



August 3, 2020

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SAFETY NEWS ALERT

Environmental Compliance Alert keeps industry pros up to date on the latest EPA rules, why companies are being fined, and the latest trends at the federal and state level. Read what environmental pros depend on to prevent pollution and stay in compliance. *Environmental Compliance Alert's* editor is Scott Ball (email: sball@SafetyNewsAlert.com).

EPA enforcement leniency ends Sept. 1: Are you ready?

■ Routine monitoring & reporting must be done

Circle September 1 on your calendar. That's when EPA enforcement goes back to normal.

At the height of the coronavirus pandemic, EPA announced a temporary hold on penalties for routine monitoring and reporting violations by regulated facilities.

EPA cited stay-at-home work orders and COVID-19 illness compromising the availability of facility "staff, contractors and laboratories to timely analyze samples and provide results."

Most state environmental agencies followed EPA's lead by extending an olive branch to facilities.

Nonprofit groups and nine states led by New York and California sued to overturn the temporary enforcement policy. Agency critics accused EPA of giving polluters a "free pass."

Those lawsuits will now be dropped ... unless EPA decides to extend leniency past August 31, which is a possibility as COVID-19 cases rise in some parts of the country.

'Routine' is the key word

Environmental counsel cautioned clients to keep track of what they weren't technically keeping track of, such as stormwater samples and

(Please see EPA ... on Page 2)

WATERS OF THE U.S.

Opponents chip away at protected waters rule

■ COLORADO WINS INJUNCTION – OTHER STATES BATTLING IN COURT

The Trump administration's replacement for the Waters of the U.S. rule (WOTUS) is officially a go in 49 states.

The lone exception – Colorado – still falls under the Obama regime's WOTUS after a federal district court granted an injunction.

Roughly 50% of wetlands and 18% of streams that became federally protected under WOTUS now fall under state jurisdiction.

EPA and the Army Corps of Engineers rolled back multiple

protections on wetlands and agricultural land features via the Navigable Waters Protection (NWP) rule earlier this year.

Circuit court battle ahead

The 9th Circuit Court will hear an appeal to expand the NWP rule injunction to California and other Western states.

NWP narrows the scope of protected – and potentially permitted – sources under the Clean Water Act (*for a timeline, search for "navigable waters rule" at our website*).

Info: tinyurl.com/watersrule632

WORKPLACE HAZARDS

Time to get staff focused on compliance

As more companies open their doors and employees stream back into the workplace, now's the perfect time for refresher training to get folks' compliance juices flowing.

That especially goes for staffers and emergency personnel for hazardous waste treatment, storage and disposal (TSDF) facilities.

OSHA mandates 24 hours of initial training and an eight-hour annual refresher on its HAZWOPER (Hazardous Waste Operations and Emergency Response) standard.

It's not just TSDF staffers, contractors and responders who need HAZWOPER training.

So do:

- cleanup personnel on Superfund and RCRA contamination sites, and
- emergency responders including firefighters and hazmat teams (OSHA splits emergency responders into five level categories under HAZWOPER).

Online training may be best bet

What if you're limiting staffers'

time on site and you've got a training deadline coming up?

No need to worry. OSHA says "computer-based training may meet some refresher training requirements, provided that it covers topics relevant to workers' assigned duties. It must be supplemented by the opportunity to ask questions of a qualified trainer and by an assessment of hands-on performance of work tasks."

So a Microsoft Meetings or Zoom session for Q&A will do the trick.

Info: osha.gov/html/faq-hazwoper.html

EPA ...

(continued from Page 1)

wastewater discharges.

Keep in mind EPA's policy doesn't cover events like accidental chemical releases if they're above reportable thresholds. Along those same lines, sites required to use continuous emissions monitoring systems can't use COVID-19 as an excuse to go offline!

What qualifies, what doesn't

To qualify for a break from enforcement action, you'll need to be able to show that:

1. You made a good-faith effort to comply with the law, regulations or permit limits.
2. Compliance wasn't reasonably practicable due to problems like staff shortages or stay-at-home orders.
3. COVID-19 virus was directly responsible for a violation, and
4. Your facility's back in compliance following the health crisis.

The leniency policy doesn't cover criminal violations, failure to report hazardous imports or Superfund and RCRA corrective actions.

SHARPEN YOUR JUDGMENT

This feature provides a framework for decision making that helps keep you and your company out of trouble. It describes a recent legal conflict and lets you judge the outcome.

INSURER WON'T COVER LEAK: WILL COURT STEP IN?

"Let me see if I've got this straight, or if maybe my hearing is failing me," said Buck Flanagan, environmental manager. He was on the phone with his company's insurance agent, Jimmy Fresco.

"You're claiming there's an exclusion in our policy for the accidental release we had here," Buck said.

"That's right," said Jimmy. "It's right there in the policy, which I'm looking at now. I don't mean to cite chapter and verse for you, but your policy includes a pollution exclusion for ammonia releases."

Manager was in the dark

"Now Jimmy, I know you have a lot of clients and maybe keeping track of what we do here is difficult," Buck said. "Do I really need to remind you that we're a cold storage facility?"

"I'm not sure what you're trying to tell me," said Jimmy.

"Ammonia releases are our No. 1 environmental issue!" said Buck. "There's not much reason for us to have insurance except for that."

"I see," said Jimmy. "But I'm afraid it boils down to the contract."

"That's another problem. You never discussed any exclusion with me," said Buck.

"There's no way I would've agreed to it. If you don't cover us, then we have no choice but to sue you to indemnify us."

Buck's company sued the insurer. Who won this legal battle?

Make your decision, then please turn to Page 6 for the court's ruling.



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Where other companies are stumbling over compliance

For more fines, visit: www.EnvironmentalComplianceAlert.com/category/who-got-fined-why

Can't stall air control upgrades anymore: \$16M

Company: HollyFrontier (HF) El Dorado Refining, El Dorado, KS.

Business: Oil refinery.

Penalty: \$4 million fine and \$12 million in facility upgrades and system changes.

Reasons for penalty: HF didn't comply with opacity limits and Risk Management Plan (RMP) regs. Kansas Department of Health and Environment inspectors documented numerous instances of visible smoke coming from the refinery's flare. HF also exceeded limits for hydrogen sulfide and sulfur dioxide. In 2017, a catastrophic release of naphtha, a flammable hydrocarbon mixture, led to a fire and one death. The accident resulted from inadequate facility design and maintenance.

Note: HF will spend \$12 million to install air pollution controls, upgrade its flare and audit its RMP practices.

'Is that waste hazardous?' Facility didn't check: \$19K

Company: The Powder Shop, Cedar Rapids, Iowa.

Business: Custom and industrial metal coating, metal sandblasting and metal grit blasting.

Penalty: \$19,000.

Reasons for penalty: The company violated the Resource Conservation

To help your firm avoid common mistakes and violations, we present a cross-section of recent enforcement actions in each issue. Penalties for firms or individuals can include fines, mandatory facility upgrades, house arrest and even jail time.

and Recovery Act (RCRA) by failing to:

- perform hazardous waste determinations on toxic and ignitable wastes
- comply with RCRA Subtitle C generation and handling requirements
- implement emergency preparedness procedures, and
- label used oil containers properly, one of which was found leaking.

Check labels closely before importing any product!

Company: Swix Sport USA, Haverhill, Massachusetts.

Business: Outdoor sports equipment and clothing company.

Penalty: \$375,625 fine and \$1 million educational project.

Reasons for penalty: On at least 83 occasions, Swix imported ski wax products containing six different per- and polyfluoroalkyl substance (PFAS) chemicals not included on the Toxic Substances Control Act Inventory or otherwise exempt for commercial purposes. Applying ski wax puts users at risk and waxed skis can release PFAS into snow melt and soil.

Note: Swix will educate ski mountains and race teams about the hazards of ski wax that contains PFAS.

RCRA cleanup for 2 million pounds of hazwaste!

Company: BNSF Railway, Sioux City, IA.

Business: Freight railroad network.

Penalty: RCRA cleanup order.

Reasons for penalty: The rail company must clean up 2 million pounds of broken cathode ray tube (CRT) glass, a hazardous waste, left behind by a previous tenant. CRT contains high levels of lead.

Note: The Sioux City facility is one of six sites in Iowa and Nebraska

where Aaron Rochester and his company Recycletronics stored nearly 17 million pounds of CRT glass. Rochester never obtained a hazwaste permit to store it. He awaits trial later this year.

Stormwater practices didn't match permit

Company: Americold Logistics, Lynden, Washington.

Business: Perishable goods warehouse.

Penalty: \$41,500.

Reasons for penalty: The company violated its industrial stormwater general permit by failing to:

- prevent unlawful discharges to Fishtrap Creek
- take corrective action after exceeding benchmarks
- document monthly stormwater inspections
- monitor discharges, and
- implement an adequate stormwater pollution prevention plan.

Note: Americold agreed to develop engineering plans to reduce pollutants from leaving the facility and entering Fishtrap Creek in addition to paying a fine.

EPA keeps doling out fines to auto 'tuning' shops

Company: Innovative Diesel, Elkton, Maryland; AirFish Automotive, Laurel, Delaware; and Diesel Works, Mount Joy, Pennsylvania.

Business: Vehicle repair shops.

Penalty: \$204,504 (total).

Reasons for penalty: The shops sold and installed aftermarket defeat devices aka electronic "tunes" that disable pollution controls on cars and trucks. Tunes override catalytic controls and allow higher emissions of nitrogen oxides, carbon dioxide and other pollutants. Going after sellers and distributors of defeat devices is one of EPA's National Compliance Initiatives.

REGULATORY AGENDA

NESHAP changes for many on the way

EPA's latest regulatory agenda is jam-packed with proposed and final air rules.

EPA pledged to speed up technology reviews for air regs. At the beginning of 2016, dozens of National Emission Standards for Hazardous Air Pollutants (NESHAP) were years behind for mandatory technology and risk reviews.

We've covered many of these NESHAP in our pages and on our website. (Type in "NESHAP" and your industry sector at our website.)

Some industry sectors will have to monitor additional sources and report electronically. Others will enjoy a break on how often they report.

The biggest change: EPA's removed the industry shield for excess emissions due to equipment startups, shutdowns or malfunctions (SSM).

Facilities must now comply with emission limits at all times, including SSM events (search for "SSM industry

shield" at our website for a timeline of EPA's air policy change).

Is your sector due for changes?

Most of the NESHAP listed in the regulatory agenda are in the proposed stage. Final regs set to receive White House budget office approval in the coming months are for these sectors:

- integrated iron and steel manufacturing
- plywood and composite woods
- taconite iron ore processing
- rubber tire manufacturing
- generic Maximum Achievable Control Technology standards for ethylene production
- surface coating of automobiles and light-duty trucks
- iron and steel foundries, and
- lime manufacturing plants.

Info: tinyurl.com/epaspring2020agenda632

PROCESS SAFETY

Half-million in fines for chemical explosion & fire

■ CHEMICAL SAFETY PROCEDURES ARE WORTH THEIR WEIGHT IN GOLD

Process safety management (PSM) exists for a reason – it helps protect buildings and save lives.

A chemical fire that burned for days on end in Port Neches, Texas is proof.

Forced to let plant burn down

Production was humming along at TPC Group's petrochemical manufacturing plant one November day last year.

That's when butadiene leaked from a finishing tower and formed a vapor cloud. A spark ignited the cloud sending fireballs high into the air.

A series of explosions sent employees scrambling for safety. Over a period of six days, fires

burned much of the plant to ashes.

Company and firefighting officials let the fires burn for six days to prevent more explosions.

It's a miracle no one was killed. About 175 employees were laid off or furloughed as the company rebuilds.

Piping wasn't up to snuff

OSHA fined TPC Group \$514,692 for willful violations of its PSM standard. The firm failed to:

- develop and implement emergency shutdown procedures, and
- inspect and test process vessel and piping components.

Lawsuits from neighboring towns and other agencies are pending.

Info: osha.gov/SLTC/processsafetymanagement/index.html

INSPECTOR'S LOG

This feature provides insights into the enforcement process – from the point of view of EPA and state inspectors – so you can avoid routine compliance mistakes made by other companies.

■ FACILITY LET CONTRACTOR MISMANAGE STORMWATER

To: Regional Enforcement Director
From: Inspector Bob Wiley
Re: Clean Water Act

While driving by Acme Industrial the other day, I noticed some construction was underway.

It didn't look like there were any controls such as berms or dikes for minimizing stormwater runoff.

The next day, I met with Acme's operations manager about my concerns. We took a tour and I pointed out places where they weren't capturing sediment.

There was visible, dirty water running off from at least three spots. A lot was flowing down storm drains and down the street.

All of these are no-nos under a general construction stormwater permit, as you know.

Owner thought it wasn't liable

I quickly realized the problem when the operations manager asked if we would cite the contractor.

In many cases it is on a contractor to meet and enforce compliance issues. But I explained that under the Clean Water Act, it's a site owner's ultimate responsibility to make sure:

- local water sources aren't polluted, and
- a stormwater permit is procured and followed.

Acme had the contractor shut down work temporarily while it got its ducks in order.

Based on the volume of sediment and sand that ran off for several days, I'm recommending a fine of \$49,500 for Acme.

■ Dramatized for effect. Based on a settlement with a Midwestern real estate company.

PERCHLORATE, LEAD & COPPER

Reg news on horizon for water utilities

Publicly owned treatment works (POTWs) dodged a bullet – EPA won't be regulating perchlorate under the Safe Drinking Water Act.

EPA declined to take action because perchlorate levels are declining largely due to:

- drinking water regs in **Massachusetts and California**, which other states can adopt
- federal and state remediation at contaminated sites, such as a cleanup of groundwater near Lake Mead in **Nevada**, and
- improved storage and handling procedures of hypochlorite solutions used to disinfect water.

Perchlorate is used in solid rocket propellants, munitions, fireworks, airbag initiators for vehicles, matches, and signal flares.

It can also occur naturally, particularly in arid regions like the Southwest. The chemical is also a byproduct in hypochlorite solutions used for treating drinking water, and

nitrate salts used to produce fertilizers, explosives and other products.

Info: epa.gov/sdwa/perchlorate-drinking-water

Waiting for the other shoe to drop

POTWs are bracing for a more stringent lead and copper rule (LCR).

EPA is leaving the LCR action level as is at 15 parts per billion (ppb). But the LCR now has a trigger level of 10 ppb which compels POTWs in areas with lead service lines to reevaluate current treatment protocols or conduct a corrosion control study to bring levels down.

Systems above 10 ppb but below 15 ppb must set an annual goal for replacing lead lines and reaching out to the public.

Towns that exceed the 15 ppb limit must replace 3% of old lead lines within a year until lead and copper concentrations drop to safe levels.

Info: RIN 2040-AF15

HAZARDOUS WASTE

Lesser-known RCRA facts to share at toolbox talks

- ENVIRO PROS ALWAYS LEARNING SOMETHING NEW FROM REGS

Next time you discuss hazardous waste with your team, ask them if they know what “Rick-ruh Empty” means.

(“Rick-ruh” being the Resource Conservation and Recovery Act or RCRA, of course.)

Answer: Under RCRA, a hazardous waste container that can hold less than 120 gallons is empty if there's an inch or less of liquid in it.

RCRA covers a lot more than liquids

Here are a couple of lesser-known RCRA facts your team may not know:

1. There are eight toxic RCRA metals that must be stored safely

and separately – arsenic, barium, cadmium, chromium, lead, mercury, selenium and silver.

All eight of these metals have been characterized as:

- corrosive (D002 listed)
- toxic (D004-D043)
- reactive (D003), or
- ignitable (D001).

2. Miscellaneous waste, such as old tires and used oil, are covered under RCRA and can be hazardous. For example, burning tires releases numerous air toxics.

Make sure staffers understand RCRA's overarching goal is stewarding hazwaste so it doesn't contaminate air, water or soil.

Info: epa.gov/hw

TRENDS TO WATCH

■ CALIFORNIA WANTS ONLY ZERO-EMISSION TRUCKS

The California Air Resources Board (CARB) is sending a very loud message to diesel truck fleets with a zero-emissions (ZE) pledge.

CARB's calling for exclusively battery-powered trucks on the Golden State's roads and highways by 2045.

Suffice to say, it won't be cheap for industry. CARB estimates ZE large pickup trucks and delivery vans will cost between \$10,000 to \$20,000 more than conventional vehicles. Tractor trailers' price tags will escalate by \$70,000 per vehicle.

CARB's mandate starts rolling out in 2024 with a goal of 5% to 9% ZE vehicles sold in state.

Info: engadget.com/california-push-for-zeroemissions-heavy-trucks-032143253.html

■ LONE STAR STATE UPDATES TITLE V AIR PERMIT DUTIES

Title V permitted facilities in Texas must submit more info from now on to the state.

The Texas Commission on Environmental Quality (TCEQ) introduced a Permits by Rule Supplemental Table (ST) under its Title V program.

Starting this August 1, all site operating permit and general operating permit applications for initial and renewal projects, as well as significant revisions more than two years from permit renewal, must include the ST.

Major sources that emit 10 tons or more per year of one hazardous air pollutant (HAP) or 25 tons per year of any combination of HAPs must apply for a Title V permit.

Questions on the Texas changes should be directed to TCEQ's air division at (512) 239-1250.

Info: tceq.texas.gov/assets/public/permitting/air/Forms/Title_V/Potential_Requirements/20875.pdf

COVID-19

OSHA updates coronavirus safety guides

OSHA issued return-to-work safety practices for industries like manufacturing, meat processing, logistics and construction.

To help prevent the spread of COVID-19, OSHA recommends all facilities follow these best practices:

- practice social distancing by maintaining 6 feet between co-workers where possible
- allow for flexible work hours and staggered shifts if feasible
- train on how to properly put on, use, take off and maintain protective clothing and equipment
- allow workers to wear masks over their nose and mouth, and
- promote personal hygiene with readily available soap and water, hand rubs that contain at least 60% alcohol, disinfectants and disposable towels to clean work surfaces.

More specific help for industry

You can download COVID-19 fact sheets for a wide range of industry sectors in both English and Spanish, such as:

- manufacturing
- stockrooms and loading docks

- package delivery workers
- construction
- agriculture, and
- seafood processing.

Info: [osha.gov/SLTC/covid-19/news_updates.html](https://www.osha.gov/SLTC/covid-19/news_updates.html)

PFAS imports banned: More rules to come

The phaseout of per- and polyfluoroalkyl substances (PFAS) continues with an EPA ban on future commercial uses and imports of these “forever chemicals” tainting water systems nationwide.

A Toxic Substances Control Act (TSCA) rule prohibits significant new uses of long-chain PFAS used as surface coatings on carpeting, furniture, ski wax and other products, unless EPA approves a specific request.

Any company that wants to import PFAS or products containing them will also need agency approval.

Info: [politico.com/news/2020/06/24/epa-finalizes-pfoa-imports-rule-337006](https://www.politico.com/news/2020/06/24/epa-finalizes-pfoa-imports-rule-337006)

WHERE TO GET HELP

■ DOES YOUR STORMWATER PLAN COVER ALL THE BASES?

Stormwater catch basins can do a lot more than capture debris, sediment and metals, thanks to emerging technologies.

For example: Sodium ion exchange removes nearly 95% of zinc in stormwater.

Negatively charged sodium particles essentially “balance out” nearly all zinc runoff at the molecular level.

Zinc runoff is common from vehicles, chain link fences, metal roofs and outdoor equipment.

Info: fortress.wa.gov/ecy/publications/documents/0810025.pdf

■ LOOK FOR THESE LABELS TO BOOST SUSTAINABILITY

EPA recommends federal agencies purchase items with these eco-friendly labels – and it’s not bad advice for businesses too:

- BioPreferred (the Agriculture Department’s stamp of approval)
- Forest Stewardship Council approved lumber
- Green Seal sustainability standards, and
- EPA’s SaferChoice label (for cleaning products and the like).

SHARPEN YOUR JUDGMENT – THE DECISION

(See case on Page 2)

Buck’s company won this legal battle.

A court ruled that a pollution exclusion clause doesn’t necessarily free an insurer from defending a company if the exclusion wipes out “essential coverage.”

Since the company provided refrigeration services, you could say having insurance protection in case of an ammonia leak rose to the level of “essential” coverage!

Result: The judge didn’t let the insurer off the hook from backing Buck’s company.

Here’s what else helped the company’s case: A company executive signed a sworn affidavit that the insurer never informed him its insurance policy would exclude coverage for ammonia leaks.

The insurer couldn’t produce evidence to prove the executive wrong.

And that meant the company didn’t get the policy it had bargained for.

■ ANALYSIS: DOES YOUR POLICY NEED UPDATING? CHECK BEFORE SOMETHING GOES WRONG

Your environmental risks may change over time, with some priorities becoming bigger ones than before.

So make sure your policy is up to date and provides the protections you think are most needed and realistic.

And if there are any gray areas, have your insurer spell them out – the sooner, the better.

Cite: *Scottsdale Insurance v. Refrigeration Services and Engineering*, U.S. District Court, Eastern Dist., PA, Case No. 14-cv-3920. Dramatized for effect.

NWP 12

Supreme Court nixes pipeline permit ban

An injunction on Nationwide Permit 12 (NWP 12) for construction of new oil and gas pipelines is kaput.

The Supreme Court overturned a vacatur by a federal judge in the District of Montana.

That ruling prevented the U.S. Army Corps of Engineers from using NWP 12 without first consulting Fish and Wildlife Services and the National Marine Fisheries Service regarding Endangered Species Act protections.

Industry wants permit clarity

Construction activities including pipelines, broadband, electric, water and sewer can be permitted through NWP 12 by the Corps, ruled the Supreme Court.

Caveat: The High Court's ruling temporarily vacates the lower court's injunction.

There could be more legal wrangling ahead between industry groups and federal agencies.

Info: pipelaws.com/wp-content/uploads/sites/451/2020/07/SCOTUS-Order.pdf

EPA wants better air testing for industry

By and large, EPA is leaving existing emission limits and pollution control requirements as is for numerous National Emission Standards for Hazardous Air Pollutants (NESHAP).

But in many cases the agency's added additional testing and electronic reporting requirements (*see top of Page 4 for related info*).

Case in point: The NESHAP for paper and other web coating manufacturing sites now include:

- repeat testing and e-reporting requirements, and

- a compliance demonstration equation that accounts for retained volatiles in the coated web.

Info: RIN 20660-AU22

Time to check the fine print

All proposed and final NESHAP as well as Prevention of Significant Deterioration regs in the pipeline can be found at the Spring 2020 Regulatory Agenda.

(Go to tinyurl.com/epaspring2020agenda632).

And not to beat a dead horse but the longstanding industry shield for excess emissions due to startup, shutdown and malfunction events is also now removed.

Court: California Prop 65 labels violate free speech

California's Proposition 65 list for carcinogenic chemicals just took a big hit in the courts.

A federal district court ruled product label warnings for glyphosate violates businesses' First Amendment rights by making them use warning labels they believe to be false.

'Probably' doesn't cut mustard

California put glyphosate – the primary ingredient in the herbicide Roundup – on its Prop 65 list in 2017 after the International Agency for Research on Cancer (IARC) determined the chemical is “probably carcinogenic” to humans.

EPA doesn't agree with IARC, and prohibited Prop 65 labels on glyphosate products because they'd mislead the public and be misbranded under Federal Insecticide, Fungicide and Rodenticide Act guidelines.

Info: *National Association of Wheat Growers v. Becerra*, U.S. District Court, Eastern District of CA, No. 2:17-cv-2401.

REAL PROBLEMS/SOLUTIONS

■ GET MORE FROM VIRTUAL MEETINGS WITH THESE TIPS

(From Justin Hoover, industrial hygienist, Steel Dynamics, Fort Wayne, Indiana, at the virtual AIHce EXP 2020)

These days, I'm always on a Zoom meeting. At least I feel like I am.

For you, maybe the virtual meeting is via Skype or Microsoft Meetings or some other video conferencing program. The platform isn't important.

Here are some of the tips I use to have better, more productive virtual meetings (and better meetings lead to better outcomes):

5 ideas to use

- If you're going to share a video during the virtual meeting, try it out ahead of time.
- Don't make the meeting longer than it has to be just because you have the material. People have other things to do.
- Call on people. Get them involved. Ask their opinions during the meeting.
- Be professional. Don't wear pajamas to your virtual meeting just because you're at home.
- Lean into the camera. Don't lean back in your chair. Leaning into the camera helps you look and stay engaged with the meeting.

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More than 90% of our readers report in surveys that Environmental Compliance Alert, with its quick-read format, is more valuable than any other publication they read.

"ECA has lived up to our expectations. This is the only publication we get."

Larry Richey
Plant Manager
ABC Industries
Warsaw, Indiana

Air, Water & Waste regs that affect your operations

Here's ECA's digest of recent Federal Register (FR) notices, Regulatory Identifier Numbers (RINs) and other national activities concerning air, water and waste issues. For these and more federal updates, visit: www.EnvironmentalComplianceAlert.com/category/update-on-federal-rules

NAFTA

Environmental obligations for imports and exports increase under the United States-Mexico-Canada Agreement (USMCA) trade pact that went into effect July 1.

USMCA replaces the North American Free Trade Agreement (NAFTA) signed into law by President Clinton in 1994.

In a nutshell, trade partners can't waive or lessen environmental obligations to accommodate one another.

"[USMCA trade partners are] prohibited from waiving or otherwise derogating from, or offering to waive or otherwise derogate from, their environmental laws in a manner that weakens or reduces the protection afforded in those laws in order to encourage trade or investment between the USMCA parties, or to fail to effectively enforce their environmental laws through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the USMCA parties."

Info: usmca.com/environment-usmca-chapter-24

MERCURY & AIR TOXICS

Will coal-fired power plants be able to gut the Mercury and Air Toxics Standards (MATS)?

While the battle's heating up in federal courts, ultimately the answer depends on who wins the White House this fall.

The Trump EPA revised the cost benefits analysis (CBA) for MATS this spring to satisfy a Supreme Court ruling (*search for "Expensive air rules on chopping block" at our website*).

In 2016 the Court ruled 5-4 that EPA should've considered the high compliance costs of MATS before implementing it. It's unlikely the Trump EPA budges on its revised benefits to society of \$6 to \$8 billion.

The Obama administration pegged MATS' health benefits at \$90 billion but included other pollutants like particulate matter in its analysis.

Utilities that spent billions on control technologies joined nonprofit groups to oppose the new CBA. Edison Electric Institute says repealing the foundation of MATS means "new uncertainty and risk for companies that still are recovering the costs for installing those control technologies."

EPA left existing mercury and air toxics limits in place. Coal companies are suing the agency to rescind MATS in total.

Info: earthjustice.org/sites/default/files/files/aap_et_al_v._wheeler_-_petition_for_review.pdf

METALS MINING

Precious metals like lithium and cobalt are in high demand but American companies are struggling to keep up.

That's why the Department of Energy (DOE) wants feedback on the "challenges and opportunities in up- and mid-stream critical materials battery supply chains."

"Innovation in our domestic industries and continued investment by DOE programs will help strengthen our country's ability to manufacture and recycle these materials, and work toward more robust domestic supply chains," says DOE.

DOE also seeks input on current battery cathode materials supply chains as well as opportunities

for near- and long-term research and development. Comments to this request for information are due by July 31 via email to BatteryCriticalMaterialsRFI@ee.doe.gov.

Info: www.energy.gov/eere/articles/department-energy-issues-request-information-strengthen-battery-critical-materials

PHARMACEUTICAL HAZWASTE

States are slow to adopt EPA's pharmaceutical hazwaste rule (*search for "pharmaceutical waste rule" at our website*).

So far only **Alabama, Alaska, Florida, Georgia, Iowa, Kentucky, New Jersey, Pennsylvania, South Dakota** and Virginia have adopted the pharmwaste reg.

Only one guideline is the law in every state – sewerage of used or spoiled pills and other pharmaceuticals is prohibited.

Healthcare facilities must bag expired pharmwaste. Pouring pills in sinks and flushing them down toilets has contaminated public drinking water supplies.

Info: 84 FR 5,816

SO2 ATTAINMENT

Industrial facilities upgrading their sulfur dioxide (SO2) scrubbers has helped clear the air in the Chicago metropolitan areas of **Illinois**.

The Lemont and Pekin areas now meet the 2010 National Ambient Air Quality Standards for SO2.

Illinois EPA set tougher emission limits for two power plants and three manufacturing facilities to reduce pollution. Both areas were classified as SO2 nonattainment in 2013.

National SO2 concentrations have dropped 80% since 2000 due to adoption of flue gas desulfurization technology and refineries reducing the amount of sulfur in gasoline.