

# **Environmental Law Update – What You Need to Know**

**PRESENTED BY**

**CINDY BISHOP**

**TO**

**NTAEP**

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**I. Waters of the U.S.**

**II. Federal Enforcement Initiative**

**III. PFAS**

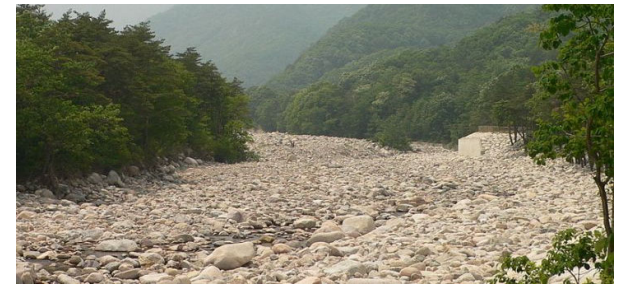
**IV. TRI for NGP**

**V. TCEQ Compliance History Changes**

**VI. ASTM E1527-21**

# Waters of the U.S.

- Rapanos Decision (2006)
  - Scalia – does not include ephemeral streams or channels with periodic flow
  - Kennedy – significant nexus test
- 2015 Obama Rule (significant nexus)
  - Much litigation
- 2019 Rule Repealed
  - Narrowed definition - included adjacent wetlands
- August 2021 – Arizona Court vacates rule



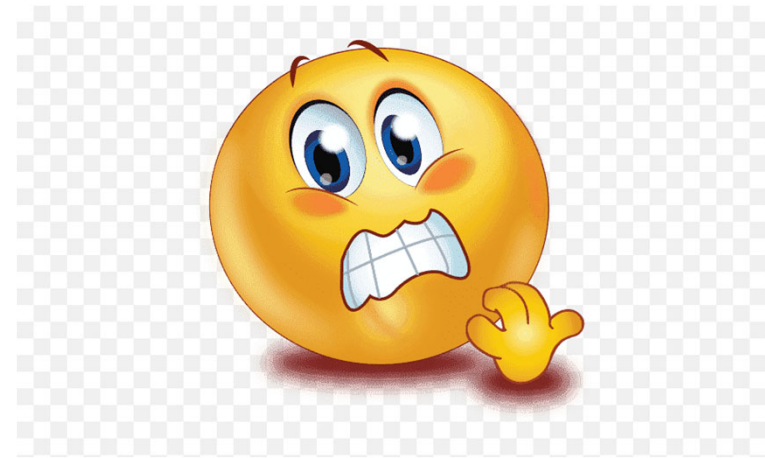
# Waters of the U.S.

(continued)

- December 7, 2021 – EPA and the Corps announce proposal, including:
  - Relatively permanent
  - Significant nexus test - significantly affect the chemical, physical or biological integrity of traditional navigable water, interstate waters or the territorial seas.
- Comment period ends February 7, 2022.

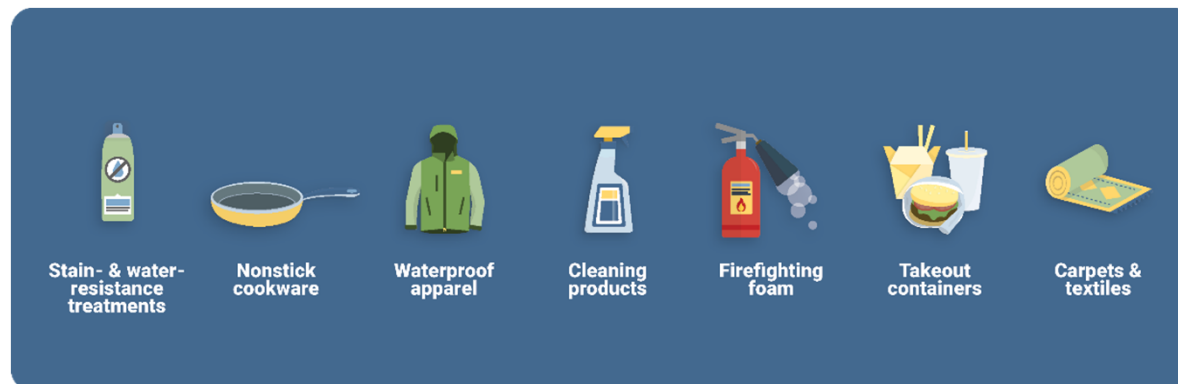
# Federal Enforcement

- Environmental Justice
- Air
  - Reducing excess emissions
    - Infrared cameras
  - After defeat devices (Volkswagen)
- RCRA
  - RCRA Air – increased inspections
  - RMP
- Water
  - NPDES compliance
  - Drinking water



# PFAS

- December 2021 – EPA announces that US utilities will have to monitor drinking water for 29 PFAS from 2023 through 2025
- Federal drinking water limits proposed for 2022
- Definition of hazardous substance – Proposed Rule Spring 2022
- Add to TRI – Spring 2022



Source: Washington State Department of Ecology

# TRI – Natural Gas Processing

- Nov. 24, 2021 – EPA added natural gas processing facilities to list of facilities included in TRI Form R
  - SIC Code 1321;
  - Ten or more full-time employees; AND
    - Manufacture a TRI Chem > 25,000 lb
    - Process a TRI Chem > 25,000 lb
    - Otherwise Use a TRI Chem > 10,000 lb



# TRI – Natural Gas Processing

- Example chemicals that could trigger TRI reporting:
  - Hydrogen sulfide
  - Benzene
  - Toluene
  - Xylene
- Effective for reporting year 2022 (report due July 1, 2023)
- So, get ready NOW



# TCEQ Compliance History Proposed Changes

- 30 TAC Chapter 60
  - TCEQ currently recalculates compliance history annually
  - High performers
  - Satisfactory
  - Unsatisfactory

# TCEQ Compliance History

## Proposed Changes

- Proposed Rule for Emergency Incidents
  - Emergency Incident
    - Significant community disruption
    - Emergency response by gov't for release
    - One of the following:
      - Issuance of emergency order by feds or state;
      - Issuance of a TRO by TCEQ;
      - Use of significant federal or state resources, such as establishing a command center; or
      - Evacuation of neighbors, or injury or death

# TCEQ Compliance History Proposed Changes

- TCEQ ED may reclassify compliance history to “under review”
  - Effective immediately
  - Notice to facility
- TCEQ ED may then reclassify to “suspended”
  - TCEQ will look at fault and other info supplied by facility
  - 30 to 90 days after facility CH changes to “under review”

# TCEQ Compliance History Proposed Changes

- Effect:
  - Permit applications are evaluated in light of event
  - Facility CH is treated as unsatisfactory
- Reclassification lasts up to 3 years

# ASTM Phase I Update

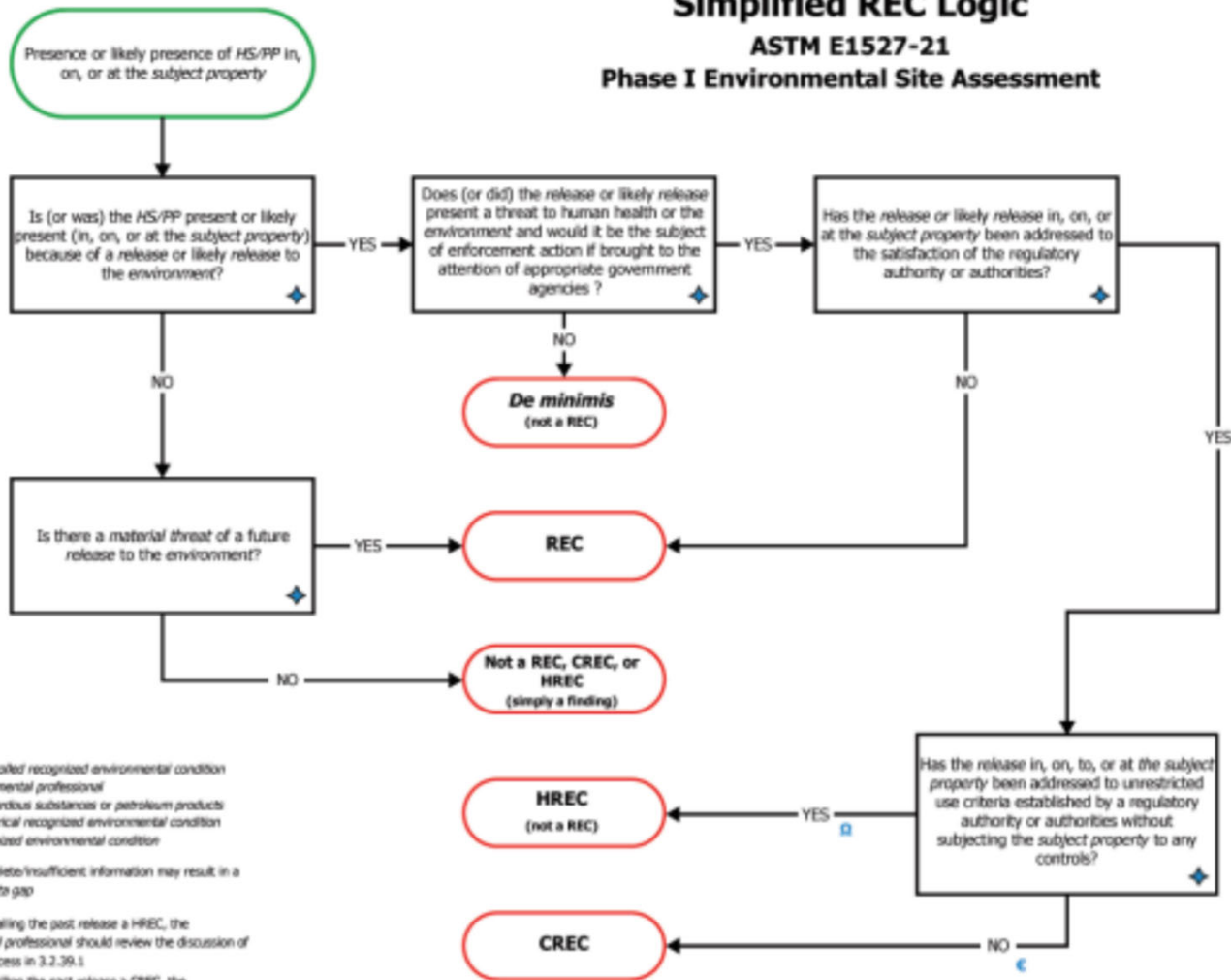
- ASTM E1527-21 – approved Nov. 1, 2021
  - Clarification of major definitions
  - Best practices
  - New definitions
    - Property use limitation
    - Significant data gap
  - Improved report requirements
    - “Subject property”
    - Photographs
    - Figures of entire property and showing adjoining properties



# ASTM Phase I Update

- Appendix with REC flow chart and examples
- PFAS – non-scope for now
- Expiration date – 180 days from completion of the first of each component
- Recommendations – only if requested by client
- EPA approval pending – 40 CFR 312

## Simplified REC Logic ASTM E1527-21 Phase I Environmental Site Assessment



**NOTES:**

CREC – controlled recognized environmental condition  
 EP – environmental professional  
 HS/PP – hazardous substances or petroleum products  
 HREC – historical recognized environmental condition  
 REC – recognized environmental condition

◆ – incomplete/insufficient information may result in a significant data gap

Ⓚ – before calling the past release a HREC, the environmental professional should review the discussion of the HREC process in 3.2.39.1

Ⓛ – before calling the past release a CREC, the environmental professional should review the discussion of the CREC, process in 3.2.17.1

**FIG. X4.1 Simplified REC Logic**

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Questions?

Cindy Bishop

[cbishop@cbishoplaw.com](mailto:cbishop@cbishoplaw.com)

214-893-5646