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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).

Biden climate change plan for energy sector is in the works

■ *Obama and Trump air plans failed in court*

The Biden administration threw in the towel – it won't try reviving the Clean Power Plan (CPP) for coal and oil utilities.

But that brief sigh of relief from electricity providers quickly faded from the cold realization that tougher climate change rules may be inevitable.

What the Biden plan *won't* do

The CPP got shot down by the Supreme Court in 2015 largely because it singled out coal-rich states for major greenhouse gas (GHG) reductions while setting easily reachable goals for states heavy on natural gas and hydro.

Count on the Biden plan not picking "villain" fuels and instead sticking to GHG emissions both at

power plants' fencelines, and likely along the supply chain, such as:

- fracking and drilling
- oil and gas pipelines
- transportation, and
- "downwind" impacts on neighboring states.

This type of regulatory approach won't please many in the oil & gas industry, but by spreading the pain it's more likely to survive Clean Air Act legal challenges.

Texas outages on everyone's minds

President Biden campaigned on zero GHG emission from electric utilities by the year 2035. To get there will require enormous investment

(Please see Climate ... on Page 2)

ENFORCEMENT

Supplemental enviro projects get green light (again)

■ ANOTHER TRUMP POLICY OVERTURNED: MORE TO COME

Supplemental environmental projects (SEPs) are back on the table in federal enforcement actions.

The Department of Justice's Environment and Natural Resources Division overturned President Trump's ban of SEPs because it was "inconsistent with longstanding Division policy and practice."

Some in industry support the move

SEPs were a common tool in settlements for decades, allowing violators to reduce civil fines and

create good will in companies' communities by funding cleanups and pollution prevention initiatives like retrofitting diesel school buses.

But many in industry argued that third-party groups shouldn't have been allowed to dictate the terms and dollar value of SEPs.

The Trump administration believed SEPs violated the Miscellaneous Receipts Act by allowing penalties to go to outside groups instead of the Treasury as the law requires.

Significant violations of air, water, waste and chemical safety regs, particularly repeaters, will be top targets for substantial SEPs.

ETHANOL

No more exemptions for small refineries

Small refineries will be hard-pressed to obtain an exemption from the biofuel mandate in the Renewable Fuel Standard (RFS).

The 10th Circuit Court of Appeals threw out three exemptions granted to small refineries because the companies didn't present compelling evidence they'd suffer economic hardship from having to purchase renewable identification numbers (RINs).

The Trump administration granted up to four times as many exemption petitions than the Obama regime.

Small refineries were exempt from RFS production mandates until 2011.

Small sites can't get off the hook

Corn farmers, ethanol producers and bigger refineries yelled the loudest about smaller operations getting a break from having to blend biofuels into gasoline and other fuels. That's because RIN totals across industry weren't cut as many more fuel producers didn't have to comply with the RFS mandate.

Final "blend-wall" figures for

2020 are set at:

- cellulosic biofuel: 590 million gallons
- biomass-based diesel: 2.43 billion gallons (bgs)

The 10th Circuit Court of Appeals threw out three exemptions

- advanced biofuel: 5.09 bgs, and
- total renewable fuel: 20.09 bgs.

EPA hasn't announced volume requirements for 2021 except for biomass-based diesel, which remains at 2.43 bgs.

Info: tinyurl.com/renewablefuelexemptions647

Climate ...

(continued from Page 1)

in technologies like carbon capture and sequestration, and ramped-up renewable fuel production beyond current hydro, wind, solar, biofuels and biomass.

Electricity shortages in Texas due largely to wind turbines freezing up (see Page 4 for more) highlight reliability issues with renewable fuels as opposed to fossil fuels.

Power plants and grid regulators everywhere are taking a second look at their blend of energy sources. Some will look to curtail further cuts in coal or bolster gas usage.

The big question is: Will more companies be willing to absorb the costs of being major greenhouse gas emitters to boost reliability? We're about to find out.

In the meantime, industry groups are pressing the White House to reconsider tougher regulations on oil & gas and coal.

Info: tinyurl.com/cleanpower647

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 REWRITE OF ENVIRO POLICY BY INSURER LEGAL?

Buck Flanagan, environmental director, felt a jolt of terror shoot through him as he scanned a PDF from his insurance carrier.

"We might as well be uninsured!" Buck yelled. "How in the world could they do this to us?"

Buck waited the better part of the day until Jimmy Fresco, the insurance rep, finally returned Buck's call.

"You're essentially dropping coverage for us, do you realize that?" asked Buck.

"Let me explain," said Jimmy. "You and I both know EPA and the courts show no mercy on cleaning up spills, hazardous waste accidents, you name it. Insuring companies like yours is a big risk," said Jimmy.

A glaring new exclusion

"I understand that," said Buck. "And I can see your point when it comes to raising the price.

"But cutting our coverage in half?" Buck asked.

"There are options there," said Jimmy. "Additional coverage may be needed. I can --"

"You're also excluding our River Road facility, Jimmy," said Buck. "This is cutting the legs out from under us. We can't do business with a policy like this. This isn't a policy renewal, it's 'Take it or get lost!'"

"I'm sorry you feel that way, but it's the best we can do," said Jimmy.

Buck's company sued the insurer for breach of contract.

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

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

Probation & \$90K fine for covering up fuel oil spill

Company: Cin-Air, Lunken Airport, Cincinnati, Ohio.

Business: Aircraft operator.

Penalty: \$90,000 fine and one year probation.

Reasons for penalty: Cin-Air's fuel pump at the Lunken Airport airplane hangar was inadvertently left running overnight after a mechanic refueled an airplane. Workers had put a zip tie on the pump's dead-man switch so it stayed open and didn't have to be held down. The next morning, workers found the fuel pump ran all night and was leaking. More than 3,000 gallons of fuel spilled from the pump. Cin-Air didn't notify the National Response Center and waited six hours to call the fire department. Employees washed down the spill area with water into a nearby storm sewer.

Note: The company must train employees on spill prevention techniques and publish an apology in a trade publication.

Hazwaste cleanup will keep PCBs contained

Company: U.S. Magnesium, Rowley, Utah.

Business: Primary magnesium manufacturing.

Penalty: \$37 million Superfund law

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.

settlement and \$250,000 fine.

Reasons for penalty: U.S. Magnesium will spend \$37 million to prevent dioxins, furans, hexachlorobenzene and polychlorinated biphenyls (PCBs) from running off or seeping into the ground. The company will build a barrier wall around the operating portions of its 1,700-acre site to prevent leaks or breaches of hazardous materials to the Great Salt Lake, and a filtration plant to treat all wastewater. It's also providing financial assurance to ensure proper cleanup and closure of the site.

PM went into the air instead of the baghouse

Company: Steel Dynamics, Butler, Indiana.

Business: Manufacturer of flat rolled steel sheets and liquid pig iron.

Penalty: \$475,000 fine and \$3 million in upgrades.

Reasons for penalty: The company failed to capture all particulate matter (PM) emissions from three ladle metallurgical stations and route them to a baghouse, as required by the company's Title V operating permit.

Note: As part of its settlement, the company must upgrade and expand its baghouse or build a new one to capture PM emissions.

VOC leaks come with steep price: \$1.7 million fine!

Company: Midwest Can, Franklin Park, Illinois.

Business: Portable fuel container manufacturing.

Penalty: \$1.7 million.

Reasons for penalty: Midwest Can sold plastic portable fuel containers that didn't effectively prevent volatile organic compound (VOC) emissions. The cans were labeled with Certificates of Conformity (COC) to Clean Air Act guidelines.

Testing showed the containers emitted higher levels of VOCs than the COCs allowed for.

Plenty of upgrades are on tap to curb stormwater

Company: Ke'ehi Marine Center, Honolulu, Hawaii.

Business: Dry and wet docking and fuel stations for boats.

Penalty: \$127,821.

Reasons for penalty: The center's boating operations led to discharges of lead, zinc and copper into Honolulu's Ke'ehi Lagoon. Illicit discharges harm aquatic life and sensitive coral reef ecosystems.

Note: The Center has since:

- developed a Stormwater Pollution Prevention Plan
- resurfaced the 1.3-acre boatyard area to prevent discharges from work areas, and
- installed a stormwater treatment system.

Batteries, electronic waste can't be thrown in trash

Company: Walgreens, multiple stores in California.

Business: Pharmacy chain.

Penalty: \$3.5 million.

Reasons for penalty: Walgreens violated the state's hazardous waste law after agreeing to correct problems in a 2012 stipulated judgment. Inspectors found hazwaste in trash bins at multiple stores. Items included:

- over-the-counter and prescription medications
- electronic devices
- batteries
- aerosol products, and
- cleaning agents.

Note: Walgreens also threw away papers containing customers' private info without shredding it first.

ENERGY RELIABILITY

Texas grid failure a cautionary tale

In most debacles there's more than one area to assign blame, and the power blackouts in Texas that caused several deaths are no exception.

The facts: Chilly temperatures not seen in more than 100 years and rain froze half the state's wind turbines. Wind accounts for more of the state's electricity generation than coal but well behind natural gas.

For more than two weeks, millions of Texans were without power, many for days on end. Most of the 36 winter weather-related deaths were due to roadway accidents, but a handful died from exposure.

COVID blamed for no inspections

The Electric Reliability Council of Texas (ERCOT) is supposed to do safety inspections of power plants every year and make sure they're "winterized."

ERCOT did virtual tabletop exercises instead this year, citing

COVID-19 exposure fears, rather than in person. ERCOT says it's too soon to tell if the lack of in-person inspections played a part in the shutdown of plants.

Underestimated winter weather?

Climate change researchers told state lawmakers to expect milder winters from now on, predicting a 1.6 degree temperature increase.

The GOP-led state legislature considered but never acted on bills to bolster the Lone Star State's power grid dating back to 2015.

Why gas supply got cut off

Power plants lost access to gas when compressors froze, cutting off the normal supply temporarily.

Texas power plant compressors are overwhelmingly powered by electricity rather than gas, which lessens the equipment's carbon footprint.

RCRA

Hazwaste storage tanks vapors went unchecked

■ RCRA INSPECTIONS ARE QUICK TO FIND PROBLEMS! HERE'S PROOF

One of EPA's national compliance initiatives is to prevent releases of volatile organic compounds (VOCs) from hazardous waste storage tanks that contribute to smog.

(Search for "National Compliance Initiatives" at our website.)

Regulators made an example of an electronics manufacturer in Maine to drive home the point.

Tanks weren't labeled, inspected

The Fairchild Semiconductor manufacturing facility in South Portland generates liquid solvent wastes that emit VOCs.

Inspectors discovered on a routine check that Fairchild stored solvent

hazwaste in multiple tanks but lacked a Resource Conservation and Recovery Act (RCRA) air emissions compliance program.

Fairchild also didn't meet RCRA requirements for labeling, monitoring and recordkeeping for tanks and associated equipment.

After the inspection, the facility dismantled a 5,500-gallon hazwaste tank that violated RCRA's air emissions regs, and implemented a compliance program for all other tanks and equipment.

The company's paying \$104,545 in fines and has corrected the problems.

Note: Semiconductor manufacturers are one of several industries that must comply with RCRA air regs as well as National Emission Standards for Hazardous Air Pollutants.

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.

■ SITE HAS CHEMICAL RELEASE BUT NEVER PHONES IT IN

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

We have some civic-minded neighbors to thank for tipping us off about an ammonia leak.

The fumes from ABC Cold Storage were strong enough that neighbors called 911. Some folks left their homes for the day because of eye and nose irritation.

Once we caught wind of the release, we paid ABC a visit. There were firefighters on the scene.

We quickly learned the company's response team was working on the equipment failure and there was no more anhydrous ammonia leaking out.

ABC had an accidental release of more than 100 pounds of ammonia. Their permit allows for releases, and in this case, the release wasn't a violation.

It's what ABC did after detecting the release that's the problem.

ABC's team dropped the ball

ABC's supervisors acted fast to repair the leak. But no one took the time to call it in.

The National Response Center, plus local and state agencies, must be called if 100 pounds or more of ammonia leaks.

Federal law, specifically the Emergency Planning and Community Right-to-Know Act, is crystal clear on these requirements.

It shouldn't have taken residents tipping us off about the release. ABC had a responsibility.

I recommend a \$102,000 penalty.

■ *Dramatized for effect. Based on a settlement with a Southeastern cold storage facility.*

CLEAN WATER ACT

Feds won't bend on this permit blunder

Before dredging or filling streams or wetlands, it's absolutely crucial that you:

- apply for a Clean Water Act Section 404 permit from the U.S. Army Corps of Engineers first, and
- don't move even a shovel full of dirt until the permit's in hand.

It's not just the environmentally right thing to do ... it's also the only way to avoid a battle with the feds that you won't win!

As a recent settlement proves, it doesn't matter how long the battle takes, the government will pursue it to the end.

Why take the risk?

Starting back in 2005, Thomas Lipar, a Houston-based developer, broke ground on the Benders Landing Estates housing development.

The property contains streams and wetlands that feed into Spring Creek and the West Fork of the San Jacinto River, which flow into Lake Houston.

Lipar's companies operated earthmoving machinery and filled substantial segments of streams and acres of abutting wetlands despite having info about the aquatic condition of the property.

Fatal mistake: Lipar never obtained a dredge-and-fill permit and let work go on.

15-year court fight peters out

State authorities tipped off the Department of Justice. Lipar did his best to stall a payout in court for several years but finally agreed to settle in January.

Lipar and his companies agreed to pay \$900,000 in compensatory mitigation, preserve undisturbed riparian areas, conduct erosion control work on streams, and be subject to a prohibitory injunction that will resolve CWA violations.

Info: justice.gov/enrd/consent-decree/us-v-thomas-e-lipar-et-al

ENVIRONMENTAL JUSTICE

Solid waste landfills can expect more scrutiny

- STATE AGENCIES NOT KEEPING TABS ON WASTE OPERATORS' EMISSIONS

With the Biden White House focusing squarely on Environmental Justice (EJ) enforcement, one sector that can expect greater scrutiny is municipal solid waste (MSW) landfills.

An EPA Inspector General (IG) report from last year found states aren't checking up on landfills' emission controls.

That includes landfills that should be operating under Title V (major source) permits.

Major sources flying under radar

The IG report "identified 12 active MSW landfills in the

two states audited, Georgia and Texas, that could be operating without the required Title V permits.

"[State] agencies responsible for issuing Title V permits to MSW landfills didn't always obtain the data needed to verify whether the landfills required a permit and whether landfill emissions exceeded allowable levels [set in 1996]."

MSW landfills emit carbon dioxide, methane and non-methane organic compounds as waste decomposes. Active and closed landfills are typically located near low-income neighborhoods and trigger odor complaints where controls are outdated or aren't in use.

Info: epa.gov/sites/production/files/2020-07/documents/_epaig_20203007-20-p-0236_glance.pdf

■ COURT CASE TO CLARIFY POINT SOURCE DEFINITION

A water pollution lawsuit in Massachusetts will help determine what a "functional discharge" from an underground source is.

Flashback: The Supreme Court ruled in *Maui v. Hawaii Wildlife Fund* that groundwater pollution may qualify as a point source that needs a water permit. This decision upended nearly 40 years of precedent (search for "Maui point source" at our website for a timeline of the case).

Fast forward to today: The town of Barnstable is being sued over effluent sand beds that are 1.5 miles away from surface waters within the Lewis Bay watershed system, including Stewarts Creek and Hyannis Inner Harbor.

If judges rule effluent is discharging to the creek, the town will be forced to apply for a National Pollutant Discharge Elimination System permit and face the threat of Clean Water Act enforcement.

We'll keep an eye out on this lawsuit's outcome for you.

Info: clf.org/wp-content/uploads/2021/02/FINAL-Hyannis-Complaint.pdf

■ 17 STATES DEMANDING TOUGHER LIMITS ON PM 2.5

Seventeen states are suing EPA to toughen the national ambient air quality standards for tiny particulate matter (PM 2.5).

The previous administration left existing limits in place. Several EPA scientists and health experts argued a tougher soot limit was needed to reduce heart and lung ailments and early deaths.

For now, the PM 2.5 standards are set at 12 micrograms per cubic meter (µg/m³) for the primary annual average, 15 µg/m³ (secondary annual average) and 25 µg/m³ (primary and secondary 24-hour average).

CLIMATE CHANGE

Social cost of carbon, gases go way up

The Biden administration is ramping up the social cost of greenhouse gases (GHGs) that federal agencies refer to when promulgating rules and approving permits.

The Interagency Working Group wants to reinstate values set in 2017 that were then shelved by the Trump administration. The proposed social cost values are:

- carbon dioxide: \$51 a ton
- nitrous oxide: \$18,000 a ton, and
- methane: \$1,500 (all values are based on a 3% discount rate).

Oil, gas project costs to rise

From 2017 through 2020, the social cost of carbon was 1% with a 7% discount rate.

Lower discount rates increase the amount of damages that can be assessed to projects like natural gas pipelines or fracking wells.

The social cost is the monetary value of the net harm to society associated with adding a small amount of that GHG to the atmosphere in a given year.

Regulators with EPA, the Interior Department and Energy Department

can factor in changes like net agricultural productivity, human health effects, the risk of flooding and other natural disasters and disruption of energy systems when considering new regs or permit applications.

Info: tinyurl.com/socialcostcarbon647

OSHA coronavirus work policy based on state reg

A COVID-19 emergency temporary standard is on the way from OSHA that's expected to mirror Virginia's recently enacted policy.

While states like Connecticut, Texas and Mississippi have lifted workplace restrictions, OSHA may assess fines if employees are found to have contracted COVID-19 at work.

Virginia's policy calls for:

- face masks for employees whose jobs require facing the public
- ready access to hand sanitizer
- regular cleaning of common work spaces, and
- training for employees on coronavirus safety.

WHERE TO GET HELP

MIDWEST ENVIRO CONFAB OPEN TO ALL, JUNE 22-23

Check out one of the biggest educational conferences for compliance pros this spring – the Midwest Environmental Compliance Conference (MECC).

Regulators from EPA Region 7 and the following state agencies will present and answer questions:

- Missouri Department of Natural Resources (DNR)
- Kansas Department of Health and Environment
- Iowa DNR, and
- Nebraska Department of Environment and Energy.

Environmental consultants and business leaders will also share strategies for reducing waste, complying with hazardous air pollutant regs and best ways to monitor and report releases.

MECC promises inside info on what the Biden EPA's climate change plan will look like and how industry will be affected.

The conference is scheduled for June 22-23 at the Kansas City Convention Center. Live streaming available (\$420 for both days).

Info: mecconference.com/june-22-23-2021-in-kansas-city-and-by-live-streaming-video

SHARPEN YOUR JUDGMENT – THE DECISION

(See case on Page 2)

Buck's company won. The court ruled the insurance carrier negotiated in bad faith by essentially rewriting the policy, namely by:

- upping the price substantially
- cutting coverage from 10 years to one
- slashing coverage by more than half, and
- excluding one of the company's sites.

LESSON LEARNED: FACILITY KNEW INSURER WAS PLAYING GAMES AND DIDN'T STAND FOR IT

Insurance law and environmental laws help protect businesses from nightmare scenarios like this one.

For example, hazardous waste permit holders (state and federal) must show they can cover:

- normal operations
- site closure and post-closure care (which may, in the worst case scenario, involve a Superfund cleanup), and
- sudden and accidental discharges.

Insurance is obviously the primary coverage for most facilities against environmental lawsuits. Laws like the Clean Air Act put an onus on insurance carriers as well: Renewal policies can't differ widely from expiring ones.

That doesn't mean an insurer has no wiggle room to make changes when a policy is up for renewal. But wholesale changes in years of coverage, significant new exclusions, etc., won't likely cut it in a court of law.

Cite: *Indian Harbor Insurance v. F&M Equipment, U.S. Appeals Court, 3rd Circuit, No. 14-1897*. This case has been dramatized for effect.

COMPLIANCE

What's your Enviro Justice game plan?

Facilities in or near minority and low-income neighborhoods, or whose emissions impact these areas, can't afford noncompliance.

With the Biden administration making EJ a priority, regulated sites that experience an accidental release will pay higher fines and risk seeing their permits rescinded.

Proactive approach works best

Attorneys Vinson & Elkins recommend four steps companies can take to minimize risk:

1. Identify and track EJ communities near your sites using EPA's online tool EJScreen (epa.gov/ejscreen). This is especially important for emissions that travel for miles. Demographics of neighborhoods change – it's important to know race, ethnicity and income levels of residents nearby.

2. Self-audit the compliance status of all units, facilities or operations near EJ communities. Bonus: You're eligible for reduced or waived fines under EPA's audit policy ([search for "EPA audit policy" at our website](#)).

3. Consider creating an EJ internal policy that includes pollution prevention measures and improves your status as a neighbor.

4. Reach out to community leaders and attend local meetings if you're not already doing so. If you hire local residents and donate to local causes, make sure your marketing people are getting the word out.

Info: velaw.com/insights/biden-administration-environmental-justice-focus-enforcement-impact

'Forever' chemicals leak from plastic to product

Traces of per- and polyfluoroalkyl substances (PFAS) found in a mosquito pesticide product came from its plastic container.

EPA says PFAS were "most likely formed" when fluoride was injected into the container molds, which led to PFAS leaching into the product.

Is leaching a big hazard?

The mosquito product was distributed in fluorinated high-density polyethylene (HDPE), a widely used thermoplastic polymer made from petroleum.

EPA will be testing different brands of fluorinated containers like HDPE products to determine if they contain or leach PFAS, and the conditions that can lead to leaching.

Info: [msn.com/en-us/news/politics/epa-investigates-toxic-forever-chemicals-in-pesticides/ar-BB1enKQM](https://www.msn.com/en-us/news/politics/epa-investigates-toxic-forever-chemicals-in-pesticides/ar-BB1enKQM)

EPA fast-tracks water standards for PFAS

Water utilities should expect monitoring and testing standards for PFAS within the next four years.

EPA proposed a fifth unregulated contaminant monitoring rule to collect new data on PFAS in drinking water, and is reissuing final regulatory determinations for perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) under the Safe Drinking Water Act.

National policy is in sight

EPA's goal is to find the frequency that 29 PFAS are found in drinking water systems and at what levels. Municipal water plants are asking for clear and fair guidelines.

In the meantime, class-action lawsuits are booming against big chemical manufacturers like DuPont, Chemours and 3M for pollution found in drinking water wells in New Jersey, New York, Massachusetts, Michigan and other states.

Info: epa.gov/safewater

REAL PROBLEMS/SOLUTIONS

■ STORMWATER: OUR MOVE 'INDOORS' WON EXEMPTION

Back when EPA and states updated their stormwater rules, there was a collective "grrr" from all sorts of operations like ours.

It seemed like we'd have to obtain a stormwater permit and then face associated liabilities.

But as we studied the rules, we realized there was an alternative.

Facilities don't necessarily need permits if they move operations indoors and thereby qualify for a no-exposure exemption.

At first that seemed unlikely as we handle a lot of scrap metal.

Yet there is a way to move activities indoors without building a new warehouse.

Avoided building warehouse

Turns out that "inside" doesn't mean "totally indoors." It really means just out of the rain.

Solution: We could use awnings over our loading dock to shield trucks, materials and equipment from the elements.

So we made a small investment in awnings to cover our loading dock, and that won us an exemption from expensive – and in our case, totally unnecessary – stormwater permitting costs.

▼ FROM OUR SUBSCRIBERS

More than 90% of our readers report in surveys that Environmental Compliance Alert, with its quick-read format, is more valuable than any other publication they read.

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

David Sample
Environmental Specialist
Ajinomoto North America

Air, Water & Waste regs that affect your operations

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

TSCA

Chemical industry stakeholders, you have until May 8 to comment on Toxic Substances Control Act (TSCA) restrictions on:

- decabromodiphenyl ethers (DecaBDE), a flame retardant used in textiles, plastics and polyurethane foam making
- hexachlorobutadiene, used in the manufacture of rubber compounds and lubricants and as a solvent
- pentachlorothio-phenol, an agent that makes rubber more pliable in industrial uses
- 2,4,6-tris(tert-butyl)phenol, used as a fuel, oil, gasoline or lubricant additive, and
- phenol, isopropylated, phosphate (PIP 3:1), a flame retardant in consumer products and variety of industrial uses.

Companies are seeking [an extension on the compliance deadline for PIP \(3:1\)](#) which is found in a wide variety of electronics, including cell phones, robotics used to manufacture semiconductors and equipment used to move COVID vaccines and keep them at the appropriate temperature.

Stakeholders noted the complexity of international supply chains makes locating the presence of and finding alternatives to PIP (3:1) in components very challenging.

Info: tinyurl.com/tsca647

RULE ROLLBACKS

Democrats in Congress could invoke the Congressional Review

Act (CRA) to reverse “midnight” rules promulgated by federal agencies during the final weeks of the Trump presidency.

Regs finalized by outgoing administrations are typically difficult to undo. We'll keep you posted on all rule rollbacks.

The Biden administration has made undoing climate change-related regs a priority, in particular less stringent fuel efficiency standards for light-duty cars and trucks.

HAZCOM OSHA

OSHA's top 10 most cited violations accounted for 24,239 violations for fiscal year 2020.

The top 10 was released by the National Safety Council, along with the number of violations.

At No. 2 on the list is hazard communication (hazcom) of chemicals. Inspectors are finding problems with written hazcom programs and implementation.

“Sometimes we'll find an employer will have a written program, but they just haven't implemented it yet,” according to OSHA Deputy Director for its Enforcement Directorate, Patrick Kapust. “It must be implemented in the workplace. It shouldn't just be maintained in a notebook in the office.”

Other violations involve employee information and training, [maintaining safety data sheets and making sure they are readily available](#), labels and other warnings, and requirements to develop safety data sheets and maintain copies of them.

These violations are being found in manufacturing, general industry, construction, masonry and roofing contractors, automotive shops, paint and interior repair and maintenance, general automotive repair, and machine shops.

The top 10 list doesn't change much from year to year. Here are the

leading violations for 2020:

1. Fall protection general requirements (1926.501), 5,424 violations
2. Hazcom (1910.1200), 3,199
3. Respiratory protection (1910.134), 2,649
4. Scaffolding (1926.451), 2,538
5. Ladders (1926.1053) 2,129
6. Lockout/tagout (1910.147), 2,065
7. Powered industrial trucks (1910.178), 1,932
8. Fall protection training requirements (1926.503), 1,621
9. Personal protective equipment eye and face protection (1926.102), 1,369, and
10. Machine guarding (1910.212), 1,313.

Info: nsc.org/in-the-newsroom

OIL & GAS DRILLING

The Department of Interior (DOI) revoked more than 70 oil & gas on-shore drilling permits that were approved by agency staffers without the approval of Biden appointees.

Companies can reapply for permits (many are likely to get approval) and won't be penalized for any drilling done while they had permits.

President Biden issued a moratorium on drilling and fracking on all federal lands his first week in office and also revoked the permit for the Keystone XL oil pipeline from Alberta's tar sands ([search for “Keystone XL” at our website](#)).

The Western Energy Alliance is suing to get the moratorium overturned. The case is currently at the U.S. District Court for Wyoming.

[DOI canceled on- and off-shore leases in Alaska, Colorado, Montana, New Mexico, Wyoming and along the Gulf of Mexico.](#)

About 250 new oil & gas drilling permits are near approval from DOI among more than 2,500 applications filed recently.