**ENVIRONMENTAL**

PPG Indus. Inc. v. U.S., No. 19-1165, \_\_ F.3d \_\_ (3d. Cir. 2020)

The Third Circuit affirmed the District Court’s denial of summary judgment to the plaintiff, PPG Industries Inc. (“PPG”), and grant of summary judgment to the U.S. government concerning the issue of whether the government’s involvement at a chromite ore processing plant during World War I and World War II rendered it an “operator” under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. 9607, and thus liable to PPG for the cleanup costs associated with the waste. The Third Circuit declined to apply a different test for determining operator liability on the part of the government versus any other potentially responsible party assessed under the operator definition enunciated in United States v. Bestfoods, 524 U.S. 51, 55 (1998). Applying the Bestfoods test, the Third Circuit found that the government’s regulation of chromium chemical production at the site by PPG’s predecessor through price controls, labor controls, and production controls and subsidies did not render it a person who “manage[d], direct[ed], or conduct[ed] operations *specifically related to pollution*”. (Emphasis original). The Third Circuit rejected a “nexus” argument between the Government’s activities and waste-disposal at the site with the Court noting that while the prior owner “rose to the occasion” to increase production during WW II, that did not mean it had to switch to a quicker, more wasteful process and it was the prior owner–not the government–that managed operation specifically related to pollution. Thus, the Court affirmed that the government’s regulatory involvement at the site did not trigger a contribution obligation to PPG.