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## SAFETY NEWS ALERT

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

## EPA raises bar on chemical evaluations & safety measures

### ■ Toxic Substances powers granted by Congress

Congress wanted EPA to clamp down on the most toxic and bioaccumulative substances in commerce five years ago when it passed the Frank Lautenberg Chemical Safety Act.

Now it looks like the clampdown on high-risk chemicals will get underway with EPA announcing two major changes to the Toxic Substances Control Act (TSCA) program.

#### Tougher bar for new uses

From now on, Significant New Use (SNU) rules won't be issued with a "not likely to present an unreasonable risk" determination.

"Going forward, when EPA's review leads to a conclusion that one or more uses may present an

unreasonable risk, or when EPA lacks the information needed to make a safety finding, the agency will issue an order to address those potential risks," an EPA press release announced.

This means manufacturers will need to provide more data to get the green light for an SNU. And workers who handle substances coming to market can expect a clearer appraisal of a chemical's risk factors.

#### Driving down OSHA's lane?

The other big change?

EPA won't defer to OSHA's worker protection standards and Safety Data Sheets when it determines a chemical may put workers in harm's way, as

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

## CRITERIA POLLUTANTS

### Emissions cheating scandal at Colorado agency

#### ■ DID NAAQS STATUS PUSH BOSSES TO HIDE AIR POLLUTION DATA?

We've heard watchdog groups accuse regulators of being too lenient on polluters, but a whistleblower case out of Colorado takes it up a notch.

Three employees at the Colorado Department of Public Health and Environment claim an air pollution control director told them to stop measuring increases in sulfur dioxide, nitrogen dioxide and particulate matter, all of which are criteria pollutants regulated by National Ambient Air Quality Standards.

Also: According to the whistleblower complaint, management ordered a modeler to falsify a gold mine's air data "to ensure that no modeled violation would be reported."

#### Time to clear the air

The whistleblowers revealed an asphalt and concrete plant in the Denver area is in noncompliance for ozone, and an oil & gas extraction facility had been allowed to operate without a permit.

The Denver metro area is a serious violator of the ozone standard, with summertime smog levels comparable to areas like Los Angeles.

## ELECTRONIC WASTE

### Recycle, reuse, reap rewards & awards!

Diverting electronic waste from landfills and recycling it instead takes 24/7 stewardship and an investment of time and money.

Of course, the environmental benefits are huge:

- precious metals like nickel, palladium, silver, cobalt and gold are recovered, and
- harmful metals like lead, cadmium and mercury are kept out of the soil and groundwater.

Bonus: Companies that lead the way in electronics recycling can win awards to boot.

#### Mega-tons earn mega-kudos

LG Electronics USA in Englewood Cliffs, New Jersey, Samsung Electronics in Montville, NJ and Xerox in Webster, New York were among 20 winners of the 2020 Sustainable Materials Management (SMM) Electronics Challenge Awards from EPA.

All of the award winners diverted a total of 176,494 tons of electronics from landfills and avoided nearly

500,000 tons of carbon dioxide equivalent emissions.

Also: Samsung was recognized for introducing its first plastic-free packaging design for the Galaxy S10 smart phone.

#### Companies that lead the way in electronics recycling can win awards

The SMM Challenge encourages electronics manufacturers and retailers to send 100% of used electronics they collect to third-party certified refurbishers and recyclers. Other winners were Dell, Vizio, TCL North America and Sony.

Info: [epa.gov/smm-electronics](http://epa.gov/smm-electronics)

#### EPA ...

(continued from Page 1)

it's done for decades: "Where EPA identifies a potential unreasonable risk to workers that could be addressed with appropriate personal protective equipment and hazard communication, EPA will ... identify the absence of worker safeguards as 'reasonably foreseen' conditions of use, and mandate necessary protections through a TSCA section 5(e) order."

Plus: EPA and OSHA are teaming up on TSCA chemical reviews and safety measures.

#### Do-overs coming for chemicals?

EPA wrapped up assessments for 10 high-risk chemicals last year. None of them were banned but restrictions on some are underway.

Facilities still using any of these substances should prepare for tougher regs or bans: 1,4-dioxane, 1-bromopropane, asbestos, carbon tetrachloride, HBCD, methylene chloride, NMP, pigment violet 29, TCE and perc.

## 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.

#### ■ CAN INSURER DENY STORMWATER COVERAGE?

Environmental manager Buck Flanagan couldn't breathe for a minute as he scanned an email.

*Denial of claim?!* Buck thought. *This can't be right. It can't be.*

Before he could dial his insurance rep, Jimmy Fresco, his phone rang. It was Fresco calling him.

"I'm just checking if you got our email," said Jimmy. "Figured I should get in touch quickly."

"We're being sued by multiple homeowners for flooding damage," said Buck. "If we don't have coverage, we're looking at bankruptcy. You can't do this to a paying customer."

#### Claims threaten to ruin firm

"Your policy has a pollution exclusion," said Jimmy. "Facts are, sediment and gravel migrated off your site and dammed the stream. It's black-and-white."

"Hurricane Harvey was a massive, massive storm," said Buck. "What could we have done to stop it?"

"Our facility was badly damaged from the storm too," said Buck. "We're sorry about how people lost their homes to Harvey, but that's why we all pay for insurance, to protect ourselves!"

"I wish there was more we could do," said Jimmy.

"We have no choice but to sue then," said Buck.

Buck's company sued to get the insurer to indemnify it against storm-related damage claims by neighboring homeowners.

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](http://www.EnvironmentalComplianceAlert.com/category/who-got-fined-why)

### **Clean Air Act & RCRA gaffes add up! \$220K fine**

**Company:** Par Hawaii Refining, Kapolei, HI.

**Business:** Oil refineries.

**Penalty:** \$219,638.

**Reasons for penalty:** Par Hawaii improperly managed hazardous waste from its refinery processes. EPA inspectors documented an oily residue being released onto an unlined asphalt pad and into nearby soil that testing confirmed contained hexavalent chromium and benzene. The company was fined under the Resource Conservation and Recovery Act (RCRA) in 2018 for these waste gaffes. A year later, inspectors wrote up multiple violations of the Clean Air Act's Risk Management Program chemical accident prevention requirements. These included process safety errors, such as incorrect maximum inventories for some crude unit vessels, inaccurate piping and machine diagrams, and operating procedures that were unclear and not current, such as an outdated emergency shutdown operating procedure in the control room.

### **Don't forget to report emissions, pay permit fees**

**Company:** County Materials Corporation, Janesville, WI.

**Business:** Manufacturer of concrete

*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.*

blocks and girders.

**Penalty:** \$171,750, which includes \$81K-plus in past-due fees to the Wisconsin Department of Natural Resources (DNR) as well as \$90K-plus in forfeitures, surcharges and court costs.

**Reasons for penalty:** The company constructed and operated its Janesville facility without obtaining required air permits from the DNR. It didn't report annual air emissions or pay annual air emission fees, then more than a year later, submitted overdue permit applications. The company also emitted more particulate matter to the air than its permit allowed.

### **No heads up to EPA before asbestos work: \$36K**

**Companies:** Wright Brothers and First Team Restoration, Boise, Idaho.

**Business:** Contractors.

**Penalty:** \$36,000 (total).

**Reasons for penalty:** The renovation companies failed to:

- test and inspect drywall and joint compound for asbestos before removing it, and
- notify EPA at least 10 days before beginning the renovation of an older commercial building.

**Note:** Asbestos fibers and particles may be released into the air by disturbing material during demolition work, building or home maintenance, repair and remodeling. Asbestos materials need to be kept wet and bagged, and workers must wear protective gear.

### **Inspectors took 1 look at waste storage area and ...**

**Company:** UCT, Bristol, Pennsylvania.

**Business:** Specialty chemical manufacturer.

**Penalty:** \$44,880.

**Reasons for penalty:** The company

violated RCRA rules, such as failing to:

- properly label, date and mark hazwaste containers
- keep hazwaste bins closed except when adding or removing toxic and flammable waste
- make waste determinations
- provide annual RCRA training to employees, and
- ship hazwaste for treatment or recycling within the 90-day RCRA storage limit.

**Note:** UCT manufactures a variety of chemical items: solid phase extraction products for hospitals, clinical and toxicology laboratories, food safety testing labs, pharmaceutical and biotech companies and environmental testing facilities; and silane/silicone products used in the glass and fiber optic, medical device, cosmetic, paint and coating, adhesive and electronics industries.

### **Spraycleaning fluids ran off into polluted harbor**

**Companies:** Basin Marine and Balboa Boatyard of California, Newport Bay, CA.

**Business:** Boat maintenance yards and docks.

**Penalty:** \$202,132.

**Reasons for penalty:** Both companies didn't control discharges of paint solvents, fuel, oil, hydraulic fluid and heavy metals including lead, zinc and copper into impaired Newport Bay. They were cited for failure to:

- conduct stormwater sampling
- identify sufficient storage capacity to contain runoff generated during routine, seasonal rain events
- clean and dispose of debris near catch basins, and
- meet permit limits for copper and zinc levels in stormwater.

## NEW SOURCE REVIEW

### Know the facts, prevent permit hurdles

Among the reg changes the Biden administration would love to undo but likely won't be able to within the next four years are New Source Review (NSR) air reforms.

For example: Facilities that can show a new project or major modification won't lead to an emissions increase of a criteria pollutant don't automatically have to obtain an NSR permit any longer.

Word to the wise: Companies should be even more careful to map accurate emission estimates and keep tabs on what their potential to emit will be.

The Biden EPA has made it clear stronger enforcement for air violators is coming. Here's what company execs, engineers and compliance teams need to keep in mind.

#### 'Major' modification is blurry

EPA has never clarified what a major modification means. It doesn't

have to be a new smokestack or new process to catch regulators' eyes and be judged as major by the courts.

Any change that can lead to even a brief emissions spike should be part of your permit discussions. Watchdog groups can and will sue if emissions increase just one day.

#### Low tolerance for soot emissions

EPA scientists are pushing hard for a redo of the tiny particulate matter (PM 2.5) national ambient standard in response to lung disease studies.

Under NSR you have very little wiggle room for a PM 2.5 increase – NSR is triggered by a 10 ton per year (tpy) increase in PM 2.5 (it's 15 tpy for coarse particles, aka PM 10).

Significant increase triggers are higher for ozone, nitrogen dioxide and sulfur dioxide (all 40 tpy) and carbon monoxide (100 tpy).

**Info:** Search for "NSR reform" at our website.

## FRACKING

### Study: Where are methane emissions spiking?

#### ■ EPA IS UNDERCOUNTING METHANE FROM EASTERN FRACKING SITES

Methane emissions from oil & gas are 90% higher than EPA estimates according to Harvard and MIT researchers:

"Most of this increase [from 2010 to 2015] appears driven by unconventional oil & gas production in the eastern U.S."

The largest unconventional oil & gas area in the eastern U.S. is the Marcellus Shale formation which covers parts of New York, Pennsylvania, Ohio, Maryland, West Virginia and Virginia.

#### Satellite data paints dire picture

Researchers used satellite data to track and map methane emissions over

North America. They compared high-resolution images of methane columns to annual estimates from EPA's *U.S. Greenhouse Gas Emissions and Sinks* reports.

For the most part, the numbers jibed with researchers' calculations (offshore oil & gas drilling contributed slightly less methane than EPA data reports) except for the wide discrepancy in oil & gas fracking (90% higher) and natural gas production (50% higher).

Bottom line: The driver is almost certainly leaks from oil & gas wells and pipelines.

The methane report was published in the journal *Atmospheric Chemistry and Physics* (free download).

**Info:** [acp.copernicus.org/articles/21/4339/2021](http://acp.copernicus.org/articles/21/4339/2021)

## 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.*

### ■ MAKES SAME STORMWATER MISTAKES AT TWO SITES

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

We haven't been keeping an eye on paper and pulp mills as much as we should be. When I noticed the ABC paper mill was late reporting, I thought there might be a problem.

Turns out I was right. We inspected ABC's main facility and found they were making illegal water discharges.

It also looked like their stormwater controls were lacking. When I asked for a recent stormwater sample and a copy of their spill prevention plan, the managers couldn't provide me with either one.

Turns out there were similar problems at ABC's other facility. This time they could give me stormwater data. But the runoff exceeded what their permit allowed.

I asked about the last time they'd done a site inspection. None of the staffers I spoke with could remember doing one.

### Violated multiple water laws

We filed citations against ABC for violating the Clean Water Act, Spill Prevention Plan and Oil Pollution Prevention regs.

The good news is ABC is taking responsibility and has corrected their deficiencies. But that's not an excuse for disregarding permits at not one but two facilities.

I recommend a \$65,000 penalty for the first site and a \$100,000 penalty for the other.

■ *Dramatized for effect. Based on a settlement with a corrugated paper and cardboard manufacturer.*

## RCRA & SUPERFUND SITES

### Report: Hazwaste inspections need jolt

What's the next hot inspection target for EPA and state agencies on the horizon?

Put money on treatment, storage and disposal facilities (TSDFs) with RCRA landfills that were closed with hazardous waste in place.

An EPA inspector general (IG) report says almost half of TSDFs that should've been inspected are way behind schedule, making groundwater sources a prime spot for contamination risks.

#### Hazwaste sites could be leaking

RCRA guidelines require a closed landfill or other kind of RCRA unit be inspected once every two to three years. Forty-nine percent of 600-plus sites with closed units weren't checked in recent years.

"Because of the lack of inspections, a hazardous waste leak from a compromised unit could go undetected for years, with dire human health and environmental consequences," the

IG warns. "For example, a leak that is not expeditiously detected could contaminate groundwater, resulting in a loss of drinking water supply, high cleanup costs and human exposure to contaminants."

Closed hazwaste sites either have to comply with RCRA corrective actions or the Superfund law. The IG also noted a lack of coordination between EPA regulators for the Superfund and RCRA programs.

#### Inspection by drones in future?

This type of enforcement oversight is perfectly suited to drone inspections if EPA gets approval to use them. OSHA is using drones for some large worksite inspections.

Lack of feet on the ground is an ongoing problem for environmental agencies. Congress has steadily cut the EPA workforce and budget under Democrat and GOP administrations.

**Info:** [epa.gov/office-inspector-general/oig-reports#2021](http://epa.gov/office-inspector-general/oig-reports#2021)

## PROTECTED WATERS

### Trump clean water rule's far-reaching effects

■ PERMITTED PROJECTS ARE A GO NO MATTER WHAT NEXT RULE SAYS

Turns out the Navigable Waters Protection (NWP) rule removed more waterways from federal protection than the most pessimistic watchdog groups thought!

The Army Corps of Engineers estimates 70% of waterways and water features don't qualify for Clean Water Act (CWA) permits or protection under the NWP rule, according to an *Environment & Energy News* report.

#### Limits to protecting waters

While the rule's been put on the shelf by the Biden administration, there's no chance of the more

restrictive Obama-era Waters of the U.S. rule being brought back to remedy the situation.

Bottom line: Oil & gas, mining, pipeline, highway, infrastructure and other kinds of projects with CWA Section 401 permits will be able to continue regardless of what happens with the NWP rule.

NWP narrowed the scope of federally protected waters to:

- territorial seas and traditional navigable waters
- perennial and intermittent tributaries to those waters, and
- certain lakes, ponds, impoundments and wetlands adjacent to jurisdictional waters.

**Info:** [eenews.net/stories/1063727993](http://eenews.net/stories/1063727993)

## TRENDS TO WATCH

### ■ PFAS GOING ON GOLDEN STATE PROP 65 LIST

Several per- and polyfluoroalkyl substances (PFAS) are slated to be listed on California's Proposition 65 list of cancerous chemicals.

The CA Environmental Protection Agency's Office of Environmental Health Hazard Assessment seeks comments on Prop 65 listings for:

- perfluorooctane sulfonate (PFOS) and its salts and transformation and degradation precursors
- perfluorodecanoic acid
- perfluorononanoic acid
- perfluorohexanesulfonic acid, and
- perfluoroundecanoic acid.

Any products containing these substances or their salts will require warning labels. PFOS is already listed on Prop 65 but not its salts and transformation and degradation precursors.

PFAS are no longer made in the U.S. The chemicals were developed in the 1950s to repel water and oil on carpeting, cookware, furniture and other products.

**Info:** [oehha.ca.gov/proposition-65/notices](http://oehha.ca.gov/proposition-65/notices)

### ■ GARDEN STATE MANDATES GREEN STORMWATER PLANS

New Jersey facilities should be transitioning to green stormwater controls to divert runoff to streams, rivers and other waterways.

A new rule that went into effect on March 2 calls for regulated sites to use rain gardens, bioretention basins, vegetated swales, pervious paving and green roofs in lieu of pipes and culverts.

Any application for residential permits will have to comply with the new stormwater rule to merit approval by the NJ Department of Environmental Protection.

**Info:** [nj.gov/dep/newsrel/2021/21\\_0006.htm](http://nj.gov/dep/newsrel/2021/21_0006.htm)

## CLIMATE CHANGE

### Canada & U.S. target oil & gas methane

The U.S. and Canada pledged to work together on reducing greenhouse gas (GHG) emissions at a climate summit on April 22.

Building on an early 1990s partnership that slashed acid rain, both countries will focus on:

- reducing methane emissions from oil & gas operations and possibly other industries
- cutting down on GHGs from transportation, and
- investing in renewable fuels for cleaner electricity.

During the first half of 2020, methane emissions doubled in Alberta province's oil fields.

The Canadian government pledged to reach carbon net zero status by the year 2050. (For a related story, see bottom of Page 4.)

Info: [tinyurl.com/canadaclimate649](https://tinyurl.com/canadaclimate649)

### Feds want input on lead & copper rule this spring

Stakeholders and the general public can ask questions and offer opinions during listening sessions for the lead and copper (LCR) rule.

EPA will hold two virtual sessions on April 28 and May 5 from 10 a.m. to 10 p.m. EST.

The agency particularly wants input from individuals and communities most at-risk for exposure to lead.

Online community round table discussions will be announced soon for dates in May.

Submit your comments online at [www.regulations.gov](http://www.regulations.gov) and enter Docket ID No. EPA-HQ-OW-2021-0255.

### Which LCR changes survive?

EPA is reviewing the first major revisions to the LCR rule in years. Proposed changes include:

- treatment facilities must test 20% of elementary schools and daycare centers for lead over a five-year period, and
- corrosion control measures would need to be reevaluated and changed if lead levels of 10 parts per billion or higher are detected.

Info: [epa.gov/ground-water-and-drinking-water](http://epa.gov/ground-water-and-drinking-water)

## WHERE TO GET HELP

### ONLINE TRAINING: GET UP TO SPEED ON HAZCOM RULE

OSHA wants to align its Hazard Communication standard with the most current Globally Harmonized System of Classification and Labeling of Chemicals (GHS).

For help complying, check out a live, 60-minute online seminar from Premier Learning Solutions set for April 29 at 1 p.m. EST.

The program, "2021 HazCom Standard Update: Labeling, Safety Data Sheets and Training Requirements," will be led by EH&S expert and author Jack Fearing.

Attendees can submit questions before, during and after the seminar. Fearing will cover:

- key compliance updates to the HazCom standard
- changes to definitions and new classifications to know, and
- what the GHS is and how it's changed the old HazCom standard.

Cost: \$199. You may claim 0.05 continuance of certification points from the Board of Certified Safety Professionals.

Info: [learningpremier.com/product/2021-hazcom-standard-update-labeling-sds-training-requirements](http://learningpremier.com/product/2021-hazcom-standard-update-labeling-sds-training-requirements)

## SHARPEN YOUR JUDGMENT – THE DECISION

(See case on Page 2)

No, Buck's company lost.

A U.S. district judge threw out the company's lawsuit against its insurance provider, granting summary judgment to the insurer.

The judge ruled the insurer didn't have to indemnify because stormwater runoff containing sediment and gravel that dammed part of a waterway and led to flooding of hundreds of homes met the definition of pollution – thereby triggering the pollution exclusion in the company's contract.

The company in this case, Megasand Enterprises, a gravel mining operation, is almost certain to appeal this decision. But if it can't win on appeal, it'll be on the hook

for multiple claims well into the millions of dollars and potentially have to declare bankruptcy.

We'll keep you posted on any further developments.

### ANALYSIS: POLLUTION EXCLUSION MAY APPLY EVEN IN THE MOST EXTREME WEATHER EVENTS

Any facility that stores waste, materials or equipment outdoors which migrates off its property and causes damage may be held financially liable, even with an insurance policy.

Facilities can reduce the risk of a pollution exclusion being used against them by investing in controls (stormwater berms, secondary containment for tanks, etc.) and making sure compliance plans are up to date.

Cite: *Everest National Insurance v. Megasand Enterprises*, U.S. District Court, Southern Dist. Texas, No. 4:20-cv-1265. Dramatized for effect.

## DISADVANTAGED COMMUNITIES

### Enviro Justice task force takes charge

EPA administrator Michael Regan didn't waste any time defining his agency's vision and who he'll be counting on as his top chiefs.

Regan fired a handful of science advisors who came on board under the Trump administration.

Many long-time agency scientists claimed the advisors had stymied attempts to curb pollution, such as tightening the national ambient air quality standard for tiny particulate matter (*search for "EPA PM 2.5 pollution" at our website*).

#### Green activists at forefront

EPA and other federal agencies (Energy, Interior, Transportation) will work with a new Environmental Justice advisory board handpicked by the White House.

Among the 26 community leaders and environmental activists:

- Peggy Shepard, founder of We ACT for Environmental Justice
- LaTricea Adams, CEO of Black Millennials 4 Flint
- Susana Almanza, founding member of People Organized in Defense of Earth and Her Resources, and
- Congressman Raul Grijalva (D-Arizona), chair of the House Natural Resources Committee.

The board was formed as part of President Biden's executive order directing 40% of environmental and climate change investments go to disadvantaged communities.

Info: [tinyurl.com/EnviroJustice649](https://tinyurl.com/EnviroJustice649)

#### Popular sunscreen chemical a cancer risk

Sunscreen and anti-aging skin lotions containing the ingredient octocrylene become cancerous if not used promptly.

French and American researchers found octocrylene degrades and

becomes benzophenone, a toxic chemical that causes cancer and disrupts endocrines leading to thyroid disorders.

Dermal absorption of benzophenone into the skin is known to exceed 70%.

Manufacturers like L'Oreal, Neutrogena, Garnier, Bioderma and LaRoche-Posay use octocrylene in various skincare products.

Info: [pubs.acs.org/doi/full/10.1021/acs.chemrestox.0c00461](https://pubs.acs.org/doi/full/10.1021/acs.chemrestox.0c00461)

#### Wastewater grants lean on technology solutions

Water infrastructure projects are getting a shot in the arm with funding from the Department of Energy.

More than \$27 million will go to 13 states for initiatives like:

- developing widely applicable treatment processes to produce renewable power
- extracting chemicals and fertilizers from water for purposes of reuse
- evaluating flexible grid service for biopower from wastewater
- deploying Artificial Intelligence, machine learning and predictive process controls
- addressing social inequities produced by lack of access to clean water among rural and Indian communities, and
- improving wastewater treatment options for agriculture and livestock.

Project teams from universities, water utilities, manufacturers, national laboratories, and small and minority-owned businesses are leading the wastewater projects.

Info: [tinyurl.com/waterinfrastructure649](https://tinyurl.com/waterinfrastructure649)

## REAL PROBLEMS/SOLUTIONS

### RETAILERS NEED TO 'LEED' ON SUSTAINABILITY ISSUES

There's no reason why retail facilities can't be spacious, well-lit, inviting – and sustainable.

We've incorporated LEED (Leadership in Energy and Environmental Design) guidelines in every facility we renovate by:

- converting neon exterior signs to LED (light-emitting diode) lighting (LEDs are the most efficient choice on the market)
- installing floors made from recycled content or renewable resources, including a rubber flooring that's made from discarded sneakers
- using paints, sprays and varnishes that have no or low amounts of volatile organic compounds, and
- arming our janitorial crews with green cleaning sprays and liquids, not chemical products.

#### Great blueprint to follow

Several of our facilities are LEED-certified.

A few aren't because they don't meet all of the specifics.

But we still built those stores using LEED as a blueprint so they can be as sustainable as possible and help preserve 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.

"ECA gets right to the point. They use real-world scenarios to give you examples of disputes and lawsuits."

Dave Sample  
Safety Supervisor  
Ajinomoto North America  
Eddyville, Iowa

## Air, Water & Waste regs that affect your operations

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

### TSCA

Of all the high-priority chemicals that EPA chose not to ban, asbestos has drawn the most attention from environmental groups (see cover story for related info).

The Asbestos Disease Awareness Organization petitioned the 9th Circuit Court of Appeals to toss out EPA's final risk evaluation for asbestos because it "underestimat[es] the dangers of this toxic mineral, despite a presentation of unreasonable risk to human health."

So far EPA has only weighed in on chrysotile asbestos, which is still being used in asbestos cement, friction materials, roof coatings and cements, and gaskets.

But the agency hasn't addressed legacy asbestos used in residential and commercial construction and vehicle brake pads, under the Toxic Substances Control Act (TSCA).

Asbestos is heavily regulated by EPA and some states. It hasn't been mined in the U.S. since 2002.

Asbestos was one of 10 chemicals chosen for in-depth analyses in 2016 (search for "TSCA top 10 chemicals" at our website).

**Info:** [asbestosdiseaseawareness.org](http://asbestosdiseaseawareness.org)

### ENVIRONMENTAL JUSTICE

Prediction: Oil & gas pipelines will face a higher hurdle obtaining a general permit from the U.S. Army Corps of Engineers.

The Byhalia crude oil pipeline connecting Tennessee and Mississippi

is under fire in court because it cuts through predominately black neighborhoods in Memphis.

An 800-gallon oil spill by Valero, one of the pipeline's partnering companies, in Mississippi is still fresh on people's minds.

Nonprofit groups representing Memphis residents want the project halted until more stringent safety measures to protect drinking water are put in place.

General permits don't require the same amount of impact study analyses as individual permits. The Corps doesn't have jurisdiction to address potential discharges to groundwater, indirect emissions from crude oil refining and pipeline transport, or spills and leaks from pipelines.

The Byhalia pipeline would travel above the Memphis sand aquifer and through a municipal wellfield that provides all of the drinking water for Memphis residents.

If the aquifer was contaminated by an oil spill it would be disastrous for Memphis, western Tennessee and northern Mississippi families, argue the groups suing.

**Info:** *Memphis Community Against Pollution v. Army Corps*, U.S. District Court, Western Dist. TN, Case No. 2:21-cv-02201.

### MSGP STORMWATER

Key to avoiding Clean Water Act (CWA) enforcement is identifying stormwater conveyance paths or discharge points (outfalls) on your property or properties.

A Massachusetts auto salvage company with three scrapyards failed to map outfalls and install adequate controls like berms to prevent contaminated stormwater from running off.

Because it's in the auto salvage business, LKQ Northeast is regulated under the CWA's Multi-Sector General Permit (MSGP) for stormwater discharges associated with

industrial discharges as well as state water protection laws.

The three sites may have discharged total suspended solids, iron, aluminum, mercury, zinc, fuel oil, hydraulic oil, brake fluids, lead acid and lead oxides to nearby brooks.

EPA issued citations for a total of \$293,425. LKQ is also:

- updating its stormwater pollution prevention plans
- implementing best management practices to prevent any future discharges, and
- improving its practices for monitoring, sampling, inspecting, training and recordkeeping.

**Info:** [epa.gov/npdes/npdes-stormwater-program](http://epa.gov/npdes/npdes-stormwater-program)

### COVID

The Centers for Disease Control and Prevention (CDC) issued new guidance March 8 that lifts some restrictions on individuals who've been fully vaccinated for COVID.

This new guidance means fully vaccinated individuals can:

- gather indoors with other vaccinated people without having to wear a mask or face shield
- gather indoors with unvaccinated people from one other household without masks, unless any of those people, or anyone they live with, has an increased risk for severe illness from COVID, and
- refrain from quarantining or getting tested for COVID-19 if you've been around someone with the virus unless you have symptoms.

Translation: This means if everyone "working on your floor ... has been fully vaccinated, you can gather together without wearing masks," according to law firm Breazeale Sachse & Wilson ([www.bsullp.com](http://www.bsullp.com)).

**Info:** [cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html](http://cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html)