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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 EPA will take its shot at redefining Waters of the U.S.

■ *What will it take to win over the courts?*

The 40-year debate on what constitutes Waters of the U.S. (WOTUS) is entering yet another new chapter!

The White House rescinded the Trump administration's WOTUS rule (months after the courts vacated it) and announced a more restrictive reg to come from EPA and the U.S. Army Corps of Engineers.

President Biden wants greater federal protection of wetlands and more restrictions on developing public lands whether it be agriculture, mining, fracking, telecommunications or construction.

Trump's Navigable Waters Protection (NWP) rule removed federal jurisdiction over more than 300 projects, including natural gas

pipelines and port projects adjacent to wetlands, that previously would've needed Clean Water Act (CWA) Section 404 permits.

Trump's NWP rule also removed protections of ephemeral streams which are wet only part of the year but help purify waters that flow to rivers and lakes in desert states like **New Mexico** and **Arizona**, according to EPA.

New reg faces tough task

The fate of a Biden WOTUS rule comes down to convincing two Republican-appointed justices on the Supreme Court to widen the scope of the Clean Water Act (CWA), which was signed into law in 1972 and

(Please see Waters ... on Page 2)

PFAS

Emerging contaminants put on Toxics reporting list

■ EMERGENCY RESPONDERS NEED INFO ON PFAS RELEASES

More than 20,000 facilities just wrapped up their reporting obligations under the Toxics Release Inventory (TRI) program.

There are currently 770 individually listed chemicals and 33 chemical categories covered by TRI. Facilities that manufacture, process or otherwise use these chemicals above set limits must report annually by July 1.

Add 3 more to the list

Beginning July 1, 2022, three kinds of per- and polyfluoroalkyl substances

(PFAS) must be reported through the TRI online portal TRI-Me:

- perfluorooctyl iodide
- potassium perfluorooctanoate, and
- silver(I) perfluorooctanoate.

This action was required under the National Defense Authorization Act for Fiscal Year 2020 signed into law by Congress.

TRI reporting falls under the Emergency Planning and Community Right-to-Know Act and the Pollution Prevention Act.

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

HAZARDOUS SUBSTANCES

Green chemistry ideas to build upon

The public wants safer products with fewer chemicals in them, which is better for the environment.

Bottom line: Green chemistry initiatives are a win-win for industry.

Four manufacturers and a college professor are the latest winners of EPA's Green Chemistry Challenge Awards. Who knows, you may find inspiration for a project of your own from their success stories.

Biodegradable, reusable, green

- Colonial Chemical in Tennessee created a plant-based surfactant

Green chemistry initiatives are a win-win.

called SugaBoost. Unlike petroleum-based surfactant detergents, SugaBoost is biodegradable, doesn't generate emissions or discharges, and contains no carcinogens or

endocrine disruptors.

- XploSafe in Oklahoma created PhosRox, a sorbent used to make fertilizer that simultaneously removes ammonia, phosphate and nitrate from contaminated waters. The resulting material is a granulated time-release fertilizer.
- Professor Srikanth Pilla of Clemson University, South Carolina, invented the first nonisocyanate polyurethane foam. Diisocyanates are a potential human carcinogen. Pilla's foam is made with lignin, a natural polymer from pulp and paper waste and vegetable oils.
- Bristol Myers Squibb and Merck were honored for creating sustainable reagents made from citrus fruit peels and a green manufacturing process for making cough syrup.

Info: epa.gov/greenchemistry

Waters ...

(continued from Page 1)

piggybacked off the Commerce Clause regulating interstate waters.

One way for the two agencies writing a WOTUS rule to do that?

Come up with a clear and technical definition of a "significant nexus" between a small and larger body of water. Significant nexus is the term retired Justice Anthony Kennedy coined to describe where the feds' jurisdiction comes into play.

Agencies' history in spotlight

Opponents of a tougher WOTUS rule will no doubt cite EPA's overreach in CWA cases, like the Sackett family in Idaho who were fined for disturbing and building on what EPA determined was a wetland, in their backyard.

Agricultural and industry groups stressed the permit hurdles businesses would face and questioned why agricultural ditches needed protection under President Obama's wide-reaching WOTUS rule.

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.

■ 'YOUR PERMIT'S TOO LENIENT!' GROUP SUES FIRM

"How did your meeting with those environmental activists go?" asked Frank, the company lawyer.

"About as badly as I thought it would!" chuckled Buck Flanagan, environmental director.

"Well, they smell blood," Frank replied. "After the state cited us for a permit violation, these groups figure they can pile on."

"My feeling is we should settle and get it over with," said Frank.

"Not so fast," said Buck. "Our problem with the state was over production. Our permit said if we passed a threshold, it would put us in noncompliance."

"We did and we paid the price for it," said Buck. "But these activists say we're a major source of pollution and it just isn't so."

Cheaper to settle now?

"If we do become a major source, we're looking at major penalties and a much more expensive permit," Frank argued.

"That's why I think we should settle this now," said Frank.

"Production is one thing, emissions are another," said Buck.

"We paid a fortune for the best available pollution technology on the market. We're well below our permit limits, and there's no reason that we should go over anytime soon," said Buck.

"I don't know. I've seen the courts go along with these groups on air cases before," Frank argued.

"We should fight it" said Buck.

Who won this legal battle?

- 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

Metal-tainted discharge triggers fish kill: \$29K fine

Company: Emhart Teknologies, Danbury, Connecticut.

Business: Manufacturer of precision screw-thread wire and screw-lock inserts.

Penalty: \$29,658.

Reasons for penalty: The manufacturing plant accidentally discharged a mixture of water and coolant used to keep the facility's cutting machines from overheating into the Sympaug Brook. The mixture contained oil and toxic metals such as copper and lead left over from machining operations. An automatic sump pump displaced 1,800 gallons of diluted metal cutting coolant from an aboveground storage tank into nearby storm basins.

Note: Fifteen barrels (or 630 gallons) of wastewater reached the brook. The oil and metals in the coolant caused a fish kill of white suckers, tessellated darters, creek chub and four other species.

Didn't keep tabs on wide array of hazardous waste

Company: Rock Dike Fabricators, Mason, Texas.

Business: Oil & gas industry equipment fabrication shop.

Penalty: \$37,322.

Reasons for penalty: The facility shipped more than 10,000 pounds of industrial solid waste containing air compressor oil in concentrations above 1,500 milligrams per

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.

kilogram total petroleum hydrocarbons to the municipal landfill, which isn't permitted to handle the waste. The firm also failed to conduct hazardous waste determinations for:

- particulate discharge from its dust collector system
- oily discharge from an air compressor line
- used paint filters
- discarded personal protective equipment
- discarded rags and spent filters from a paint booth, and
- waste paint.

Note: Texas facilities can face higher fines from the Texas Commission on Environmental Quality (TCEQ). The agency's proposed 30% to 50% higher maximum penalties for releases and 50% fine increases for programmatic violations like not acquiring TCEQ permits (*search for "TCEQ fines" at our website*).

Incinerator dinged for out-of-date air controls

Company: Atlantic County Utilities Authority (ACUA), Atlantic City, New Jersey.

Business: Wastewater treatment plant and sewage sludge incinerator (SSI).

Penalty: \$75,000.

Reasons for penalty: ACUA lacked plans and operating parameters for complying with federal and state SSI emission requirements. Sewage sludge contains a range of pollutants like mercury, lead and cadmium that are released when sludge is burned.

Note: As part of its settlement, ACUA also agreed to:

- fund new electric vehicle charging stations
- establish emission operating limits
- monitor emissions regularly
- minimize bypass events, and

- apply for a permit modification. These projects will cost the utility between \$3 to \$4 million.

Raw sewage discharges must stop: \$100M in fixes

Municipality: City of Quincy, Massachusetts.

Business: Stormwater and sanitary sewer systems.

Penalty: \$115,000 fine and \$100 million consent decree.

Reasons for penalty: Heavy storms trigger sewage-contaminated overflows to Quincy Bay, Boston Harbor and regional beaches. Water sampling in 2019 revealed raw sewage discharging from numerous Quincy stormwater outfalls, including at beach areas. Quincy has until 2034 to upgrade its century-old system and make repairs to sewer pipes.

Cutting corners on lead safety never pays off

Company: HK Construction, Honolulu, Hawaii.

Business: Building renovations.

Penalty: \$14,981.

Reasons for penalty: HK Construction violated the lead paint Renovation, Repair and Painting (RRP) rule by failing to:

- retain proper records, including documentation of a certified renovator being assigned to jobs
- train workers on lead-safe work practices
- ensure workers performing renovations were certified or trained by a certified renovator, and
- provide the required "Renovate Right" pamphlet to residential property owners.

NAAQS

Tougher PM 2.5 standard in the cards?

How low will EPA reset the national standard for tiny particulate matter (PM 2.5)?

Some agency insiders want the National Ambient Air Quality Standard (NAAQS) for PM 2.5 set as low as 8 micrograms per cubic meter (ug/m3) to combat asthma, heart attacks and early deaths.

EPA announced it would review a December 2020 decision to retain the 12 ug/m3 limit promulgated in 2011 by the Obama administration.

A proposed rule is coming by summer 2022, with a final rule due a year later.

Usual suspects on notice

Most fine particles in the atmosphere are the result of nitrogen oxide (NOx) and sulfur dioxide emissions from:

- power plants
- industrial facilities, and

- trucks and cars.

Additional PM 2.5 sources which EPA singled out in a press release are:

- construction sites
- unpaved roads
- fields, and
- smokestacks.

EPA's air office says an internal policy assessment supported raising the standard. EPA will work with

Only question is how low to go?

the Clean Air Scientific Advisory Committee and a review panel of scientific experts on the review.

The previous NAAQS for PM 2.5 was 15 ug/m3.

Info: epa.gov/naaqs/particulate-matter-pm-air-quality-standards

PERFORMANCE STANDARDS

Sewage sludge air rule enforcement on the rise

■ CLEAN AIR RULE'S UPGRADE PROVISION A TOUGH HURDLE

Ten years after EPA tightened air performance standards for sewage sludge incinerators (SSI), facilities are still struggling to comply.

(See third fine on Page 3 for an example of an SSI facing a penalty.)

Under the SSI reg, an SSI that makes changes over the life of the unit costing more than 50% of the original cost must meet more stringent emissions standards for nine pollutants: cadmium, carbon monoxide (CO), hydrogen chloride, lead, mercury, nitrogen oxides (NOx), particulate matter (PM), polychlorinated dibenzo-pdioxins (dioxins) and polychlorinated dibenzofurans (furans) and sulfur dioxide.

Some companies don't keep tabs on that Clean Air Act requirement or simply continue operating under less stringent emission caps.

Investments trigger compliance

Case in point: The Metropolitan District (MD) headquartered in Hartford, Connecticut, is paying a \$298,000 penalty for not complying with sewage sludge limits.

EPA alleged MD surpassed the 50% benchmark for its three incineration units but didn't clamp down on pollutants.

Going forward, the incinerators must comply with New Source Performance Standards for mercury, lead, cadmium, dioxins and furans, CO, PM and NOx.

Info: 76 FR 15,371

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.

■ CONTRACTORS IGNORING SAFE WORK PRACTICES

To: Regional Enforcement Director
From: Inspector Bob Wiley
Re: Lead paint rule

We've always depended on citizens letting us know when they see companies dump into rivers and the like.

In the last few years, we've been getting more tips about building owners and contractors who don't follow lead paint safety and health guidelines.

Acme Painting, for example, specializes in renovating older facilities and schools. They attract a lot of contract work in the region.

A citizen noticed Acme didn't share required "Renovate Right" pamphlets with occupants. Acme also wasn't containing lead dust when smoothing down surfaces.

An initial fine didn't do the trick. We followed up with Acme on subsequent jobs. Once again, they didn't distribute pamphlets so people knew about lead paint health hazards.

Acme racked up \$48,000 in lead paint violations, most of which could've been avoided.

No warning to exposed staffers

There's a similar pattern among contractors and renovators when it comes to removing lead paint and how they train staffers.

For example: We learned from a source that ABC Renovators wasn't providing workers with info.

The site inspection showed ABC didn't follow all required work practices either.

I'm recommending a \$13,750 fine for ABC.

■ *Dramatized for effect. Based on settlements with two California contractors.*

STORMWATER

Lot of new hurdles in construction permit

Construction activities starting in 2022 will face more stormwater duties than ever.

EPA's added a host of requirements to the Construction General Permit (CGP) which goes into effect on February 17, 2022.

Here's a rundown of changes

- Perimeters must be extended or repaired if there's "evidence of stormwater circumventing or undercutting the perimeter control after a storm event."
- Water-tight containers may be needed for chemicals stored on-site. Containers should be placed "on a spill containment pallet (or similar device) if kept outside, and have a spill kit available at all times." Owners/operators may need to provide an awning to cover larger chemical containers.
- If a high water table requires dewatering, inspections must be done and discharges should be

photographed to determine where discharges go and what controls are needed.

- Operators need to be aware of sediment discharges.
- Site inspectors must have passed a new EPA construction inspection course or hold a license that covers the same info.
- Operators must take photos showing site stabilization at the end of the construction project.
- Routine maintenance is defined as repairs that can be completed within 24 hours. Repairs that take longer are classified as a corrective action.

Comments are due soon

Stakeholders have until July 12 to submit comments on the proposed rule in the *Federal Register*.

The CGP is a five-year permit. EPA can revise the permit during the next five-year period (2022-27).

Info: 86 FR 26,023

RCRA

Don't make these mistakes with acute hazwastes

- THRESHOLD FOR LARGE QUANTITY GENERATORS IS VERY LOW

We report all the time on facilities that don't follow basic Resource Conservation and Recovery Act (RCRA) guidelines, like keeping different kinds of hazardous wastes separate, or determining if a waste stream is hazardous.

You know better than to make blunders like those. But even responsible stewards of the environment can make RCRA mistakes, particularly when it comes to acute wastes.

Know your status

Fact: If you generate 1 kilogram or more of an acute waste in a calendar

month, you're automatically a large quantity generator (LQG).

A normally very small generator would have to follow LQG rules in 40 CFR 262.17.

Fact: There are more than 130 listed acute wastes. EPA defines acute as fatal to humans in small doses by inhalation, drinking or skin absorption.

If you haven't checked the list of acute wastes recently, you may want to do so to make sure all waste streams are being handled properly.

Management, treatment and storage guidelines for acute wastes are more stringent than F, P, K and U listed wastes.

Info: www.pca.state.mn.us/sites/default/files/w-hw2-02.pdf

TRENDS TO WATCH

■ MORE SOURCES ENSNARED BY KEYSTONE STATE AIR REG

Five hundred Pennsylvania facilities will have to curb emissions under a Reasonably Available Control Technology (RACT) III rule.

The PA Department of Environmental Protection's (DEP) proposed RACT III rule sets emission limits for major sources with the potential to emit 100 tons per year (tpy) of nitrogen oxides or 50 tpy of volatile organic compounds.

RACT III would also expand source categories from the previous two rules. Added sources are combustion units, municipal solid waste landfills, municipal waste combustors, process heaters, turbines, stationary internal combustion engines, cement kilns, glass melting furnaces, lime kilns and direct-fired heaters.

Facilities that can't meet presumptive RACT III limits and requirements can apply for NOx emissions averaging permits or a case-by-case determination.

The DEP expects to finalize the rule by March 2022 with a compliance deadline starting January 1, 2023.

Info: www.mankogold.com/publications-PA-RACT-III-VOC-NAAQS.html

■ COAL STATES V. EPA HEADED FOR SUPREME COURT

West Virginia and Kentucky are mounting a last-ditch effort to prevent the Biden administration from shutting down mines and coal-fired power plants.

Kentucky Attorney General Daniel Cameron filed an amicus brief (friend of the court) in the pending U.S. Supreme Court case *West Virginia v. EPA*.

The states are appealing the Washington DC Circuit Court of Appeals' decision allowing EPA to set strict carbon dioxide limits on power plants.

Info: supremecourt.gov/docket/docketfiles/html/public/20-1530.html

CHEMICALS

Tougher TSCA program in the works

Chemical safety activists accused the Trump EPA of stalling “meaningful” reforms and failing to ban persistent and bioaccumulative chemicals under the Toxic Substances Control Act (TSCA).

The Biden administration is reevaluating TSCA programs, guidelines and policies. Big changes already announced:

- EPA will no longer issue “not likely to present an unreasonable risk based upon the existence of a proposed Significant New Use Rule,” determinations, and
- tougher worker safety protections may be issued regardless of current OSHA regs.

(Search for “EPA raises bar on chemical evaluations” at our website.)

No fee relief for chemical makers?

The Biden EPA is reviewing multiple rules finalized in late 2020, including a TSCA fees reg that gave certain manufacturers relief.

Companies could avoid fees for importing a toxic chemical substance in an article, producing a substance only as a byproduct and producing or importing a chemical as an impurity.

EPA asked for more comments from stakeholders on the fee exemptions and could waive the reg.

Report: Hazwaste inspections need fixes

Criminal enforcement by EPA is compromised by staffers’ safety and staffing woes according to the agency’s Inspector General (IG).

Staffers at both the Office of Criminal Enforcement, Forensics, and Training and its National Enforcement Investigations Center (NEIC) say staffing shortages are making it difficult to do their jobs, particularly with hazardous waste inspections (*see top of Page 7 for a related story*).

The NEIC was cited in 2020 by the state of Colorado for hazwaste violations, such as NEIC staffers not using adequate laboratory hoods while testing hazwaste.

“NEIC has been challenged by high attrition rates among staff and the inability to backfill vacant positions since 2016, the IG reports.

Info: epa.gov/office-inspector-general/oig-reports#2021 (May 12)

WHERE TO GET HELP

■ TRAINING REMINDER: WHEN A SPILL IS AN EMERGENCY

Spills are bound to happen in industrial facilities.

Do staffers know what constitutes an emergency spill?

Staffers should be trained to know the four basic characteristics as defined by OSHA’s HAZWOPER standard:

- high levels of toxic or dangerous substances could injure exposed employees or the public
- there’s a risk of a fire or an explosion
- vapors could lower oxygen levels to unsafe levels, and
- employees need to evacuate the affected area.

Info: osha.gov/emergency-preparedness/hazardous-waste-operations/faq-hazpower

■ GRANTS RETURN POLLUTION SITES TO PUBLIC USE

Cities and towns can apply for brownfields grants to repurpose former industrial sites.

More than 150 municipalities were awarded \$66 million total in brownfields grants from EPA.

Info: epa.gov/brownfields

SHARPEN YOUR JUDGMENT – THE DECISION

(See case on Page 2)

Buck’s company won. A district court ruled against three environmental groups that were suing the company.

These groups argued the company’s emissions would increase as production increased. They claimed the company needed a Prevention of Significant Deterioration (PSD) permit because it would soon be (if it wasn’t already) a large source of pollution.

(Definition of a PSD or large source: emits at least 100 tons per year of an air toxic, in this case volatile organic compounds from rail cars and storage tanks.)

This company had already settled with the state for a previous violation. Its permit included a strict throughput limit related to fuel transfer and storage.

Business boomed, resulting in the company going over its permit limit. The company settled with the state.

The state permit battle spurred a bigger challenge by the three environmental groups.

In the end the court wanted evidence and the groups couldn’t show enough proof that emissions would spike or the permit limits weren’t sufficient. Case dismissed.

■ ANALYSIS: IF EVIDENCE IS SLIM, FACILITIES HAVE A GOOD SHOT OF WINNING CLEAN AIR DISPUTES

Unless an opponent can show good reason why a permit isn’t sufficient, courts will typically side with the permit-issuing agency.

“Predictions” are flimsy minus compelling evidence.

Cite: *Northwest Environmental Defense Center v. Cascade Kelly Holdings*, U.S. District Court, Dist. OR, No. 14-1059 Dramatized for effect.

FEDERAL BUDGET

Re-staffing at EPA gets big shot in arm

The White House budget request for EPA in fiscal year 2022 (starting October 1) includes \$110 million for agency staffing.

Assuming Congress green-lights President Biden's request for EPA – a whopping \$11.2 billion total – the agency will be able to hire more than 1,000 full-time employees.

Over the past four years, EPA's budget was slashed by 27% and 1,000 staffers resigned or retired (*see "Trump EPA staffers" at our website for more info*).

Veteran staff set to retire

The agency's workforce is aging quickly. Thirty percent of the workforce can retire in one year.

The budget also prioritizes EPA's legal staff with \$24 million earmarked for the legal advice programs.

Info: [whitehouse.gov/wp-content/uploads/2021/04/FY2022-Discretionary-Request.pdf](https://www.whitehouse.gov/wp-content/uploads/2021/04/FY2022-Discretionary-Request.pdf)

Tech firms weigh in on climate reporting to SEC

The U.S. Securities and Exchange Commission (SEC) wants to know what kinds of climate change-related data is most relevant and should be reported by publicly traded companies.

Seven of the largest tech companies – Alphabet (Google), Amazon, Autodesk, eBay, Facebook, Intel and Salesforce – advised the SEC's disclosure policy to focus on:

- a principles-based framework for companies to report relevant info to their industry and stakeholders that doesn't require frequent updates
- using relevant greenhouse gas (GHG) emission info from globally accepted metrics such as the World Resources Institute GHG Protocol
- leveraging existing frameworks and standards, and

- reporting deadlines separate from annual, quarterly and other document deadlines to the SEC. Given that climate disclosures are estimates, companies shouldn't be subject to undue liability for GHGs, the companies argue.

Info: [sec.gov/comments/climate-disclosure/c112-8907252-244227.pdf](https://www.sec.gov/comments/climate-disclosure/c112-8907252-244227.pdf)

Emergency cleanup for site closed 36 years ago!

Legacy pollution cases can take a lo-o-ong time to clear up ... more than 35 years to be exact.

Case in point: The former owner of an abandoned tool manufacturing facility in Springfield, Vermont, will pay \$662,500 plus interest to reimburse EPA for removing hazardous contamination.

Textron owned the single-story brick factory located near the center of the town from 1964 to 1985 before shutting down for good, having bought it from the Jones & Lamson Machine Company. The building's sat empty ever since.

Then in 2016, the Vermont Department of Environmental Conservation asked EPA to assess the site for contamination.

Better late than never!

Soil samples showed waste chips containing polychlorinated biphenyls (PCBs) at concentrations above the threshold of the federal Toxic Substances Control Act, plus elevated levels of chromium and arsenic.

EPA issued an emergency order and listed Textron as a RCRA emergency site. The agency removed drums of hazardous substances from the factory boiler room, and excavated and removed 990 tons of black oily soil and contaminated swarf, or waste chips, along the Black River's bank.

REAL PROBLEMS/SOLUTIONS

■ SUSTAINABILITY 'WINNERS' COME FROM STAFFERS

Companies count on environmental professionals for sustainable solutions.

We may know a lot – but often the best ideas come from enthusiastic employees.

Here are three “no-brainer” ways of reducing waste that came straight from our front-line employees.

You may see the same success by tapping your people's expertise.

- **Bring your own coffee mug:** Companies provide paper coffee cups over plastic or styrofoam because they're biodegradable. The better solution? Nix the disposable cups altogether. If you have coffee makers, let staffers know they're responsible for bringing in their own mugs.
- **Give a price break:** Companies with coffee and drink vendors are slashing drink prices if people agree to bring in reusable containers. It's better for the environment and reduces trash and disposable cup costs.
- **Post it online:** Why print and distribute company memos? Post them electronically. For memos that most folks will want to print (like healthcare plan changes), send or post PDF attachments.

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“ I often share the info in ECA with other department heads for environmental education, planning and compliance.”

Marian Keegan
Director, Community Conservation
Hemlock Farms Community Assoc.

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.

1-BROMOPROPANE

The halogenated solvent 1-bromopropane is on the fast track toward becoming a listed hazardous air pollutant (HAP).

EPA announced it would expand its HAP list for the first time since the Clean Air Act Amendments were passed by Congress in 1990.

The agency's seeking stakeholders' comments on how to regulate 1-bromopropane emissions.

1-bromopropane was on the first list of high-priority chemicals for Toxics Substances Control Act evaluations in 2016.

The substance is still in heavy use as a vapor degreaser and solvent in glue, asphalt manufacturing, optics and other products.

Comments are due by July 26. Contact is Susan Miller, miller.susan@epa.gov or (919) 541-2443.

Info: 86 FR 31,225

AIR RULE ROLLBACK

The clean air cost-benefit analysis (CBA) rule is headed for the trash heap as expected.

Calling it "inadvisable, untethered to the Clean Air Act (CAA), and not necessary," EPA is rescinding the Trump administration reg.

The CBA rule would've hampered EPA from enacting costly air rules. The reg called for:

- a mandatory CBA for all significant CAA regs
- using the best available scientific information when creating a CBA while using codified best practices from EPA and White House

Office of Management and Budget guidance, and

- additional procedural requirements to increase transparency in presenting CBA results.

Info: 86 FR 26,406

FIFRA - DICAMBA

EPA's Office of the Inspector General (IG) concludes agency leadership did farmers a favor at the expense of the ecology by not banning herbicides containing dicamba.

The agency "deviated from typical procedures in its 2018 dicamba pesticide registration decision" by not consulting three internal peer reviews for the pesticide.

The IG found "senior leaders in the Office of Chemical Safety and Pollution Prevention office were more involved in the dicamba decision than in other pesticide registration decisions ... this led to senior-level changes to omissions from scientific documents."

Soon after the decision, the 9th Circuit Court of Appeals vacated the three registrations, ruling EPA violated the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

The court order canceled three herbicide products with dicamba as an active ingredient: Bayer's Xtendimax with vaporgrip technology, Engenia and FeXapan.

Soybean and cotton farmers petitioned EPA for a two-year extension because of dicamba's effectiveness in killing weeds. But dicamba spray drifting can destroy flower and fruit tree crops.

Info: epa.gov/office-inspector-general/oig-reports#2021 (May 24)

COVID-19 VACCINE

OSHA made an important update to the way it's enforcing regulations regarding COVID-19.

The agency says it doesn't want to discourage workers from receiving the COVID vaccination, and also doesn't want to "disincentivize" employers' vaccination efforts.

Therefore OSHA won't enforce requirements on companies to record worker side effects from COVID-19 through May 2022.

OSHA will reevaluate its position next year to determine whether the exemption will continue, assuming COVID variants become a serious public health issue.

Info: osha.gov/coronavirus/faqs#vaccine

GROUNDWATER BATTLE

The U.S. Supreme Court will decide a contentious groundwater dispute between Mississippi and Tennessee this summer, the first case of its kind heard at this level.

Mississippi is suing the Volunteer State for control of an aquifer that straddles both states and is seeking \$600 million in damages.

The Magnolia State argues that Memphis Light, Gas and Water has stolen billions of gallons of groundwater from a sub-unit of the Middle Claiborne Aquifer that Mississippi says it owns.

Result: Mississippi says it hasn't been able to develop its aquifer sufficiently to provide clean drinking water for its residents.

Legal experts predict the High Court will side with Tennessee and send the case back to a special master to work out who owes what and how much to whom.

Historically federal courts that hear interstate water disputes advise sparring governments to work out differences and share resources as equitably as possible.

Info: scotusblog.com/case-files/cases/mississippi-v-tennessee