



SPECIAL INSTITUTE ON

Today's Environmental Agencies: Regulatory Enforcement, Citizen Suits, and the Natural Resources Industries

December 6–7, 2018

Le Meridien Denver Downtown, Denver, CO

In the event of an environmental crisis, you need to know how to protect the interests of your company or client, work with government agencies and stakeholders, maintain your social license to operate, and manage risk and potential liabilities. With recent administrative changes, there are lingering questions about best approaches and the expectations agencies have of industry participants. Being equipped to respond to an agency investigation, potential enforcement action, or citizen suit—and to meet the expectations of regulatory regimes—can save vital resources down the road. And if you are employed by a government agency or environmental NGO, knowing the extent of your claims and remedies is crucial.

Whether you work for an oil and gas, mining, or renewable energy company, a government agency or NGO, an environmental consulting firm, or a law firm that represents any of these parties, you will find this course extremely valuable. Join our expert faculty of industry professionals, natural resource attorneys, environmental experts, and government officials for their presentations, papers, and discussions of these topics.



Course manual includes papers & presentations by the speakers

Regulatory Enforcement, Citizen Suits, and the Natural Resources Industry

DAY 1: Thursday, December 6, 2018

7:00 am – 8:00 am: Registration

8:00 am – 8:20 am: Introduction and Opening Remarks

WILLIAM B. PRINCE, President, Rocky Mountain Mineral Law Foundation; Partner, Dorsey & Whitney LLP, Salt Lake City, UT

JENNIFER L. BIEVER, Program Co-Chair; Partner, Hogan Lovells US LLP, Denver, CO

JOHN W. MORRISON, Program Co-Chair; Partner, Crowley Fleck, Bismarck, ND

8:20 am – 9:10 am: Nuts and Bolts: Basics of Regulatory Enforcement

- Legal basics of federal and state environmental agency enforcement
- Authority under the governing statutes
- How enforcement actions are initiated at the state and federal levels
- Information collection requests, subpoenas, and other investigative mechanisms
- Worker endangerment initiative
- Civil liabilities and criminal exposure
- Application to mining, oil and gas, and renewable projects

STEVEN G. BARRINGER, Shareholder, Greenberg Traurig, LLP, Washington, DC and Las Vegas, NV

MARK C. ELMER, Senior Counsel, U.S. Department of Justice, Environmental Enforcement Section, Denver, CO

9:10 am – 10:00 am: Hot Topic Enforcement Issues Affecting Oil and Gas Operations—Upstream, Midstream, and Downstream

- Agency focus on exploration and production activities, flaring, gathering, transportation, and pipeline issues
 - Challenges to Obama Administration's enforcement efforts for methane and VOC emissions from upstream oil and gas operations
 - Status of key Obama-era regulations directed at the oil and gas sector
 - NSPS OOOO
 - Flaring regulations replacing NTL-4A
 - Current state regulatory and enforcement efforts
 - Difficulties in compliance planning in an uncertain regulatory landscape
- J. TOM BOER, Partner, Hunton Andrews Kurth LLP, San Francisco, CA

10:00 am – 10:20 am: Hosted Refreshment Break

10:20 am – 11:10 am: Document Retention, FOIA, and Information Storage

- What documents and data should be saved?
- How long should retention continue?
- How does FOIA affect your company's document storage policies?
- Will the stored information assist the agency or my company?

CLIFF STRICKLIN, Partner, Bryan Cave Leighton Paisner LLP, Denver/Boulder, CO; former First Assistant U.S. Attorney—Colorado and Special Assistant U.S. Attorney with the Enron Task Force

11:10 am – Noon: Federal Species Protection and Enforcement

- Hot topics in Migratory Bird Treaty Act (MBTA) and Bald and Golden Eagle Protection Act enforcement
- Risks of using proactive agency engagement
- MBTA's incidental take standard and FWS's enforcement strategy
- Hot topics in Endangered Species Act enforcement

ROBIN KUNDIS CRAIG, James I. Farr Presidential Endowed Professor of Law, University of Utah S.J. Quinney College of Law, Salt Lake City, UT

Noon – 1:30 pm: Lunch – On Your Own

1:30 pm – 2:20 pm: CERCLA, RCRA, and Good Samaritan Laws

- CERCLA and RCRA caselaw update, including Chevron Mining (10th Cir.), Pakootas (9th Cir.), Sunnyside Gold (D.C. Cir.), and Util. Solid Waste Activities Group (D.C. Cir.)
- Statutory and regulatory developments, including Superfund Task Force, Good Samaritan, and Prospective Purchaser Initiatives
- Unique attributes of CERCLA enforcement
- Costs of CERCLA enforcement
- Opting out of CERCLA
- Negotiating a CERCLA Consent Agreement

ELIZABETH H. TEMKIN, Partner, Davis Graham & Stubbs LLP, Denver, CO

2:20 pm – 2:35 pm: Hosted Refreshment Break

2:35 pm – 3:25 pm: The Interplay Between EPA, OSHA, and State Enforcement

- Extent of coordination and reach by the federal EPA into the safety realm
- Engagement in collaborations with OSHA and state safety agencies
- Effects of state agencies enforcing OSHA in conjunction with EPA

TREY OVERDYKE, Partner, Holland & Hart LLP, Jackson, WY

EMILY C. SCHILLING, Partner, Holland & Hart LLP, Salt Lake City, UT

3:25 pm – 4:15 pm: Industry Perspective on the Current Federal Regulatory Environment

- Current federal regulatory environment
- What has changed from an industry perspective
- Risks under the Trump Administration and how to be prepared
- Risks (and current status) of decreased enforcement, increases in citizen suits, and increased involvement of state environmental agencies
- Regulatory changes, executive orders, and administrative opinions
- What these changes mean for industry

JULIE R. DOMIKE, Partner, Haynes and Boone, LLP, Washington, DC

SUZANNE B. MURRAY, Partner, Haynes and Boone, LLP, San Antonio, TX

4:15 pm – 5:05 pm: Walk Through an Enforcement Action—An Audience Participation Event

- Hypothetical enforcement scenario: an audience participation event
- Progressive facts presented during each segment
- Based on real-world examples of actual enforcement situations
- Full life-cycle of a potential enforcement action
 - Missed signs of a developing problem
 - Reacting to an unfolding event
 - Responding to the agency
 - Managing government interaction
 - Confronting difficult choices to bring the problem to a close

BRITTANY BARRIENTOS, Partner, Stinson Leonard Street LLP, Kansas City, MO

JULIA A. JONES, Senior Counsel, Anadarko Petroleum Corporation, Denver, CO

JESSICA F. TOLL, Assistant General Counsel, Kinder Morgan, Inc., Lakewood, CO

5:05 pm – 6:05 pm: Hosted Reception for Registrants, Speakers & Guests

DAY 2: Friday, December 7, 2018**8:00 am – 8:10 am: Introduction to Day 2****8:10 am – 8:40 am: Keynote Presentation—Environmental Priorities for the Trump Administration**

- Trump Administration's environmental priorities for oil, gas, and the natural resource industries
- Where the Administration is currently focused, why it has made certain changes, and its plans going forward

MATTHEW Z. LEOPOLD, General Counsel, U.S. Environmental Protection Agency, Washington, DC (Invited)

8:40 am – 9:30 am: State Agencies, State Enforcement, and the Balance of Federalism

- Cooperative federalism regimes, such as the Clean Air Act and the Clean Water Act
- States and federal governments' shared overlapping authority for enforcement
- Issues arising from multiple agencies practicing enforcement jurisdiction over the same issues
- Intergovernmental disputes, and the double-exposure of private individuals
- Hot topics of state regulatory enforcement—groundwater protection and enforcement, local quality standards, and new areas of regulation

GARRY KAUFMAN, Director, Colorado Department of Public Health & Environment, Air Pollution Control Division, Denver, CO

JIM MARTIN, Shareholder, Beatty & Wozniak, P.C., Denver, CO

9:30 am – 9:50 am: Hosted Refreshment Break**9:50 am – 10:40 am: Liability of Owners, Contractors, and Non-Operators**

- Expansion of regulatory view of who should be held liable for violations
- Owners of facilities and contractors as targets of enforcement efforts
- Application to onshore oil and gas operations, mining operations, and other projects

NADIRA CLARKE, Partner, Katten Muchin Rosenman LLC, Washington, DC

JOHN G. COSSA, Associate, Beveridge & Diamond PC, Washington, DC

10:40 am – 11:30 am: Anatomy of a Citizen Suit

- How a citizen suit unfolds
- Due diligence by environmental groups in preparing for suit
- Goals, strategies, and acceptable resolutions
- How citizen suits are brought under applicable statutes, how they are pursued, and how they may be resolved
- When citizen suits are precluded

RANDY DANN, Partner, Davis Graham & Stubbs LLP, Denver, CO

ALEX HARDEE, Associate Attorney, Earthjustice, Denver, CO

11:30 am – 1:00 pm: Lunch – On Your Own**1:00 pm – 1:50 pm: Environmental Enforcement, Defense, and Resolution: The Key Agreements Involved**

- Importance of planning and a solid understanding of key agreements that may be involved at each step in responding to environmental incidents and resolving enforcement
- Expert Consulting Agreements, Joint Defense Agreements, Tolling Agreements, Non-Prosecution and Deferred Prosecution Agreements, Immunity Agreements, Cooperation Agreements, Consent Decrees, and Plea Agreements with Environmental Compliance Plans and Third-Party Monitoring provisions
- Terms, conditions, and requirements in these agreements that are greatly beneficial or potentially very costly in either the short or long term
- Importance of understanding the policies, procedures, and legal implications involved in negotiating and enforcing these agreements with the government and other parties

KEVIN R. FELDIS, Partner, Perkins Coie LLP, Anchorage, AK; former First Assistant United States Attorney–Alaska

1:50 pm – 2:40 pm: Prevention Is the Best Defense

- Importance of prevention in avoiding regulatory enforcement actions altogether
- What steps companies can take to avoid a catastrophe in the first place
- Audit and SEC issues, the self-auditing process, disclosure issues
- Internal policies that can be implemented to avoid liability down the road

SCOTT REISCH, Partner, Hogan Lovells US LLP, Denver, CO

SEATON THEDINGER, Counsel, Hogan Lovells US LLP, Denver, CO

2:40 am – 2:55 pm: Hosted Refreshment Break**2:55 pm – 3:45 pm: Criminal Liability**

- Criminal exposure under federal and state regulatory schemes: CWA, CAA, RCRA, and others
- Approaches to defending criminal charges
- Preparations and pitfalls: jury trials, grand jury investigations, and congressional investigations
- Responding to investigations from federal agencies that could have potential criminal components
- Who has to talk to investigators?
- Individual and company rights in an unexpected investigation

STEVEN P. SOLOW, Partner, Katten Muchin Rosenman LLP, Washington, DC

DEBORAH L. HARRIS, Section Chief, Environmental Crimes Section, U.S. Department of Justice, Washington, DC

3:45 pm – 4:45 pm: Ethical Implications in Disclosures, Confidentiality, and Compliance

- Ethical issues stemming from dealings with environmental agencies
- Reporting obligations
- Multi-jurisdictional issues (practicing outside jurisdiction)
- Communicating with regulators who are represented by counsel

JOHN F. WALSH, Partner, WilmerHale, Denver, CO;

former United States Attorney–Colorado

4:45 pm: Course Adjournment

Can't attend? You can still order the course materials

ORDER FORM



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Course materials and audio for Regulatory Enforcement will be available within 4 weeks after the program

Title/Description	Qty.	Unit Price		Total
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All registrants will receive a link to the online course materials. A hard copy manual is available to registrants for \$70. See the registration form.				
Regulatory Enforcement, Citizen Suits, and the Natural Resources Industry				
Looseleaf Manual only (REGM)		\$255	\$215	\$
Digital Manual only (REGD) (no handling charge)		\$255	\$215	\$
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Select your course materials format: **DOWNLOAD ONLY (\$0)** (Electronic materials only) **HARD COPY (\$70)** (Receive manual at conference)

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Room Reservations: Le Meridien Denver Downtown, 1475 California St., Denver, CO, 80202, has blocked rooms for this Special Institute until November 20 at the rate of \$184 (single/double) per night. Ask for special rates for Rocky Mountain Mineral Law Foundation registrants. For reservations, contact the Le Meridien Denver Downtown at:

- Online <http://tinyurl.com/rockym134>
- Toll Free 866-912-1085

Trouble making room reservations? Contact us at info@rmmlf.org

Registration Cancellations: Refunds, less a \$50 administrative fee, will be given for cancellations received by 3:00pm on Monday, November 19, 2018. No refunds will be given thereafter, although substitution of attendees may be made by contacting the Foundation. Cancellations must be made in writing or email to info@rmmlf.org. Registrants not entitled to a refund will receive a link to the written materials.

Registration Fees: Include course materials, refreshments, and hosted functions as listed in this brochure. These fees do not include hotel costs or transportation. Registrations will be accepted only when accompanied by a check, money order, government purchase order or training form, credit card information, or wiring information. No registrations can be processed without payment.

Car Rental: Hertz is offering special discounts by referencing Meeting CV#03NJ0013 and Rocky Mountain Mineral Law Foundation. Make reservations at <http://tinyurl.com/hertz2018> or call 800-654-2240 (U.S.); 800-263-0600 (Canada); or 405-749-4434 (International).

CLE Credit: This course consists of approximately 13 hours of continuing education, including 1 hour of ethics. You must let us know, at least 45 days in advance of the conference, the states or organizations for which you will need credit (see registration form). Credit hours for states will vary and are subject to each state's approval and credit rounding rules. Foundation conferences are typically accredited by all mandatory CLE states and Canadian provinces, and various professional organizations upon request. Attorneys from certain states may be required to pay an additional fee. The Foundation is a State Bar of California MCLE-approved provider.

CPE Credit: NASBA has indicated that if an individual reviews a program and feels that it is relevant to their CPA practice, they can consult with their state accountancy board to request that the course be approved. CPE approval is state-by-state.

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