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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).

Will last-minute Trump EPA regs survive court challenges?

■ Biden pledged to reverse midnight rules

Two 11th-hour final Trump EPA rules sparked a wave of scrutiny:

- the so-called Secret Science rule which prohibits using private health study data and studies that haven't been replicated, and
- a cost-benefit analysis (CBA) policy designed to stop costly regs like the mercury and air toxics standards (MATS) for coal power plants.

The Biden administration pledged to overturn midnight rules from the outgoing administration, and there's strong pressure from environmental groups to reverse these two.

Once that happens, it's up to the courts to decide if they stay or go after industry groups sue.

Our prediction? One of Trump's

changes will survive court challenges, while the other one eventually gets shot down.

Good reasons for private data?

The Secret Science rule came about after members of Congress repeatedly asked to see data from health studies used to write EPA rules. The most famous example was the "Six Cities" study by Harvard researchers which made the case for tougher fine particulate matter regs.

Critics of the Trump EPA change make two reasonable arguments:

- revealing personal data from participants in health studies is illegal under privacy laws, and

(Please see Last-minute ... on Page 2)

ENFORCEMENT

Per-day, per-violation EPA fines are increasing

- MAXIMUM FINES GOING UP YEARLY UNDER COST-OF-LIVING MANDATE

Environmental fines are creeping higher again under a cost-of-living increase mandated by Congress.

As of December 23 of last year, EPA can assess higher per-violation, per-day penalties under the following statutes.

Noncompliance more expensive

- Resource Conservation and Recovery Act: \$76,764
- Clean Air Act: \$102,638
- Clean Water Act: \$56,460

- Emergency Planning and Community Right-to-Know Act: \$59,017
- Comprehensive Environmental Response, Compensation and Liability Act: \$59,017
- Safe Drinking Water Act: \$59,017
- Toxic Substances Control Act: \$41,056, and
- Federal Insecticide, Fungicide and Rodenticide Act: \$20,588.

Maximum fine amounts increased anywhere from \$300 to \$1,000 depending on the statute.

Info: 85 FR 83,818

TOXICS RELEASE INVENTORY

Industry keeps lid on toxic releases

Take a bow, all you industrial facilities out there, for your pollution prevention efforts!

The Toxics Release Inventory (TRI) national analysis shows a 9% overall drop in releases of TRI-listed substances from 2018 to 2019.

Facilities avoided releasing 89% of chemical-containing waste into the air, surface and ground water or soil by using preferred practices such as recycling, treatment and energy recovery, according to EPA.

More strategies to reduce waste

Other highlights from the TRI analysis include:

- Air releases decreased by 23 million pounds from 2018 to 2019, continuing a long-term trend.
- Facilities initiated a total of 3,285 new source reduction activities to prevent or reduce TRI waste. It's the first year since 2014 that more new source reduction activities were implemented than in the prior year.
- For the first time, data on nonylphenol ethoxylates, which

are surfactants used in adhesives, dispersants, cleaners, paints and coatings, were reported.

Air releases decreased by 23 million pounds from 2018 to 2019

- The percentage of chemical waste that was recycled increased yet again in 2019. Recycling is EPA's most preferred waste management method.

Heads up: The annual TRI reporting deadline is July 1.

Info: *TRI national analysis for 2019 at epa.gov/trinationalanalysis and TRI facilities' efforts to reduce TRI releases is at epa.gov/tri/p2*

Last-minute ...

(continued from Page 1)

- replicating results from pollution studies would mean deliberately harming people's health.

Prediction: The courts extend Chevron deference to EPA's interpretation of environmental law.

Courts sympathetic to industry

Five years ago, the Supreme Court ruled EPA should've considered the immense costs of the MATS reg before promulgating it.

With three Trump judges now on the bench (plus more industry-friendly appellate courts), there's little chance the cost-benefit rule is axed.

Reason: CBA doesn't prohibit expensive air rules – it calls for separate breakdowns of direct and indirect benefits of regs. Indirect or "co" benefits can't be used to justify direct benefits.

Assuming the Secret Science rule's vacated, EPA would be able to use private health study data for air rules.

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.

■ SUED FOR CHEMICAL LEAK: FIGHT CASE OR SETTLE IT?

"I'm not surprised we're being dragged into court for the Miller plant's groundwater pollution," sighed Buck Flanagan, environmental director.

"Those are the risks you take when you buy a brownfield property, I'm afraid," said Cliff Uplander, company attorney.

"Yep. The Miller company used chemicals that we now know cause cancer," said Buck.

"On top of that, they weren't too careful with them either. They poured chemicals down floor drains or dumped them," said Buck.

"And those chemicals may have seeped into our neighbor's property," Cliff replied.

"May have?" Buck asked.

"Take a look at the neighbor's complaint," said Cliff.

Only one chemical listed in suit

Buck read over the complaint. "Hmm. The claim mentions perc, which Miller did use," said Buck. "But the rest of the complaint just says –"

"Hazardous substances," said Cliff, finishing Buck's sentence.

"That could mean anything," said Buck. "How do we know if Miller's chemicals were the only source – or even the primary cause – of contamination?"

"We don't," said Cliff. "There's no telling what other industrial activity in the area tainted the groundwater."

Buck's company tried getting the lawsuit dismissed. Did it win?

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



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Where other companies are stumbling over compliance

For more fines, visit: www.EnvironmentalComplianceAlert.com/category/who-got-fined-why

Haphazard universal & hazardous waste habits

Company: Alliant Techsystems Operations, Elkton, Maryland.

Business: Manufacturer of solid rocket fuel and propellant tubes for aerospace and military purposes.

Penalty: \$36,920.

Reasons for penalty: Alliant violated hazardous waste regs for storing contaminated propellants, paint booth waste and mercury-containing lamps. It failed to:

- implement safeguards for its on-site burn pad and storage buildings
- train on safe hazwaste handling and treatment practices
- label, date and keep closed containers of hazardous and universal waste, and
- keep all final signed waste manifests.

Upgrades will keep sewage out of the ocean

Entity: U.S. Navy SEAL training base of operations, San Clemente Island, California.

Business: Military wastewater treatment plant.

Penalty: \$2.3 million federal facility compliance agreement.

Reasons for penalty: The Navy didn't follow guidelines in its National Pollutant Discharge Elimination System (NPDES) permit. It failed to properly operate and maintain all

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.

facilities and perform maintenance on all monitoring instruments.

Note: Wastewater system upgrades should be completed this fall. This inspection fell under EPA's National Compliance Initiatives program which includes NPDES permit holder compliance.

Anonymous tip sheds light on muddy stormwater

Company: Aspen Homes and Development, Coeur d'Alene, Idaho.

Business: Residential homebuilder.

Penalty: \$20,325.

Reasons for penalty: An anonymous tip about a lack of stormwater controls and dirty discharges prompted an inspection. Aspen Homes failed to:

- install and maintain erosion and sediment control measures, which resulted in muddy stormwater runoff leaving the property
- conduct and document over 25 inspections, and
- update and maintain Stormwater Pollution Prevention Plan records.

Note: Since coming into compliance, the company's prevented just over 170,000 pounds of sediment from migrating off-site.

Outdated pesticide labels can cost you! \$366K fine

Companies: Central Garden & Pet, Walnut Creek, California and Nufarm Americas, Alsip, Illinois.

Business: Pesticide production.

Penalty: \$365,700 (total).

Reasons for penalty: The companies distributed pesticide products with outdated labels that were missing current information on how to safely use, store and dispose of pesticides. They were cited under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

Note: FIFRA enforcement grew significantly in 2020 (search for

"FIFRA fines" at our website for multiple examples).

If EPA says you polluted, count on court believing it

Company: Tony and Joshua Brown, Armstrong, Iowa, doing business as Riverview Cattle.

Business: Cattle farm.

Penalty: \$75,000.

Reasons for penalty: Riverview discharged stormwater containing pollutants through an underground pipe that drained into the Des Moines River on at least 41 days without having a required Clean Water Act (CWA) permit. Animal feeding operations with over 300 head of cattle that discharge pollutants through man-made conveyances to streams and rivers must have a CWA permit, and take measures to minimize or eliminate stormwater pollutants.

Note: The Browns argued runoff didn't impair the river. EPA presented modeling and other evidence to convince an administrative law judge it did.

Big box retailer out \$20M for lead paint violations

Company: Home Depot, headquartered in Atlanta, Georgia.

Business: Retail home improvement, tools and hardware.

Penalty: \$20.75 million.

Reasons for penalty: Home Depot vendors and contractors didn't comply with the lead paint Renovation, Repair and Painting (RRP) rule in multiple states, including Utah, Massachusetts and Rhode Island. Numerous contractors didn't have EPA licenses or follow lead safe work practices at mostly residential homes.

Note: Home Depot agreed to train all contractors on the RRP rule, and set up a hotline to take customers' safety and health concerns.

CHEMICAL SAFETY

RMP inspections keep raking in big fines

Risk Management Plan (RMP) inspections are liable to remain a National Compliance Initiative under the Biden administration.

Recent enforcement shows companies aren't merely dropping the ball on one or more RMP priorities – many aren't addressing their obligation to protect people and the environment from harmful releases.

Ammonia gas hazards out in open

BC Systems/Fresh Express's refrigeration systems use anhydrous ammonia at food storage and distribution facilities in Yuma, Arizona and Salinas, California.

Inspectors found ammonia piping and instruments weren't labeled properly. Other problems were documented:

- lack of ammonia hazard reviews
- ammonia inventory exceeded the Emergency Planning and Community Right-to-Know Act

(EPCRA) threshold, and

- operating procedures didn't follow RMP guidelines.

Total RMP and EPCRA fines added up to \$186,975.

Flammable liquids a fatal risk

Big West Oil, a North Salt Lake, Utah refinery, holds more than 10,000 pounds of flammable mixtures and 1,000 pounds of hydrofluoric acid, both of which require an up-to-date RMP plan.

Unfortunately Big West's RMP procedures came up short in:

- hazard analysis
- mechanical integrity
- process safety info, and
- operating procedures.

Compliance would've prevented the \$344,364 in fines assessed.

Info: Search for "national compliance initiatives" at our website.

NESHAP

Ethylene oxide air regs about to get tougher?

- CANCER RISKS WAY TOO HIGH FOR NEIGHBORS OF CHEMICAL PLANTS

Emission regs for ethylene oxide (EtO) finalized last year aren't tough enough, according to a lawsuit from 11 environmental groups.

If the Washington DC Circuit Court of Appeals (one rung below the U.S. Supreme Court) agrees, it'll be back to the drawing board for EPA.

Clean air statute not followed

At the heart of the lawsuit: 200 chemical plants that emit 2,000 pounds of EtO and put neighbors at a risk for cancer twice the allowable limit under the Clean Air Act.

More than 90 plants handle the chemical gas, primarily to sterilize medical equipment and kill

microorganism growth in grains. Roughly half of America's medical equipment can't be sterilized using water-based solvents, making EtO a critical chemical.

The downside: EtO causes cancer in high-level concentrations over extended periods of exposure. It's also been linked to non-Hodgkin lymphoma, leukemia, multiple myeloma and breast cancer.

EPA tightened requirements for process vents, storage tank pumps and connectors, and heat exchange systems and equipment to help cut EtO leaks by 107 tons per year under National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Miscellaneous Organic Chemical Manufacturing sector.

Info: tinyurl.com/goldbergsegalla644

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.

■ MAJOR HAZWASTE GENERATOR, BUT NO PERMIT!

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

Our inspections of pharmaceutical facilities and labs uncovered a disturbing pattern of hazardous waste ignorance.

In fact, one of the first sites we checked up on was in violation of numerous Resource Conservation and Recovery Act (RCRA) requirements.

Acme Labs is a large quantity generator of hazwaste every month. Even so, Acme never:

- obtained a hazwaste permit, or
- filled in all the critical info on their contingency plan.

For example: They didn't include contact info for their facility's point person.

Good luck if there was a fire and firefighters needed basic info to protect themselves and save lives.

Manager wasn't trained

We had a quick look around and found other basic, glaring deficiencies.

The site manager who showed us around admitted she wasn't trained in hazwaste management.

And she clearly needed the training. She couldn't produce any paperwork showing she or another qualified person inspected the storage area on a weekly basis.

We went over RCRA guidelines with her and gave her a list of changes that needed to be made immediately.

Adding up the violations, it's \$39,000 in penalties.

- *Dramatized for effect. Based on a settlement between EPA and a pharmaceutical laboratory.*

EMERGING CONTAMINANTS

PFAS scorecard: 6 states require testing

Water plants know testing and treatment for per- and polyfluoroalkyl substances (PFAS) will be a priority this decade.

But other Clean Water Act-permitted facilities should also be asking, “Are we discharging measurable amounts of PFAS?”

Reason: Six states have already enacted tough PFAS standards, and other states like **Rhode Island** and **Washington** are set to follow suit.

Also: The Biden EPA is likely to tighten PFAS guidelines in the next year or so.

Testing limits vary by state

To date, **Massachusetts, Michigan, New Hampshire, New Jersey, New York** and **Vermont** have set maximum contaminant levels (MCLs) for the most commonly found PFAS in groundwater, perfluorooctane sulfonic acid (PFOS) and perfluorooctanoic acid (PFOA).

These six states’ MCLs are

anywhere from three to five times as stringent as the federal MCL of 70 parts per trillion.

Michigan and New Jersey also set specific groundwater standards for PFOS and PFOA.

(For an up-to-date table of PFAS regs for the six states, go to Bryan Cave Leighton Paisner’s website at tinyurl.com/pfas644.)

July 1 deadline for toxics reports

Reminder: 172 kinds of PFAS are now reportable every year under the Toxics Release Inventory (TRI) program beginning this July 1.

Any business that manufactured, processed or otherwise used a listed PFAS at or above a threshold quantity of 100 pounds in 2020 must submit data electronically via the TRI-Me online portal.

Info: epa.gov/toxics-release-inventory-tri-program/list-pfas-added-tri-ndaa

WASTE HANDLING

Aerosol cans as a universal waste is catching on

HAZARDOUS WASTE HANDLING RELIEF IS COMING TO MOST STATES

Slowly but surely, state regulatory agencies are getting around to adding aerosol cans to their universal waste (UW) lists.

The federal EPA rule, making aerosol cans the fifth kind of UW, took effect in February 2020.

Typically states can take up to three years or longer before updating their hazardous and UW programs.

Based on the number of states that have adopted the aerosol can listing, most facilities should be able to take advantage of looser handling and storage requirements by the end of 2022 at the latest.

Thousands of facilities may be

eligible to downgrade their waste generator status to small or very small as a result.

Where is the rule in effect?

As of January 2021, aerosol cans are a listed UW in **Alaska, Arizona, California, Colorado, Illinois, Indiana, Iowa, Kentucky, Michigan, North Carolina, New Jersey, New Mexico, Ohio, Utah, North Carolina, Pennsylvania** and **Puerto Rico**.

Caveat: States aren’t required to adopt the UW rule. But pressure from business owners and industry groups to provide regulatory relief can help get the ball rolling.

Info: Search for “aerosol cans universal waste” at our website for a timeline of the rule.

TRENDS TO WATCH

WATER PERMIT REGS IN PA ARE GETTING A MAKEOVER

Pennsylvania’s wetlands and dam safety rules were amended for the first time in 30 years.

The biggest changes to the Keystone State’s Chapter 105 regulations include:

- permit waiver requirements for geotechnical or environmental site investigations, recreational trails and temporary pads at wetland crossings
- waiver prohibitions for stream enclosures located in a drainage area less than 100 acres, in areas that are habitat for threatened or endangered species, or in historically significant areas, and
- new construction, operational and maintenance requirements for dams.

Most of the Chapter 105 revisions codify requirements that the PA Department of Environmental Protection already enforces.

Info: tinyurl.com/pennwetlands644

TEXAS TAKES THE REINS ON COAL ASH COMPLIANCE

Texas will likely join **Oklahoma** and **Georgia** as the only states to have autonomy over coal combustion residuals (CCR).

If the Biden administration tightens the 2015 CCR rule, the Texas Commission on Environmental Quality would still regulate and enforce CCR management.

EPA’s expected to approve the Lone State State’s plan for regulating coal-fired power plants’ ponds and landfills (the public comment period expired on February 8).

Unlike most significant Resource Conservation and Recovery Act rulemakings, the CCR reg didn’t require states to adopt it.

Info: texastribune.org/2020/12/29/texas-environment-coal-ash-epa-biden

TSCA INVENTORY

Final chance to report active chemicals!

Chemical manufacturers have one last chance to report active substances and maintain their confidential business information (CBI) privileges.

EPA announced a 60-day reporting window for active/inactive substances on the Toxics Substances Control Act (TSCA) Inventory. Companies petitioned for a second chance because they were confused about what to report and by when.

Companies will have 60 days to report chemicals once this reg's published in the *Federal Register* (it wasn't published at press time).

Roughly half of the chemicals that were still on the TSCA Inventory have been removed because they're no longer in use.

Info: epa.gov/chemicals-under-tsca/epa-reopens-reporting-period-tsca-active-inactive-rule

OSHA, EPA take on workplace exposure

Chemicals that pose unreasonable health risks to workers who manufacture and handle them will

eventually be regulated by EPA under TSCA Section 5.

(Search for "toxic substances top 10" for a timeline.)

EPA and OSHA signed a memorandum of understanding to work on regs together. Agencies will share practical info on identifying levels of workplace exposure and what precautions are needed, such as personal protective equipment, engineering controls and ventilation.

What's in the pipeline?

Keep an eye out for TSCA workplace restrictions for these chemicals within the next two years:

- 1,4-dioxane
- chrysotile asbestos
- decaBDE
- PIP 3:1
- pentachlorothiophenol
- hexachlorobutadiene
- carbon tetrachloride
- trichloroethylene, and
- methylene chloride.

Info: lawbc.com/regulatory-developments/tsca

WHERE TO GET HELP

SUSTAINABILITY SUCCESS STORIES TO APPRECIATE

Looking for more ways to reduce waste, wean off fossil fuels and promote clean water?

Take a look at Higher Education. The Sierra Club recognizes schools that are leading the way in sustainability, often driven by students.

This year's Cool Schools list is topped by the University of California-Irvine, which boasts some of the most energy-efficient laboratories nationwide and a food pantry partnership with a local farm that feeds thousands of students.

Rounding out the Top 9 are:

9. Univ. of New Hampshire
8. Univ. of Connecticut
7. Colorado State
6. SUNY College of Environmental Science and Forestry
5. Cal-Merced
4. Arizona State
3. Thompson Rivers (British Columbia), and
2. Stanford.

Info: sierraclub.org/sierra/cool-schools-2020/top-20-coolest-schools-2020

SHARPEN YOUR JUDGMENT – THE DECISION

(See case on Page 2)

No, the company couldn't get the suit dismissed.

A federal district court ruled the lawsuit brought by a neighboring property owner could move on even though the lawsuit only mentions:

- tetrachloroethylene (aka TCE or "perc"), and
- "hazardous substances."

Now the company could be on the hook for damages under the Superfund law.

Should company try appealing?

This may not be the end of the story. Reason: Turns out the company won the initial trial case before the neighboring property appealed (and won).

This company could try arguing – again – that "hazardous substances" is ambiguous and doesn't tie it to the contamination.

ANALYSIS: THREAT OF RELEASE OF ONE HAZARDOUS SUBSTANCE ENOUGH FOR CLAIM

Did this company get too cute for its own good? Maybe.

After all, the former business on this brownfield site was a dry cleaner that used perc in substantial quantities for years. There's little doubt that groundwater was tainted by the chemical.

Until the courts rule otherwise, the release (or threat of a release) of one hazardous substance can trigger Superfund liability for a property owner.

Cite: *Tarob M&C Investors v. Herbert*, U.S. District Court, Northern Dist. CA, No. 14-cv-04291. This case has been dramatized for effect.

CLIMATE CHANGE

How will GHG treaty impact oil & gas?

President Biden has committed the U.S. to joining the Paris Climate Accord. Some in industry are asking, “Is it necessary?”

The United Nations’ Gap Report 2020 finds “the U.S. emits 13% of global GHG emissions [while] China emits more than one-quarter.”

Despite emitting the most GHGs per capita, U.S. GHG emissions have been declining 0.4% per year over the last decade.

In the meantime, emissions from China, India and Russia are rising due to increases in fossil fuel use for electricity generation and pipeline development.

President Trump pulled the U.S. out of the Paris treaty in 2017 because “compliance with the [Accord’s] terms and the onerous energy restrictions it placed on the U.S. could cost as much as 2.7 million lost jobs by 2025,” according to the National Economic Research Associates.”

The UN report predicts a worldwide increase in temperature of 37 degrees by the end of the century unless nations and industry cooperate to cut GHGs further.

Info: unep.org/emissions-gap-report-2020

Plastic piling up in most states: Is this an answer?

Municipalities and states are inundated with more recyclable materials than ever since China banned waste imports three years ago.

(Search for “China waste ban” at our website for a timeline.)

Plastics in particular are piling up in warehouses or being shipped to landfills. That’s why Pennsylvania is cutting regulatory red tape for recycling facilities.

Act 127, signed into law by Governor Tom Wolf (D), exempts post-use polymers from the PA

Solid Waste Management Act so “advanced” recyclers don’t have to obtain waste permits or spend money treating these plastics.

What’s the catch? An advanced recycler can only accept and handle so-called “hard-to-recycle” plastics. Examples: single-use grocery bags, detergent bottles and egg cartons.

Facilities that also handle common wastes and recyclables can’t take advantage of the exemption. Pennsylvania’s exemption requires an advanced facility to “separate, store and convert post-use polymers through pyrolysis, gasification, depolymerization, catalytic cracking, reforming, hydrogenation and similar technologies into basic hydrocarbon raw materials, feedstocks, chemicals, crude oil, liquid fuels, waxes, lubricants and other products.”

Will other states follow Pennsylvania’s lead to boost recycling? We’ll keep you posted.

Info: www.mankogold.com/publications-PA-SWMA-Advanced-Plastics-Recycling.html

Process safety gaffes to cost businesses more

Federal OSHA is raising its maximum penalty amounts for 2021 based on cost-of-living adjustments.

Maximum penalties for serious and other-than-serious violations will increase from \$13,494 to \$13,653 per violation. Willful or repeat violations will increase from \$134,937 to \$136,532 per violation.

This increase is based on the 2015 Federal Civil Penalties and Inflation Adjustment Act to “advance the effectiveness of civil monetary penalties and to maintain their deterrent effect,” according to OSHA.

EPA (see bottom of Page 1) and the Department of Transportation (see Page 8) also increased fines for 2021.

REAL PROBLEMS/SOLUTIONS

■ CAUGHT HAZWASTE ERROR BEFORE EPA AUDITED US

(From an environmental manager in the Midwest, name and company withheld by request)

Mislabeling hazardous waste can cause all kinds of headaches.

In our case, it triggered an audit by our state department of environmental protection (DEP)!

When our headquarters underwent renovations, we pulled out old ceiling lights and ballasts for energy-efficient lighting.

Some of those ballasts were old and contained polychlorinated biphenyls (PCBs). The total haul weighed about 500 pounds.

We boxed everything safely and called our recycler.

Explanation stopped inspection

Just days later, the DEP called and said they’d be auditing us. I couldn’t understand why – until I took a closer look at our disposal records.

The recycler had written down that we disposed of 500 pounds of PCB-containing material.

Ouch! Fact was, there were only 10 pounds worth of PCB-laden ballasts. But we hadn’t separated it, boxed it and labeled it clearly so the recycler knew what was up.

We explained the error to DEP and thankfully avoided an audit

▼ 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.

“We rely on any update on oil and gas regulations. ECA’s format is time-efficient.”

Scott Brasfield
Superintendent of
Facilities & EHS
PGP Operating
Vance, Alabama

Air, Water & Waste regs that affect your operations

Here's ECA's digest of recent Federal Register (FR) notices, Regulatory Identifier Numbers (RINs) and other national activities concerning air, water and waste issues. For these and more federal updates, visit: www.EnvironmentalComplianceAlert.com/category/update-on-federal-rules

RENEWABLE TAX CREDITS

The Omnibus spending bill signed by Congress and President Trump before the New Year extends tax incentives for renewable energy.

The 26% investment tax credit (ITC), for solar photovoltaic and solar water heating projects built between Jan. 1, 2020 and Dec. 31, 2022, has been extended.

Don't wait too long: The ITC drops to 22% for projects under construction between Jan. 1, 2022 and Dec. 31, 2023, and to 10% for commercial solar projects initiated in 2024 and placed in service after Dec. 31, 2025.

Fiber optic solar, fuel cell and small wind energy sites are also eligible for the same ITCs, except there's no credit available for projects started in 2024.

Wind farms and facilities are eligible for production tax credits up to 60% for their first 10 years of service. Construction must have begun before 2021 and facilities need to be up and running by 2024.

Info: congress.gov/bill/116th-congress/house-bill/133

TSCA FEES

Chemical manufacturers can take advantage of exemptions from Toxic Substances Control Act fees once an EPA rule becomes final.

Exemptions for TSCA fees are proposed for:

- importing articles that contain a chemical substance
- producing a substance as a

- byproduct, or manufacturing or importing as an impurity
- all de minimis amounts of manufactured/imported substances
- imported chemicals for research and development, and
- chemicals made as a non-isolated intermediate.

Companies can also apply for extensions to pay fees in installments, and can use cost data from the past two years to calculate fees.

EPA took into account financial burdens caused by the coronavirus. The fee rule "reflects real-world situations, narrows the broad scope of current requirements [and] significantly reduces the burden on American businesses."

Info: epa.gov/tsca-fees/proposed-revisions-tsca-fees-rule

HAZMAT FINES

EPA isn't the only federal agency hiking fine amounts (*see bottom of Page 1 for details*).

The Department of Transportation (DOT) increased civil penalties for violations of Hazardous Materials Regulations (HMRs) covering hazmat shipments by ground, air and rail.

Maximum fines for hazmat shipping violations rose from \$81,993 to \$83,439 per day, per violation.

For a violation that results in death, serious illness, severe injury or substantial property damage, the maximum penalty fine is now \$194,691 per day, per violation (up from \$191,316).

And the minimum penalty for failure to provide hazmat training for employees rose from \$493 to \$502 per employee, per day.

Six different Administrations under the DOT umbrella can assess HMR penalties:

- Federal Aviation
- Maritime
- Pipeline and Hazmat Safety

- Federal Railroad
 - Federal Motor Carrier Safety, and
 - National Highway Traffic Safety.
- Info:** 86 FR 1,745

LEAD & COPPER RULE

EPA's final lead and copper rule (LCR) for drinking water systems is a bit tougher than what the agency called for originally.

For example: Systems that serve 50,000 or more people must publish their lead service line (LSL) inventories online. The prior threshold was 100,000.

The final LCR also mandates:

- Homeowners with LSLs must receive an annual notice of when they can expect a replacement.
- Systems that don't meet their annual LSL replacement goals inform the public (such as virtual or in-person townhall meetings).
- Customers whose tap water exceeds the 15 parts per billion (ppb) lead action level must be notified within 24 hours (EPA originally proposed a 30-day notice period).
- Treatment facilities must test 20% of elementary schools and daycare centers in their service areas for lead over a five-year period. Testing results must be provided to schools.
- Corrosion control measures need to be reevaluated and changed for lead levels 10 ppb or higher. Systems above 10 ppb but below 15 ppb must schedule LSL replacements and communicate with their states.

These are the first significant changes to the LCR since 1991. A lead poisoning fiasco in Flint, Michigan seven years ago brought attention to lead in water health hazards and spurred calls for tougher regulation.

EPA didn't change the LCR's action level (15 ppb) or maximum contaminant goal of zero. There's no safe level of lead in water for children and expectant mothers.

Info: tinyurl.com/leadrule644