

## **Introduction to Fall 2025 Edition RCRA and Superfund: A Practice Guide, 3d Fall 2025**

Revisions to reflect the changes of Administration priorities including climate change, EPA organization and functions, role of DOJ in enforcement, etc.

EPA's rebranding the "Resource Conservation and Recovery Act Corrective Action Program" to the "Hazardous Waste Cleanup Program."

Recent case law involving:

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—RCRA cases:

—Citizen Suits:

- Notice
- Standing
- Imminent Hazards
- Past Violations
- TSDf requirements
- Interface of Bankruptcy Code and RCRA

—CERCLA cases:

- Definitions
- Statute of limitations issues
- Sovereign immunity and relationship to the Administrative Procedures Act
- Preemption Issues
- Judicial Review: consent decrees, related RCRA & CERCLA actions
- Liability issues: owner/operator, arranger, successor liability, trustees, insurers, owner and operators of vessels under CERCLA § 107(h)
- Effect of § 113(h) on judicial review
- Declaratory Judgment actions
- Privilege, sanctions & expert testimony - discovery matters
- Scope of EPA's powers related to Information Requests & Site Access
- Defenses
- Consistency with NCP issues/cost recovery
- Natural Resource Damage actions
- Insurance exclusion issues
- Indemnity issues & pre-CERCLA liability
- Discharge of Claims—Bankruptcy
- Relationship of actions under § 107 and § 113

The Supreme Court in *Loper Bright Enterprises et al. v. Raimondo, Secretary Of Commerce, et al.*, 144 S.Ct. 2244 (June 28, 2024) held that courts need not, and

under the Administrative Procedure Act (APA) may not, defer to an agency's interpretation of the law simply because a statute is ambiguous; overruling *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694. How this opinion will play out in the long term to affect EPA's interpretations under CERCLA and RCRA will play out over time.

Chief Justice Roberts did state "By doing so, however, we do not call into question prior cases that relied on the *Chevron* framework. The holdings of those cases that specific agency actions are lawful—including the Clean Air Act holding of *Chevron* itself—are still subject to statutory *stare decisis* despite our change in interpretive methodology." (at 2273)

For purposes of this update, it is important that Practitioners are aware that *Chevron* deference is no longer the standard that courts are to apply. Numerous legal commentators have weighed in to speculate on the extent of change that may occur in interpretation of agency interpretations of law. Many argue that the standard of deference from *Skidmore v. Swift & Co.*, 323 U.S. 134, 140, 65 S.Ct. 161, 89 L.Ed. 124 (1944), which Chief Justice Roberts discusses in his opinion in *Loper Bright*.