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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).

EPA Environmental Justice strategy comes into focus

■ Enforcement starts with reporting programs

Regulated facilities in and near “overburdened” communities should expect a jump in inspections and closer scrutiny of emissions and discharges.

The Biden EPA’s Environmental Justice (EJ) initiative is in full swing. Case in point: The City of **Chicago** suspended a permit for a metal shredding facility after EPA administrator Michael Regan asked for further review of the facility’s pollution impact (*see Page 4 of previous issue for more info*).

We’d like to tell you it’s the bad actors who are operating with expired permits or are years behind in installing the latest pollution controls that will be the first targets.

The fact of the matter is it’s the low-hanging fruit – regulated sites that monitor and report electronically – EPA will pluck first.

Attorneys for Kilpatrick, Townsend and Stockton (KTS) warn EPA is already scouring reports under:

- the National Pollutant Discharge Elimination System program
- Clean Air Act emissions, and
- the Toxics Release Inventory program reports (*the TRI annual reporting deadline is July 1*).

Will Biden EPA face hurdles?

KTS attorneys predict that EPA developing a definition for an

(Please see Justice ... on Page 2)

CYBERSECURITY

Another ransomware attack on regulated sector

- HACKERS GOING AFTER REGULATED, CONSUMER-CRITICAL SECTORS

Weeks after a ransomware attack forced the Colonial Pipeline shutdown (*see cover story of last issue*), the world’s largest meat supplier came under fire.

JBS SA, headquartered in Brazil, shut down meat-processing plants in **Utah, Texas, Wisconsin and Nebraska** over Memorial Day weekend.

Shifts were also canceled at slaughterhouses in **Iowa and Colorado**. The impact on the food sector was immediate – JBS produces a quarter of all American beef and

about a fifth of all pork.

To make matters worse, Pilgrim’s Pride, the second largest poultry processor, shut down chicken plants in multiple states.

Backup servers survived attack

JBS ordered plant closures after determining its American and Australian servers were compromised by a coordinated cybersecurity attack. Luckily the company’s backup servers weren’t affected.

There may be more ransomware attacks to come on regulated, critical sectors like oil & gas and agriculture.

PESTICIDES

FIFRA rulebreakers paying a small mint

Chemical manufacturers and distributors really can't afford to make mistakes labeling any of their pesticide products.

Reason: EPA is raking in big bucks nailing companies for not following Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) specifications to the T!

Here's a rundown of who got caught flubbing FIFRA and how much they're on the hook for.

Pull out the checkbook!

- Univar Solutions in Portland, Oregon, sold "Woodlife 111," a pesticide and wood preservative, without mandatory safety and health warnings. Univar was cited for 33 FIFRA violations and fined \$165,000.
- Bear River Supply in Rio Oso, California, repackaged and sold "Vistaspray 440 spray oil" and "Roundup PowerMax" without warning labels. Also: Its facility wasn't registered with EPA and a secondary containment unit and

loading pad for containing spills needed repairs. Fine: \$50,578.

- Three Michigan-based companies were ordered to stop selling multiple plant growth products. All contain chemicals that require they be labeled as pesticides. The businesses face steep fines for not stopping sales immediately (Hydro Pros Garden Center in Utica, Great Lakes Garden Wholesale in Warren and Jungle Control in Troy).

Info: epa.gov/pesticide-labels/pesticide-labeling-questions-answers

Justice ...

(continued from Page 1)

overburdened by pollution community won't be easy because "actual testing of environmental media may not necessarily reveal high concentrations of contamination" and "entities must do something in violation of a permit ... or be responsible for a release or contaminant."

That may be true, but it won't stop EPA from partnering with cities and counties with EJ policies and implementing punitive measures like:

- stalling or denying permits
- insisting state agencies make permit limits more stringent when they expire, and
- citing permitted facilities for infractions like universal waste handling via "Dumpster dive" checks for light bulbs or batteries.

San Francisco, Fulton County Georgia, Whatcom County, Washington, and Newark, New Jersey are examples of areas with EJ policies. Chicago is considering a cumulative impact EJ policy.

Info: kilpatricktownsend.com

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 IT TOO LATE TO SUE FOR 'HIDDEN' CONTAMINATION?

"There's no doubt about it," said Buck Flanagan, environmental manager. "Those buried tanks aren't ours. They must have been ABC Industries' tanks because they owned this site for years before we bought it from them."

"OK. Was there any contamination?" asked Cliff Uplander, the company attorney.

"So far, we've identified one toxic chemical in the soil. There's a lot of it unfortunately.

"There were traces of leaded fuel and wastewater in the tanks, so we need to do more digging around and make sure we know what we're dealing with," said Buck.

Taking its chances in court

"We have no choice but to sue ABC," said Cliff.

"But here's the problem: We bought the property over 15 years ago. And the statute of limitations is six years."

"True. But this is new pollution," said Buck. "We didn't have a clue it was there."

"You didn't know it was there. You also weren't part of the initial surveying," said Cliff.

"ABC paid for cleanup before the sale. I could see the court saying we didn't do our job the first time and should've dealt with the soil contamination then."

Buck's company took its chances and filed a lawsuit against ABC Industries for damages.

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

Using wet vac to suck up gasoline triggers a fire

Company: Lupton Petroleum Products, Lupton, Arizona.

Business: Small refinery of transmix, an unusable mixture of diesel and gasoline which is turned back into diesel and gasoline.

Penalty: \$279,472.

Reasons for penalty: The company failed to:

- conduct a hazard review
- identify hazards associated with the discharge of pressure relief valves
- install isolation valves around pumps, and
- identify and train employees about various electrical hazards.

Note: An employee used a plug-in wet/dry vacuum to remove excess gasoline from one of the distillation towers when hydrocarbons ignited. A fire resulted in minor injuries to an employee and significant damage to facility equipment.

Operators face jail time for stockpiling hazwaste

Individuals: Samuel Hopper and Brian Hopper, current operators from Sebring, OH, and Richard Sickelsmith, former operator from New Waterford, OH.

Business: Former industrial plating shop and garage.

Penalty: All three men face more than a year in prison and will have to pay restitution to the state.

Reasons for penalty: Ohio EPA discovered more than 18 tons of

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.

hazardous waste that was stored at the shuttered industrial facility for years. Violations included:

- corrosive and chromium sludge and solids in seven tanks
- five 55-gallon drums filled with chromium or cadmium sludge
- cadmium in a wastewater treatment tank and floor sump, and
- 8,000 gallons of hazwaste from the plating process.

Note: None of the three operators obtained a Resource Conservation and Recovery Act (RCRA) permit to store hazwaste and didn't report the violations to Ohio EPA. The coup de grace: There's a hole in the facility's roof that allows rain and snow to infiltrate the site's drums and containers, and potentially cause a toxic release.

Sloppy asbestos removal contaminates facility

Company: Idaho Transportation Department (ITD), Rigby, ID.

Business: Government services.

Penalty: \$61,250.

Reasons for penalty: Two untrained ITD workers improperly removed asbestos-containing materials from a room and contaminated the space. Workers removed materials from maintenance buildings used for highway maintenance without keeping asbestos wet and following other safety protocols.

Note: ITD self-reported the asbestos violations and had a licensed contractor clean up the worksites. ITD was fined for similar asbestos removal violations in 2014 and 2015. For help complying with asbestos removal guidelines, go to epa.gov/asbestos/asbestos-laws-and-regulations#regs

EPA could shut down paper mill over air toxics

Company: New Indy Containerboard,

Catawba, South Carolina.

Business: Pulp and paper mill.

Penalty: Emergency order and information request under Clean Air Act Section 303.

Reasons for penalty: EPA ordered the paper mill to immediately install three fence-line monitors and begin reducing hydrogen sulfide (HS) emissions to 600 parts per billion (ppb) over a rolling 30-minute period and 70 ppb over a rolling seven-day average.

Note: In addition, the company must report any HS exceedance, submit daily documentation of the previous 24 hours of monitoring data and provide summary reports of continuous emissions monitoring. New Indy is located near the border with North Carolina.

Took a mighty big risk not having a plan or sharing it

Company: Winfield Solutions, Dodge City, Kansas.

Business: Fertilizer manufacturing and distribution facility.

Penalty: \$83,975.

Reasons for penalty: The company never submitted and implemented a risk management plan (RMP) for its use of aqueous ammonia. It stores more than 20,000 pounds of aqueous ammonia, an extremely hazardous substance that's corrosive to the skin, eyes and lungs, in concentrations over 20%.

Note: The company's submitted an RMP and is cooperating with EPA to meet all requirements. Reducing risks from accidental releases of hazardous substances at industrial and chemical facilities is a top priority for EPA (*search for "National Compliance Initiatives" at our website*).

OIL & GAS

Worst methane offenders put on notice

Small oil & gas facilities will be a major focus of the promised Biden EPA methane rule.

Reason: The smallest producers in the sector, about 195 facilities total, emit 22% of greenhouse gases (GHGs), according to a report from the Clean Air Task Force, Ceres and M.J. Bradley & Associates.

Smaller refineries, well pads and other production facilities that have escaped GHG reporting and some monitoring obligations will be impacted by new regs.

Top 10 aren't big name brands

The study looked at data from 300 sites in the GHG reporting program.

One startling finding: The 19th largest oil & gas producer, Hilcorp Energy with facilities in Texas, Louisiana, Colorado, Pennsylvania and four other states, is the No. 1 methane emitter.

Several mid- to small-sized companies that lack name recognition – such as Terra Energy Partners, Flywheel Energy, Blackbeard Operating and Scout Energy – also made the top 10 list for yearly methane emissions.

And while the big boys like ExxonMobil publicly support methane emission and leak guidelines, many

Top methane emitters a target.

smaller companies warn lawmakers that new pollution regs could put them out of business.

President Biden's made it clear he wants to shift away from fossil fuels over the coming decade so it's not clear how far EPA will bend.

Info: catf.us/resource/benchmarking-methane-emissions

STATE RULES

Who'll be paying next for diesel truck emissions?

INDIRECT SOURCE RULE A BIG CHALLENGE FOR WAREHOUSES

We're keeping an eye on a new indirect diesel truck emissions rule on warehouses in California.

If the indirect source rule (ISR) leads to significant fines and improves air quality in the smoggy South Coast district, other states may follow suit with regs of their own.

Spreading the pain

It's not just warehouses California regulators are eying for ISRs. Attorneys for Latham & Watkins predict the next sectors on their "hit list" include:

- commercial airports and railyards
- new development or redevelopment projects, and

- commercial marine ports.

Warehouses argued they had little to no control over trucking companies coming in and out of their parking lots, but their entreaties didn't sway the South Coast Air Management District (SCAQMD) which regulates air quality in the Los Angeles region.

Under the warehouse ISR, facilities will need to provide annual reports of all trucking trips, notify the SCAQMD if a new trucking operator comes on board and pay mitigation fees.

The program covers single buildings with more than 100,000 square feet of warehouse space. The largest warehouses (250,000 sq. ft.) in the region will have to comply first with the ISR.

Info: jdsupra.com/legalnews/air-regulators-tackle-trucking-at-4766873

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.

NO REPORTING FOR DOZENS OF TOXIC RELEASES

To: Regional Enforcement Director
From: Inspector Bob Wiley
Re: Air toxics

As you know, we've been keeping tabs on Acme Industrials' activities since levying \$1.2 million in Clean Water Act (CWA) penalties a few years back.

Our field team didn't expect any further problems with CWA compliance when we paid Acme a visit. Unfortunately we found there were problems with reporting hazardous air pollutants.

Considering the type of production Acme does, they should have been keeping tabs on a variety of toxic chemicals.

When there wasn't any accounting for those air toxics, we started a more in-depth investigation.

Neighbors had no warning

After we sifted through months and months of data, it was clear Acme violated the Clean Air Act as well as the Emergency Planning and Community Right-to-Know Act numerous times over four years.

We're talking about a staggering list of air toxics – hydrogen cyanide, mercury, sulfuric acid, hydrogen cyanide and phosphine.

Acme also hid ozone data as there was no reporting for sulfur dioxide and nitrogen oxides. What's most inexcusable was the lack of communication with emergency response agencies and the general public.

I recommend at minimum \$300,000 in penalties and a repeat inspection in six months.

■ *Dramatized for effect. Based on a settlement with a mining company.*

SUPREME COURT

More wiggle room for Superfund claims

Property owners that must clean up a contaminated site are in a much stronger position after a unanimous Supreme Court ruling.

The High Court ruled a plaintiff can seek restitution from responsible parties under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), aka the Superfund law, up to six years after a non-CERCLA settlement, reversing a Washington DC Circuit Court ruling.

Key: Was it a CERCLA settlement?

The skinny: Guam entered into a Clean Water Act (CWA) consent decree with the U.S. Navy to remediate a landfill tainted by heavy metals and other hazardous substances going back to World War II.

Guam then pursued a CERCLA claim against the Navy to pay roughly \$160 million of the cleanup bill. The Navy argued the suit was time-barred by the contribution claim under

Section 113 (f)(3)(B) of CERCLA.

A district court didn't buy this argument but the DC Appeals Court did. Guam wisely appealed.

The Supreme Court clarified that since Guam brought a CERCLA claim, the statute of limitations is six years per CERCLA Section 107, which allows for recovery of "all costs of removal or remedial action" from a liable party, rather than the three-year contribution claim limit under CERCLA Section 113.

Trial lawyers are salivating

CERCLA "payback" claims are likely to increase as parties paying for CWA or RCRA cleanups seek to recover costs.

What about individual states' statute of limitations? Typically federal law trumps state guidelines, but we'll see what the courts have to say about it in coming years.

Info: tinyurl.com/morganlewis653

ILLICIT DISCHARGES

Cell phone tips lead to \$27K clean water fine

■ EAGLE-EYED RESIDENTS CAUGHT SCRAP METAL FALLING IN BAY

Cell phone cameras and Wi-Fi make it easier than ever for citizen activists to record a company's activities and send pictures and videos to regulators in seconds.

A New England facility just found out the hard way.

Polluting out in the open

Patriot Stevedoring & Logistics, the port operator at Brayton Point, Mount Hope Bay, in Somerset, Massachusetts, used a crane to move scrap metal onto ships.

About 50 truckloads of shredded metal is delivered to the port daily before enough is stockpiled to be

carried away by ship.

Patriot has an up-to-date stormwater permit but isn't permitted to discharge scrap metal.

Members of the public took pictures of the crane's metal claws dropping scrap metal into the bay and reported it to EPA.

The agency's New England office inspected and cited Patriot for illicit discharges. The company will pay a \$27,000 fine.

Patriot has since installed a dumpster-like carrier for metal scrap. The carrier can be hoisted directly onto ships. And the company's replacing its old mechanical claws.

Info: epa.gov/enforcement/water-enforcement

TRENDS TO WATCH

■ PLASTIC BAG BAN NOT TURNING OUT AS EXPECTED

Delaware Democrat lawmakers aren't happy about retail and grocery stores taking advantage of a loophole in a disposable plastic bag law (which makes us wonder how many of the lawmakers read the bill first).

Many stores didn't do away with plastic bags, instead switching to thicker ones allowed in the law that customers may decide to re-use or simply throw away after shopping.

Store owners can provide paper, cloth and thicker plastic bags but not typical thinner plastic ones that jam recycling equipment.

Lawmakers are already huddling to write the plastic bag allowance out of the law.

The bag provisions went into effect on January 1.

Info: wgmd.com/del-plastic-bag-ban-loophole-addressed-in-new-bill

■ HURRICANE SEASON HERE: IS YOUR FACILITY PREPARED?

Uh oh: Some climatologists are predicting a higher than normal number of storms and hurricanes this summer.

The good news is, forecasting has improved significantly, giving industrial facilities more time to batten down the hatches and reduce the risks of chemical leaks.

As it does every year, EPA's reminding facilities about their responsibilities in preventing oil or chemical releases, and their reporting duties under the Superfund law and Community Right-to-know Act.

Basic preparedness steps for hazardous weather are reviewing shutdown procedures, securing storage tanks, and reviewing local and state response contacts.

Info: epa.gov/natural-disasters/hazardous-weather-release-prevention-and-reporting

TOXIC SUBSTANCES CONTROL ACT

30-plus chemicals tabbed for SNURs

Heads up, chemical manufacturers: Three significant new use rules (SNURs) are in effect for nearly three dozen substances.

Companies must notify EPA in writing at least 90 days before manufacturing any of these chemicals:

- cyclohexane, 1,4-bis(ethoxymethyl)-
- butanone, 3-methyl-, peroxide
- formaldehyde, reaction products with 1,3-benzenedimethanamine and p-tert-butylphenol
- haloalkane (generic)
- carbonic acid, di(lithium-6Li) salt
- lithium chloride
- tar acids (shale oil), C6-9 fraction, alkyl phenols, low boiling, and
- propenoic acid, mixed esters with heterocyclic dimethanol and heterocyclic methanol (generic).

Info: 86 *FR* 30,196, 86 *FR* 30,190 and 86 *FR* 30,184.

Biden admin rolls back 'secret science' reg

The Biden administration is rescinding a trio of Trump-era

environmental regs:

- the so-called “secret science” rule prohibiting health studies with redacted data in future rulemaking
- a one-year limit on states to oppose projects that may pollute waters through Clean Water Act (CWA) Section 401 certification, and
- an overhaul of EPA guidance documents allowing industry to challenge them.

GOP lawmakers asked to see research documents like the Harvard “Six Cities” study which prompted a crackdown on tiny particulate matter pollution. EPA countered it couldn’t always provide data because of patient confidentiality laws.

The Trump administration sought an end to CWA 401 permit delays and denials from governors concerned about potential pollution and climate change impact.

EPA guidance documents aren’t binding rules but over the years the courts have ruled they amount to de facto regs in disputes between facilities and the agency.

Info: Search for “Biden Trump EPA” at our website for more examples of rollbacks.

■ IN-PERSON & LIVE STREAM ENVIRO CONFERENCE

Whether you’re itching to get on the road for an industry conference or you’d prefer to stay local, the Midwest Environmental Compliance Conference (MECC) has you covered.

You can attend in-person (with associates, of course) or by live streaming video this fall. MECC is scheduled for October 26-27 at the Kansas City Convention Center.

MECC is hosted by state business and manufacturing associations, and supported by EPA Region 7 (Missouri, Nebraska, Iowa, Kansas and nine tribal nations) and state agencies.

Speakers delve into recent and upcoming regs that’ll affect your operations, provide anonymous case studies from their clients, and answer questions.

Cost: \$425 for compliance professionals from regulated entities, \$450 for government employees and \$725 for service providers. There’s an early bird price special in effect until September 30.

Continuing Legal Education credits are available.

Info: meconference.com/october-26-27-2021-in-kansas-city-and-by-live-streaming-video

SHARPEN YOUR JUDGMENT – THE DECISION

(See case on Page 2)

Yes, the company won.

The court ruled the finding of underground storage tanks and polychlorinated biphenyls (PCBs) in the soil qualified as a new discovery of contamination, and the company could pursue damage recovery in court.

That’s despite the fact the company bought the property more than 15 years ago and the state’s statute of limitations for tort claims is six years.

Did the property seller know about the tanks and possible toxics contamination? Should the company that bought the property have done a better job of surveying soil and groundwater years ago?

There were no clearcut Yes or No answers to either of

those questions – but the court didn’t focus on those issues.

Bottom line was, documents showed the company didn’t know about the tanks and PCB contamination. As a result, the six-year statute kicked in with this recent discovery, not the year that the property changed hands.

■ ANALYSIS: STATUTES VARY BY STATE, COURTS DON’T ALWAYS RULE SAME WAY IN THESE CASES

Tort statutes vary state by state. Court decisions in cases like this also vary. It’s possible that another court would’ve ruled in favor of the previous owner.

Best bet: Always address air, water and soil contamination issues promptly and document, document, document. Courts look favorably on businesses that operate above board.

Cite: *North River Mews Associates v. Alcoa*, U.S. District Court, NJ Dist., No. 14-8129. Dramatized for effect.

CLIMATE CHANGE

Nuclear plant closes, CO2 output spikes

Carbon emissions from power plants dropped steadily over the last 20 years as both coal-fired and nuclear facilities were shuttered.

But there's a limit to how much natural gas and renewable fuels can maintain that trend and provide reliable energy.

Case in point: Carbon emissions in New York state spiked 35% over normal pre-COVID levels a month after Governor Andrew Cuomo (D) shut down the Indian Point nuclear plant under pressure from nonprofit groups.

What fills the void?

According to energy and environmental reporter Michael Shellenberger, "the carbon intensity of New York's electricity, the amount of carbon dioxide emissions per unit of electricity, rose 46% ... and the share of electricity from renewables, including hydroelectric dams, actually declined between 2019 and 2021."

The same scenario played out in California over the past decade. Carbon emissions from electricity generation in the Golden State increased from 33 to 41 million metric tons despite the state weaning off out-of-state coal and closing nuclear plants.

The Biden administration is seeking billions of dollars in funding for renewables. Shellenberger argues lawmakers should steal a page from European countries' playbooks and invest in nuclear power instead to reduce emissions.

Info: michaelshellenberger.substack.com

EPA air penalty cites lack of environmental justice

Getting inspected and fined for air, water and waste compliance is

going to jump under the Biden EPA's Environmental Justice program (*see cover story for more*).

Paying a steep fine isn't the only risk for a noncompliant business – you can't underestimate the way a company's public image can take a hit too.

Called out in the press

EPA emphasized EJ in a press release about West Virginia Alloy (WVA) Manufacturing, a primary metals maker and steel processor.

WVA will be paying a \$182,350 Clean Air Act penalty because of fugitive emissions of fine particulate matter (PM 2.5) from its furnaces and production activities.

"The area surrounding the facility is considered to be in an area of potential EJ concern, and corrective actions in this settlement will help reduce negative health impacts in the community," EPA noted. "Excess emissions [of PM 2.5] contribute to decreased lung function and ... irritation of the airways, coughing or difficulty breathing."

WVA is now in compliance with its air permit and EPA regs.

New reg coming for mining equipment

Mine operators will need a written safety program for mobile and powered haulage under a Mine Safety and Health Administration (MSHA) proposed rule.

The MSHA rule applies to haulage equipment at surface mines and surface areas of underground mines. Conveyor equipment is excluded from the reg.

MSHA made haulage equipment safety a priority after fatalities in 2017 and 2018.

Info: RIN 1219-AB91

REAL PROBLEMS/SOLUTIONS

■ MULTIPLE PERMITS CAN TRIP YOU UP: A SOLUTION

Do regulatory requirements match under different permits?

Then be careful!

We've learned through experience that water protection guidelines can vary on federal and state permits.

The state permit can say one thing about how long you have to monitor a project site after completing work, how to revegetate the area, etc.

If there are different requirements, you can be liable for not complying.

Stay on top of requirements

Here are three rules we always follow to avoid headaches:

1. Have inspectors check the site before closing the job. We know a firm that closed a stormwater permit before the work site was permanently stabilized.
2. Always follow punch lists, especially if you're dealing with multiple contractors. You want to ensure a job's closed out right.
3. Once you've done what the permit instructs you to do, don't forget to close out the permit. You open yourself to liability issues if you forget to end it.

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"ECA is more valuable than other publications because my time to read is limited. You provide the info I need."

Michael Cowherd
Environmental & Quality Control
Brown-Forman

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.

PFAS BANS

The longer it takes for EPA to promulgate a rule for the emerging contaminants per- and polyfluoroalkyl substances (PFAS) found in drinking water sources, the more states will continue cracking down hard on the chemicals instead.

In fact, some state-level laws and regs could force manufacturers to scale back on PFAS usage sooner than you think.

Case in point: [Vermont is banning PFAS in food packaging](#) and other kinds of products.

Starting July 1, 2022, firefighting foam containing PFAS will be prohibited. And beginning July 1, 2023, the so-called “forever chemicals” are banned from:

- food packaging
- ski wax, and
- carpets, rugs and aftermarket stain and water-resistant treatments.

Vermont's legislative ban was spurred by a study finding elevated levels of PFAS in women's breast milk. Samples tested showed PFAS levels nearly 2,000 times higher than the safe amount in drinking water recommended by health officials.

Similar PFAS phaseouts are pending in [New York](#), [Maine](#) and [Washington](#) (*search for “PFAS” at our website for a timeline*).

Info: dec.vermont.gov/pfas

LEAD PAINT & DUST

Looks like EPA is going [back to the drawing board with its lead paint and dust standard](#), finalized last year.

The 9th Circuit Court of Appeals ruled the standard doesn't satisfy a

2017 court mandate to reevaluate hazard standards for protecting children from lead in dust and paint.

EPA lowered the acceptable dust levels used to determine if lead paint remediation needs to be done in older homes or facilities that care for children to 10 micrograms per square foot ($\mu\text{g}/\text{ft}^2$) for floors (previously 40 $\mu\text{g}/\text{ft}^2$), and 100 $\mu\text{g}/\text{ft}^2$ for window sills (up from 250 $\mu\text{g}/\text{ft}^2$).

The agency retained the dust clearance level for floors at 40 $\mu\text{g}/\text{ft}^2$ which is four times higher than what health studies say is a reasonable risk for children. EPA didn't create new cleanup practices for contractors or facility operators.

Info: cdn.ca9.uscourts.gov/datastore/opinions/2021/05/14/19-71930.pdf

CLEAN ENERGY INCENTIVES

Renewable fuels will get a massive shot in the arm if the Clean Energy for America Act spearheaded by U.S. Senator Ron Wyden (D-Oregon) becomes a reality.

The Act “features technology-neutral tax credits for domestic production of clean electricity and clean transportation fuel, as well as performance-based tax incentives for energy-efficient homes and office buildings.”

These tax credits are open to “all resources, including fossil fuels, that capture carbon or make efficiency improvements,” according to Wyden's press office.

The clean electricity incentive is available as either a [production tax credit of up to 2.3 cents per kilowatt hour](#) or an investment tax credit of up to 30%.

Wyden's bill proposes a simpler set of long-term energy tax incentives that are technology-neutral, as opposed to most of the 44 current energy tax incentives which are more short-term by design.

Info: finance.senate.gov/record/members-news/wyden-unveils-clean-energy-for-america-act

GAS PIPELINES

The Federal Energy Regulatory Commission (FERC) is [stalling five gas pipeline projects](#) over climate change concerns.

The five companies' pending applications for Natural Gas Act Section 7 certificates of public convenience and necessity may be on hold for months and ultimately rejected by the administration.

All five permit applications are for expansions of ongoing pipeline activities. FERC wants the companies to prepare environmental impact statements before it gives them the green light.

Going forward, FERC will undoubtedly take a closer look at pending permits it feels were rushed through in the final weeks of the Trump administration.

The Biden-Harris White House wants more stringent methane emission and leak regs for existing and new oil & gas facilities (*see top of Page 4 for a related story*).

Info: [sidleyenergyblog.sidley.com, 6/2/21](https://sidleyenergyblog.sidley.com/6/2/21).

OZONE ATTAINMENT

Recent air quality testing brings good and bad news for several counties in [Wisconsin](#).

These counties' attainment status was reclassified under the 2015 national ambient air quality standard for ground-level ozone:

Milwaukee and Ozaukee counties were upgraded from partial to full attainment, while Racine, Waukesha and Washington counties were downgraded from full to partial.