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ABA SECTION OF ENVIRONMENT ENERGY AND RESOURCES

Pesticides, Chemical Regulation, and Right-to-Know Committee Newsletter

Vol.10, No. 1 **September 2008**

FROM THE CHAIR

Mark N. Duvall

As the new chair of the Pesticides, Chemical Regulation, and Right-to-Know Committee, I want to thank Lynn Bergeson for two years of outstanding leadership. Thanks, Lynn!

The committee has new ideas for activities of public importance and interest to its members. Please look over the ideas below and get involved. The committee offers many opportunities for learning about developments in this broad area, making a presentation (in person at a meeting or by telephone in a Quick Teleconference), writing for the newsletter on current topics, and developing detailed analyses of important topics. There is lots to do, so please get involved! Some of the key issues that the committee plans to address in 2008-2009 include:

TSCA Reauthorization. The new Congress and administration are expected to build on current bills and dialogue at the state and federal level to overhaul the Toxic Substances Control Act (TSCA). The relevant considerations will include, among others, the influence of the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) and the Canadian Environmental Protection Act 1999; state ideas such as California's Green Chemistry Initiative; the challenge of applying current TSCA regulations to new engineered nanomaterials; and the feasibility of promoting alternatives to amending TSCA such as the U.S. Environmental Protection Agency's (EPA) Chemical Assessment and Management Program (ChAMP) and related voluntary testing programs.

REACH Implementation. After years of debate and planning, REACH has taken effect. This European program is having a substantial impact on U.S. manufacturers whose products are exported to the European Union, as they now must address REACH implementation under most circumstances. Technical questions about requirements, development of testing consortia agreements, data compensation, and other issues familiar from the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) context now find new forms as the U.S. learns to live with REACH. Additionally, interesting and sometimes challenging chemical identification and nomenclature issues must also be addressed as part of REACH implementation.

Nanotechnology Regulation. The committee will continue its previous work on the developing regulatory framework for engineered nanomaterials. Phase II of the Nanotechnology Project will result in publication of white papers on the roles of the Endangered Species Act (ESA), the National Environmental Policy Act, and the Federal Food, Drug, and Cosmetic Act in regulating engineered nanomaterials, as well as an updated version of the white paper on the role of FIFRA and the Food Quality Protection Act (FQPA). Committee activities will also consider regulation of engineered nanomaterials under REACH and TSCA. The committee plans to meet with EPA and Food and Drug Administration staff to discuss the white papers, make presentations to Congressional staff and others in

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Lynn L. Bergeson, Editor

In this issue:

This newsletter is a publication of the ABA Section of Environment, Energy, and Resources, and reports on the activities of the committee. All persons interested in joining the Section or one of its committees should contact the Section of Environment, Energy, and Resources, American Bar Association, 321 N. Clark St., Chicago, IL 60654.

coordination with the Section's Congressional Relations Task Force, and continue the public dialogue on appropriate regulation of these innovative materials for which testing methodologies, risk assessment tools, and control mechanisms may not be well adapted.

Impact of the ESA on Pesticides. Perhaps the most important issue in regulation of pesticides today relates to the ESA, which can significantly curtail the usage of pesticides. The committee will play an important role in bringing the various stakeholders together to discuss ESA problems and solutions.

Endocrine Modifiers. More than a decade after enactment of the FQPA, EPA is moving forward decisively on testing of pesticides and other chemicals for potential endocrine effects. Particular chemicals considered by some to have endocrine effects have become the subject of enhanced legislative, regulatory, and consumer concern. The science, the regulatory approach, and practical alternatives are all topics of importance and interest.

Registration Review for Older Pesticides. As EPA's Office of Pesticide Programs winds down the "Reregistration" process under FIFRA, it is ramping up the successor program: "Registration Review." This program will raise interesting questions for EPA, registrants, users, and other stakeholders, as EPA revisits previously-approved (and reregistered) products and uses against yet another round of evolving health and environmental standards and science policies. For example, will some active ingredients or products raise previously-unidentified nanotechnology issues? Will EPA impose more stringent endangered species reviews during reregistration? Will EPA have to consider the greenhouse gas potential of specific ingredients or uses in a manner not previously considered?

Development of "Green" Pesticides and Chemicals. Traditional pesticides have come under attack for potentially causing a wide range of adverse health and environmental effects. EPA has instituted incentive programs such as Design for the Environment, and third parties have developed "green" certification programs such as "green guide" labeling,

to promote the development and commercial success of lower-risk pesticides. Nanotechnology is offering ways to target pesticides more effectively so as to reduce usage and otherwise develop lower-risk pesticides. These developments have important implications for future pesticide development and use.

Role of the Retailers in Market Decisions. An emerging trend is the practice of major retailers dictating to the upstream supply chain what chemicals they will not accept in products, demanding development of "green" packaging and products, and otherwise influencing the use and/or deselection of chemicals in products. This non-governmental mechanism for chemicals management is having a profound impact on the current use of chemicals, all done in a context essentially devoid of traditional notice and comment rulemaking with due process considerations.

"Green" Marketing. At all levels of the supply chain, sellers are responding to customer demands for "green" products by presenting "green" claims about their products. Whereas a decade ago such claims often related to recycling, today's claims may relate to reduced emission of greenhouse gases, reduced energy usage, absence of chemicals of concern, use of renewable resources, etc. Such claims have triggered both claims of "greenwashing" and governmental interest by the Federal Trade Commission. Moreover, as similar marketing claims are made globally, both governments and non-governmental advertising watchdog groups around the world are developing guidance on "green" claims and adjudicating objections to individual claims, thereby developing a body of materials that can help protect both sellers and buyers.

State vs. Federal Interpretations. For some programs, such as the Emergency Planning and Community Right-to-Know Act Tier II reporting requirements, EPA and state agencies that implement the same or similar statutes are interpreting the same or similar provisions inconsistently (*e.g.*, with respect to reporting thresholds for shared facilities such as warehouses). Identification of these inconsistencies and ideas for resolving them can have a significant impact on the regulated community.

PCB Cleanup Standards. Congress assigned regulation of polychlorinated biphenyl (PCB) contamination remediation to EPA under TSCA in 1976, but since then states and even EPA itself have tended to consider this subject another aspect of hazardous waste remediation. The respective roles of EPA and states and different and sometimes inconsistent statutes and regulations have created conflicts over who controls PCB cleanups, and under what standards.

If any of these topics intrigues you, please contact one of the committee's officers. This will be an exciting year for the committee, so make sure you are a part of its activities. And be sure not to miss two big events already scheduled: the 16th Section Fall Meeting in Phoenix on Sept. 17-20, 2008, and the 38th Annual Conference on Environmental Law, Keystone, Colorado, March 12-15, 2009.

The Pesticides, Chemical Regulation, and Right-to-Know Committee welcomes the participation of members who are interested in preparing this newsletter.

If you would like to lend a hand by writing, editing, identifying authors or identifying issues, please contact the editor, Lynn L. Bergeson, at (202) 557-3801 or lbergeson@lawbc.com.

Back issues of this newsletter can be found at *www.abanet.org/environ/committees/pesticides/newsletter/archive.html*.

FTC TAKES A FRESH LOOK AT ENVIRONMENTAL MARKETING

Charles L. Franklin

What does it mean to attend a "carbon-neutral" stock car race, to wash hair with a "chemical-free" shampoo, or to purchase an "eco-friendly" drain cleaner? When are disposable forks and straws "sustainable?" In response to a new generation of environmental terms and claims being used in the marketplace, the Federal Trade Commission (FTC, Commission) has initiated several proceedings to evaluate the need for formal guidance for claims associated with renewable energy, voluntary carbon offset markets, and other environmental marketing trends. For chemical and plastics manufacturers and their downstream customers, the FTC's approach could have important implications for marketing claims and liability.

The Current Regulatory Framework

The FTC regulates false and deceptive advertising, including environmental marketing claims, through its oversight authority under Section 5 of the Federal Trade Commission Act. 15 U.S.C. § 45(a). The FTC regulates such claims on a case-by-case basis, using environmental marketing guidelines (Green Guides) to establish presumptive safe harbors with respect to marketing practices. *See* 16 C.F.R. § 260. While the Green Guides do not have the force of law, the Commission uses them as a reference point in assessing the legality of specific marketing claims in enforcement proceedings.

The FTC's Green Guides (Guides) provide guidance at several levels of specificity. At the broadest level, the Guides establish general principles applicable to all environmental marketing, including:

Substantiation: Marketers must be able to substantiate claims under a "reasonable basis" test;

Qualification: Marketers must qualify and limit claims where the purported environmental attribute or benefit relates to only a portion of the product (such as the packaging), where the claim would otherwise expressly or impliedly overstate the attribute or benefit;

Special care with comparative statements: Where marketing materials make explicit or implicit comparisons between the environmental attributes of different products or processes, the materials should make the basis for the comparison sufficiently clear to avoid consumer deception;

Prominent display of qualifying language: Any qualification or disclosure should be sufficiently clear, prominent, and understandable to prevent deception; and

Limited scope of general environmental claims: The Guides give particular attention to "general environmental claims," including "environmentally friendly," "environmentally preferable," "earth-smart," "essentially non-toxic," etc. Specifically, "every express and material implied claim . . . about an objective quality, feature or attribute of a product or service must be substantiated" and qualified to prevent consumer deception and confusion. *Id.* § 260.5-260.7.

The Guides also provide more targeted guidance regarding appropriate and inappropriate use of certain types of environmental claims that the FTC identified during its past efforts. *Id.* § 260.7 (addressing claims as: "degradable," "biodegradable," "photodegradable," "compostable," "recyclable," "recycled content," "source reduction," "refillable," "ozone safe," and "ozone friendly"). The FTC first issued Green Guides in 1992, but has periodically revised the Guides as new issues and circumstances arise. *See, e.g.*, FTC, *Guides for the Use of Environmental Marketing Claims; Final Revised Guides*, 63 Fed. Reg. 24,240 (May 1, 1998).

Adapting the Green Guides in a Changing Marketplace

Since November 2007, the Commission has initiated several new proceedings to review the current Guides, citing the growth of new marketing claims associated with the evolving carbon markets, renewable energy,

consumer and corporate branding, environmental packaging, and lifecycle analysis. *See* FTC, *Guides for the Use of Environmental Marketing Claim*, 72 Fed. Reg. 66,091 (Nov. 27, 2007); FTC, *Guides for the Use of Environmental Marketing Claims; Carbon Offsets and Renewable Energy Certificates; Public Workshop*, 72 Fed. Reg. 66,094 (Nov. 27, 2007); FTC, *Guides for the Use of Environmental Marketing Claims; The Green Guides and Packaging; Public Workshop*, 73 Fed. Reg. 11,371 (Mar. 3, 2008), and FTC, *Guides for the Use of Environmental Marketing Claims; Green Building and Textiles; Public Workshop*, 73 Fed. Reg. 32,662 (June 10, 2008). The FTC has received comments on these topics from a diverse range of private and corporate commenters, and is making comments available for review at http://www.ftc.gov/bcp/workshops/carbonoffsets/index.shtml. Many of the issues are relevant to the chemical industry and its downstream customers.

"Sustainable and Sustainability" claims. Most commenters appear to agree that product-specific "sustainability" claims should adhere to the FTC's existing standards for "general environmental claims," requiring substantiation of the basis for the sustainable claim, and limitation of such claims to the relevant aspects of the product. One important distinction raised by several commenters, however, was the difference between making "sustainable" claims to market specific products versus discussing a corporate goal of increasing sustainable operations. In the latter case, where sustainability is described as an aspirational corporate goal rather than the feature of a specific product, several commenters argued the FTC should apply a more flexible standard.

Chemical-Free/Substance-Free claims and related comparative marketing claims. Numerous commenters raised concerns about the growing prevalence of claims touting products based on their lack of specific ingredients (*e.g.*, chemical-free, PVC-free, formaldehyde-free, "does not contain [X]," etc.). To them, such claims tend to imply that the products are "safer" or "environmentally preferable" to other products that might not make similar statements. For that reason, they argued that if such claims are allowed, they needed to be accompanied by language qualifying and substantiating the implied claim and comparison. Others disagreed, arguing that if consumers care about the presence or absence of specific chemicals or substances, their preferences are legitimate regardless of what factual substantiation exists to justify those preferences.

New general environmental claims. Most commenters agreed that as marketers adopted new environmentally focused terms of art like "eco-friendly" and "green," such claims should be subject to the same rigorous substantiation and qualification standards the FTC has already established for other general claims.

Carbon neutrality and the rise of marketing associated with the voluntary carbon offset and renewable energy certificate (REC) markets. The FTC is giving particular attention to whether and how it should regulate claims associated with the sale and use of carbon offsets, RECs, and other products associated with voluntary market efforts to reduce or sequester personal or corporate carbon emissions. In January 2008, the Commission held a workshop dedicated to the growing markets for carbon offsets and renewables, along with products purporting to offer "carbon neutrality." Both the transcript from the workshop and the resulting public comments indicate that stakeholders hold widely divergent views on how these new carbon markets should function, and what role the FTC should play in regulating them.

Environmental packaging claims related to product packaging and lifecycle analysis. On April 30, 2008, the FTC held a second public workshop, addressing the growth of green claims related to lifecycle of product packaging, as reflected in terms like "renewable," "refillable," "recyclable," "sustainable," "bio-based," and "degradable." These terms pose challenges to consumers due to the many variables that influence the manufacture, use, and disposal of product packaging, as well as how any reasonable consumer may interpret such claims.

Marketing individual product attributes and the challenge of hidden tradeoffs. Another often cited source of confusion for consumers and marketers is

how to rank the "greenness" of products that have many different environmental attributes. Should the environmental attributes of a product design (origin and toxicity of materials, energy intensity of manufacturing processes, etc.) trump the performance characteristics of the product (fuel efficiency, lifespan, etc.)? Who decides? Marketing that focuses on one specific attribute of a product may be entirely truthful with respect to its express claims while still providing a misleading picture of the product as a whole.

Use of third-party certifications and logos to substantiate environmental claims. One way that consumers and companies are trying to sort through the thicket of environmental claims and attributes is by relying on third-party companies that provide independent certifications regarding specific attributes of a product (examples include EnergyStar and LEED for energy efficiency in products and buildings, Green-E for renewable energy and products manufactured with renewable energy, and the Gold Standard for carbon offsets). These are but a few of the sources and types of certifications available on the market today and the FTC is evaluating the impact that this proliferation of different standards is having on consumer awareness. While commenters generally saw value in such groups, many raised questions regarding the standards used by any one organization in "certifying" a product or material.

The Commission faces a considerable challenge in maintaining its guidelines in a form that balances business needs and consumer expectations at a time when both the marketplace and consumer expectations change daily. How the FTC will meet this challenge is still unclear, and likely will require more workshops and stakeholder dialogue efforts if the Commission is to get it right. In the meantime, if there is any single message the FTC can send to marketers, it is that even in the Wild, Wild West of environmental marketing, there is still at least one sheriff in town.

REACH: EUROPEAN CHEMICALS AGENCY PROPOSES REVISIONS TO THE REGISTRATION GUIDANCE

Ira Dassa

The Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) regulation, which entered into force throughout the European Union (EU) last year, represents a major overhaul of the EU's approach to the management and regulation of chemicals. American (and other non-EU) companies do not have any obligations under REACH, and cannot in fact pre-register or register any substances with the new European Chemicals Agency (ECHA), but it is clear that American companies exporting their products to the EU, either directly or indirectly, are deeply impacted by REACH, particularly when the proprietary aspects of those products (*e.g.*, compositional details) are taken into account.

For most companies exporting to the EU, REACH Article 8 provides welcome relief. Under Article 8(1), a non-EU entity that either manufactures a substance, formulates a preparation (*i.e.*, a mixture), or produces an article that is imported into the EU can appoint an EU-based Only Representative (OR) and thereby relieve the actual EU importers of the substance, preparation, or article of the obligation to register a particular substance. The OR, rather than the importers, would carry out the pre-registration and/or registration (and fulfill all other importer obligations), and the importers would be regarded as downstream users of the substance. ECHA's most extensive guidance on the REACH OR provisions currently appears in Section 1.5.3.4 of the May 2008 version of the *Guidance on Registration*. ECHA, *Guidance on Registration* (May 2008), available at http://reach.jrc.it/docs/guidance_document/registration_en.pdf.

On August 13, 2008, ECHA announced a proposal to revise Section 1.5.3.4 in two key respects. First, ECHA has proposed to add language clarifying that REACH does not distinguish between direct and indirect imports into the EU. Although it can be argued that this clarification is somewhat unnecessary—ECHA's *Guidance on Data Sharing*, for example,

has always explained that "[w]hen an [OR] is appointed, the non-EU manufacturer has the obligation to inform the Importer(s) within the same supply chain (the—direct **and indirect**—customers of the non-EU Manufacturers) of the appointment"—ECHA sees fit to make it unmistakably clear to non-EU companies that when the pre-EU supply chain is lengthy and multi-layered (*e.g.*, Company XYZ, a substance manufacturer, supplies its substance X to Formulator A, whose mixture containing substance X is later incorporated into Formulator B's mixture, with Formulator B's product then being shipped to the EU), an OR appointed by Company XYZ can cover the amount of substance X that is supplied by that manufacturer, contained in Formulator B's product, and imported into the EU by Formulator B's customer. Similarly, an OR for substance X appointed by Formulator A also can cover that same amount (as well as amounts of substance X supplied to Formulator A by other substance manufacturers), as can an OR appointed by Formulator B. ECHA's proposed revision to the guidance would explain that "[a]s long as it is clear who in the supply chain of a substance is the manufacturer, formulator or producer of an article who has appointed the [OR] and it is clear for which imports the [OR] is responsible, it does not matter what are the steps or supply chain outside the EU between the manufacturer, formulator or producer of an article and the importer in the EU." ECHA's proposed revision would rightly caution, though, that "the use of the [OR] facility creates the need for exact documentation on which quantities of the substance are covered by the [OR] registration" inasmuch as "it will not be obvious which quantities of the substance will be covered by the [OR's] registration (the manufacturer might not be aware of certain imports in formulations, the formulator might use his own [OR], etc.)." (ECHA, *Guidance on Data Sharing* (Sept. 2007) at 22 (emphasis added), available at http://reach.jrc.it/docs/guidance_document/data_sharing_en.pdf. In addition, since February 2008, the *Guidance on Registration* has contained a diagram showing an EU importer, identified as Importer 3 and the direct customer of a non-EU distributor, being relieved of the registration obligation by virtue of Non-EU Manufacturer 3's appointment of an OR. *Guidance on Registration* at 24; *see also* European Commission, *Questions and Answers on REACH* (July 2007) at 9 ("In case an [OR] is appointed, any importers of the substance produced by that non-EU manufacturer shall be regarded as downstream users"), available at http://ec.europa.eu/environment/chemicals/reach/pdf/qa_july07.pdf.)

The second revision proposed by ECHA pertains to when a non-EU company wishes to change its OR. Currently, Section 1.5.3.4 of the *Guidance on Registration* explains that if a non-EU entity switches to a new OR after the former OR had submitted a registration dossier, "the successor will have to submit a new registration dossier, as there is no link between the two [ORs] who are separate legal entities." *Guidance on Registration* at 23. The proposed revision would enable the new OR, provided the former OR has agreed, to submit an update to the earlier registration dossier. Only in the event the former and new OR are unable to reach agreement would it be necessary for the latter to submit a new registration dossier.

ECHA has circulated its proposal and an attendant request for comments to the Competent Authorities (CA) of the EU Member States and to Observers of CA meetings. As an EU trading partner, the United States' Mission to the EU received the proposal and is coordinating American industry input. The comment period closed on September 2, 2008.

DOI PROPOSES CHANGES TO ENDANGERED SPECIES ACT CONSULTATION PROCESS

Lynn L. Bergeson

In an August 11, 2008, news conference and press release, Secretary of the Interior Dirk Kempthorne announced proposed changes to the regulations that implement U.S. Endangered Species Act (ESA) requirements applicable to actions taken by federal agencies. According to Kempthorne, the proposed changes are intended "to clarify process, replace ambiguous definitions, explain when formal consultation is applicable, and improve the informal consultation process." A copy of the press release is available at http://www.doi.gov/news/08_News_Releases/080811a.html. The proposed rule was published on August 15, 2008. 73 Fed. Reg. 47,868. Comments on the proposed rule are due **September 15, 2008**.

According to the proposed rule, the proposed revisions will amend the current rules "by allowing for a variety of documents prepared for other purposes to suffice for initiating consultation, and by allowing for action agencies to determine the effects of their own actions, without concurrence from the Service, in some very specific narrow situations." It states further, "[i]n addition, we propose to clarify the appropriate causation standard to be used in determining the effects of agency actions. Finally, we propose relatively minor procedural changes to 'informal' consultations, including inserting time frames into the informal consultation process."

In the preamble to the proposed rule, the Department of Interior's (DOI's) Fish and Wildlife Service and Department of Commerce's National Marine Fisheries Service (the Services) state that the changes are intended to clarify that the current "reasonably certain to occur" causation standard is more stringent than the "reasonably foreseeable" standard under the National Environmental Policy Act (NEPA), and must be based on "clear and substantial information." In his press release, Kempthorne mentioned the May 15, 2008, listing of the polar bear as a "threatened species" under the ESA, a decision based on the loss of the polar bear's sea ice habitat, stating, "it is inappropriate to consult on a remote agency action involving the contribution of emissions to global warming because it is not possible to link the emissions to impacts on specific listed species such as polar bears."

To reduce the number of consultations, the proposed rule will add new language that specifically lists criteria that federal agencies may rely on to conclude no consultation is required for the proposed action. In the proposed rule, the Services state that federal agencies now have "decades of experience" and "are well aware that … ultimately it is they who must insure that it is not likely that their action will jeopardize the continued existence of listed species or adversely modify or destroy designated critical habitat." The Services also state their belief that federal agencies "will err on the side of caution in making these determinations."

The U.S. Environmental Protection Agency (EPA), for example, would not be required to consult with the Services, "when the direct and indirect effects of that action are not anticipated to result in take and:

(1) Such action has no effect on a listed species or critical habitat; or
(2) Such action is an insignificant contributor to any effects on a listed species or critical habitat; or
(3) The effects of such action on a listed species or critical habitat:
    (i) Are not capable of being meaningfully identified or detected in a manner that permits evaluation;
    (ii) Are wholly beneficial; or
    (iii) Are such that the potential risk of jeopardy to the listed species or adverse modification or destruction of the critical habitat is remote."

Finally, the proposed rule adds regulatory language that gives the Services 60 days to reply to a federal agency's determination that a formal consultation is not required; according to the proposed rule, the Services will be able to extend this informal consultation period for an additional 60 days by written notice to the agency. If the Services do not reply within the

prescribed period, the agency may terminate the informal consultation in writing and proceed with the action.

Background

Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is responsible for reviewing information and data to determine whether a pesticide product may be registered for a particular use. Under ESA Section 7(a)(2), federal agencies, including EPA, must ensure that their actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. This duty extends to licensing activities such as the registration of pesticides by EPA. When EPA determines a pesticide may harm an endangered species, EPA can either change the terms of the pesticide's registration or, through consultation with the Services, develop appropriate mitigation measures.

In 2004, DOI, in cooperation with EPA and the U.S. Department of Agriculture, published the so-called counterpart regulations, which were intended to establish a formal, comprehensive multi-agency review process to ensure that pest and rodent control products approved by EPA do not jeopardize threatened and endangered species. The counterpart regulations would have removed input from the Services in determining whether pesticides threaten endangered species. Environmental organizations filed a lawsuit challenging the counterpart regulations. The plaintiffs succeeded in overturning the rules at the federal district court level, arguing that the Services have more expertise in endangered species issues, and that EPA in the past has repeatedly failed to consider the Services' advice on how pesticides might affect such species. As a result, EPA currently must consult with the Services.

AMERICAN BAR ASSOCIATION
SECTION OF ENVIRONMENT, ENERGY, AND RESOURCES

Calendar of Section Events

16th Section Fall Meeting
Sept. 17-20, 2008
Phoenix, Arizona

The Basic Practice Series—An Introduction to the Practice of Environmental Law
Sept. 19-20, 2008
Phoenix, Arizona
(Cosponsored with the ABA Young Lawyers Division)

Interdisciplinary Solutions to Instream Flow Problems
Oct. 7-9, 2008
San Antonio, Texas
(Cosponsored with the Instream Flow Council)

23rd Annual Petroleum Refining and Marketing Roundtable
Oct. 15, 2008
Austin, Texas
(In conjunction with the 31st Annual ABA Forum on Franchising)

27th Annual Water Law Conference
Feb. 19-20, 2009
San Diego, California

38th Annual Conference on Environmental Law
March 12-15, 2009
Keystone, Colorado

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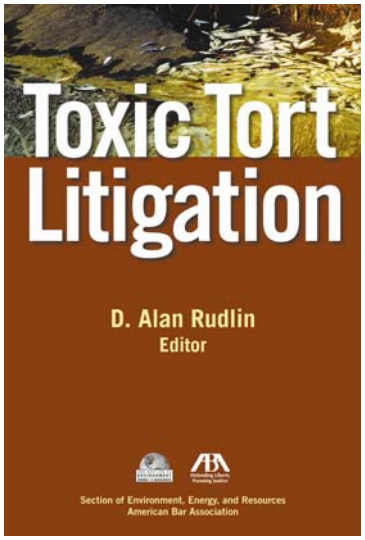
From ABA Publishing and The Section of Environment, Energy, and Resources

Toxic Tort Litigation

D. Alan Rudlin, Editor



Trying a toxic tort case is very different from other high-stakes litigation. Cases are complex, involving large numbers of plaintiffs and defendants with multiple lawsuits brought in more than one jurisdiction, and can entail difficulties in identifying the source of the claimed harm. Toxic tort cases require innovative complex litigation procedures and heavily rely on establishing scientific concepts to resolve causation issues. **Toxic Tort Litigation** is a new, practice-focused guide that explores the specific and often unique elements that distinguish this type of litigation.

Toxic Tort Litigation explains the differing theories of liability and damages within the toxic tort context, as well as the key procedural and substantive defenses to toxic tort claims. Subsequent chapters cover the important aspects of scientific and medical evidence and causation, including dealing with the opinions of experts in the context of *Daubert* or *Frye* challenges. The book also addresses the important aspects of case strategy, trial management, and considerations in settlement. The final part of **Toxic Tort Litigation** highlights critical aspects in litigating specialized cases, including mold, lead, asbestos, silica, food product and pharmaceutical liability, and MTBE. Includes extensive notes and comprehensive index.

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