



February 1, 2021

WHAT'S INSIDE

2 Sharpen Your Judgment

Storage tank sting:
\$1.2 million fine

3 Who Got Fined & Why

18 months in slammer for
hazardous waste scammer

4 Air Quality

EPA knows half a million
trucks are cheating air rules

5 Water & Waste News

Avoid costly wastewater
hurdles: 6 keys

6 Enviro Regs Update

Biden drilling ban could cost
Western states billions

7 What's Coming

Update: Who must report
COVID-19 illnesses?

SAFETY NEWS ALERT

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

EPA air monitors flunk test: What it means for facilities

■ *Polluters skirt rules, regulated sites on notice*

Just how effective are the nation's air quality monitors at registering dangerous emissions?

Answer: Not very, according to a Reuters news agency report. EPA monitors seem to be routinely missing "major toxic releases and day-to-day pollution dangers."

The upshot: Plenty of industrial polluters may be getting a free pass while responsible facilities like yours are paying their freight!

Data said air was healthy

Two years ago, a century-old butane refinery in Philadelphia exploded and caught fire in the wee morning hours.

Hydrofluoric acid vapors escaped

from deteriorated piping dating back to the 1970s and caught fire. Buildings in the southwest area of the city rattled from multiple blasts.

All told, the disaster at Philadelphia Energy Solutions "released nearly 700,000 pounds of hazardous chemicals, including butane, and about 3,200 pounds of hydrofluoric acid, which can cause fatal lung injury in high concentrations."

But somehow, EPA air data recorded that time period as one of the healthiest of the year.

Time to invest in safe air?

Consider that the 3,900 monitors in EPA's arsenal are counted on to

(Please see Air ... on Page 2)

POLITICS

North Carolina enviro chief tabbed to head EPA

■ BIDEN PICKS STATE HEAD WHO WON BILLIONS FOR COAL ASH CLEANUP

Michael Regan, currently chief of the North Carolina Department of Environmental Quality, is Joe Biden's choice for EPA administrator.

Regan is younger and less experienced than other candidates whose names were floated after the election, but his environmental bona fides impressed citizens' groups.

Case in point: Regan spearheaded a multi-billion-dollar coal ash pond cleanup with Duke Energy in 2017. The energy company pleaded guilty to spilling 39,000 tons of coal ash

containing heavy metals like mercury and arsenic into the Dan River in 2014, an event that sparked EPA's Coal Combustion Residuals rule.

Experience in Enviro Justice issues

The Biden administration pledges to make Environmental Justice (EJ) a priority. Regan worked with Democrat and GOP lawmakers in North Carolina to create an EJ advisory board to take on pig farm lagoon pollution and other problems.

Regan takes over an agency with 14,000-plus employees. More than 300 EPA staffers resigned or retired under the Trump administration.

BENZENE

Storage tank sting: \$1.2 million fine

Crowley Fuels of Alaska, with fuel storage tanks in Juneau and three other towns, badly needed an air quality compliance audit about a decade ago.

If Crowley had equipped its tanks with adequate vapor controls, it could've saved itself \$1.3 million in fines and bad publicity. A 2018 inspection found Crowley lacked vapor controls on its gasoline tanks and loading rack for filling diesel trucks. As a result, the company emitted 110,000 pounds of excess gasoline vapors containing benzene, a known carcinogen, and toluene, a central nervous system depressant, from 2013 to 2018.

Hazardous emissions weren't the only problem.

EPA cited the company under both the Clean Air Act's New Source Performance Standards as well as National Emission Standards for

Hazardous Air Pollutants for bulk gasoline terminals.

Chemical reporting fell way short

Hazardous emissions weren't the only problem – Crowley also didn't submit Toxics Release Inventory (TRI) reports for multiple chemicals.

The firm produced liquid petroleum which contained benzene, cyclohexane, ethylbenzene, naphthalene, toluene, xylene, 1,2,4-trimethylbenzene, n-hexane and lead compounds in quantities that exceeded TRI threshold reporting amounts. But it failed to submit TRI data for six years straight.

Crowley agreed to either install pollution control equipment on storage tanks and the truck loading rack or convert the terminal to diesel-only service by 2021.

Air ...

(continued from Page 1)

measure attainment with National Ambient Air Quality Standards, industry sectors' compliance with National Emission Standards for Hazardous Air Pollutants and – perhaps most importantly – catch toxic “spikes” in towns and cities.

The Philadelphia refinery example isn't an isolated incident. Monitors failed to record any toxic risks from 10 other refinery explosions over the last decade.

Critics “say the network's problems are many and varied: monitors are sparsely and poorly placed, the program is underfunded and the network isn't equipped to meet current pollution threats.

“Individual monitors have also proven inaccurate, often recording pollution levels that can vary wildly ... [and] nearly half of the country's monitors meant to capture fine particulate matter don't meet federal accuracy standards.”

Info: tinyurl.com/air643

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 BUYER LIABLE FOR MESS SELLER DIDN'T DISCLOSE?

“This is bad news,” sighed company attorney Clifford Uplander. “Really bad news.”

“Tell me about it,” said Buck Flanagan, environmental manager.

“When we bought the River Road property, we knew we inherited some environmental problems. But this chemical plume we just found is an even bigger mess,” said Buck.

“I'm not even sure our insurance carrier will help in this case.”

“Back up just a minute,” said Clifford. “You said we ‘just found’ the chemicals?”

Impact study didn't catch it

“That's right,” said Buck. “The owner never disclosed it had a chemical leak of any kind.

“Our site inspection didn't pick up anything either, so ...”

“That's what I thought you said,” Clifford replied. “Which means this is the previous owner's responsibility, not ours.”

“I'm not sure EPA will see it that way,” said Buck. “My understanding is once you take over a site, any pollution problems are on you.”

“I'm not so sure about that,” Clifford replied. “We did our due diligence. Who knows, maybe the old owner didn't know about it.”

“Or maybe they did,” Buck sighed. “Regardless, I think EPA will expect us to clean up the mess.”

Buck was right. EPA ordered his company to clean up the prior site owner's mess.

The company fought EPA's order. 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

18 months in slammer for hazardous waste scammer

Individual: James Moss, former president, 5R Processors, Ladysmith, Wisconsin.

Business: Electronic equipment recycling.

Penalty: 18 months in prison.

Reasons for penalty: Moss pleaded guilty to criminal violations of the Resource Conservation and Recovery Act and to evading paying income and employment taxes. Moss and the employees who worked for him:

- transported hazardous waste between facilities without a permit
- falsified start dates on hazwaste containers
- hid containers behind pallets and in semi-trailers
- stored containers at unpermitted warehouses in Wisconsin and Tennessee, and
- gave inspectors false shipping records for leaded glass.

Note: As president of 5R from 2010 to 2017, Moss was responsible for plant operations, shipping and receiving, demanufacturing, accounting and payroll.

Inspectors caught oil plan problems before a spill

Company: Lanai Oil, Lanai, Hawaii.

Business: Petroleum product wholesaler and bulk storage terminal.

Penalty: \$71,166.

Reasons for penalty: A 2018

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.

inspection found Lanai failed to comply with its Clean Water Act permit. It didn't:

- review and evaluate its Spill Prevention, Control and Countermeasure (SPCC) plan at least once every five years
- permanently close out-of-service aboveground storage tanks, and
- conduct tank integrity tests.

Note: Reduced demand and falling oil prices have led to a surplus in inventory for many businesses (see sidebar, Page 6, for more info and compliance help from EPA).

Washed solids down drain: Time to pay the piper

Company: Kronospan, Eastaboga, Alabama.

Business: Integrated pulp and fiberboard mill.

Penalty: \$900,000 fine and supplemental environmental project (SEP) worth \$7.7 million.

Reasons for penalty: Kronospan discharged process wastewater to the publicly owned treatment works (POTW) without a state permit from 2007 through 2012. It continued discharging high levels of suspended solids, obstructive solids and oxygen demanding pollutants after getting its permit.

Note: Kronospan agreed to install a \$7.7 million evaporation system that will reduce its annual volume of process water which it pretreats and discharges to the POTW by more than 86%. (For a related story, see top of Page 5.)

No toxics reports for heavy metals: \$33K hit

Company: J.J. Ryan (aka Rex Forge), Plantsville, Connecticut.

Business: Metal forging company that manufactures motor vehicle parts.

Penalty: \$33,371.

Reasons for penalty: Rex Forge didn't

submit Toxics Release Inventory (TRI) reports in 2018 for its processing and use of:

- chromium
- manganese, and
- ethylene glycol.

Note: The TRI deadline for reportable amounts of hazardous chemicals is every July 1 under the federal Emergency Planning and Community Right-to-Know Act. You can download a spreadsheet of TRI-listed chemicals at: epa.gov/toxics-release-inventory-tri-program/tri-listed-chemicals

Another retailer nabbed in Dumpster dive inspection

Company: Ross Stores, 441 stores in California.

Business: Discount home furnishings, electronics and clothing.

Penalty: \$3.3 million.

Reasons for penalty: From 2014 to 2017, employees at more than 400 stores threw away hazardous waste items in Dumpsters, which then went to municipal solid waste landfills that aren't permitted to accept it. Items included:

- electronic waste
- cosmetics
- batteries
- mercury-containing lamps
- aerosol spray cans, and
- other toxic and ignitable materials.

Note: Forty-one state and city district attorneys negotiated the settlement with Ross after inspectors conducted thorough examinations of stores' waste over a four-year period. Ross must hire hazwaste compliance officers and do waste audits as part of its consent decree.

NOX EMISSIONS

EPA: Half a million trucks are cheating!

More than half a million diesel trucks out on the roads and highways have had their emission controls tampered with.

And EPA knows it.

Bottom line: Environmental directors and fleet managers would be wise to verify all diesel vehicles are up to snuff.

Companies that self-audit and report Clean Air Act (CAA) violations are eligible for reduced, and in some cases, waived fines.

Violators are subject to civil penalties up to \$45,268 per noncompliant vehicle or engine, \$4,527 per tampering event or sale of defeat device, and \$45,268 per day for reporting/recordkeeping errors.

Problem areas to check

An EPA air office study estimates 550,000 trucks – about 15% of the nation's fleets – are operating without one or more CAA-mandated

technologies to minimize emissions:

- software in the electronic control unit (ECU) that governs engine fueling strategies and ignition timing
- exhaust gas recirculation systems (commonly managed by software in the ECU) that recirculate part of an engine's exhaust back through the engine to reduce the formation of nitrogen oxides in the engine
- after-treatment systems like adsorption catalysts, diesel particulate filters and selective catalytic reduction systems
- onboard diagnostic systems that continually monitor actuators, and
- emission after-treatment systems that notify operators when repairs are needed.

The EPA study relates to class 2b and class 3 diesel pickups that weigh between 8,501 to 14,000 pounds.

Info: dieselnet.com/news/2020/11epa.php

GREENHOUSE GASES

Report: Large facilities' emissions on downswing

■ WHAT'S THE STATE OF CARBON REDUCTION? DATA SHEDS LIGHT

Greenhouse gas (GHG) emissions from large facilities dropped 5% from 2018 to 2019, according to the GHG Reporting Program (GHGRP).

The steady downward trend continues: GHG emissions from large sites decreased by more than 14% from 2011 to 2019, and 25% from power plants in the same period.

Facilities in 32 measured industrial sectors are cutting GHGs by investing in scrubber technologies and carbon capture and sequestration, and weaning off coal and oil.

Energy sector tops list of emitters

The GHGRP compiles data from 8,000-plus large emission sources,

fuel and industrial gas suppliers, and carbon dioxide injection sites, and releases data annually in the fall.

Reporting entities accounted for 2.85 billion metric tons of carbon dioxide equivalent, roughly half of overall U.S. GHG emissions.

The top 13 production sectors are, in order: fossil fuel power plants, oil & gas drilling and production, refineries, nonfluorinated chemicals, minerals, waste, metals, other forms of combustion, paper and pulp mills, underground coal mines, fluorinated chemical makers, electronics manufacturers and electrical equipment production.

Info: You can see state-by-state and tribal region breakdowns of GHG emissions at epa.gov/ghgreporting/ghgrp-state-fact-sheet

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.

■ DIDN'T REPORT MULTIPLE HAZARDOUS RELEASES

To: Regional Enforcement Director
From: Inspector Bob Wiley
Re: EPCRA violation

We've reviewed our investigation of ABC Energy's ammonia violations and concluded a penalty of \$365,000 is in order.

Like many natural gas-fired facilities, ABC burns off nitrogen oxide exhaust at the source with ammonia.

We eventually discovered large quantities of ammonia – more than 100 pounds each – leaked from ABC's stacks over the years.

ABC's excuse was that the releases were accidental and they didn't discover them until well after the fact.

That excuse doesn't cut it when you're talking about 27 separate releases over several years.

The leaks caused a health risk for neighbors who never got a warning.

ABC didn't inform local or state responders about the releases in a timely manner.

Penalties for not reporting are steep under the Emergency Planning and Community Right-to-Know Act, but they're necessary for keeping businesses in line with the law.

Stepped up monitoring

ABC treated this matter seriously and is helping make sure harmful chemicals don't leak again.

The company's installed a continuous emissions monitoring system that detects emissions of hazardous air pollutants or any releases of chemicals like ammonia.

That way emergency responders are notified ASAP.

■ *Dramatized for effect. Based on a settlement between EPA and a liquid natural gas plant.*

PRETREATMENT STANDARDS

Avoid costly wastewater hurdles: 6 keys

Industrial facilities that pretreat wastewater can avoid major headaches by avoiding any kind of illicit discharge.

Why? Because all it takes is being cited once for violating Clean Water Act (CWA) general or specific prohibitions for you to be classified as a certified industrial user (CIU).

Industrial users need to worry about prohibitions, but CIUs have to spend a lot more time and money complying with categorical pretreatment standards.

Beware these specific permit traps

The CWA defines a general prohibition as any discharge that passes through or interferes with Waters of the U.S. and/or puts a publicly owned treatment works (POTW) in violation of its National Pollutant Discharge Elimination System (NPDES) permit.

Got all that? Good.

Most of the time it takes a pretty

sizable first-time spill or leak to trigger NPDES action and a state agency or EPA to crack down hard on an offending facility.

But violate specific prohibitions once and you can land in hot water (pardon the pun) pretty quickly.

Specific prohibitions apply to these kinds of hazardous discharges:

- pollutants that cause a fire or explosion hazard (liquids with a flash point above 140 degrees)
- corrosives with pH lower than 5.0
- solid, viscous or oxygen-demanding pollutants in great enough quantity to obstruct flow to the POTW
- heat in excess of 104 degrees that prevents biological activity or breaking down of pollutants
- petroleum, nonbiodegradable or mineral oil spills that pass through to waters or interfere with the POTW, and
- toxic gases, vapors, or fumes that harm POTW workers.

STORMWATER

Runoff controls can cause problems – here’s why

■ WHERE CONTROLS GO AND HOW THEY’RE MAINTAINED IS CRITICAL

Not all EPA-approved stormwater controls are built equally.

For example: Sandbags do a good job of soaking up metals, sediment and other kinds of runoff.

But they’re also a tasty treat for rodents and hungry animals!

Once varmints tear through them, you’ve got pollutant runoff going down storm drains.

If you do use sandbags, make sure someone’s checking them periodically.

‘Is that the best place for controls?’

Construction companies also need to avoid placing portable toilets (Portapots) near drains.

All it takes is a leak – or worse, a Portapot tipping over – and you’ll have a big mess on your hands.

Same principle goes for washing vehicles on a project or building site.

Even though a permit may allow for vehicle washing, you must still protect surface waters.

The permit won’t protect a company from Clean Water Act penalties if there’s evidence of oil, automotive fluids and the like from your vehicles going in nearby ponds and streams.

Make sure vehicles are washed where runoff is easily controlled and drains aren’t impacted.

Info: Download a Training Toolkit at environmentalcompliancealert.com/stormwater-2

TRENDS TO WATCH

■ MASSACHUSETTS STEPS UP PFAS CHEMICAL CHECKS

Private drinking water wells in 81 Massachusetts towns will be tested for per- and polyfluoroalkyl substances (PFAS).

The MA Department of Environmental Protection (DEP) and University of MA are partnering in the public health effort. Wells will be tested on their proximity to known PFAS contamination.

Earlier this year the DEP set a maximum contaminant level of 20 parts per trillion for the class of chemicals commonly used to stain guard furniture and coat pots and pans, and also as a firefighting foam agent.

Well owners could be liable for all cleanup costs if PFAS are found in groundwater.

The DEP is targeting six types of polyfluorinated chemicals in wells: PFOS, PFOA, PFHxS, PFNA, PFHpA and PFDA.

Info: mass.gov/info-details/per-and-polyfluoroalkyl-substances-pfas

■ EPA FLEXING ITS FIFRA MUSCLES: BIG FINES ON TAP

The biggest surge in statutory enforcement this year is under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

EPA is levying big fines against companies that market, sell and import pesticide products that aren’t FIFRA-registered.

Case in point: A New York company, Quest USA, was fined \$213,668 for importing illegal alcohol wipes into the Port of Long Beach, California.

Quest attempted to import over 650,000 wipes (marketed as BioPure Multipurpose Wipes) in 20 shipments into the U.S. this year.

More than 500 disinfectant products have been approved by EPA as effective in killing COVID-19.

Info: epa.gov/pesticide-registration/list-n-disinfectants-coronavirus-covid-19

INTERIOR

Biden drilling ban to cost states billions

President-elect Joe Biden pledged to eliminate oil & gas drilling on federal lands to combat the effects of climate change.

Wyoming Governor Mark Gordon warns such a move would be devastating financially for his state.

A study by the University of Wyoming and Wyoming Energy Authority estimates a drilling freeze would lead to \$670 billion in lost revenue by 2040 for eight Western states, and eliminate 350,000 jobs.

Other states that would be hard hit by Department of Interior restrictions on public land drilling would be Alaska, California, Colorado, Montana, New Mexico, North Dakota and Utah.

Info: finance.yahoo.com/news/ban-federal-drilling-leases-cost-230103859.html

Feds propose less red tape for mining projects

Mining projects may become eligible for streamlined permitting under Title 41 of the Fixing America's Surface Transportation Act aka

FAST-41. The Federal Permitting Improvement Steering Council proposed adding large-scale infrastructure mining projects to FAST-41.

Additional FAST-41 sectors are renewable and conventional energy production, electricity transmission, surface transportation, aviation, ports and waterways, water resource projects, broadband, pipelines and manufacturing.

Info: 85 FR 75,998

Plan to combat climate change in New England

The Maine Climate Council has laid out steps for the state to reduce greenhouse gases by 45% in 10 years and achieve Governor Janet Mills' goal of carbon net-neutrality by the year 2045. Steps include:

- transitioning the state transportation sector to electric vehicles
- modernizing Maine buildings to clean energy and systems, and
- increasing carbon sequestration.

Info: tinyurl.com/mainclimate643

WHERE TO GET HELP

■ OIL INVENTORY BUILDING UP? CHECK OUT EPA GUIDANCE

Throughout North and South America, oil companies are dealing with bulging inventories due to reduced demand and market value.

EPA's released an advisory, *Compliance Concerns Associated with Increasing Oil Storage*, to help.

The agency recommends facility owners/operators increase existing storage capacity or create new facilities to meet federal environmental rules.

Caveat: Expanding storage capacity can make your facility subject to:

- the Clean Water Act's Spill Prevention, Control and Countermeasure rule and Facility Response Plan guidelines for oil and oil-like substances
- industrial stormwater permitting under the National Pollutant Discharge Elimination System program, and
- the Emergency Planning and Community Right-to-Know Act's reporting rules if you have a spill or leak.

Info: epa.gov/sites/production/files/2020-10/documents/complianceadvisory-oilstorage.pdf

SHARPEN YOUR JUDGMENT – THE DECISION

(See case on Page 2)

Buck's company won this legal battle.

A district court ruled against EPA so the company wasn't on the hook for cleanup costs.

Any newly found contamination problems should be resolved with the former owner, a U.S. district court ruled.

CONTRACT HELPED REDUCE FIRM'S LIABILITY

One thing that helped the company was the wording of the contract it signed with the seller, which limited its long-term liability for existing contamination.

Had the contract read "assumes liability for all known and hitherto undiscovered contamination," it may have been a different story.

Companies or individuals don't automatically assume "successor liability" for environmental problems at a property – whether these are known or unknown issues.

The company was responsible only for the problems known at the time of sale.

■ ANALYSIS: NOT SURE ABOUT A NEW PROPERTY? GET A SECOND OPINION BEFORE BUYING

Buck's company might've avoided this legal mess altogether by doing more in-depth soil and groundwater testing or using more than one environmental firm to survey the property.

Missing a chemical plume underneath the property was an oversight that most companies can't afford to make. Knowing all the risks up front is worth its weight in gold.

Cite: *U.S. v. Sunoco*, U.S. District Court, Eastern Dist. PA, No. 05-6336. Dramatized for effect.

HEALTH & SAFETY

Who must report COVID-19 illnesses?

OSHA has doled out \$4 million in coronavirus-related fines.

The enforcement surge has many companies asking: “Do we need to submit a Form 301 (Injury and Illness Incident Report) if one of our employees contracts the virus while at work?”

Answer: OSHA’s coronavirus reporting policy is similar to the agency’s Severe Injury Reporting rules.

If one or more workers gets sick with COVID-19, you have:

- 24 hours to notify when someone is hospitalized with a work-related case, and
- eight hours to notify if an employee dies from work-related COVID-19 if it’s within 30 days.

A violation carries a minimum \$5,000 fine and is liable to trigger an in-person inspection.

Info: Search for “OSHA coronavirus” at our website for related news and enforcement.

Congress aims to slash warming gas by 85%

At print time, Congress was close to approving an energy bill that phases out hydrofluorocarbons (HFCs) by 85% over the next 15 years.

The American Innovation and Manufacturing Leadership Act calls for more investment and development of climate-friendly refrigerants, solvents, fire suppressants, foam blowing agents, aerosols and propellants.

Manufacturers and contractors switched to HFCs decades ago because they’re not a significant threat to the stratospheric ozone layer.

Fluorinated gases like HFCs, perfluorocarbons, sulfur hexafluoride and nitrogen trifluoride are synthetic, powerful greenhouse gases that account for roughly 3% of manmade global warming emissions.

Info: congress.gov/bill/116th-congress/house-bill/5544

Ex-EPA chief McCarthy named climate czar

The Biden administration is making former EPA administrator Gina McCarthy its “climate change czar.”

McCarthy will be responsible for coordinating greenhouse gas policies and regs among federal agencies.

She led the rollout of the Clean Power Plan (CPP), which set GHG goals for states’ power plants. More than a dozen states remain committed to those reduction goals after the CPP was shelved.

McCarthy served as EPA’s chief from 2013 through early 2017. EPA took a hit under her tenure for its mismanagement of lead poisoning in Flint, Michigan (search for “Flint lead” for a timeline).

PFAS testing on tap for water permit holders?

Wastewater and industrial stormwater permit holders may have to monitor for per- and polyfluoroalkyl substances (PFAS).

A National Pollutant Discharge Elimination System work group for EPA recommends including “permit requirements for phased-in monitoring and best management practices, taking into consideration when PFAS are expected to be present in point source wastewater discharges.”

EPA’s water office is working on multiple PFAS public health measures, including a national maximum contaminant level, which is currently 70 parts per trillion. Several states are putting out tougher PFAS limits of their own, like Massachusetts (see “Trends” column, Page 5).

REAL PROBLEMS/SOLUTIONS

■ SWITCH FROM SOLVENTS PAYS OFF IN LOTS OF WAYS

(From a facility manager for a Pacific Northwest company)

We’re a distribution warehouse with some hazardous waste on site.

Much of it is universal waste, like batteries and fluorescent lamps that contain mercury, and waste paint.

We could have easily reached large quantity status years ago. But we’ve prevented it on more than one occasion by taking a closer look at how we do business.

Greener solution pays off

For example, we need to clean out storage tanks on site.

From experience, nothing works better than solvent for cleaning off oil and grease gunk.

But we’d rather not expose employees to solvents if we can avoid it.

So we looked at an enzyme-based “green” cleaner as an alternative.

The tank heats up after we apply the enzymes. That makes it a lot easier to clean off all the gunk.

Eliminating solvent in our cleaning process was not only cost-effective, it also erased a lot of our compliance headaches.

Bonus: Doing away with solvents for tank-cleaning is a win-win for the environment.

▼ 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.

“This newsletter saves me time researching issues we deal with like hazardous waste profiling and waste stream approval.”

Steve Preece
Technical Director
Madison Chemical
Madison, Indiana

Air, Water & Waste regs that affect your operations

COST-BENEFIT AIR RULE

EPA will face steeper hurdles regulating air toxics and greenhouse gases under a final cost and benefit analysis (CBA) rule.

Agency rulewriters can no longer include “indirect” or “co-” health benefits to justify new Clean Air Act rules on industry.

EPA must also do separate reviews of targeted and indirect benefits before promulgating a reg.

The impetus for the policy change was the Utility MACT (Maximum Achievable Control Technology) rule for power plants in 2011.

The Obama EPA claimed Utility MACT would prevent 17,000 premature deaths and save \$140 billion in healthcare costs to justify it. But those benefits were tied to reductions in particulate matter emissions from various smokestack and tailpipe air regs already on the books or in the works.

The Biden administration will aim to repeal the CBA reg, but must take public comments for a year after proposing a move.

In the end, the courts will decide whether tighter CBA limits on EPA air rules are appropriate or not.

Info: beta.regulations.gov/docket/EPA-HQ-OAR-2020-0044

LIQUEFIED NATURAL GAS

The Department of Energy (DOE) won't conduct National Environmental Policy Act (NEPA) reviews when deciding to issue permits to liquefied natural gas (LNG) exporting facilities.

DOE decided NEPA doesn't apply to how export facilities are built or operate. Caveat: A NEPA analysis may be needed to determine how LNG is transferred to certain kinds of ships.

DOE determined imports and exports of LNG by marine shipping vessels don't pose significant environmental impact.

The rule went into effect January 4.

Info: 85 FR 78,197

FIFRA PESTICIDES

Manufacturers should be registering plant biostimulants to comply with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

EPA clarified which products are regulated and must be registered before being used in agricultural sprays and fertilizers.

Plant biostimulants are biochemical, microbial or chemical substances which boost crop yields by physiologically “stimulating” the plant. Biostimulants alter the way plants react to nutrients from soil and fertilizers and are considered a type of pesticide.

Products require FIFRA approval if they:

- enhance, promote or stimulate fruit growth and development
- inhibit or promote sprouting
- enhance or promote the color, development, quality or shape of fruits or crops, or
- promote or retard seed germination.

Info: 85 FR 76,562

ETHYLENE OXIDE

A draft risk assessment for ethylene oxide (EtO) doesn't specify a preferred method for determining cancer risks through industrial usage.

The EPA assessment includes several methods companies can use to determine health risks. EtO is commonly used as a fumigant to sterilize medical equipment (roughly half of the nation's medical equipment and tools), as well as spices.

EPA is liable to propose tighter National Emission Standards for Hazardous Air Pollutants for EtO within the next couple of years.

Cancer rates are higher in areas where there are EtO manufacturing

plants and sterilization facilities (*search for “cancer ethylene oxide” at our website*).

Info: 85 FR 74,339

TSCA CHEMICALS

EPA seeks comments on industry's use of di-isononyl phthalate (DINP) or di-isodecyl phthalate (DIDP).

The agency will be considering stakeholders as part of scope documents on the chemicals.

DIDP and DINP are phthalates commonly used as plasticizers in the production of plastic and plastic coating to increase flexibility.

If EPA finds there are significant health risks to plant workers, users or the public, it will follow up with Toxics Substances Control Act (TSCA) regs.

Both chemicals were identified as substances of concern in EPA's 2014 Work Plan (*search for “TSCA work plan” at our website*).

Info: epa.gov/chemicals-under-tsca/draft-scope-documents-manufacturer-requested-risk-evaluations-didp-and-dinp

FALL 2020 REG AGENDA

EPA's latest Regulatory Agenda is now online.

We've covered most of these rules, in print and on our website, including the top two items on this page.

Info: tinyurl.com/eparegagenda643