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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)).

## Biden EPA will make climate change a priority again

### ■ *Early prediction on what industry can expect*

**H**ow much regulatory change should industry expect under the Biden administration?

One thing is for certain: The oil & gas and coal sectors shouldn't expect rollbacks of air toxics, greenhouse gas (GHG) and wastewater rules enacted during the past four years.

The Biden EPA will try reversing some Trump team rollbacks, such as the methane rule for oil & gas wells. EPA rolled back New Source Performance Standards for volatile organic compounds and methane from oil & gas facilities, but appeals by environmental groups and states like **California** are just getting underway.

Also: Recent changes to the National Environmental Policy Act (NEPA) could get the ax. The Trump administration removed climate change from the NEPA permitting process to help spur more drilling and development on federal lands.

We predict EPA won't try reviving the Clean Power Plan (CPP) which set carbon reduction goals for all 50 states' power plants.

The Supreme Court stayed CPP in 2016 and would likely do so again. Several states that supported CPP are staying the course and reducing their reliance on coal

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

## TSCA

### **Chemical reporting deadline extended until Jan. 29**

#### ■ STILL TIME TO REPORT WHICH CHEMICALS INDUSTRY'S USING

**I**n light of the coronavirus pandemic depleting workforces at many companies, EPA is extending a very important chemical reporting deadline.

Chemical manufacturers and importers now have until January 20 to report listed toxic substances that are still in commerce.

The previous deadline to comply with the Chemical Data Reporting (CDR) rule was November 30, 2020.

To continue manufacturing, processing or importing 25,000 pounds or more of a listed toxic

substance during a single year, companies must confirm the chemical is still in use every four years to maintain certification.

Subsequent reporting dates will come in 2024, 2028 and so on.

#### **Where you need to report**

Need help with reporting? Call the Toxic Substances Control Act reporting hotline at (202) 554-1404.

If you haven't registered yet, you can do so at the electronic CDR web reporting portal listed below.

**Info:** [epa.gov/chemical-data-reporting](http://epa.gov/chemical-data-reporting)

## PESTICIDES

### \$7M FIFRA fine a warning to importers

Companies that import chemicals, products and materials need to ensure they comply with Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) regs.

A nearly \$7 million FIFRA fine against Electrolux Home Products is all the proof needed.

Electrolux imported approximately 420,000 Frigidaire brand dehumidifiers and air conditioners containing filters incorporating an unregistered nanosilver and that also were labeled with pesticidal claims.

The problem? EPA hasn't approved any nanosilver pesticide products for home appliances to disinfect the ambient air or protect the health of the user to date.

In fact, the only kinds of products incorporating nanosilvers which are FIFRA-certified are textile products (nanosilvers protect clothing from mold and bacteria that cause odors, deterioration and discoloration).

#### Working overtime to fix errors

After EPA learned of the products being imported, it worked with U.S.

Customs and Border Protection to prevent the dehumidifiers and ACs from going into commerce.

In addition to paying \$6,991,400 in fines, Electrolux has replaced the filters manufactured with nanosilver and removed the online and on-box pesticidal claims.

So far Electrolux has returned over 500,000 air conditioners and dehumidifiers to FIFRA compliance.

Info: [tinyurl.com/natlawreviewfifra641](http://tinyurl.com/natlawreviewfifra641)

#### Biden ...

*(continued from Page 1)*

power and growing their renewable energy sources.

#### How low can Joe go on GHGs?

The Biden campaign set an ambitious zero-emissions goal for the energy sector by 2035. To get there would require enormous investments in carbon capture & sequestration, a boom in wind, hydro and solar power production, and technologies to curtail carbon emissions.

#### Oil sector bracing for change

Biden can count on steady political pressure from his own party members to rein in the fossil fuel industry.

The president-elect didn't support the Green New Deal championed by Senator Bernie Sanders (Vermont) and Congresswoman Alexandria Ocasio-Cortez (New York) for much of the campaign.

But during the final presidential debate, when asked if he would "transition" from the oil industry, Biden said he would.

One early move to come: Biden promised the U.S. would join the Paris Climate Agreement (*for related info, see bottom of Page 5*).

## 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.*

### ■ MUST INSURER PAY FOR FIRM'S REMEDIATION STUDY?

Environmental Manager Buck Flanagan counted down from 100 to zero slowly to calm his anger. When he was finally done, he dialed Jimmy Fresco, his company's insurance agent who'd been avoiding him for days.

"This is Jimmy."

"Glad to hear you're alive," said Buck. "I was about to call the police and file a missing person's report."

"That's funny," said Jimmy. "I've been very busy. Clients with a lot of tricky problems."

"Now we've reviewed our initial decision on the remediation study your company did. Nothing's changed," said Jimmy.

"Re-read your policy if you don't believe me. We can't pay for any feasibility studies unless the state or the feds or the courts – or a combination of the above – ordered a cleanup."

### Insurer: 'Fine print on our side'

"That's a dodge and you know it," said Buck. "There's no way a cleanup order wasn't coming."

"Why drag it out in court for years? That would cost us, the affected parties and your insurance company a ton in legal costs."

"Be that as it may," said Jimmy, "remediation studies are only compensable if there's an enforcement or cleanup action."

"Then I guess we'll be seeing you in court," said Buck.

Buck's company sued to get the insurer to pay.

Did it win?

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



EDITOR-IN-CHIEF: SCOTT BALL  
[sball@SafetyNewsAlert.com](mailto:sball@SafetyNewsAlert.com)

MANAGING EDITOR: FRED HOSIER  
PRODUCTION EDITOR: JEN ERB  
EDITORIAL DIRECTOR: CURT BROWN

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## Where other companies are stumbling over compliance

### **Oil spill protections were shoddy at multiple sites**

**Company:** Koppers, Follansbee and Green Spring, West Virginia, and Clairton, Pennsylvania.

**Business:** Carbon materials and chemicals, railroad products and services, and performance chemicals.

**Penalty:** \$1 million.

**Reasons for penalty:** Koppers was cited for multiple violations of the Clean Water Act's Spill Prevention, Control and Countermeasure (SPCC) rule, Facility Response Plan (FRP) requirements and West Virginia's aboveground storage tank guidelines. Inspectors documented deteriorated secondary containment around chemical tanks, structural deficiencies in tanks that could lead to a catastrophic spill, and a lack of tank inspections.

**Note:** The consent decree requires Koppers to conduct integrity testing of specified tanks or take them out of service, and come into compliance immediately with SPCC and FRP regs.

### **Hazwaste slips through cracks at treatment site**

**Company:** Safety-Kleen Systems, Los Angeles, California.

**Business:** Hazardous waste treatment, storage and disposal facility (TSDF).

**Penalty:** \$102,700.

**Reasons for penalty:** Safety-Kleen failed to do hazwaste determinations for all solid wastes. The company was cited under the Resource Conservation and Recovery Act.

*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.*

EPA inspected the facility as part of its National Compliance Initiative to reduce air toxic emissions from hazwaste TSDFs.

**Note:** Safety-Kleen will begin testing most of its customers' containers for perchloroethylene, a likely human carcinogen, and perform additional sampling of waste streams.

### **FIFRA label slip-ups get no mercy from EPA cops**

**Company:** Chemco Corporation, Lawrence, Massachusetts.

**Business:** Pesticide production.

**Penalty:** \$56,543.

**Reasons for penalty:** Chemco sold at least three pesticides that were either unregistered, adulterated or mislabeled from 2018 to 2019. The products didn't conform with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

### **Animal waste ran off site for years: \$8.1M penalty**

**Company:** Churchill Downs Louisiana Horseracing (CD), New Orleans.

**Business:** Horse race track and stables.

**Penalty:** \$2.7 million fine and upgrades totaling \$5.6 million.

**Reasons for penalty:** Since 2012, the racetrack discharged untreated process wastewater containing horse manure and urine into the New Orleans municipal separate storm sewer system, which leads to the London Avenue Canal, Lake Pontchartrain, the Mississippi River and ultimately the Gulf of Mexico. CD's discharge permit prohibits any discharge unless there is significant rain (10 inches or more in a 24-hour period).

**Note:** CD's fair grounds are a large capacity Concentrated Animal Feeding Operation with up to 1,800 horses on site. As part of its settlement, CD will implement best management practices and

construction projects to prevent unauthorized discharges, and perform site-specific sampling, monitoring and hydraulic modeling.

### **Fugitive HAPs took its toll on local air quality**

**Company:** Hydrite Chemical, Cottage Grove, Wisconsin.

**Business:** Chemical blending and manufacturing facility that manages and processes spent solvents.

**Penalty:** \$480,500.

**Reasons for penalty:** Hydrite exceeded air permit limits by not monitoring for fugitive emissions of hazardous air pollutants (HAPs) through its processing and storage of solvents.

**Note:** Hydrite must conduct a leak detection and repair (LDAR) audit and implement training procedures and corrective actions. Following the LDAR audit, the facility must monitor and calculate emissions so it complies with HAP limits. Spent solvents may contain one or more kinds of heavy metals like lead, nickel and arsenic.

### **Vehicle imports must conform with EPA regs**

**Company:** DDM Imports, Airway Heights, Washington.

**Business:** Truck importer.

**Penalty:** \$65,000.

**Reasons for penalty:** DDM imported three diesel pickup trucks from Canada that lacked required emission controls.

**Note:** Customs officers inspected them at the U.S.-Canada border in Eastport, Idaho and found wires and connections between emissions sensors and controls and the vehicles' onboard diagnostics systems had been cut on two of the trucks. Emission control devices were removed from the third truck.

## VOLATILE ORGANIC COMPOUNDS

### Emission flares are due for tougher regs

Environmental groups are pressing EPA hard to regulate industrial flaring for several industrial sectors.

But it's not oil refineries and natural gas wells that are in groups' crosshairs this time.

A lawsuit by Environmental Integrity Group (EIG) and nine other nonprofits could mean trouble for:

- chemical and petrochemical manufacturers
- natural gas processors
- solid waste landfills, and
- solid and hazardous waste incinerators and treatment facilities.

#### Flares not hitting 98% efficiency

EIP and partners will be sure to use EPA's own studies to win its Clean Air Act (CAA) claim in federal court.

For example, EPA found that ethylene flares which are supposed to destroy 98% of volatile organic compounds and hazardous air

pollutants in theory are nevertheless operating at 86% to 94% efficiency in practice.

Not to mention, the feds and state agencies, notably in Texas and Louisiana, have pursued numerous

### Flaring reviews are years overdue.

enforcement cases based on watchdog groups' evidence of industrial sites flaring for considerably longer than their air permits allow.

EPA has updated flaring regs for refineries and ethylene sites but hasn't reviewed policies for other industrial sectors since the 1990s.

The CAA requires residual risk and technology reviews every eight years.

Info: [tinyurl.com/flaring641](http://tinyurl.com/flaring641)

## PROCESS SAFETY

### Lied about chemical safety plan – jail awaits!

- PSM PLAN WOULD'VE COST \$20K – SCHEME WILL HAUNT FOR LIFE

Not having a risk plan or process safety protocols in place when you handle highly hazardous chemicals is dumb.

Even dumber than that is lying to inspectors about not having a plan!

Case in point: Rean Brooks, former manager at Texas Packing in San Angelo, pleaded guilty to concealing knowledge of a felony and now faces up to three years in prison.

#### Disastrous decision backfires

In 2018, Texas Packing was operating with 16,500 pounds of anhydrous ammonia – more than 6,000 pounds over the Process Safety Management (PSM) program

threshold required by OSHA.

The issue was reported to OSHA, and an inspector met with Brooks and others at the meat packing plant. It would cost the company about \$20,000 for a PSM plan and controls.

To avoid paying the bill, an employee created false documents to make OSHA believe the plant was in compliance. According to the U.S. Attorney's Office for the Northern District of Texas, Brooks gave the fake docs to an OSHA inspector.

OSHA issued the company a \$615,000 fine for lacking a PSM plan and related machine guarding and fall protection infractions.

Brooks will hope for leniency from the sentencing judge. He's also on the hook for \$250,000 in fines.

## 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.*

### ■ ILLEGAL DREDGING NETS \$30,000 PENALTY

To: Regional Enforcement Director  
From: Inspector Bob Wiley  
Re: CWA

We got a tip from the Army Corps of Engineers recently about a Clean Water Act (CWA) violation.

The Corps had been keeping tabs on a dam project upstream of Miller Creek, about 75 miles from our office.

They discovered someone had excavated tons of dirt and gravel and discharged it into a stream.

The reason I'm saying "someone" is because the Corps never got to the bottom of who did it, when or under whose orders.

As you can imagine, there was a long list of contractors, subcontractors and consultants working on a project like that.

#### 'Where's your permit?'

The Corps called us in for assistance. We didn't have much luck connecting the dots either.

What we did learn is that the property owner, John Williams, had final say over dredging and all other activities. Liability lies with him.

But Williams didn't comply with basic tenets of the CWA. We learned he never applied for a Section 404 dredge-and-fill permit.

I explained the tributary was protected under the CWA because it flows into Miller Creek.

He still didn't admit to doing the dredging work, but Williams didn't have an explanation for who could've done it.

Williams must restore the tributary under our orders. I also recommend a \$30,000 fine.

- *Dramatized for effect. Based on a settlement between EPA and a Pacific Northwest property owner.*

## SOLID WASTE

### Bans on single-use plastic catching on

Consumers, retailers and manufacturers are reeling from state-level solid waste restrictions and bans in the pipeline.

Single-use (SU) plastic bags and straws aren't the only items regulators are targeting – paper bags, textiles and mattresses are on the chopping block in some states too.

Here's a rundown of what's ahead:

#### Garden State goes all-in

New Jersey is phasing out plastic and paper bags, nudging the buying public toward reusing bags to shop for groceries and the like.

Governor Phil Murphy (D) signed a bill that bans “SU plastic carryout bags, polystyrene foam food service products, SU plastic straws ... and SU paper carryout bags [which] use as much or more energy and resources to manufacture and transport than SU plastic carryout bags and contribute to harmful air emissions.”

New Jersey's ban, which affects

restaurants, convenience stores, food trucks, movie theaters and grocery stores that are 2,500 square feet or larger, goes into effect in May 2022.

Info: [tinyurl.com/njbagban641](http://tinyurl.com/njbagban641)

#### No more clothing in the dump

The Massachusetts Department of Environmental Protection is proposing a landfill and incinerator ban on mattresses and textiles.

As with previous Bay State solid waste bans, the goal is to increase recycling of materials.

Info: [mass.gov/guides/massdep-waste-disposal-bans](http://mass.gov/guides/massdep-waste-disposal-bans)

#### Fines coming for bag violators

New York's long-awaited ban on SU carryout plastic bags is underway. State regulators started enforcing the law in October.

Businesses will get a warning first and can be fined for second offenses.

Info: [dec.ny.gov/press/121415.html](http://dec.ny.gov/press/121415.html)

## WOTUS

### Trump EPA waters rule will be tough to overturn

■ CONSERVATIVE SUPREME COURT WILL HAVE FINAL SAY ON REACH

Clean water groups supported Joe Biden in part because the Democrat candidate said he would overturn the Navigable Waters Protection (NWP) rule.

But a Hail Mary to revive the Obama administration's Waters of the U.S. (WOTUS) rule will face a steep uphill battle.

Reason: The Supreme Court under Chief Justice John Roberts has struck down a number of regulatory moves critics describe as overreach.

#### 'Ambitious' regs in trouble

That's unlikely to change with conservative Amy Coney Barrett

replacing liberal Justice Ruth Bader Ginsburg who died last fall.

Going forward, industry can count on five or six reliable votes against federal rulemaking.

In addition, the High Court is expected to rule on the limits of the Clean Water Act as WOTUS and NWP appeals are pending.

WOTUS expanded the scope of federally protected sources by including irrigation ditches, intermittent and ephemeral streams and more wetlands.

Agriculture and other industry groups mounted a “Ditch the Rule” campaign to stop it. Groups cited permitting headaches for farms, ranches, real estate development, and oil & gas projects.

## TRENDS TO WATCH

### ■ SELF-AUDIT OPTION FOR TEXAS OIL & GAS FACILITIES

Oil & gas operations in Texas's Permian Basin can avoid air quality fines by participating in the Find It and Fix It initiative.

Companies have until January 31 to enroll in the self-audit program announced by the Texas Commission on Environmental Quality (TCEQ).

A compliance plan must identify actions that will be taken to bring a facility into compliance with TCEQ air rules no later than 180 days after submitting an application.

Caveat: Find It and Fix It only applies to air permit programs within TCEQ's jurisdiction, but not the Texas Railroad Commission, which regulates most flaring and venting activities by oil & gas sites.

Facilities that participate can agree to a Permian Basin compliance agreement with TCEQ's Enforcement Division by emailing staff at [PermianEE@tceq.texas.gov](mailto:PermianEE@tceq.texas.gov).

Note: TCEQ is planning to increase fines for environmental noncompliance (search for “Texas fines bigger” at our website for more info).

Info: [tceq.texas.gov/assistance/industry/oil-and-gas/permian-find-and-fix-initiative](http://tceq.texas.gov/assistance/industry/oil-and-gas/permian-find-and-fix-initiative)

### ■ RCRA PROGRAMS GET MAKEOVER IN ARKANSAS

Add Arkansas to the list of states that have implemented the Hazardous Waste Generator Improvements (HWGI) rule.

The AR Department of Environmental Quality (DEQ) adopted HWGI and four other Resource Conservation and Recovery Act rule updates to Regulation 23.

HWGI reclassifies facilities as large, small, conditionally exempt small and non hazwaste generators. Biennial reporting requirements are still in effect.

If you didn't receive an email from DEQ about changes, contact the agency at (501) 682-0744.

## AIR PERMITS

### Major-source permit change on fast track

Major air sources that reduce emissions can apply for area source classification under a final rule that goes into effect January 21.

The Trump EPA made ending the “once-in, always-in” policy a priority (*search for “once-in, always-in” at our website for a timeline of the air policy change*).

Industry groups argued the policy locked in major sources to more expensive permits and control technologies, thereby dissuading companies from trying to slash pollution and achieve area status.

Info: 85 FR 73,854

### Navigable waters rule effective in 49 states

Colorado is the only state where the Navigable Waters Protection (NWP) rule isn’t in effect because of a court injunction (*see bottom, Page 5, for a related story*).

The CO Department of Public Health and Environment released a white paper explaining how the legal impasse will affect Clean Water Act

Sections 402 and 404 permits as well as regulation of discharges to state waters. NWP went into effect in all other 49 states on June 22.

Info: [tinyurl.com/coloradowater641](http://tinyurl.com/coloradowater641)

### Bisphenol A products need Prop 65 warning

Bisphenol A (BPA) is now listed as a toxic substance under California’s Proposition 65 list.

The CA Court of Appeal, Third Appellate District (Sacramento), upheld the Office of Environmental Health Hazard Assessment’s decision to list BPA as a reproductive toxicant.

Prop 65 forces manufacturers and retailers to label products or shelves with health warnings about cancer or reproductive harm.

BPA is used in numerous products such as polycarbonate plastics, epoxy resins and packaging.

(*Search for “Prop 65” at our website for related info.*)

Info: [courts.ca.gov/opinions/documents/C079078.PDF](http://courts.ca.gov/opinions/documents/C079078.PDF)

## WHERE TO GET HELP

### ■ DON’T BE LATE TO REPORT: FORM R’S ARE DUE MARCH 1

Set a reminder! The annual Tier II chemical reporting deadline is March 1.

Potential fines keep climbing higher courtesy of inflationary adjustments mandated by Congress.

The maximum Tier II penalty (under Section 312 of EPCRA aka Emergency Planning and Community Right-to-Know Act) is now \$58,328!

### Check reportable substances

Keep in mind Tier II reporting responsibilities aren’t the same as Toxics Release Inventory duties (deadline: July 1).

- You need to file a Form R if you store 10,000 pounds or more of a listed chemical for one day in calendar year 2020.
- Does your substance have a safety data sheet assigned to it? If so, it’s reportable.
- Always check the EPCRA chemical “list of lists” to see what you need to file Form Rs for (*check link below*).

Info: [epa.gov/epcra/consolidated-list-lists-under-epcracerclacaa-ss112r-august-2020-version](http://epa.gov/epcra/consolidated-list-lists-under-epcracerclacaa-ss112r-august-2020-version)

## SHARPEN YOUR JUDGMENT – THE DECISION

(See case on Page 2)

Yes, Buck’s company won.

The court ordered the insurer to pay for the remedial investigation and feasibility study (RI/FS).

The insurer tried arguing its policy only covered damages or costs if they were part of a formal enforcement or cleanup action.

Since the company voluntarily paid for the RI/FS – in return for EPA not issuing a cleanup order – there was no formal order, the insurer said.

That didn’t wash with the court, for two reasons:

1. The RI/FS met standards set by the Superfund law’s contingency plan for contaminated sites, and

2. Buck’s company acted in good faith by not waiting for a corrective action from EPA and essentially grabbing the bull by the horns.

Decision: The insurer had to pay the claim to honor terms of the contract.

### ■ ANALYSIS: UNLESS A CONTRACT CLEARLY EXCLUDES COVERAGE, INSURER’S ON THE HOOK

Insurance companies try writing all kinds of exclusions and technicalities into contracts to avoid coverage.

In general, “damages” includes the costs of studying how to best clean up a contaminated site in insurance policies – and the courts are pretty consistent in ruling for facilities in disputes like this one.

Cite: *Teck Metals v. Certain Underwriters at Lloyds of London*, U.S. District Court, Eastern Dist., WA, Case No. 05-41. This case has been dramatized for effect.

## COVID-19

### Do employees need coronavirus vaccine?

Pfizer's announcement about progress with its COVID-19 vaccine means facilities will be asking, "Can we – and should we – mandate that employees get vaccinated?"

The short answer is, you can. Whether you should do so depends on a number of factors.

#### Plenty to consider before acting

Employment law firm Ogletree Deakins suggests employers take these steps before the vaccine arrives:

- Consider if a mandatory policy is necessary or if you'd be better off "strongly encouraging" employees to get a COVID-19 vaccine.
- Consider confining a mandatory vaccine policy to high-risk locales, departments or worksites.
- Prepare to review numerous requests for accommodations.
- Find out if it's possible to provide the vaccinations at no or little cost to employees at convenient locations during normal working hours.
- Plan to negotiate with any unions regarding the policy.
- Review state workers' comp laws and your insurance policy regarding ramifications of adverse employee physical reactions to the vaccine.
- Keep up to date on new laws, regulations and guidance from federal and state authorities.

Info: [ogletree.com/insights](http://ogletree.com/insights)

### Paper & pulp mills can cut carbon footprint

Georgia-Pacific's Leaf River cellulose mill in New Augusta, Mississippi became the first pulp mill to earn EPA Energy Star certification.

By investing in improvements and changing how it uses energy throughout the plant, Leaf River generates enough power on site to operate at normal levels without

having to purchase outside electricity.

Paper and pulp mills are among the most regulated sectors for air toxics, greenhouse gases and wastewater discharges.

Other paper plants may want to adapt Leaf River's strategies to gain Energy Star status.

Info: [gppackaging.com/sustainability](http://gppackaging.com/sustainability)

### Recycling is volatile: What's moving today?

China's two-year-old ban on waste imports from the U.S. and other Western countries has hit the recycling market hard.

Case in point: Domestic recycling dipped from an all-time high of 35% in 2017 to 32.1% in 2018 according to EPA's *Advancing Sustainable Materials Management: Facts and Figures* data report.

This latest report is the first to dive deep into how food waste is diverted, and breaks down construction and debris materials.

#### Slices of the recycling pie

What are the hottest and coldest recyclables on the market? Breaking down the recyclables pie by percentages, they're:

- paper and cardboard (23%)
- food (22%)
- plastics (12%)
- yard trimmings (12%)
- metals (9%)
- wood (6%)
- textiles (6%)
- glass (4%)
- rubber and leather (3%), and
- miscellaneous inorganic and all other waste (2%).

Info: [epa.gov/facts-and-figures-about-materials-waste-and-recycling](http://epa.gov/facts-and-figures-about-materials-waste-and-recycling)

## REAL PROBLEMS/SOLUTIONS

### LONG-TERM SUSTAINABILITY GOALS HAVE PAID OFF

(Emil Burca, senior manager, Sustainability and Performance Management Office, Mars Inc., Chicago, adapted from a press release at [mars.com](http://mars.com))

Growing our business while becoming more energy-efficient has been no easy task!

But it's all part of a long-term vision of growing sustainably by eliminating all fossil fuel use and carbon dioxide emissions within a generation's time.

We've done it facility by facility, taking advantage of every way we can to increase efficiency.

#### Efficient equipment delivers

In some cases, it takes a year or longer before we reap energy savings. We're focused more on the long-term benefits.

For example, one of our biggest sites has seen steadily increasing production while at the same time reducing energy consumption.

We've done it with technology optimizations that have increased the efficiency of our:

- compressed air equipment
- boilers, and
- heating, ventilation and air-conditioning equipment.

## 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.

"The real-life situations presented in *ECA*, both good and bad, helps me with prevention planning. It keeps me in the know and is easy to share."

Sam Kipe  
Plant Manager  
Chemical Containers

## 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.

### STARTUPS/SHUTDOWN

Question: Can facilities seek leniency from state agencies for emission spikes related to equipment startup, shutdown and malfunction (SSM) events?

Answer: It depends on what part of the country they're in.

In 2015, EPA ordered 36 state agencies via a state implementation plan (SIP) call to remove industry shield provisions for SSM violations after a federal court setback. For decades, state agency directors had the option of reducing or waiving fines.

Seventeen states, including Texas and North Carolina, sued to get the shield reinstated. EPA regional offices then granted exemptions for large stationary combustion engine sources in both states.

*Fast forward to today:* EPA administrator Andrew Wheeler told regional offices that SSM exemptions "may be appropriate in certain SIPs."

Wheeler's rationale is the SSM policy won't fly in all federal circuit courts that oversee a handful of states in regions.

While the Washington DC Circuit often decides clean air cases, there's no guarantee it will settle ongoing litigation or uphold the 2015 SIP call.

**Info:** [epa.gov/sites/production/files/2020-10/documents/placeholder\\_0.pdf](https://epa.gov/sites/production/files/2020-10/documents/placeholder_0.pdf)

### FIFRA CANCEL ORDER

The chemical irgarol, most often used in antifoulant paint to protect boat hulls, is being restricted under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

An ecological risk assessment determined irgarol, which is used in antifoulant paint and as a materials preservative in algicidal paints, is toxic to both freshwater and marine plants, and leads to coral bleaching.

Paint manufacturers and shipping companies will need to use alternatives to irgarol such as zinc pyrithione, tralopyril and DCOIT.

**Info:** [beta.regulations.gov/search?filter=EPA-HQ-OPP-2010-0003%20](https://beta.regulations.gov/search?filter=EPA-HQ-OPP-2010-0003%20)

### CERCLA FINANCIAL LIABILITY

Three industrial sectors won't face financial assurance requirements (FARs) to show they're capable of covering the costs of an accidental release or spill:

- electric power generation, transmission and distribution
- petroleum and coal product manufacturers, and
- chemical manufacturing.

Through a final rulemaking, EPA determined the financial risks from facilities in these industries are addressed by existing state and federal requirements to cover the costs of cleaning up possible hazardous substance releases.

EPA can impose FARs on industrial sectors determined to be high-risk under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), aka the Superfund law. In 2019, EPA withdrew proposed FARs on hardrock mining companies.

**Info:** [epa.gov/superfund/superfund-financial-responsibility](https://epa.gov/superfund/superfund-financial-responsibility)

### GAS TANKS

Propane cylinders can be kept in service longer thanks to a final rule by the Department of Transportation's (DOT) Pipeline and Hazardous Materials Safety Administration.

The final reg Rule authorizes 12-year initial and subsequent requalification periods for volumetric expansion testing and a 12-year initial requalification period for proof pressure testing.

To qualify, cylinders must be:

- made in conformance with DOT specification 4B, 4BA, 4BW or 4E
- used only for non-corrosive gas
- protected by a corrosion-resistant coating, and
- free of corroding components.

Subsequent requalification periods for proof pressure testing remain set at 10 years.

**Info:** 85 FR 68,790

### TSCA RISK EVALUATION

Carbon tetrachloride poses unreasonable risks in 13 of its 15 common industrial uses according to a Toxic Substances Control Act (TSCA) reg.

TSCA regs will be promulgated over the next two years to protect workers who make and handle it.

The chemical liquid is used in refrigerants, aerosol propellants, degreasers, spot remover products, fire extinguishers and insect fumigants, and is also known as tetrachloromethane, Halon-104 or Refrigerant-10.

**Info:** 85 FR 70,147

### CORRECTION: NPDES E-REPORTING

In our previous issue on Page 6, we wrote that a deadline for states to comply with the National Pollutant Discharge Elimination System (NPDES) electronic reporting rule hadn't been set yet.

In actuality, the new deadline is December 21, 2025.

We regret the error.