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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).

Jail & fines for water plant staffers who skirt the rules

■ NPDES permit holders on alert

Illicit discharges are squarely on EPA's and the U.S. Justice Department's radar, and they're not hesitant to put violators behind bars to send a stern message!

Case in point: The City of Pittsburgh Water and Sewer Authority (PWSA) pleaded guilty to violating its National Pollutant Discharge Elimination System (NPDES) permit by discharging sludge into the Allegheny River. The city's on the hook for a half million dollars in mandatory upgrades.

But it's a veteran supervisor who'll pay the heaviest price.

Supervisor, staff aware of effects

Sixty-nine-year-old Glenn Lijewski was the supervisor at the Aspinwall

drinking water treatment plant. Between 2010 and 2017, Lijewski oversaw the dumping of untreated sewage into the Allegheny River.

According to KDKA 2 CBS Pittsburgh, "[discharges] caused plumes of discolored water sometimes several hundred feet long, and solids to become visible in the river, over time creating a buildup employees called the 'island.'

"Sometimes when the river was low, officials say birds could be seen walking on the so-called island."

To make matters worse, Lijewski also directed employees to falsify drinking water contaminant levels on discharge monitoring reports so that the Aspinwall plant would fly under

(Please see Jail ... on Page 2)

ENFORCEMENT

Enviro Justice at top of Biden-Harris priority list

■ FACILITIES IN 'AT-RISK' AREAS TO FACE HIGHER COMPLIANCE BAR

Robust pollution prevention plans (PP) will be critical for avoiding hefty fines and potential criminal enforcement under the incoming Biden administration.

The Biden campaign promised to "ensure that Environmental Justice [EJ] is a key consideration in ... righting wrongs in communities that bear the brunt of pollution."

Federal crackdown coming?

Law firm Hunton Andrews Kurth expects a number of moves to boost

EJ enforcement, such as:

- revamping the EJSCREEN mapping and screening tool to better identify sources of pollution and which communities are affected
- creating a community notification program that requires industry to report hazardous or toxic releases
- putting a greater emphasis on EJ concerns in federal permitting and new regs, and
- addressing leniency toward repeat violators and egregious polluters at the state level.

Info: Hunton Nickel Report blog, tinyurl.com/bidenEJ642

CALIFORNIA

Coronavirus work rules keep coming

California has adopted a COVID-19 emergency standard that covers all industrial sectors except healthcare.

This new Cal/OSHA standard requires employers to create written COVID-19 policies addressing hazards specific to the workplace.

Face coverings and other personal protective equipment must also be provided at no cost to the employee.

Employers are required to provide free COVID-19 testing in the event

PPE must be provided at no cost to the employee.

of an outbreak, which the standard defines as three or more cases in the workplace within a two-week period.

Existing state mandates regarding the coronavirus were adapted to reinforce those guidelines, including the requirement to timely notify health officials, Cal/OSHA and affected

workers should an employee get a positive test result.

The standard doesn't offer recommendations for specific ventilation requirements in the workplace, but it does acknowledge research confirming airborne transmission of COVID-19.

Employers: Extra burden on us

Worker advocacy groups called the standard a step in the right direction, but "business interests argued against the proposal's passage, calling the process 'rushed' and the provisions duplicative and burdensome," according to the *Los Angeles Times*.

The emergency standard will likely remain in place through May.

California is the third state to adopt a COVID-19 policy following Virginia and Oregon.

Jail ...

(continued from Page 1)
inspectors' radar.

Federal prosecutors charged Lijewski with conspiracy to violate the Clean Water Act and the PWSA industrial user permit. Based on the severity of his alleged crimes and the seven-year duration, Lijewski is facing serious time in prison (for related story, see top of Page 3).

Dischargers need to stay on toes

NPDES compliance is one of EPA's National Compliance Initiatives (NCIs), which falls outside core enforcement (search for "national compliance initiatives" at our website).

The new administration could tweak or expand the NCI program, but our money's on NPDES permit holders staying on EPA's hit list.

Reason: Poor and minority communities are most at risk for waterworks pollution, and the Biden team has promised to focus on Environmental Justice issues (see bottom of Page 1).

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.

IS WARNING LETTER FROM EPA SAME AS A LAWSUIT?

You could hear a pin drop as Buck Flanagan, environmental manager, shared bad news with his company's executives.

"EPA found hazardous waste containers owned by our company at Mulloy Landfill," said Buck. "It looks like our waste polluted groundwater wells at that site. As you know, EPA made Mulloy a Superfund site.

"We're one of several companies the agency now says are liable for cleanup costs," Buck concluded.

"Are we liable?" the CEO asked.

"Based on how Superfund cleanups pan out, we'll have to pay something," Buck replied. "The good news is, our insurer should have our back. I just let them know about EPA's letter to us."

"Keep up posted," said the CEO.

Later that week ...

Refusal to indemnify? This has got to be a joke, Buck fumed. He nearly tore apart a letter from his insurer saying it wouldn't cover Superfund legal costs.

"What kind of game are you playing?" Buck asked the insurance rep, Jimmy Fresco. "This is a suit. You're supposed to defend us!"

"It's a violation notice," said Jimmy. "But it's not a suit. We can't cover you – at least not yet."

"You can't do this. The courts won't allow it," said Buck.

Buck's company took the insurer to court when it wouldn't cover legal costs.

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

Wastewater scam artist fined, put on probation

Individual: Patrick James Schwarte, Sioux City, Iowa.

Business: Sioux City wastewater treatment plant shift supervisor.

Penalty: Two years of probation, including two months of home confinement, and \$5,000 fine.

Reasons for penalty: From 2012 to 2015, Schwarte and his direct supervisor tampered with monitoring methods to ensure the utility passed all its tests. Schwarte had operators add liquid chlorine to wastewater for an hour or two early in the morning to reduce E. coli levels, and then ran contaminant tests. Then later in the day staffers tested for chlorine after it had dissipated in wastewater.

Note: The scam allowed the plant to run only one of its chlorine contact basins instead of two, and avoid needed repairs and maintenance. The 71-year-old Schwarte was lucky to avoid jail time.

Storage tanks not up to date with RCRA regs

Entity: Nassau County, New York.

Business: County government.

Penalty: \$427,500.

Reasons for penalty: The county didn't upgrade leak-detection technology requirements and other guidelines in the 2015 underground storage tank (UST) rule at 48 facilities. Groundwater, soil and surface waters must be protected from fuel and chemical leaks from

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.

USTs, which are regulated under the Resource Conservation and Recovery Act (RCRA). Nassau is bringing its tanks into compliance and installing a centralized monitoring system.

Note: Search for “underground storage tanks regs” at our website.

Dumpster dives at multiple sites net huge waste fine

Company: Bed, Bath and Beyond, 200 stores in California.

Business: Home and kitchen products retailer.

Penalty: \$1.49 million.

Reasons for penalty: Hazardous waste inspectors checked trash compactors at multiple stores throughout the Golden State. Items thrown away with common trash and sent to landfills included:

- lithium batteries
- broken compact fluorescent bulbs containing mercury
- electronic devices
- ignitable liquids
- aerosol cans
- cleaning agents, and
- flammable, reactive, toxic and corrosive materials.

Note: District Attorneys began the investigation in 2015 after a front end loader separated trash from a BBB store and it set on fire. Investigators recovered electronic waste, lithium batteries and a can of lighter fluid. In addition to paying a fine, BBB is also doing self-audits of waste bins and compactors.

Metal facilities let ozone depletants enter the air

Company: Connecticut Scrap, Uncasville, and five other scrap metal companies located in CT and Rhode Island.

Business: Industrial and consumer product shredding facilities.

Penalty: \$160,000.

Reasons for penalty: The scrap yards failed to:

- drain all substances that deplete the ozone layer like hydrochlorofluorocarbons before shredding appliances such as air conditioning equipment and refrigerators, and
- use stationary diesel engine generators with emission control devices for volatile organic compounds, carbon monoxide, nitrogen oxides, formaldehyde and particulate matter.

Note: CT Scrap took its large diesel generator out of commission. All of these facilities must show they're preventing air pollution to prevent follow-up citations.

Feds: Oil spills preventable with response plans

Companies: R.P. Nixon Operations and Empire Energy E&P, Hays, KS.

Business: Crude oil production.

Penalties: \$50,000 and \$37,000.

Reasons for penalty: The neighboring facilities discharged oil into the Saline River in Kansas. Nixon released 165 barrels in 2016 and Empire spilled 16 barrels in 2019. Both companies violated the Spill Prevention, Control and Countermeasure rule because they didn't have Facility Response Plans (FRPs). Locations that store 1,320 gallons or more of oil in aboveground storage tanks need FRPs with:

- accurate facility diagrams
- equipment maintenance plans, and
- proper secondary containment to contain spills and leaks.

Note: In addition to paying a fine, Nixon must make SPCC upgrades at its 90 Kansas facilities.

PARTICULATE MATTER

Tougher PM 2.5 limit shot down by EPA

National soot standards won't change under a final EPA rulemaking despite agency scientists calling publicly for tougher measures.

EPA wrapped up mandatory Clean Air Act reviews of fine particulate matter 2.5 microns in diameter or smaller (PM 2.5) and coarse particulates (PM 10).

National Ambient Air Quality Standards (NAAQS) remain set at:

- PM 2.5 primary annual average – 12 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$)
- PM 2.5 secondary – 15 $\mu\text{g}/\text{m}^3$
- PM 2.5 primary and secondary, 24 hour-average – 35 $\mu\text{g}/\text{m}^3$, and
- PM 10 – 150 $\mu\text{g}/\text{m}^3$.

Sixteen counties are currently in nonattainment of the primary PM 2.5 NAAQS and 23 counties don't meet the PM 10 NAAQS.

Over the past 30 years, EPA's ratcheted down NAAQS for PM

and ground-level ozone but left limits for other criteria pollutants (carbon monoxide, lead, sulfur dioxide and nitrogen dioxide) in place.

Power plants catch a break

Last year, a group of EPA air and radiation office regulators recommended a tighter NAAQS for PM 2.5, somewhere between 8 $\mu\text{g}/\text{m}^3$ and 10 $\mu\text{g}/\text{m}^3$.

An agency draft report estimated a reduction in as many as 34,000 deaths annually with a tougher limit.

Some health studies show a link between PM 2.5 and coronavirus deaths among minority and senior populations (*search for "PM 2.5 COVID-19" at our website*).

Soot is linked most commonly to diesel truck and older vehicle tailpipe exhaust, coal and oil power plant emissions, and wildfires.

Info: RIN 2060-AS50

RISK MANAGEMENT

Chemical safety lapses sent workers to the ER

- \$1.5 MILLION FINE & EVEN COSTLIER UPGRADES FOR AMMONIA USER

Anhydrous ammonia is the most common chemical that triggers Risk Management Plan (RMP) enforcement, which an Arizona company and its employees learned the hard way.

Apache Nitrogen Products, which uses ammonia to manufacture ammonium nitrate-based explosives for mining operations and agricultural fertilizers, will pay a \$1.5 million civil fine for two accidental releases.

Accidents waiting to happen!

While unloading a rail car in 2014, employees accidentally released 52,000 pounds of ammonia. Fumes made 12 employees and a contractor sick. Seven people required off-site

medical treatment and an evacuation was needed.

EPA found deficiencies in the plant's hazard assessment, process safety information, operating procedures, mechanical integrity program, compliance audits and emergency response program.

Just a year later, Apache had another ammonia release due to ineffective preventive maintenance (PM). The company waited hours to notify the National Response Center and state and local authorities, in violation of the Superfund law and Right-to-Know Act.

Apache has upgraded its PM tracking system, done third-party audits of its process safety program, upgraded its ammonia monitoring system, and replaced outdated and noncompliant equipment.

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.

■ TANK FAILED, LEAKED OIL DURING COLD SPELL

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

I'm following up on the Smith Heating Oil spill from last weekend. We've wrapped up our investigation, and it's mostly good news regarding the damage done.

They left a delivery truck with a half-full tank of heating oil on site.

Typically the company delivers or drains excess fuel from their trucks, partly to reduce the risk of a leak.

Smith's closed early on Saturday because of the snowstorm coming through. And they were short on personnel to tie up loose ends.

As you remember, it was bitterly cold that Saturday. Unfortunately a flange on the bottom of the truck froze solid.

When it thawed out on Sunday afternoon, the flange came loose. But since they're closed on Sundays, no one caught it.

For the next few hours, about 1,500 gallons of oil spilled out.

Firm acted quickly, did its part

The good news is, most of the oil stayed on Smith's property. But some spilled down a storm drain.

Locating the plumes was easy. They were in one area because of all the ice. We removed the plumes with vacuum trucks.

Smith called us and the fire department early Monday when they saw the leak. And they were very supportive in the cleanup.

I'm recommending a reduced, one-day penalty for the spill prevention violation of \$14,500.

- *Dramatized for effect. Based on a settlement between EPA and a New England fuel distributor.*

RCRA

Universal waste gaffes can cost you!

We've warned readers for years – universal waste (UW) is technically hazardous under the Resource Conservation and Recovery Act (RCRA).

Recordkeeping, storage and safety guidelines are considerably easier if items qualify as UW, but you can't treat them like solid waste.

Sometimes regulators will make an example of a UW violator to get other facilities' attention.

Operated without a permit

Upper Edge Technologies is an electronic parts refurbisher and manufacturer, specializing in laptop and Chromebook batteries, keyboards and touchscreen panels, based in West Memphis, Arkansas.

The Arkansas Department of Environmental Quality inspected and found a wide range of RCRA violations. First and foremost, Upper Edge qualified as a large quantity generator of UW because it has more

than 5,000 kilograms of UW on site, but it didn't have an appropriate hazwaste permit.

Arkansas' UW list includes spent lead and nickel cadmium batteries, pesticides, mercury-containing devices, hazardous spent lamps and consumer electronics such as computer monitors and components.

Slipped up on RCRA basics

The company also failed to:

- make waste determinations
- dispose of waste in a timely manner (UW must be treated or recycled within one year)
- mark accumulation dates on bins
- provide necessary training
- keep records of waste received
- maintain waste containers, and
- label all waste properly.

The company was fined \$19,125 and must prove it's in compliance within 60 days.

EPA GUIDANCE

Who needs NPDES permits after High Court ruling?

- MAUI RULING OPENED CAN OF WORMS FOR REGULATED SITES

When the Supreme Court ruled pollution that travels underground to surface waters may require a Clean Water Act (CWA) permit, justices wrote EPA could propose regs or guidance to help industry.

A draft guidance in response to *County of Maui v. Hawaii Wildlife Fund* attempts to clarify what constitutes a point source that may require a National Pollutant Discharge Elimination System (NPDES) permit.

EPA says a "mere suggestion, assertion or allegation that a point source discharge of pollutants is or may be reaching a water of the U.S. via groundwater without supporting

information or evidence ... is not sufficient to trigger the duty to apply for, or the requirement to obtain, a NPDES permit."

Bottom line: A facility that hasn't been cited or successfully sued for traveling pollution won't be liable under the CWA.

Lawsuits just getting started

Watchdog groups and state agencies are keeping tabs on likely sources of groundwater-to-surface pollution. Potential hot spots:

- concentrated animal feeding operations
- coal ash ponds, and
- wastewater lagoons.

Info: tinyurl.com/mauiguideance642

TRENDS TO WATCH

■ BRUTAL YEAR FOR COAL MINING: 8,000 JOBS LOST

Eight thousand coal mine workers lost their jobs over the past 12 months as power plants continued weaning off the fossil fuel.

That number represents a staggering 15% of coal miners nationwide. Job losses are heavy in Appalachia and many small towns throughout the South and Midwest.

White Stallion Energy in Indiana declared bankruptcy and laid off almost all of its 260-member workforce. Utah-based Lighthouse Resources is also restructuring and laid off half its employees.

While the Trump administration relaxed several rules on coal, the mercury and air toxics standard and greenhouse gas regs have caused a rapid shrinking of the sector.

Natural gas plants and wind turbines are filling the void for now. Many energy experts predict demand will outstrip supply in coming years without a lifeline being extended to coal or nuclear power plants being built.

■ OFT-FLOODED WETLANDS GETS OK FOR PUMP PROJECT

Mississippi received the Army Corps of Engineers' approval to build the Yazoo Pumps, which will hopefully relieve flooding in the South Delta wetlands.

More than half a million acres were flooded by torrential rains in the spring of 2019 and 2020.

Conservation groups argued the pumps would dry up the wetlands and destroy habitats. Seventeen federal and state-listed endangered species thrive in the delta.

Corps scientist Jacob Berkowitz says that winter rainfall provides most of the water the wetlands need and that the pumps won't turn the area into non-wetlands.

The new pump system is slated to be built north of Vicksburg.

WIND FARMS

Feds push to weaken bird protections

Fish and Wildlife Services (FWS) isn't backing off on exempting "incidental" bird killings (takings) from the Migratory Bird Treaty Act.

A final environmental impact statement says the Act's take prohibition only applies to purposeful takings of migratory birds.

Wind farms, power lines affected

FWS defines take as "to pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture or collect" and amended the definition of killing as "any action that directly and foreseeably causes the death of a migratory bird."

The policy move would benefit a handful of sectors, none more so than wind farms and energy companies that own power lines.

Info: [fws.gov/regulations/mbta](https://www.fws.gov/regulations/mbta)

PVC manufacturing MACT reg gets tougher

Maximum Achievable Control Technology (MACT) limits for manufacturers of polyvinyl chloride

(PVC) piping and copolymers are being tightened.

EPA amended National Emission Standards for Hazardous Air Pollutants (NESHAP) for the PVC sector by:

- creating new emission limits for several process vent categories
- establishing new definitions for emission sources
- clarifying that if a PVC production unit process vent merges with a non-PVC vent stream, both the PVC MACT and MACT for the vent stream both apply to minimize HAPS from processing and venting
- revising the process wastewater vinyl chloride emission limits
- removing the total non-vinyl chloride organic HAP emission limit and establishing vinyl chloride as a surrogate
- clarifying standards for stripped resin, storage vessels, equipment leaks and closed vent systems, and
- removing the startup, shutdown and malfunction industry shield for emission violations.

Comments are due January 8.

Info: 85 FR 71,490

WHERE TO GET HELP

■ UPDATED COVID GUIDANCE FOR CRITICAL EMPLOYEES

The Centers for Disease Control and Prevention (CDC) updated its guidance for handling critical infrastructure employees (CIEs) who are asymptomatic after being exposed to individuals suspected or confirmed to have COVID-19.

The CDC updated its prior partial exemption of its standard 14-day quarantine guidance for CIEs with the caveat that this should be done only as a last resort.

The exemption allowed CIEs who were exposed to COVID to continue working as long as they remain asymptomatic, and that employers:

- encourage employees to screen for symptoms prior to reporting to work
- screen employees for symptoms upon their arrival at the worksite
- regularly monitor workers for symptoms while at work
- require employees to wear face coverings and social distance while at work, and
- routinely clean and disinfect occupied work areas.

Info: [cdc.gov/coronavirus/2019-ncov/community/critical-infrastructure-sectors.html](https://www.cdc.gov/coronavirus/2019-ncov/community/critical-infrastructure-sectors.html)

SHARPEN YOUR JUDGMENT – THE DECISION

(See case on Page 2)

Buck's company won. A state district court ruled EPA's Potentially Responsible Party (PRP) letter equals a lawsuit.

Therefore the company's insurance carrier had to indemnify the company – in other words, begin covering legal costs related to the Superfund case.

The insurer appealed the district court's decision to the state supreme court, but the court wouldn't hear it, pointing to an earlier case that settled the question.

■ ANALYSIS: IN MOST STATES, A LETTER FROM EPA STARTS BALL ROLLING IN LAWSUIT PROCESS

So how do you know if a PRP letter from EPA or a state environmental agency is a de facto lawsuit that your

insurer must defend?

The answer largely depends on the state your facility is located in. That's because the courts haven't ruled consistently on this question from state to state.

Most states have ruled an environmental notice of violation constitutes a suit under Commercial General Liability policies.

If there's precedent, the law's in your favor, not the insurer's. But it's a trickier proposition in some states.

In general, the courts don't look favorably on insurers that try wiggling out of defending a hazardous contamination dispute.

But as Superfund cleanups become more expensive, some insurers are increasingly trying this tactic.

Cite: *American Chemical Services v. U.S. Fiduciary and Guaranty Company*, U.S. District Court, Northern Dist. IN, No.13-CV-177. Dramatized for effect.

CONSENT DECREES

Third-party SEPs not put on ice after all?

The courts will allow watchdog groups like the Sierra Club to negotiate supplemental environmental projects (SEPs) with companies in certain situations.

That's despite the Department of Justice (DOJ) banning SEP agreements which financially benefit groups. (Citizens' groups that are directly harmed by a company's actions are exempt from the policy.)

Case in point: The Sierra Club sued DTE Energy in Michigan for modifying coal-fired electric generating units without permits, not installing required pollution controls and not achieving the lowest achievable emissions rate.

DTE agreed to retire some coal units and fund community projects to the tune of \$2 million.

'Loophole' or common sense?

The DOJ sued to strike the SEP, but the U.S. District Court for the Eastern District of Michigan refused to void it.

Reason: The SEP was negotiated separately from the consent decree between DTE and the feds.

DTE was free to enter into an SEP that mitigates the effects of its Clean Air Act violations and also settles its lawsuit with the Sierra Club.

Info: *U.S. v. DTE Energy*, E.D. Mich., No. 10-CV-13101, 12/3/20.

Be careful before you put green stamp on product

"Green" ... "organic" ... "renewable" ... all are terms that companies would love to use to describe their products if they could!

It's when businesses stretch the truth (aka "greenwash") that they get themselves into trouble with the Federal Trade Commission (FTC).

For example, the Diestel Turkey Ranch in Sonora, California, advertised its turkeys as "raised

on sustainable family farms" with "individual care and a wholesome diet." That's true of some of their turkeys – but many are raised on factory farms that don't meet any of these sustainable claims.

Sure about that? Check the guides

A class-action lawsuit against the farm alleges it violated the FTC's *Green Guides*.

To avoid problems, businesses should refer to specifics in the *Guides*. Example: A product that's labeled "organic" must have at least 95% certified organic content. "Made with organic" labeling requires the product have at least 70% certified organic content.

Info: "Environmentally Friendly Products? Socially Responsible Manufacturing? Considerations for a New Era of Advertising Claims" at infolawgroup.com

Graphene: New source of green battery power

Graphene circuits are a potential source of unlimited and clean energy, according to physicists at the University of Arkansas.

Researchers found micron-sized sheets of graphene can create enough alternating current to power small, low-voltage devices and sensors. Previous research concluded that freestanding atoms on graphene sheets couldn't perform work.

"We found that the on-off, switch-like behavior of the diodes actually amplifies the power delivered, rather than reducing it, as previously thought," lead researcher Paul Thibado says. "The rate of change in resistance provided by the diodes adds an extra factor to the power."

Info: journals.aps.org/pre/abstract/10.1103/PhysRevE.102.042101

REAL PROBLEMS/SOLUTIONS

TOTAL TEAM TRAINING FOR HAZWASTE DOES THE TRICK

(From Rich Libengood, maintenance director, Diamond Products Limited, Elyria, OH)

Hazardous waste handling regs can be confusing – especially for maintenance staffers who already have a lot on their plates.

Plus: Depending on the state you're in and the kind of waste items you deal with, certain requirements can change.

Unless you're periodically training hazwaste handlers, there could be a compliance issue that they're not aware of.

Newbies & veterans get the info

We keep on top of changes and make sure every team that has a hand in hazwaste management gets regular training when something comes up.

In my experience, it's not just newer staffers you'd better be worried about.

Veteran employees will sometimes stick with the routines they know and not do things the way we need them done.

So we make sure new and experienced employees get the training.

Bonus: We also give them reminders about procedures.

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

Larry Richey
Plant Manager
ABC Industries
Warsaw, IN

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.

CLIMATE CHANGE FINANCIAL RISK

The Federal Reserve acknowledged for the first time in its history that climate change is a financial risk which companies, lawmakers, shareholders and banks need to make a priority.

Climate change "is likely to increase financial shocks and financial system vulnerabilities that could further amplify these shocks," according to the Fed's Board of Governors November 2020 *Financial Stability Report*.

Chairman Jerome Powell says the Fed can enact regs if it believes global warming-related flooding and droughts will harm the financial system.

The Fed report highlights steps that could be taken to mitigate the effects of climate change:

- increased transparency and disclosure by banks and insurers to improve risk pricing, and
- investing in technology and policies that reduce climate risks outside of the financial system.

Info: [federalreserve.gov/publications/files/financial-stability-report-20201109.pdf](https://www.federalreserve.gov/publications/files/financial-stability-report-20201109.pdf)

PROTECTED WATERS

EPA asked the 10th Circuit Court of Appeals to restore the Navigable Waters Protection (NWP) rule in **Colorado**, the only state where the reg's not in effect.

A Colorado judge recently granted the state's request to nullify the rule there. NWP reestablished the historical scope of federally protected waters to:

- territorial seas and traditional navigable waters, like the Atlantic Ocean and the Mississippi River

- perennial and intermittent tributaries
- certain lakes, ponds, and impoundments, and
- wetlands that are adjacent to jurisdictional waters.

NWP also excludes areas and features that were protected under the Obama administration's Waters of the U.S. rule:

- ephemeral land features (only wet immediately after rainfall)
- groundwater (*see related story, bottom of Page 5*)
- most kinds of ditches, including farm and roadside ditches
- farm and stock watering ponds
- prior converted cropland, and
- waste treatment systems.

Info: tinyurl.com/nwprulecolorado642

TOXIC SUBSTANCES

EPA admits that 1,4-dioxane is a likely human carcinogen that endangers some manufacturing and chemical plant workers, but the agency won't ban it.

A draft report on 1,4-dioxane concludes there are no unreasonable health risks with:

- textile dye in arts and craft materials
- automotive antifreeze
- surface cleaners and furniture care products
- laundry and dishwasher detergents
- spray polyurethane foam, and
- paints, coatings and floor lacquer.

1,4-dioxane is also used in greases, varnishes, shampoos, deodorants, cosmetics, cement, roofing, siding and insulation, and children's toys.

Manufacturers will need to keep an eye out for restrictions on the toxic substance over the next two years. We'll keep you posted.

Info: tinyurl.com/dioxane642

HAZMAT SHIPPING RELIEF

The Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) streamlined a number of regs to benefit shippers, freight forwarders and carriers.

PHMSA reg changes include:

- limited quantity exceptions for 114 kinds of corrosive materials on the Hazardous Materials Table
- permitting laboratory waste that's not RCRA-regulated to be packed under the lab pack exception
- greater flexibility for cleaning out metal drums, and
- relaxing some poison-by-inhalation requirements for shipping regulated materials by rail.

These changes were all made in response to industry stakeholder petitions submitted over the past five years. Most of these revisions also align PHMSA guidelines with the International Maritime Dangerous Goods Code.

Info: 85 FR 75,680

AIR PERMITTING REFORM

A major change to New Source Review (NSR) permitting went into effect on Christmas Eve.

Companies can avoid applying for NSR preconstruction permits if they can demonstrate emissions won't increase due to plant modifications or new construction (Step 1).

The biggest winners from this final rule are smaller projects whose backers typically can't risk a legal battle with EPA. The agency consistently wins million-dollar lawsuits against firms that skip the NSR application process.

Info: 85 FR 74,890