

**LEAVING THE OIL IN THE SOIL: UTILIZING THE FULL EXTENT  
OF CERCLA'S PETROLEUM EXCLUSION**

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CERCLA prohibits the government or other plaintiffs from recovering environmental response costs related to remediating "petroleum, including crude oil or any fraction thereof. . ." Based on a few early rulings narrowing the exclusion's scope, potentially responsible parties have seldom employed CERCLA's petroleum exclusion to its full extent. When the petroleum exclusion defense is asserted, the typical argument that arises is whether or not the petroleum has become adulterated with hazardous wastes or other hazardous substances that are not indigenous to the petroleum. This presentation will focus on various arguments that can be made to distinguish unadulterated petroleum from hazardous wastes. We will examine recent U.S.EPA guidance broadening the scope of the exclusion to include almost all refinery products. We will also examine the concentrations of metals indigenous to unadulterated petroleum, the differing chemical fingerprints of petroleum and hazardous waste, and stratigraphic and geographic methods for distinguishing petroleum from hazardous wastes. Finally, we will examine who bears the burden of proof when in proving the applicability of the petroleum exclusion.

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