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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).

Not a point source? You may be now after SCOTUS ruling

■ Liability for discharges is growing

Earlier this year, the Supreme Court determined that groundwater pollution may qualify as "functional discharges" depending on a number of factors:

- the types of and hazardous qualities of the pollutants
- how much of and how often pollutants taint surface waters, and
- the distance between the groundwater and nearby streams, lakes, the ocean, etc.

(Search for "Maui groundwater" at our website for a timeline.)

Cheaper to settle than fight?

There are a handful of similar groundwater discharge cases like *County of Maui v. Hawaii Wildlife Fund* pending in federal courts. Facilities include mines in Colorado, Minnesota and Alabama, a resort complex in Massachusetts and a pipeline in South Carolina.

Environmental attorneys Venable LLP warn *every single one* of these defendants could lose their Clean Water Act (CWA) lawsuits and be forced into very expensive settlements as the dust from Maui clears.

That's because the Supreme Court

(Please see Point source ... on Page 2)

ENVIRONMENTAL APPEALS BOARD

EPA permit appeals get pro-industry makeover

■ EAB HAS 60 DAYS TO RENDER VERDICT ON PERMIT APPEALS

Say so long to permit review delays from EPA's Environmental Appeals Board (EAB).

The Trump administration streamlined EAB's review process for the first time in 27 years.

From now on, the EAB must:

- issue a final decision 60 days after a permit appeal's been heard
- limit the availability of extensions to one request per party, with a maximum extension of 30 days, and
- streamline the amicus process,

thereby limiting who qualifies as an affected party and can sign on to a permit appeal.

Industry wanted end to delays

Many in industry complained EAB permit fights dragged on too long and were often stacked against applicants.

"Over the years, the scope of responsibilities for EPA's EAB has changed and the permitting appeal has become too lengthy," says EPA administrator Andrew Wheeler. "Making the reviews more streamlined and judicial review more prompt will lead to ... a fairer process."

METAL COATING

Inspectors didn't set out to fine this firm

Frequently manufacturers purchase workshops and factories from businesses that are moving or going out of business.

They're often in the same line of work and want to keep the previous occupant's equipment – but it's never a good idea to adopt the same bad compliance habits.

'Since we're here ...'

Case in point: **California** Department of Toxic Substances Control (DTSC) inspectors visited a metal finishing shop in Lynn.

Inspectors were there to check whether the old tenant, Martin Metal Finishing, was safely shutting down operations.

Turns out the new occupant, Processes by Martin, was already up and running. A quick walkthrough of the facility by inspectors revealed a number of hazardous waste violations:

- unauthorized storage of paint waste cans, paint booth filters and soap tank residue
- inadequate maintenance and facility

design in the event of a fire

- unpermitted treatment of hazardous soap tank residue by air-drying it in steel drums, and
- hazwaste containers with illegible accumulation start dates.

DTSC handed the company a \$64,350 ticket for its hazwaste shortcomings. The metal finisher has since corrected the problems and complies with California waste regs.

Info: dtsc.ca.gov/processes-by-martin-inc/

Point source ...

(continued from Page 1)

created an exception to longstanding precedent, namely that groundwater doesn't qualify as a point source under the CWA.

To make matters worse, the high court's judges coined a vague definition (functional discharges) for district and federal courts to hash out what it means.

As a result, the high court put property owners on the hook for costly lawsuits, fines, and in some cases, permit obligations under the National Pollutant Discharge Elimination System (NPDES) program.

Case in point: The group suing Maui County because of wastewater wells which reached the Pacific Ocean argued Maui should have to apply for an NPDES permit.

Don't be caught off guard!

Bottom line: Underground storage of wastewater, coal ash and other hazardous substances is increasing businesses' liabilities.

Facilities would be wise to audit their wells/impoundments and assess control measures in light of how *Maui* alters the compliance landscape.

Info: tinyurl.com/venableinsights634

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.

RENOVATED FACILITY, BUT DIDN'T APPLY FOR PERMIT

Buck Flanagan, environmental director, nodded his head and sighed as he pored over a lawsuit against his company.

"Sure looks like we blew it," sighed Buck.

"Those plant modifications we made seemed minor enough that we didn't think emissions would spike one bit.

"But now that I read over the New Source Review rules again, we definitely should've applied for a permit," said Buck.

"We all make mistakes," said Clifford Uplander, the company attorney. "The question here is, did we violate the law?"

Is 5-year limit defense a winner?

"I'm no lawyer obviously," said Buck. "But I'm pretty sure these environmental groups win cases like this one more often than not.

"Especially if they can show there was a negative impact on air quality in the area," said Buck.

"That's where this case is a little thin, to say the least," said Clifford.

"They may be right that we should've applied for a new permit, as you say.

"Bottom line is, they waited too long before suing us. This complaint is dated July 1, 2020," said Clifford.

"We wrapped up those renovations in 2013. They completely missed the five-year statute of limitations."

Buck's company tried getting the lawsuit thrown out.

Who won?

■ *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

Owner escapes jail, not fines, for hazwaste leak

Individual: Robert Carville, owner, Carville National Leather Corporation, Johnstown, NY.

Business: Tannery.

Penalty: \$369,693 in restitution to EPA. Carville is currently serving two years of probation after pleading guilty last year to a felony count of storing hazardous waste without a permit.

Reasons for penalty: When Carville shut down his leather tannery in 2013, he left behind hundreds of drums of hazwaste, many of them corrosive and acidic. Chemicals began leaking two years later. The upstate New York site was designated a Superfund cleanup site. EPA removed the drums and chemicals. Carville never obtained a Resource Conservation and Recovery Act permit to store the hazwaste drums.

Shop towel handler didn't control VOCs: \$52K fine

Company: New England Industrial Uniform Rental Service (NEIURS), West Springfield, MA.

Business: Industrial laundry.

Penalty: \$51,700.

Reasons for penalty: NEIURS failed to:

- install Reasonably Available Control Technology to limit volatile organic

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.

- compound (VOC) emissions, and
- apply for an air permit from the Massachusetts Department of Environmental Protection.

Note: NEIURS launders business uniforms and industrial shop towels, and until recently, print towels, which are often contaminated with solvents that contain VOCs. The facility's now prohibited from laundering print towels, and it must implement best management practices for cleaning shop towels that contain oils and grease.

Storage tank leak leads to messy cleanup and fine

Company: Mort Roszell Rentals, San Antonio, TX.

Business: Highway and street construction contractor.

Penalty: \$26,411.

Reasons for penalty: A 750-gallon used oil tank leaked and secondary containment failed. About 550 gallons of oil and water contaminated 20 cubic yards of soil which required remediation. The Texas Commission on Environmental Quality fined the contractor for installing the aboveground storage tank (AST) without approval of an Edwards Aquifer AST Plan.

Expedited settlement lowers stormwater fine

Company: Bogus Basin Recreational Association (BBRA), near Boise, ID.

Business: Winter ski area and recreation complex.

Penalty: \$52,680.

Reasons for penalty: BBRA built a retention dam, in-stream 42-acre water storage pond for snowmaking, and chair lift replacement without:

- implementing an adequate Stormwater Pollution Prevention Plan (SWPPP)
- creating an SWPPP site map

- conducting inspections required under the Clean Water Act, and
- installing and maintaining best management practices to control stormwater.

Note: The Idaho Department of Environmental Quality documented the problems during an unannounced inspection. BBRA agreed to an expedited settlement, a faster and more streamlined process that reduces fines.

Facility's discharges too much for local water plant

Company: Henningsen Foods, David City, Nebraska.

Business: Egg processing facility.

Penalty: \$827,500 fine and \$2 million on wastewater system upgrades.

Reasons for penalty: Henningsen sent high loads of egg-processing waste and cleaning solution to the municipal treatment plant and put it in noncompliance for ammonia and oxygen-depleting substances multiple times. The plant also submitted late and inaccurate pollutant monitoring info.

Note: Henningsen has since installed pretreatment equipment to minimize pollutants sent to the sewage plant. The company's paying towards plant upgrades and will monitor and report discharges more frequently.

No heads up on lead paint? Prepare to pay up

Company: PMR Properties, Council Bluffs, IA.

Business: Rental property manager.

Penalty: \$40,800.

Reasons for penalty: PMR remodeled pre-1978 homes in Iowa, Nebraska and Missouri without warning occupants first about the risks to children from lead paint, as required under the lead Renovation, Repair and Painting rule.

NSPS

What's in oil & gas methane rollback?

Oil & gas producers won't need expensive leak-detection systems for methane after all.

EPA is rescinding most of the requirements in an Obama-era rule designed to reduce emissions of warming gases.

The final rule is still under review. Major changes were announced in 2018 and 2019, but not all of them will make it into the final reg.

What's on the chopping block?

The 2015 New Source Performance Standards (NSPS) called for oil and gas companies to:

- install controls on wells to capture methane from hydraulic fracturing processes, and
- monitor and remediate leaks in the production and supply chain – a requirement industry argued was too complex and costly.

Both those requirements will be

axed, say anonymous EPA staffers.

Also: EPA won't oversee smog or greenhouse gas (GHG) emissions from pipelines, storage tanks and transmission facilities, leaving those duties to state regulators.

Monitoring duties kept alive

While the ink on the methane rule hasn't dried yet, the word is industry will have to monitor for methane emissions periodically.

EPA considered reducing the monitoring requirements to every two years for oil & gas wells and annually for compressor stations. But the agency decided those relaxed obligations weren't likely to survive inevitable legal challenges.

Methane accounts for 9% of all manmade GHGs and has 25 times the warming effect as carbon dioxide.

Info: foxbusiness.com/markets/epa-gas-oil-regulations-methane

ANHYDROUS AMMONIA

'Alternative' process safety plan didn't meet mark

■ LACK OF PSM PLAN KEY FACTOR IN COURT NIXING COMPANY'S APPEAL

Regulators will give companies a surprising amount of leeway with "work-around" solutions in compliance programs and permits if they're persuaded that people and the ecology are protected.

But that leeway has its limits, as a recent case shows.

The U.S. Court of Appeals for the 5th Circuit found a Sanderson Farms chicken processing plant's anhydrous ammonia procedures were in violation of OSHA's Process Safety Management (PSM) standard.

An Occupational Safety and Health Review Commission (OSHRC) judge upheld two fines OSHA issued for:

- lack of maintenance on compressor

shutdown devices in case of a release, and

- no inspections and tests on safety devices and emergency stops.

Were violations cut-and-dried?

Rather than take its lumps and pay the fines, Sanderson appealed the OSHRC's decision.

Sanderson's argument? The company argued it had other PSM methods in place that would help prevent a release and prevent workers from ammonia exposure.

The 5th Circuit ruled that the fact other devices in the process could prevent a hazardous release didn't free Sanderson from its process safety responsibilities.

Info: tinyurl.com/psmstandard634

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.

■ SHUT BUSINESS DOWN UNTIL IT STOPS POLLUTING LAKE

To: Regional Enforcement Director
From: Inspector Bob Wiley
Re: Illegal discharges

It's rare that I recommend shutting a facility down until it comes into compliance.

But that's the course we should take with ABC Industrials. They must submit a discharge permit that addresses all of their point sources.

In addition, a \$105,000 penalty is in order.

Runoff controls had eroded

Who knows how long the company would've continued polluting Lake Geary if it weren't for neighbors tipping us off.

We tracked multiple muddy streams going directly from their parking lot to the lake.

It wasn't just sediment running off but motor oils, anti-freeze, solvents and a host of heavy metals in the samples we took.

Whatever stormwater controls were in place were removed or eroded years ago.

During heavy rains, water runs directly off the asphalt and concrete into woods and a creek that feeds into Lake Geary.

The parking lot is impervious. It slopes and there's no grass to soak up pollutants that run off from vehicles and equipment on the site.

ABC's lack of a permit or plan of any kind can't be excused.

As long as ABC does its part, our office will work overtime helping them with a plan, and will get their stormwater permit approved as quickly as we can.

■ *Dramatized for effect. Based on a recent settlement between EPA and a Midwestern shopping center.*

RCRA

Key coal ash deadline on November 30

The clock is ticking for coal-fired power plants to close surface impoundments (landfills) for good.

Operators face an April 11, 2021 deadline to stop accepting coal ash at storage sites that lack leak protection, or aren't at least five feet away from an aquifer, for good and begin the closure process.

An even more pressing deadline's been set for coal ash sites that know they can't shut down impoundments by next spring.

For sites that are behind on planning new, safe coal ash landfills or expect problems doing so, they must gather documents making that case and file for an extension with EPA no later than November 30.

Reg tightened by court order

A big problem for coal ash handlers? Clay-lined landfills no longer meet the definition of a protected, "lined" surface.

EPA initially gave clay landfills the

thumbs-up in its 2015 coal ash rule, but the U.S. Appeals Court for the Washington DC Circuit overturned it in 2018.

The agency also tightened the coal ash rule so unlined landfills near aquifers had to shut down.

A threat to local waters

The coal ash rule settled that coal ash is a solid waste, not hazardous, under the Resource Conservation and Recovery Act (RCRA).

Environmental groups fought for years to compel EPA to designate coal ash a RCRA Subtitle C hazwaste, to no avail. Approximately half of coal ash is recycled as filler material in wallboard and cement.

Surface impoundment leaks and collapses have led to significant water pollution such as a Duke Energy coal ash spill in North Carolina.

Info: epa.gov/coalash/coal-ash-rule

CLEAN WATER ACT

Feds won't butt in on states' water enforcement

■ EXCEPTION: IF STATES IGNORE WATER VIOLATIONS, EPA WILL ACT

State regulators often bristled when after wrapping up enforcement actions, EPA would follow up and tack on fines – the implied message from the feds being, "You're too soft on industry."

The Trump administration continues to reverse that trend with a new "hands-off" Clean Water Act (CWA) policy.

A U.S. Department of Justice (DOJ) Environmental and Natural Resources Division memo calls for federal discretion once a state action's initiated or concluded.

The bottom line for businesses paying a price for wastewater or stormwater violations is that EPA

won't issue fines of its own, which in many cases over the years led to doubling or tripling of companies' total CWA penalties.

Where fed discretion ends

You'll notice the memo doesn't speak to CWA enforcement where no state action is ongoing. That gives the feds leeway to investigate and write tickets if a state drops the ball on egregious violations.

Also: National Pollutant Discharge Elimination System permit holders can still expect EPA input for late or incomplete reports.

And facilities in New Hampshire, Massachusetts and New Mexico still fall under EPA's CWA purview.

Info: tinyurl.com/y3qawtk

TRENDS TO WATCH

■ TEXAS CAN'T PUT OFF SULFUR REDUCTIONS ANY LONGER

Texas must identify sources for sulfur dioxide (SO₂) emission cuts or face EPA sanctions and a federal implementation plan.

Likely targets: petrochemical plants and coal-fired power plants.

EPA rejected the Lone Star State's plan for the 2010 1-hour SO₂ National Ambient Air Quality Standard to improve air quality in nonattainment areas.

Portions of three counties – Anderson-Freestone, Rusk-Panola and Titus – don't comply with the 75 parts per billion (ppb) limit. Attainment is met when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations doesn't exceed 75 ppb.

Now the ball's back in the Texas Commission on Environmental Quality's court.

Info: 85 FR 48,111

■ TOUGH LIMITS FOR PFAS ON WAY FOR WATER UTILITIES

New York is moving ahead with safe drinking water limits for PFOA and PFOS, two common per- and polyfluoroalkyl substances.

The maximum contaminant levels (MCLs) for PFOA and PFOS will be 10 parts per trillion.

Larger municipal water systems will have to test within 60 days of the rule's publication in the state register. Smaller systems serving fewer than 10,000 people must start testing within 90 days.

New York also set a 1 part per billion MCL for the toxic substance 1,4-dioxane.

PFOA was commonly used to make non-stick, stain-resistant and water-repellent products. PFOS was frequently used as an ingredient in firefighting foams.

Info: tinyurl.com/newyorkemerging634

CHEMICAL SAFETY BOARD

Oil & gas safety needs push from the top

The Chemical Safety Board (CSB) wants the top brass at offshore oil & gas companies to invest heavily in safety stewardship.

Coincidentally or not, the guidance comes on the 10th anniversary of the Deepwater Horizon oil rig explosion and inferno which led to billions of dollars in fines for BP.

(Search for “BP Deepwater Horizon” for a timeline.)

Boards need safety champions

The CSB Best Practice Guidance for Corporate Boards of Directors and Executives in the Offshore Oil and Gas Industry for Major Accident Prevention recommends board members and execs:

- consider adopting an As Low As Reasonably Practicable accident reduction target
- ensure at least one company director has relevant safety training and experience
- designate a board “champion” for process safety (PS) who initiates discussion at board meetings and leads PS oversight/initiatives, and
- develop a PS policy that’s periodically reviewed and revised

when needed, and is part and parcel of the company’s culture.

Info: [csb.gov/csb-best-practice-guidance](https://www.csb.gov/csb-best-practice-guidance)

Small hazwaste facilities will need to re-notify

Small quantity generators (SQGs) of hazardous waste must re-notify agencies of their activities every four years. And the first reporting deadline will be here before you know it – September 1, 2021.

If you’re located in a state that’s already adopted the Hazwaste Generator Improvements (HWGI) rule, you’ll be able to notify your state environmental agency.

What if your state hasn’t adopted HWGI by next fall?

EPA says you can re-notify with them using Form 8700-12, a state equivalent, or in most states, online via MyRCRAID.

Info: tinyurl.com/form87-12 and [rcrainfo.epa.gov/rcrainfo-help/application/industryHelp/index.htm#t=Introduction.htm](https://www.epa.gov/rcrainfo-help/application/industryHelp/index.htm#t=Introduction.htm)

WHERE TO GET HELP

BEST SUSTAINABILITY PLANS INCLUDE ON-SITE WATER USE

How you choose to landscape around your facility can make a big dent in water usage.

EPA’s WaterSense program recommends purchasing plants native to your geographic region. Native plants are adapted to the local climate and soil conditions, which means they require less supplemental water and fertilizer.

If you live in an arid part of the country, pick drought-tolerant plant varieties. These plants require little water and do the best in conditions with minimal rainfall.

Info: [epa.gov/watersense/what-plant](https://www.epa.gov/watersense/what-plant)

HOW MUCH CAN UNIVERSAL WASTE REG SAVE YOU?

Aerosol cans account for 40% of the hazardous waste load retailers had to deal with.

Those days are over since EPA added aerosol cans to its Universal Waste (UW) list. Count on most states to adopt them to their UW lists (some already have).

EPA pegged the regulatory savings at \$5.3 million annually.

Info: 84 FR 67,202

SHARPEN YOUR JUDGMENT – THE DECISION

(See case on Page 2)

Buck’s company won the lawsuit.

The court ruled the lawsuit was time-barred because the environmental group hadn’t filed within five years.

The Clean Air Act clearly states that lawsuits must be filed inside of a five-year statute of limitations.

Luckily for the company, the group missed that requirement by a few months. Result: Case dismissed.

ANALYSIS: EPA, ENVIRONMENTAL GROUPS USUALLY WIN PERMIT VIOLATION CASES

The fact of the matter is, facilities that don’t apply for Prevention of Significant Deterioration (PSD) permits (under the New Source Review program) before making

significant modifications and upgrades, end up on the losing end of lawsuits 99% of the time.

Where EPA, state agencies, environmental groups and citizens typically blow cases like these is suing after the five-year statute has run out.

Case in point: EPA dragged out a PSD violation back in 1990 by U.S. Steel, which ended up costing the company millions in legal fees.

In that case, a federal judge ruled the case shouldn’t be time-barred, then re-read the federal laws before reversing his decision.

The lesson there was it would’ve been a whole lot cheaper – and smarter – for that company to get its permits in order beforehand.

Cite: *Sierra Club v. Oklahoma Gas & Electric*, Case No. 13-cv-356-JHP. This case has been dramatized for effect.

AIR QUALITY

Updates on state environmental trends

Air quality keeps improving in Midwestern states as industrial facilities implement best available control technologies.

EPA administrator Andrew Wheeler lauded **Indiana, Illinois, Wisconsin, Michigan and Ohio** for slashing criteria air pollutants.

Since early 2017, 21 areas in the Rustbelt region moved from nonattainment to attainment status, which helped ease permitting restrictions for thousands of local businesses.

Criteria pollutants are sulfur dioxide, nitrogen dioxide, particulate matter, ground-level ozone (smog), carbon monoxide and lead.

Info: "Our Nation's Air: EPA Celebrates 50 Years," gispub.epa.gov/air/trendsreport/2020/#home

Pacific Northwest gives green chemistry a boost

Washington state added 11 chemicals and products of concern to its Safer Products list.

The WA Department of Ecology will evaluate feasible alternatives over the next two years for manufacturers and consumers to consider.

The chemicals and products include polychlorinated biphenyls, per- and polyfluoroalkyl substances (PFAS), phenolic compounds, phthalates, electric and electronic equipment, foam, inks, leather and textile furnishings, carpets and rugs and vinyl flooring.

Info: tinyurl.com/washchem634

Sunshine State permit holders get timely break

Florida facilities with permits set to expire gained a reprieve until September 29 due to Hurricane Isaias.

Governor Ron DeSantis (R) issued a state of emergency for 19 counties that tolls the expiration of valid permits, development orders and other authorizations, and allows permit holders to extend development authorizations an extra six months.

Impacted counties are Brevard, Broward, Clay, Duval, Flagler, Indian River, Martin, Miami-Dade, Monroe, Nassau, Okeechobee, Orange, Osceola, Palm Beach, Putnam, Seminole, Saint Johns, Saint Lucie and Volusia.

Info: flgov.com/wp-content/uploads/orders/2020/EO_20-181.pdf

West Coast utilities set to clamp down on PFAS

The California Water Board ordered wastewater treatment plants to test for traces of PFAS in effluent, biosolids and groundwater.

Utilities that test above stringent limits must adopt treatment options and begin reporting to the state.

Info: tinyurl.com/califpfas634

Slowly but surely states update hazwaste regs

The number of states that've adopted EPA's Hazardous Waste Generator Improvements (HWGI) rule is now at 27 (see page 6 for more).

Louisiana and North Dakota adopted the mandatory portions of HWGI and updated their hazwaste programs in July.

States don't have to adopt the episodic generation provision which allows a small quantity generator to clean out tanks once in a 12-month period without bumping up its generator size status.

Check with your state to see if you're entitled to an episodic event if you're not sure.

REAL PROBLEMS/SOLUTIONS

■ PANDEMIC LEADS TO CREATIVE SOLUTIONS

(From Barbara Epstein, industrial hygienist, AGC Oregon-Columbia Chapter, Wilsonville, Oregon, at the Virtual AIHce EXP 2020)

We've all had to address compliance during the coronavirus pandemic with incomplete information and lots of new data coming in.

We've instituted some new measures to protect workers and put them at ease.

For example: We're providing more hand-washing stations and scheduling work in a way that prevents having employees working together in small spaces.

Difficult times, creative solutions

Another idea: A local contractor we work with constructed a temporary hinged plexiglass barrier for a lift basket so two employees can be in the lift together while controlling the spread of droplets.

They used pinch clamps and heavy-duty zip ties to position the barrier in place and allow for easy and safe entry and exit for both employees.

And since it's a temporary device – basically just another tool in the lift basket – it doesn't count as a modification which requires the manufacturer's approval.

▼ FROM OUR SUBSCRIBERS

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 gives me more time to spend researching things that are applicable to our facility without having to sort through the regulatory schedule myself."

Mark Carpenter
EH&S Specialist
ProFusion Industries

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

CORONAVIRUS SAFETY

Can wearing a medical/surgical mask or cloth face covering lead to dangerous carbon dioxide levels for the wearer?

No, says OSHA.

Medical and surgical masks are routinely worn by healthcare workers throughout the day as part of their personal protective equipment, and don't compromise their oxygen levels or cause CO2 buildup.

They're built to be breathed through and protect against respiratory droplets, which are typically larger than CO2 particles.

As a result, CO2 particles will either go through the mask or escape along the mask's loose-fitting perimeter. Some CO2 might collect between the mask and the wearer's face, but not at unsafe levels.

Like medical masks, cloth face coverings are loose-fitting with no seal and are designed to be breathed through. In addition, workers may easily remove their medical masks or cloth face coverings periodically when not close to others.

Info: [osha.gov/SLTC/covid-19/covid-19-faq.html#general-info](https://www.osha.gov/SLTC/covid-19/covid-19-faq.html#general-info)

HAZMAT SHIPPING

Sending hazardous materials through the U.S. Postal Service (USPS) will require more prep work, thanks to two rule changes.

USPS is updating its Publication 52 (Pub 52) guidelines for hazmats. Mailers will need to:

- separate all air-eligible hazmats from surface-only hazmat shipments and non-hazmat items, and
- identify and categorize hazmats using electronic indicators.

The rule changes are in response to "rapid expansion" of hazmat shipments such as lithium batteries and cleaning solutions.

To make shipping easier, USPS is also standardizing its Extra Service options for mailing hazmats.

Keep in mind noncompliance is getting more expensive all the time. Starting this year, Pub 52 violations can cost as much as \$127,525 following a cost-of-living increase.

Info: 85 FR 46,575 and 85 FR 47,720

SUPERFUND CLEANUPS

Historically EPA has been able to classify contaminated locations as National Priority List (NPL) cleanup sites under the Superfund law, regardless of ongoing litigation.

The Washington DC Circuit Court of Appeals (*one rung below the Supreme Court*) affirmed that precedent in a lawsuit between EPA and Meritor, which owns the Rockwell International Wheel & Trim facility in Mississippi.

Meritor became aware of high levels of toluene, trichloroethylene and cis-1,2-dichloroethene in the soil. EPA determined vapor intrusion was enough of a risk to designate it an NPL location (aka Superfund site) to jump-start remediation.

The company disagreed, arguing EPA jumped the gun and should've allowed litigation between multiple parties to settle what's done and who pays for it.

In cases like this, EPA won't hesitate to put a site on the NPL list when there's a reasonable chance pollution can't be contained. The agency does allow responsible parties to cap and monitor hazardous chemicals when they can guarantee

pollution won't migrate from soil to outdoor or indoor air, groundwater and surface waters.

Info: *Meritor v. EPA*, Case No. 18-1325, U.S. Appeals Court, Washington D.C. Circuit.

COVID-19 DISINFECTANTS

Thirteen disinfectants, including two sprays made by Lysol, effectively destroy SARS-CoV-2, the novel coronavirus that causes COVID-19.

Lysol's disinfectant spray (EPA #777-99) and Max Cover Mist (EPA #777-127) passed a series of COVID-19 lab tests.

The agency's selected nearly 500 products it expects will kill coronavirus bacteria. "List N" is updated frequently to give workplaces as many options as possible to fight the disease.

EPA can approve products manufactured to fight emerging viral pathogens within 14 days under a new agency testing protocol.

Info: [epa.gov/newsreleases/epa-approves-13-products-list-n-effective-against-sars-cov-2](https://www.epa.gov/newsreleases/epa-approves-13-products-list-n-effective-against-sars-cov-2) and [lysol.com/healthy-home/understanding-coronavirus](https://www.lysol.com/healthy-home/understanding-coronavirus)

LEAD PAINT

EPA fixed loopholes in its lead paint rule by reducing the amount of lead that can remain in dust on floors and windowsills after renovations.

Clearance levels for dust on floors and windowsills were tightened from 40 micrograms (µg) of lead in dust per square foot (ft²) down to 10 µg/ft² for floor dust, and from 250 µg/ft² to 100 µg/ft² for windowsill dust.

Child care facilities and other buildings where children are regular occupants must meet these clearance levels following lead removal.

Info: 85 FR 37,810