



October 2, 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](mailto:sball@SafetyNewsAlert.com)).

## Just how toxic are those chemicals? EPA changes its tune

### ■ New TSCA tests clash with older IRIS evaluations

When Congress amended the Toxic Substances Control Act (TSCA), conventional wisdom was the riskiest chemicals industry rely on would be phased out.

Fast forward four years later, several chemicals are seeing their toxicity levels downgraded instead – benefiting chemical plants, manufacturers and brownfield developers to name a few.

The reason? EPA is testing dozens of chemicals as TSCA mandates and the numbers don't always jibe with established Integrated Risk Information System (IRIS) levels.

### Which number benefits industry?

Faced with budget and staffing limitations, EPA put the IRIS program on hold in late 2018 and pushed resources toward the agency's chemicals office, which is now putting out its own toxicity numbers.

And in some cases, they conflict with IRIS numbers that date back to the early 1990s.

Former EPA deputy administrator George Gray told *Occupational Safety & Health Reporter* that “dueling” toxicity numbers will lead to industry “venue shopping to get the number that does what you want it do.”

Attorney Martha Marrapese of

*(Please see Chemicals ... on Page 2)*

## POLITICS

### Trump, Biden plans for EPA like night and day

■ 2020 ELECTION: MORE ROLLBACKS OR CLIMATE CHANGE FOCUS?

What will four more years of President Trump mean for EPA and compliance professionals?

Agency administrator Andrew Wheeler promised more regulatory rollbacks and transparent rulemaking in a *Wall Street Journal* interview.

Wheeler wants to see other regs eased, including monitoring and reporting requirements on sectors like manufacturing and oil & gas developers.

He points to an increase in Superfund site cleanups and closures

as a key success.

### Biden charts different course

Democrat candidate Joe Biden is proposing a \$2 trillion climate change plan that will wean the U.S. off fossil fuels sooner by investing in new technology and green jobs.

Biden's plan would increase taxes on corporations and the wealthy to reach zero carbon emissions from the power grid by 2035.

EPA would take the lead on tougher greenhouse gas regs.

Info: [tinyurl.com/policy636](https://tinyurl.com/policy636)

## MANUFACTURER FEES

### High-risk substances on the hot seat

Hundreds of manufacturers must pay fees for 20 chemicals undergoing Toxic Substances Control Act (TSCA) risk evaluations by EPA.

To check who's paying fees, go to [tinyurl.com/tscafees636](http://tinyurl.com/tscafees636).

#### Studies done on industry's dime

EPA released scope documents detailing how the 20 chemicals will be evaluated. The substances are:

- formaldehyde
- 1,3-butadiene
- p-dichlorobenzene
- 1,2-dichloroethane
- trans-1,2-dichloroethylene
- o-dichlorobenzene
- 1,1,2-trichloroethane
- 1,2-dichloropropane
- 1,1-dichloroethane
- dibutyl phthalate (1,2-benzenedicarboxylic acid, 1,2- dibutyl ester)
- butyl benzyl phthalate (1,2-benzenedicarboxylic acid, 1-butyl 2-(phenylmethyl) ester)

- di-ethylhexyl phthalate (1,2-benzenedicarboxylic acid, 1,2-bis(2-ethylhexyl) ester)
- di-isobutyl phthalate (1,2-benzenedicarboxylic acid, 1,2-bis-(2-methylpropyl) ester)
- dicyclohexyl phthalate
- 4,4'-(1-methylethylidene) bis [2,6-dibromophenol]
- tris (2-chloroethyl) phosphate
- phosphoric acid, triphenyl ester
- ethylene dibromide
- 1,3,4,6,7,8-hexahydro-4,6,6,7,8,8-hexamethylcyclopenta [g]-2-benzopyran, and
- phthalic anhydride.

Info: [tinyurl.com/scopedocs636](http://tinyurl.com/scopedocs636)

### Chemicals ...

(continued from Page 1)

Wiley Rein agrees. If "the up-to-date number is advantageous to my client, I'd advocate for [the] change."

Industry groups argued some IRIS toxicity levels were too stringent, and EPA wasn't transparent about how it reached their conclusions.

As a result, brownfield developers shy away from sites where dry cleaners operated because of the compliance headaches associated with TCE and perc remediation, for example.

#### EPA cracking down in some areas

EPA isn't "taking it easy" on all chemicals. The agency will issue regs for 1-bromopropane after finding unreasonable risks to most occupational uses.

New national emissions standards may be in the works for ethylene oxide due to elevated cancer levels near plants that use it.

TSCA was signed into law in 1976. The IRIS program started in 1985 to provide consensus opinion on the lifetime health effects of chemicals.

## 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.

### ■ CAN INSURANCE COMPANY DODGE COVERING EPA FINE?

"Denial of coverage?!" said Buck Flanagan, environmental manager, as he scanned an email from Jimmy Fresco, the company's insurance agent.

"You're not weaseling out of covering us this time, buddy boy," said Buck, dialing Fresco's office.

"Buck. Guess you got my email," said Jimmy. "I can walk you through it if you like."

"I don't need a tutorial on what insurance should and shouldn't cover, Jimmy," said Buck.

"Our policy covers EPA enforcement actions and you know it," Buck continued. "Why would we need insurance if it didn't?"

### Policy excludes punitive damages

"What the policy doesn't cover is punitive damages," said Jimmy.

"The exclusion is right there, in black and white. And you're looking at a hefty penalty for emissions violations now that EPA and the state are in cahoots."

"That's not the point," said Buck. "Unless I don't understand the definition of the word, punitive means punishment."

"EPA fines aren't punishment. This isn't a criminal matter. It's an emissions violation, and we're fighting it, to boot."

"And I wish you well," said Jimmy. "But unfortunately we can't cover this."

Buck's company took the insurer to court over the dispute.

Who won?

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



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*Environmental Compliance Alert* (ISSN 1069-0131), October 2, 2020, Vol. 28 No. 636, is published semi-monthly, except once in December (23 times a year).

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## Where other companies are stumbling over compliance

For more fines, visit: [www.EnvironmentalComplianceAlert.com/category/who-got-fined-why](http://www.EnvironmentalComplianceAlert.com/category/who-got-fined-why)

### **Mixing concrete? You might need a permit**

**Company:** Superior Concrete Materials, Washington DC.

**Business:** Ready-mix concrete batch plant.

**Penalty:** \$250,000.

**Reasons for penalty:** Superior operated its ready-mix concrete equipment for four years straight without obtaining an air permit. It also operated a reciprocating internal combustion engine emergency generator without pollution controls to stem formaldehyde emissions.

### **Neighbors reported smoke from plant: \$875K ticket**

**Company:** Sims Metal Management, Johnston, Rhode Island.

**Business:** Auto and appliance scrap metal yard.

**Penalty:** \$875,000.

**Reasons for penalty:** During its first seven years in business, Sims operated without an air permit. Neighbors complained repeatedly about plumes of smoke rising from a 7,000-horsepower shredder. EPA inspections estimated the scrap yard was emitting 50,000 tons per year of volatile organic compounds (VOCs), which made the company responsible for obtaining a Title V air permit.

**Note:** Sims must install an enclosure system that limits the amount of

*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.*

fugitive VOC emissions from the shredder while it's operating.

### **16 firms chipping in for hazardous waste cleanup**

**Companies:** 16 parties that did business at the Wells G&H Superfund site, including ConAgra, Gillette, Sherwin-Williams and BASF, Woburn, MA.

**Business:** Contaminated site in Massachusetts where hazardous waste and waste oil were buried.

**Penalty:** \$19.1 million.

**Reasons for penalty:** EPA designated the area a Superfund cleanup site in 1982. The companies are paying for additional work that needs to be done such as removing contaminated soil and monitoring groundwater for pollution.

**Note:** More sites are being added to the Superfund National Priorities List for remediation (see Page 8). Companies are paying a larger share of the costs accrued by EPA.

### **A lot of work ahead for town's wastewater plant**

**Municipality:** City of San Juan Bautista, California.

**Business:** Municipally owned wastewater treatment plant.

**Penalty:** Mandatory infrastructure improvements through a Clean Water Act settlement.

**Reasons for penalty:** The city didn't comply with basic requirements of its National Pollutant Discharge Elimination System (NPDES) permit. It was cited for:

- discharges of pollutants, primarily chlorides and sodium, in excess of permit limits
- failure to properly monitor and maintain records, and
- not adequately operating and maintaining its treatment system.

**Note:** The city has until the end of 2023 to make capital improvements

that will bring it into NPDES compliance. The treatment system currently has the capacity to treat half a million gallons per day of wastewater generated by a population of about 2,500, and three vegetable processors.

### **Solid or hazardous waste? Firm didn't have answers**

**Company:** Apex Blasting, Baytown, TX.

**Business:** Hydroblasting facility.

**Penalty:** \$39,000.

**Reasons for penalty:** Apex failed to make hazardous waste determinations on:

- hydroblasting wastewater
- filter media within the hydroblasting work area
- sludge in a rolloff box, and
- rubber waste in a concrete pad waste management unit.

**Note:** The Texas Commission on Environmental Quality also fined Apex for accepting rubber waste at an unauthorized facility.

### **Pesticide makes workers sick: FIFRA violation**

**Company:** Mercer Foods, Modesto, CA.

**Business:** Distributor of foods, fertilizers and pesticides.

**Penalty:** \$51,905

**Reasons for penalty:** Mercer violated the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) by not registering its usage of pseudomonas chlororaphis, an ingredient in pesticides used for organic farming.

**Note:** In 2019, five Mercer workers reported they were sent to urgent care after exhibiting exposure symptoms after handling the pesticide. Mercer has since certified its workers aren't using any FIFRA-regulated products.

## HEPA FILTERS

### Reopening? Put air quality focus here

As more and more businesses reopen after coronavirus shutdowns, attention may need to be paid to air quality ...

... indoor air quality, that is.

The National Institute of Standards and Technology (NIST) put out recommendations for heating, ventilation and air conditioning (HVAC) systems that'll put occupants at ease and breathing easier.

#### Shoot for the best filters

Not all HVAC filters are compatible with every building's system. Your facility manager or building contractor can double check what'll work.

High efficiency particulate air (HEPA) filters are the best on the market but they may restrict air flow.

If HEPA filters aren't an option at your facilities, consider filters rated minimum efficiency rating value (MERV) 13 or preferably 14.

## CLEAN AIR ACT

### Mixing chemicals triggers disaster, \$2 million in fines

■ DOZENS HOSPITALIZED BREATHING IN TOXIC CHLORINE FUMES

Any risk management and process safety plan worth its salt makes clear, accurate and up-to-date labeling of pipes and containers a must.

Otherwise you force people to guess what's what – and that can lead to disaster when you're dealing with dangerous chemicals.

#### Hospitals packed as fumes spread

Case in point: Two Kansas companies, Harcros Chemicals and Midwest Grain Products, each paid \$1 million fines after pleading guilty to negligence under the Clean Air Act (CAA).

In 2016, a Harcros truck driver delivered sulfuric acid to Midwest's

HEPA and MERV filters cost more money but typically don't require as frequent changeouts.

#### Ultraviolet can work wonders

More companies are turning to ultraviolet lamps to kill microbes lurking inside HVAC ducts.

Consider a UV-C air cleaner as a supplementary tool.

#### Boost outdoor ventilation

Public facilities like shopping malls are reducing the amount of air they recirculate and increasing the amount of outdoor air pulled in at intakes.

NIST recommends this step, along with 24/7 outdoor ventilation, for commercial buildings as well.

Also: Keep relative humidity levels between 40% and 60%.

Info: From Covington & Burling, [tinyurl.com/air636](http://tinyurl.com/air636)

facility, which manufactures distilled spirits and food ingredients.

The driver connected a hose to what he thought was a supply line for a sulfuric acid tank.

Only the line was connected to a tank of sodium hypochlorite.

The resulting toxic chlorine gas formed a green-yellow visible plume above the skies of Atchison. A strong smell of chlorine spread making people choke for air.

More than 140 community members, employees from both companies and emergency responders on the scene needed medical treatment. County officials ordered people to shelter in place and evacuated at-risk individuals.

Info: [kansascity.com/news/local/crime/article243039356.html](http://kansascity.com/news/local/crime/article243039356.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.*

### ■ EXCUSE FOR INCOMPLETE RECORDS ISN'T ACCEPTABLE

To: Regional Enforcement Director  
From: Inspector Bob Wiley  
Re: Continuous emissions monitoring

We've gone back and forth with ABC Industrials over its emissions shortcomings. The company made a fairly compelling argument for not deserving a citation.

But it's not a good enough argument in my opinion. That's why I recommend a \$46,000 penalty for particulate matter violations over the past year.

#### Big gaps smell a little fishy

Like more and more companies, ABC keeps track of pollutants via a continuous emissions monitoring system (CEMS).

The environmental manager couldn't provide me with complete records over a six-month period. There were half-weeks missing in their logs.

He blamed it on power outages that shut down the system and other technical "glitches," and not any oversight.

Their permit does allow for incomplete recordkeeping. CEMSs aren't foolproof, and we take that into consideration.

For the periods where they could show me data, the company complied with its permit. They argued that was a clear sign they have a handle on emissions.

I'm not so sure about that when all we could see was two-thirds of data from that time period because of these "holes."

We can't give that much leeway considering the pollution issues their industry's responsible for.

■ *Dramatized for effect. Based on a settlement between EPA and a Midwestern smelting plant.*

## UST RULE

### Great news about leaking storage tanks

Slowly but surely, state regulators and EPA are cracking down on leaking and non-compliant underground storage tanks (USTs).

As of last year, 34 states had successfully closed 90% of their leaking USTs. A handful of states still have a significant backlog that need to be addressed:

Connecticut, Florida, Illinois, Michigan, New Hampshire, New Jersey, New Mexico, Montana, South Carolina, Vermont, Washington and Wyoming.

Oil, gasoline and other petroleum products threaten groundwater, the source of drinking water for half of all Americans.

#### Compliance is a must

EPA tightened the UST rule in 2015 and set an October 2018 deadline for UST owners and operators in unauthorized states to comply. (Thirty-eight states and Puerto Rico have EPA-approved UST programs.)

Several states are late to update their UST programs with mandatory changes in the EPA rule. For example, West Virginia's UST program just got EPA approval.

If inspectors pay a visit, they'll be sure to check if facilities are doing periodic testing of:

- spill prevention equipment
- containment sumps, and
- overfill prevention equipment.

Any visible evidence of cracks, recent spills or persistent leaks will almost certainly result in citations. (*Search for "underground storage tank fines" at our website for examples.*)

So will failure to present documentation of inspections, including dates, notes and initials.

UST regs mandate that tanks be lined with or made of materials designed to hold specific fuels, certified by the manufacturer or third-party sources like Underwriters Laboratory.

Info: [epa.gov/ust](http://epa.gov/ust)

## DSW

### Which solid waste rule does your state follow?

RCRA PROGRAMS VARY STATE BY STATE ON SOLID WASTE PROTOCOLS

Did your state adopt EPA's industry-friendly definition of solid waste (DSW) rule finalized in 2015 – or the more industry-friendly revised DSW rule from 2018?

It pays to check if you don't know for sure. Both versions of the DSW rule contain exclusions for generators that control waste from cradle to grave; transfers to treatment, storage and disposal facilities; and legitimate remanufacturing uses.

A close look at the fine print shows there's less red tape in the 2018 rule, which was adopted in full by Alabama, Idaho, Hawaii, Kentucky, Missouri, New Jersey, North Carolina, Pennsylvania, South

Carolina, South Dakota and Utah. Click on the EPA link below for a map of DSW compliance in all 50 states.

#### Hazwaste exemptions have grown

EPA has exempted a surprising number of materials from hazardous waste classification over the years, much to the chagrin of plenty of environmental groups!

Examples include mining overburden, cement kiln dust, trivalent chromium waste, arsenic-treated wood, petroleum-contaminated wood from underground storage tanks, spent chlorofluorocarbon refrigerants, used oil distillation bottoms and coal combustion residuals.

Info: [epa.gov/hw/where-2018-definition-solid-waste-rule-effect](http://epa.gov/hw/where-2018-definition-solid-waste-rule-effect)

## TRENDS TO WATCH

### AIR TOXICS DAMAGE TO GULF COAST IS SKETCHY

Numerous chemical and oil & gas facilities along the Gulf Coast shut down quickly days before Hurricane Laura struck.

The impact to air quality will be difficult to gauge because monitors were shut down by Louisiana and Texas regulators.

Oil & gas facilities accounting for 13% of U.S. energy output shut down, according to the Department of Energy.

National Public Radio reported Texas facilities released more than four million pounds of extra pollutants in the days before Laura made landfall.

The good news is Laura didn't produce close to the damage that Hurricane Harvey did in 2017. Federal and state regulators increased inspections and enforcement of Risk Management and Process Safety regulated facilities since Harvey.

Info: [tinyurl.com/hurricanelaura636](http://tinyurl.com/hurricanelaura636)

### CAL'S ENERGY DEMAND OUTWEIGHS SUPPLY

Wildfires and windstorms are triggering rolling blackouts in California and putting more pressure on Agriculture and smaller businesses trying to get back on their feet after COVID-19.

The CA Independent System Operator that runs most of the state's electric grid expected a 4,000-megawatt supply shortage. The utility set rolling blackouts for the first time since 2001.

Industry groups and some state lawmakers are calling for fewer restrictions on oil drillers, construction of new dams and a renewed commitment to nuclear power plants to increase power reliability.

Info: [wsj.com/articles/california-faces-new-risk-of-blackouts-this-week-11599433644](http://wsj.com/articles/california-faces-new-risk-of-blackouts-this-week-11599433644)

## POWER PLANTS

### MATS reporting relaxed for utilities

Coal groups are suing for a repeal of Mercury and Air Toxics Standards (MATS) for power plants.

*(Search for “MATS coal” at our website for a timeline.)*

The final version of MATS will be decided by the courts. In the meantime, EPA is relaxing companies’ reporting duties as it’s done for a range of industries recently.

#### 1 system better than 2

EPA is eliminating one of two MATS electronic reporting systems. Using one system – the ECMPS Client Tool exclusively – will save compliance professionals time.

Also: Utilities won’t have to report pollutants separately, and technical improvements were made so that power plants will have better access to data.

Info: RIN 2060-AU70

### Financial disclosures get an overhaul: What’s new

The U.S. Securities and Exchange Commission (SEC) updated its public

disclosure policies for the first time in 30 years for companies traded on the stock market.

Some of the changes relate directly to environmental compliance and violations that can hurt companies’ reputations with investors.

#### Fines above \$300K reportable

Item 103 in Regulation S-K required publicly-traded companies to disclose environmental fines and proceedings above \$100,000.

The SEC reset the threshold to \$300,000 to reflect cost-of-living increases since the 1990s.

The threshold can be raised as high as \$1 million or 1% of a company’s assets, whichever figure is lower, in certain cases.

Also: Companies may now cross-reference and include hyperlinks within disclosure statements to avoid duplicative reporting of the same compliance concern.

Info: [natlawreview.com/article/sec-adopts-amendments-to-modernize-disclosures-under-regulation-s-k](http://natlawreview.com/article/sec-adopts-amendments-to-modernize-disclosures-under-regulation-s-k)

## WHERE TO GET HELP

### ■ EPA TIPS FOR TESTING SMOKESTACK OUTPUT

Before stack testing, it may be worth checking out general recommendations from EPA.

EPA’s website addresses:

- best time frames for testing
- whether your smokestack is eligible for a waiver
- representative testing conditions (wind is a key factor that can skew results), and
- stoppages and postponements.

This stack test guidance is a free download about 20 pages long.

Info: [epa.gov/sites/production/files/2013-09/documents/stacktesting\\_1.pdf](http://epa.gov/sites/production/files/2013-09/documents/stacktesting_1.pdf)

### ■ BORROW SUCCESSFUL ENERGY SAVING IDEAS HERE

For some excellent electricity and water savings projects, check out the Department of Energy’s Better Buildings Solution Center.

There are over 1,000 case studies of buildings that slashed energy usage, some more than 30%, and now make better use of hourly/daily energy data.

Info: [betterbuildingsolutioncenter.energy.gov](http://betterbuildingsolutioncenter.energy.gov)

## SHARPEN YOUR JUDGMENT – THE DECISION

*(See case on Page 2)*

The company won. The court ruled the insurance company’s exclusion didn’t apply, and it was obligated to indemnify the company.

The insurer argued that a punitive damages exclusion in the contract meant it didn’t have to cover the company’s costs from an EPA enforcement action.

The court considered two questions:

1. Are civil penalties under the Clean Air Act (CAA) punitive?, and
2. If the civil penalties aren’t punitive, did the insurer owe a duty to cover the company?

The court looked at the history of CAA penalties and ruled they’re a deterrent and punishment, but not purely a

punishment. (The court didn’t note a third purpose for CAA fines – funding pollution-prevention efforts.)

Since the EPA penalty wasn’t punitive, the insurer didn’t have a leg to stand on by denying coverage.

### ■ LESSON LEARNED: IF AN EXCLUSION ISN’T CRYSTAL-CLEAR, FIGHT AN INSURANCE DENIAL

You can count on insurance companies coming up with ways to not cover a claim!

This company was smart by sticking to its guns and forcing the issue in court.

Bottom line: Punitive damage exemptions don’t apply to CAA civil penalties.

Cite: *Louisiana Generating v. Illinois Union Insurance*, U.S. District Court, Middle Dist. (LA), No. 10-516-JJB-SCR. This case has been dramatized for effect.

## RENEWABLE ENERGY

### Study: Save birds with black wind blades

What's the answer to reducing bird kills by wind farms? To quote the Rolling Stones, paint it black.

The Smola wind farm on the Norwegian coast reported a 70% decline in bird deaths after painting one of three blades black.

#### Red may do the trick too

Researchers who assisted the wind farm aren't sure if other colors such as red would work as effectively as black for deterring bird flocks.

The Smola wind farm accidentally kills between six to nine bald eagles every year.

**Info:** [bbc.com/news/science-environment-53909825](http://bbc.com/news/science-environment-53909825)

### Recycling & disposal of solar panels a big test

The next wave of electronic waste on the horizon will be solar panels that are reaching the end of their useful lives.

And we're talking upwards of 78 million metric tons of e-waste by the year 2050 according to the International Renewable Energy Agency.

Treatment facilities and landfills will need guidance on how to handle this coming glut.

For now, only Washington state has regulations for to handle spent solar panels.

#### Innards still very valuable

In addition to the megatons of waste, manufacturing of solar panels will continue to grow.

Reason: Several energy forecasters predict solar and wind technologies will soon be cheaper than coal, making solar power particularly attractive to China, Germany, Japan and India.

The good news: Photovoltaic solar panels contain valuable materials like silver, silicon, aluminum and copper that can be recovered and reused in new products.

**Info:** [irena.org/documentdownload/loads/publications/irena\\_ieapvps\\_end-of-life\\_solar\\_pv\\_panels\\_2016.pdf](http://irena.org/documentdownload/loads/publications/irena_ieapvps_end-of-life_solar_pv_panels_2016.pdf)

### EPA eases reporting duties for heavy industry

Heavy industrial sectors may gain a break from how often they have to report excess emissions.

EPA is giving states the option of reducing excess emission reporting from every quarter to twice per year at six-month intervals.

State implementation plans could be loosened for:

- fossil fuel-fired steam generators
- fluid bed catalytic cracking unit catalyst regenerators at petroleum refineries
- sulfuric acid plants, and
- nitric acid plants.

Most facilities in these sectors monitor and report using continuous emission reporting systems.

**Info:** 85 FR 49,596

### Hydropower boost coming from Capitol Hill?

Small hydroelectric dams would be exempt from licensing requirements so long as they pose no threat to endangered species, under a congressional bill.

The *Hydropower Clean Energy Future Act* would also put the Federal Energy Regulatory Commission in charge of new dam project authorizations and environmental impact studies.

**Info:** [congress.gov/bill/116th-congress/house-bill/7410](http://congress.gov/bill/116th-congress/house-bill/7410)

## REAL PROBLEMS/SOLUTIONS

### ■ GOING WITH A VENDOR FOR SOME SAMPLING PAYS OFF

*(From an environmental director in Seattle, name and company withheld by request)*

At one time, we handled all stormwater and soil sampling in house. We had a handle on what our limits were and exactly when we should monitor and send in results.

But after awhile, handling stormwater became a full-time job.

For one thing, it's tricky timing when you should take samples. Results immediately following heavy rains aren't always accurate, but sometimes that was when we needed to do our tests.

The other big time-waster was getting feedback from the state. They were helpful, but often I'd waste too much time on hold or wait a day or two for a return call.

#### Time to get outside help

Testing a hunch, I did a trial run with a vendor. It cost more up front, but it's ended up saving me a ton of time and headaches.

I'm amazed how quickly the vendor gets info back from the state too. They practically badger the regulator for the answers we need.

Since we rarely have stormwater problems, it's freed me up for other critical issues.

## ▼ 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.*

**"**Knowing about all kinds of regulatory changes is critical. ECA provides a good general overview of all areas and rules."**"**

**David Sample**  
Environmental Specialist  
Ajinomoto North America

## Air, Water & Waste regs that affect your operations

**H**ere'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](http://www.EnvironmentalComplianceAlert.com/category/update-on-federal-rules)

### OSHA GUIDANCE

The Department of Labor (DOL) is scaling back the kinds of guidance documents it promulgates to comply with one of President Trump's executive orders.

The Promoting Regulatory Openness (PRO) through Good Guidance Rule mandates that:

- DOL agencies such as OSHA provide public notice and a comment period for significant guidance involving impacts greater than \$100 million
- all guidance be made available to the public in a searchable database ([dol.gov/guidance](http://dol.gov/guidance))
- the public is able to petition the DOL on issues related to its guidance, and
- OSHA and other DOL agencies can't issue guidance that may lead to "potentially unfair conduct."

The DOL also reviewed past guidance it's issued and rescinded nearly 3,200 documents.

**Info:** RIN 1290-AA40

### SUPERFUND CLEANUPS

Six contaminated sites were added to the Superfund law National Priorities List (NPL) for remediation and cleanups.

The newly listed NPL sites are:

- Blades groundwater plume in Blades, **Delaware**
- Clearwater Finishing facility in **South Carolina**
- Highway 100 and County Road 3 groundwater plume in Saint Louis

Park and Edina, **Minnesota**

- Henryetta Iron and Metal in **Oklahoma**
- Caney Residential Yards in **Kansas**, and
- Orange County North Basin in **California**.

Four other sites are being considered for the NPL list (EPA is reviewing their petitions):

- Pioneer Metal Finishing in Franklinville, **New Jersey**
- Northwest Odessa groundwater in Odessa, **Texas**
- Cherokee Zinc smelting plant in Wier, **KS**, and
- Billings PCE in **Montana**.

While EPA may find contamination on its own, the agency typically initiates Superfund inspections after states or citizens ask for help.

Before being added to the NPL, a site must meet listing requirements and be proposed in the *FR* with a 60-day public comment period.

**Info:** [epa.gov/superfund](http://epa.gov/superfund)

### ARMY CORPS PERMITS

The U.S. Army Corps of Engineers proposed two new Nationwide Permits (NWP) for utility line projects.

NWP C: Electric Utility Line and Telecommunications Activities and NWP D: Utility Line Activities for Water and Other Substances would give industry and federal regulators more options to choose from.

Right now, only NWP 12 is used for utility lines. The Corps intends to restrict use of NWP 12 to oil and natural gas projects if the two proposed permits are finalized.

Once a project is approved for an NWP, the companies involved don't have to wait for public notice and comments, impact review under the National Environmental Policy Act, or state agency review under the Clean Water Act.

*(For info on a proposed change to state denials of permits, go to our website and search for "Clean Water Act Section 401.")*

**Info:** [tinyurl.com/nationwidepermits636](http://tinyurl.com/nationwidepermits636)

### POWER PLANT WASTEWATER

At last! Effluent limitation guidelines (ELGs) for steam electric power plants are finally on the books.

EPA's proposed and yanked numerous changes to wastewater requirements for this sector going back seven years.

For flue gas desulfurization (FGD) wastewater, utilities must monitor and control for mercury, arsenic, selenium, and nitrate/nitrite as nitrogen from now on.

And for bottom ash (BA) transport water, the final rule requires high recycle rate systems and allows for a site-specific discharge (aka purge water) which cannot exceed 10% of total BA transport water system volume.

FGD and BA aren't the only kinds of wastewater streams created by steam electric utilities, but EPA isn't addressing other kinds of effluent.

The reg sets ELGs for units, low utilization units and units that will cease coal combustion by 2028.

High flow facilities and low utilization boilers face new limitations for mercury and arsenic in their FGD discharges.

Low utilization boilers must limit total suspended solids (TSS) and implement a best management practices plan for BA transport water.

Boilers that stop using coal by 2028 need to follow ELGs for TSS in both FGD wastewater and BA transport water.

EPA nixed multiple requirements in a 2015 rule to reduce compliance costs by \$140 million annually.

**Info:** [epa.gov/eg/2020-steam-electric-reconsideration-rule](http://epa.gov/eg/2020-steam-electric-reconsideration-rule)