned after controversy.



Administrator Pruitt supports federalism in environmental issues, but is it only for “Red” states?

- * **EPA Administrator Pruitt in January 2018 Senate Oversight hearing:** “. . .[A]nd this is very important, is federalism principles. Statutes that you have passed here. . . I think more so than others, cooperative federalism is at the heart of environmental stewardship.” (Hearing Tr. at p. 19).
- * **EPA Administrator Pruitt in March 2018:** Recommends rejection of long-standing waiver under Clean Air Act for California to impose its own emissions requirements. “Federalism is not one state dictating to the rest of the country what should occur.” (Automotive News 3.15.18).
- * **Ca. and 17 other states:** Sue EPA in May 2018 over rollback of vehicle emissions standards set in April as arbitrary and capricious. Suit pending in DC Circuit.

Consider the federalism treatment extended by EPA to a “red” state--Florida

- * Trump and Interior Department announced relaxation of prior limits on offshore drilling.
- * But, Rep. Governor Scott of Florida, a key swing state in any presidential election asked for an quickly received a federal exemption within four days of a meeting with Interior.
- * What about the rest of the states with coastal resources? They're still waiting. As one commentator put it, the Administration's position appears to be: “They can go sit on a drill bit.”
- * (Chicago Tribune, Column: “*Offshore Drilling and Trump's War on the Environment*” Jan. 12, 2018).



SACM—Superfund Accelerated Cleanup Model (1992 initiative)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 7 1992

PUBLICATION NO. 9203.1-01
OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

IMPORTANT - ALL READ

**BECAUSE THIS MEMORANDUM IS SO IMPORTANT, I AM DIRECTING
DESK-TO-DESK DELIVERY TO EVERY SUPERFUND EMPLOYEE**

MEMORANDUM

SUBJECT: Superfund Accelerated Cleanup Model (SACM)

FROM: Don R. Clay *DRClay*
Assistant Administrator

TO: All Superfund Staff, Managers, Regions, and HQs

As most of you know, the Office of Solid Waste and Emergency Response, Office of Emergency and Remedial Response, has been working on a new model for streamlining and accelerating the Superfund program. Plans for full development of the Superfund Accelerated Cleanup Model (SACM) began after the Administrator's approval on February 27.

The concept, borne of staff creativity and Total Quality Management, has been designed to make Superfund work better and deliver results the public will value: 1) quick reduction of acute risks at all Superfund sites (removal and remedial) and 2) restoration of the environment over the long term. The new model consists of:

- o A one step site screening and risk assessment at the front end of the process
- o Regional management teams to "traffic cop" all sites to:
 - 1) Early Action to reduce immediate risk to people and the environment and/or
 - 2) Long-term Cleanup to restore environment; and
- o A combination of enforcement, community relations and public involvement throughout the entire process.

Printed on Recycled Paper



RING/BENDER

Are we now seeing “SWAMP-UP”? EPA’s new Superfund Task Force.

- * New Superfund Task Force recommendations adopted by Pruitt in July 2017
- * BUT, the Task Force kept no records of its meetings and apparently consulted no records before arriving at just its 34-page report. (“EPA Says Superfund Task Force Created by Pruitt kept no records of meetings” Chicago Tribune (Dec. 20, 2017).
- * At least one site listed for “accelerated action” was the result of intensive lobbying by Republicans in Orange County. (“EPA’s move to fast-track Orange County groundwater cleanup questioned” (LA Times, May 9, 2018).



On the other hand. . .

- * Some report a “breath of fresh air” when it comes to discussing mega-Superfund sites with EPA in HQ.
- * Some EPA Regional Administrators, such as Alex Dunn of Region 1, have long-time environmental backgrounds and worked with state organizations such as ECOS and its cooperative federalism paper.
- * Presidential Nomination of Peter Wright to head OLEM (successor agency to OSWER at EPA).



It ain't over until the “fat lady sings”: Reform of Superfund and its outcome can only be judged in hindsight.

- * EPA is currently conducting “listening sessions” on its Superfund reforms. Will it indeed truly “listen”?
- * **Show me the money:** With a 2018-2019 budget proposing overall agency budget cuts of 26% from 2017 and a further staff reduction of some 17% what is left for Superfund reform efforts?
- * **Need for quality people:** Albert “Kell” Kelly, a former Oklahoma banker friend of Pruitt banned from the banking world, was NOT fit to lead Superfund efforts. (“Another Top Scott Pruitt aide resigns at EPA, Axios (May 1, 2018)



Will the Trump Administration change its position on the Endangered Species Act in 2018

- * Corporate America, in the form of Weyerhaeuser Company, challenged the U.S. Fish & Wildlife Service's set aside of acres in the South as "critical habit" to a frog now known as the dusty gopher frog.
- * Weyerhaeuser sought certiorari to review the Fifth Circuit's decision in favor of the agency.
- * Trump's new Solicitor General opposed the granting of cert.
- * The Supreme Court granted cert. and the case will be heard this coming Term (October 2018 term). Brief of US now due at end of June 2018.

Why Weyerhaeuser is a litmus test for the administration and Fish & Wildlife

- * A classic case of industry (forest industry and developers, including the parish in Louisiana) versus alleged regulatory overreach by an agency.
- * Weyerhaeuser noted in its reply in support of certiorari that there were “federalism” concerns raised by federal ESA regulation of state lands that would otherwise be the subject of state land use decisions.
- * Science issues and reliability of scientific assessments are also a “hot button” in the current administration.

Resources & further reading

- * EPA, [Vehicle Emissions California Waivers and Authorizations](#)
- * US DOJ, Brief of the Federal Respondents in Opposition [to petition for certiorari] filed in *Weyerhaeuser Corp. v. U.S. Fish & Wildlife Serv.*, Nos. 17-71 and 17-74 (Nov. 2017).

