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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).

Full speed ahead! EPA widens chemical regulatory powers

■ TSCA policy changes on the way

Environmental health and safety advocates and many in industry questioned EPA's refusal to clamp down harder on toxic chemicals after Congress gave the agency the power to do so.

With the change in administrations it appears that's exactly what EPA intends to do now.

EPA announced major changes to its risk evaluation processes under the Toxics Substances Control Act on June 30 (*for recent related stories, go to our website and search for "EPA raises bar chemical"*).

First step is a game changer

EPA's recent risk assessments of 1,4-dioxane, methylene chloride, TCE, carbon tetrachloride, perc, NMP

and 1-bromopropane didn't "assess air, water or disposal exposures ... because these pathways were already regulated" under air and water laws.

That's about to change: EPA will focus more on exposure pathways like drinking water and ambient air exposure in chemical evaluations from now on.

And since the Frank Lautenberg Chemical Safety Act strengthened TSCA, count on EPA using it to restrict or ban substances like 1,4-dioxane.

Enviro Justice ramped up

The Biden administration wants a fenceline assessment approach to

(Please see Full speed ... on Page 2)

RCRA

Critical Sept. 1 deadline for small waste generators

■ SMALL HAZWASTE GENERATORS MUST RE-NOTIFY EPA OR STATE

Set a reminder for September 1 on your phone if you're one of thousands of small quantity generators (SQGs) of hazardous waste.

The first-ever biennial notification requirement for SQGs is coming fast. EPA's Hazwaste Generator Improvements (HWGI) rule made notifying EPA or an authorized state agency every four years mandatory.

Nearly all 50 states are authorized to run their hazwaste programs according to the Resource Conservation and Recovery Act

(RCRA) with the exceptions of Iowa and Alaska. About a dozen states haven't adopted the HWGI rule yet (*see sidebar, Page 5, for related info*).

Put it on your calendar

Renotification must be done using EPA Form 8700-12.

Also: Agencies need to know if you've closed a hazwaste site. Failure to notify can result in RCRA fines .

SQGs generate between 101 and 999 kilograms of hazwaste monthly.

Info: epa.gov/hwgenerators/re-notification-requirement-small-quantity-generators

RCRA

3 keys to keep waste inspectors at bay

Believe it or not, one out of every 10 Resource Conservation and Recovery Act (RCRA) citations of regulated facilities involves universal waste (UW).

California routinely racks up millions of dollars in fines against chain stores and other businesses via Dumpster dives. Other states' inspectors won't hesitate to tack on UW penalties when checking up on businesses' compliance with air or water quality rules.

Go by your state's list

If you haven't checked your state's UW list recently, you'll want to do so. Your state agency may have adopted EPA's addition of aerosol cans to the federal UW list.

Make sure aerosol cans are authorized under your state's UW list to avoid a fine. It's not a bad idea to call and ask if you're not sure.

The lesson to avoiding UW penalties is about the same as with hazwaste: If a novice inspector can quickly spot a violation, you're going to get written up!

Keys to remember are to:

- **mark UW containers clearly.** For example, "Universal Waste – Pesticides." Don't use abbreviations that occupants in your facility might have to guess at, and

Make sure aerosol cans are authorized

- **write down accumulation start dates.** You can store UW at a company-owned facility for a full year followed by one more year at another company site.

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

Full speed ...

(continued from Page 1)

correct inequities in overburdened Environmental Justice communities.

Ongoing clean air, water and TSCA chemical rulemaking and enforcement will target communities where pollution threats are the highest.

Fenceline screening assessments for chemical exposure will be submitted soon to EPA's Scientific Advisory Committee on Chemicals and be made available for public comment.

Total effect of chemical is key

While the Trump EPA evaluated toxic chemicals on a use-by-use basis, regulators will now take a "whole chemical" viewpoint focused on a substance's toxicity and persistence in the environment.

The agency will be withdrawing prior "no unreasonable risk" assessments, and issue revised unreasonable risk orders that reflect the whole-chemical approach.

Info: tinyurl.com/TSCA656

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 GET OUT OF COVERING FUME DAMAGE?

"All right then, let me walk you through the policy again," sighed Jimmy Fresco, the property insurance agent.

"I've got it in front of me, Jimmy," said Buck Flanagan, the environmental manager.

"If you look at section 5, you'll see your company agreed to a pollution exclusion, and spelled out just below that is 'chemical vapors,'" said Jimmy.

"And as you can see, among the examples listed is formaldehyde," said Jimmy. "So there's no ambiguity there. We can't indemnify you for the vapor damages.

"I'm very sorry about that, but we can't do more than what the policy spells out," said Jimmy.

Is damage 'environmental?'

"Let's take a look at the exact wording," said Buck. "The exclusion related to chemical vapors clearly states 'environmental damage.'

"The formaldehyde damage was to our warehouse," Buck continued. "And for the most part, it's products, equipment and materials in the east end of the warehouse that were destroyed.

"The pollution exclusion shouldn't come into play here," Buck finished.

"Afraid you're wrong on that point, Buck," said Jimmy.

The insurer refused to cover Buck's company for chemical vapor damage, so the company took the insurer to court.

Who won this legal battle?

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



EDITOR-IN-CHIEF: SCOTT BALL
sball@SafetyNewsAlert.com
MANAGING EDITOR: FRED HOSIER
PRODUCTION EDITOR: P.J. FRONZEO
EDITORIAL DIRECTOR: CURT BROWN

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Where other companies are stumbling over compliance

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

Inspectors find 1 problem after another at facility

Company: Alliant Techsystems Operations, operating at the U.S. Navy-owned Allegany Ballistics Laboratory, Keyser, West Virginia.

Business: Manufacturer of military products such as solid fuel rocket motors, explosive warheads, solid fuels and propellants.

Penalty: \$350,000.

Reasons for penalty: Alliant was cited for a wide range of air, water and waste violations under multiple statutes. It failed to:

- make proper waste determinations
- conduct weekly container storage area inspections
- update a facility contingency plan
- replace a hazardous waste container that was in poor condition
- maintain records of waste analyses
- conduct emission observations
- comply with air conditioning and refrigeration unit leak calculation and repair requirements
- conduct sulfur dioxide emission (SO₂) calculations and SO₂ weight emission testing for a coal-fired boiler
- report an SO₂ emission exceedance
- monitor perchlorate levels in discharges, and
- update its oil spill plan.

Note: Alliant was cited for permit

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.

violations under the Resource Conservation and Recovery Act (RCRA), Clean Air Act Title V program, National Pollutant Discharge Elimination System program and the Clean Water Act Spill Prevention, Control and Countermeasures Plan rule.

Hazwaste treatment shortcut brings \$350K fine

Company: Safety-Kleen Systems, Dolton, Illinois.

Business: Chemical recycling.

Penalty: \$350,000.

Reasons for penalty: Safety-Kleen is a RCRA-permitted organic chemical and solvent reclamation and recycling facility that regenerates spent solvent and blends hazardous waste into fuel. Inspectors found the facility treated hazardous waste in thin-film evaporators that weren't authorized in its RCRA permit.

Note: Dolton is considered an overburdened Environmental Justice neighborhood by EPA. (*Search for "Biden EPA environmental justice" at our website for more stories.*)

50 years of wetlands damage must be paid for

Companies: Maietta Enterprises, Maietta Construction and M7 Land, Scarborough, Maine.

Business: Construction.

Penalty: \$850,000 toward wetland restoration and \$25,000 penalty.

Reasons for penalty: Starting in the 1960s, Maietta continuously used a site in eastern Maine as a material staging and reprocessing area for earthwork operations. Maietta filled approximately 10 forested freshwater wetland acres adjacent to a wildlife refuge.

Note: The companies will pay to remove fill, create a plant buffer between remaining fill and restored areas, plug drainage ditches, manage

invasive species and establish a 14.5 acre conservation easement to preserve the wetlands.

'Nuisance dust' was easy to spot and contain

Company: Quikrete of Dallas, Texas.

Business: Dry concrete bagging plant.

Penalty: \$13,812.

Reasons for penalty: Quikrete created nuisance dust problems on a road building project and at its facility. It failed to:

- spray concrete when visible particulate matter (PM) emissions appeared on a worksite
- maintain its capture and abatement equipment
- keep a current copy of its air permit on hand, and
- prevent nuisance dust events.

Note: Texas Commission on Environmental Quality (TCEQ) inspectors documented PM emissions coming from the company's dryer and conveyance pipe. Videos were taken of large dust plumes leaving the concrete maker's property.

FIFRA enforcement rolls on against illegal sales

Company: Kaliber, Bellevue, Washington.

Business: Pesticides.

Penalty: \$41,200.

Reasons for penalty: In the fall of 2018, Kaliber sold unregistered products made in China on its website and Amazon. Products included the misbranded devices "Sonic Mole Repeller," "Sonic Pest Repeller" and "Sonic Mole Repeller products with LED." None of these products can be legally sold in the U.S. because they're not EPA-certified under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

GREENHOUSE GASES

Congress all-in on carbon capture

Demand for energy and electricity generation is stronger than ever and fossil fuels remain critical to providing both.

So Democrats and Republicans in Congress are working on multiple carbon capture, utilization and sequestration (CCUS) bills to mitigate emissions from coal- and oil-fired power plants.

Public privilege for private ventures

The Carbon Capture Improvement Act would let businesses access private activity bonds (PABs) currently used by local and state government to finance CCUS projects.

“If more than 65% of CO2 emissions from a given facility are captured and injected underground, then 100% of the eligible equipment can be financed with PABs,” says U.S. Senator Rob Portman (R-Ohio), co-sponsor of the bill.

Tax-exempt financing would be

available on a pro-rated basis for facilities that achieve a CO2 capture rate below 65%.

More tax incentives the trick?

The Coordinated Action to Capture Harmful (CATCH) Emissions Act would boost credit levels under the Section 45Q tax credits for power plants and industrial facilities.

CATCH proposes:

- an \$85 per metric ton credit level (pmtcl) for storing captured CO2 in saline geologic formations, and
- a \$60 pmtcl for storage in oil and gas fields or using captured carbon to manufacture low- or zero-carbon fuels, chemicals, building products or advanced materials.

The CATCH Act also calls for a 10-year extension of 45Q incentives to spur more CCUS projects.

Info: congress.gov/legislation-popular-titles/117th-congress

VOLATILE ORGANIC COMPOUNDS

Aerosol coating emission regs getting an overhaul

- VOC REACTIVITY LIMITS, LIST OF COMPOUNDS TO GET A REWRITE

National volatile organic compound (VOC) emission standards for aerosol coatings are about to be updated.

The upshot: Coatings and paint manufacturers will need to change their processes, and some industrial facilities may be stuck with unusable aerosol products.

EPA plans to:

- update product-weighted reactivity emission limits
- add compounds
- revise reactivity factors, and
- amend reporting requirements.

A proposed rule under Section 183(e) of the Clean Air Act is due by the end of the year.

Reactivity limits for aerosol coatings were last updated in 2008.

Coating industry wanted update

EPA first established VOC guidelines for aerosol paint/coating sprays because they contribute to ground-level ozone formation and can impact a geographic area’s attainment status under National Ambient Air Quality Standards.

The American Coatings Association petitioned EPA to “update its table of Maximum Incremental Reactivity values, adjust the default value, modify the regulatory language to allow for changing the value of existing compounds and add several aerosol coating compounds.”

Info: tinyurl.com/aerosolcoatings656

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.

■ SCRAP PILES AND CLOGGED DRAINS = DIRTY WATER

To: Regional Enforcement Director
From: Inspector Bob Wiley
Re: Clean Water Act

I’m concerned when any regulated site is completely out of compliance with a multitude of environmental rules.

When it’s government that is doing a poor job of protecting our resources, we need to send a strong message.

Unfortunately in this case, it’s the taxpayers who will be paying the price for their county government’s negligence.

We caught wind of sloppy waste handling at Summit County and went out to check on it. We decided to start at the county landfill.

Didn’t comply with permit

Summit keeps demolition waste stacked in piles before it can be landfilled. From the looks of things, it had been a while since anyone had gone through them.

There were large chunks of concrete, mortar and drywall, along with scrap metal and other items that shouldn’t be left out in the elements for long.

We took a look at storm drains on the site and found all kinds of scraps and junk in them. Those drains lead directly to the wastewater treatment plant.

The county’s paperwork told the story. There was no evidence of stormwater monitoring, periodic inspections or a recent site evaluation, which needs to be done annually under their permit.

I recommend a \$78,000 penalty and an immediate cleanup.

- *Dramatized for effect. Based on a settlement with a Midwestern county government entity.*

DRINKING WATER

Load of water regs coming down pike

Drinking water facilities should brace themselves now for a slew of new contaminants to monitor for and treat!

EPA released a draft list of contaminant candidates for Safe Drinking Water Act regs. It includes:

- 66 chemicals
- thousands of per- and polyfluoroalkyl substances (PFAS), excluding perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS)
- cyanotoxins
- disinfection byproducts, and
- 12 kinds of microbes.

Contaminants were selected from a universe of chemicals used in commerce, pesticides, biological toxins, disinfection byproducts and waterborne pathogens.

New regs certain for PFOA, PFOS

EPA is already moving ahead with national primary drinking water

standards for PFOA and PFOS so they're not included on this list.

EPA says this list was developed using "new approaches to rapidly screen a significantly larger number of contaminants, prioritizing data most

Utilities can chime in until Dec. 4.

relevant to drinking water exposure and the potential for the greatest public health concern, and better consideration for sensitive populations and children."

EPA is taking comments on the contaminant candidates until December 4. Contact is Kesha Forest, (202) 564-3632 or forrest.kesha@epa.gov.

Info: tinyurl.com/contaminantcandidates656

GENERAL PERMITS

Stormwater sting nabs 7 construction companies

■ BUILDERS NEED TO STAY ON THEIR TOES – INSPECTORS ARE WATCHING

Regulators are sending a message: Construction sites that don't implement Best Management Practices to control contaminated stormwater runoff are squarely on EPA and state agencies' radar.

Seven construction companies in Massachusetts are paying fines and seeing their reputations take unwelcome hits after EPA publicized their violations.

Acre-size sites require a permit

The most common mistakes made by the contractors were for failing to:

- obtain permit coverage (all seven contractors were cited for this)

- maintain adequate erosion controls
- store petroleum products safely, and
- prevent an illicit stormwater discharge and a turbid discharge.

The highest individual fine was \$9,000, paid by 383 Park Street which operated the Shay Lane construction site in North Reading.

EPA's press release includes this reminder: "All construction sites one acre or larger, with the potential to discharge stormwater to surface waters, are required to obtain coverage under EPA's General Permit for Discharges from Construction Activities, comply with the terms of the permit and thereby minimize sediment discharges."

Info: epa.gov/npdes/construction-general-permit-cgp-frequent-questions

TRENDS TO WATCH

■ ANOTHER STATE CLAMPS DOWN ON FOREVER CHEMS

Illinois EPA is proposing groundwater quality standards for five per- and polyfluoroalkyl substances (PFAS), the first of its kind in the Prairie State.

The state agency set limits for PFBS, PFHxS, PFNA, PFOA and PFOS that would require remediation and follow-up monitoring.

Sometimes known as "forever chemicals," PFAS don't break down easily in the environment and can be detected at concentrations of parts per trillion. They've been used in firefighting foams, stain-proof applications for furniture, consumer products, fast food wrappers and industrial processes dating back to the 1950s.

(For related news on PFAS, see top story on this page.)

Info: tinyurl.com/illinoiswater656

■ IRON, STEEL PLANTS GAIN HAZWASTE EXEMPTION

Businesses in Texas need to review their universal and hazardous waste programs and make changes in some cases.

The Texas Commission on Environmental Quality (TCEQ) announced it's adopting the:

- hazwaste generator improvements rule
- definition of solid waste rule and recycling provision changes, and
- hazwaste electronic manifest (eManifest) fees reg.

In addition, TCEQ added aerosol cans to the universal waste list (search for "EPA universal waste aerosol cans" at our website for a timeline of the reg).

Good news for industry: TCEQ intends to exclude spent foundry sands from the iron and steel casting industry from RCRA hazwaste management guidelines.

Info: tinyurl.com/texashazwasteoverhaul656

TOXIC SUBSTANCES

50 chemicals added to TSCA safety list

Chemical manufacturers and importers, as well as petroleum refineries, must report health and safety data on 50 kinds of chemicals.

The 50 substances being added to the Toxic Substances Control Act (TSCA) Section 8(d) Health and Safety Data Reporting rule are:

- 20 chemicals EPA designated as high-priority and underwent chemical risk evaluations such as formaldehyde, 1,3-butadiene and several phthalates, and
- 30 organohalogen flame retardants which are currently being evaluated by the U.S. Consumer Product Safety Commission.

This is the first time since 2008 that EPA has added chemicals to the Section 8(d) list.

No exemptions to reporting

TSCA Section 8(d) requires companies to notify EPA before using, importing or processing any chemical on the list.

There are no reporting exemptions available for articles, byproducts, impurities, test marketing or research and development in the rule, and no de minimis levels.

You must report electronically using the Chemical Information Submissions System tool through EPA's Central Data Exchange by September 27. Requests for an extension must be submitted by September 5.

Info: 86 FR 34,1747.

Court clarifies clean air & CERCLA reporting duty

Facilities that report Clean Air Act permit limit violations don't have to report again to meet Section 103 reporting guidelines of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

The 3rd Circuit Court of Appeals (a rung below the Supreme Court) ruled U.S. Steel satisfied its environmental obligations by reporting a fire at its Pennsylvania plant. U.S. Steel uses coke oven gas as fuel which creates emissions of benzene and hydrogen sulfide.

Info: courtlistener.com/opinion/4901027/clean-air-council-v-united-states-steel-corp

WHERE TO GET HELP

LEARN ABOUT NEW METHANE LEAK INITIATIVES

EPA will hold virtual public workshops on August 23 and 24 discussing innovative technologies that could be used to detect methane emissions from oil & gas facilities.

The workshops will focus on methane-sensing technologies that aren't currently approved for usage in Clean Air Act New Source Performance Standards.

Presenters have experimented with or evaluated methane leak detection technologies.

Info: tinyurl.com/methaneleakworkshops656

PREVENT ENVIRO HAZARDS DURING STORM SEASON

Tropical storms can pose environmental health and safety hazards such as:

- carbon monoxide fumes from using generators in poorly ventilated areas, and
- lead, asbestos and mold growth exposure after water damage.

For help, see EPA's web page.

Info: epa.gov/indoor-air-quality-iaq/resources-flood-cleanup-and-indoor-air-quality

SHARPEN YOUR JUDGMENT – THE DECISION

(See case on Page 2)

Buck's company won this battle in court.

A judge ruled the insurance firm must indemnify the company despite the insurer having what it considered an iron-clad pollution exclusion written into the policy.

Buck's argument was right on the money: The company wasn't claiming damages done to the outdoor air, waters, soil or even a neighboring property – in other words, "the environment" – which no doubt would've sunk the company's case.

Instead the company was only looking to be covered for damage done to building materials, merchandise and equipment in its building, caused by poorly made products emitting formaldehyde vapors (likely because of poor

ventilation, high temperatures or excessive humidity).

That put a dent in the insurer's argument. This was technically a claim for property damage, not environmental damage, caused by chemical vapors.

Therefore the pollution exclusion was a moot point and couldn't help the insurer get off the hook of paying up!

ANALYSIS: GET A LEGAL OPINION, IF NEED BE, IN EVENT OF INSURER TURNING DOWN A CLAIM

Courts always ask one thing in cases like these: What exactly does the contract say?

The exact wording helped the company in this case. That and the fact that in disputes where both sides make strong arguments, the courts typically lean against insurers.

Cite: *PQ Corporation v. Lexington Insurance*, U.S. District Court, Northern Dist. IL, No. 13-cv-3482. This case has been dramatized for effect.

SUPREME COURT

Gas pipelines score a major victory

In a big win for the oil & gas industry, the U.S. Supreme Court ruled states can't invoke sovereign immunity to stop federally approved pipeline projects.

Energy companies sued New Jersey after it stalled the 116-mile PennEast pipeline which had earned approval from the Federal Energy Regulatory Commission (FERC).

PennEast sought to get 100-plus dilapidated properties condemned and demolished under eminent domain provisions of the 1938 Natural Gas Act. Most of the properties are owned by New Jersey.

The Garden State fought the pipeline's request. The 3rd Circuit Court of Appeals ruled in favor of New Jersey, so PennEast appealed to the Supreme Court.

State 'stalls' take a hit

By a 5-4 vote, the High Court reversed the 3rd Circuit's decision.

Chief Justice John Roberts wrote for the majority, "Specifically we are asked to decide whether the federal government can constitutionally confer on pipeline companies the authority to condemn necessary rights-of-way in which a state has an interest. We hold that it can."

Bottom line: Once a gas pipeline is green-lighted by FERC, it's too late for individual states to invoke sovereign immunity.

Info: supremecourt.gov/opinions/20pdf/19-1039_8n5a.pdf

Inner-city power plants face stiff opposition

A few weeks back, EPA administrator Michael Regan convinced Chicago Mayor Lori Lightfoot (D) to suspend a permit for a metal shredding facility located in a poor neighborhood (*search for "Chicago Environmental Justice"*

at our website).

Now the agency's External Civil Rights Compliance Office is investigating a natural gas-powered combined heat and power plant in Philadelphia that may violate Title VI of the Civil Rights Act.

'Not in our back yard'

Neighbors in the Nicetown section of the City of Brotherly Love complained a new power plant would add to summertime smog pollution and exacerbate climate change.

The Philadelphia Department of Public Health's Air Management Services had permitted the plant (owned by the Southeastern Pennsylvania Transportation Authority) to provide electricity along regional rail lines.

More than 70% of the neighborhood's residents are below the federal poverty line.

Info: tinyurl.com/phillyenvirojustice656

Study: Another way to reduce plastic waste

Plastic waste may have a promising future as a safe and environmentally friendly fill material in cement mortar.

Montana State University researchers first coated plastic waste using calcium carbonate biomineralization techniques. They used difficult-to-recycle types 3-7 plastic waste that wind up in landfills or burned in Third World countries.

They then added the coated plastic as fill material to plastic-reinforced mortar, a type of plastic-reinforced cementitious material (PRC).

Testing showed PRC demonstrated the same level of compressive strength as plastic-free mortar.

Info: ncbi.nlm.nih.gov/pmc/articles/PMC8069578

REAL PROBLEMS/SOLUTIONS

■ OUR JUNK WAS ANOTHER BUSINESS'S TREASURE

Our facility's waste stream needed trimming.

We were filling trash receptacles every week with scrap materials, mostly wood.

All of that scrap was ending up in solid waste landfills.

The good news: We'd already implemented an office recycling program that got results.

By recycling paper, glass and aluminum, we'd reduced our office waste by one-third.

That convinced us we could cut our production load too – through smart recycling.

Only 1 trash haul a week now

It took some work, but we eventually found a company that wanted the scrap wood we'd been throwing out.

And we found another business that wanted our sawdust so they could produce firestarter logs.

Result: By not trashing as much wood and sawdust, we've reduced our waste load to one 10-yard dumpster per week.

The amount of scrap wood that we've saved from landfills equals 400 trees saved per year.

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"Wastewater compliance is becoming more challenging as limits become more stringent. ECA helps me stay up to date."

Karen Guglielmone
Environ. & Engineering
Division Manager
Telluride Public Works

Air, Water & Waste regs that affect your operations

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

RMP REVISIONS

Stakeholders shared viewpoints on what a more stringent Risk Management Plan (RMP) rule should look like in a recent listening session with EPA.

(Search for "Biden RMP" at our website for more info.)

Law firm Hunton Andrews Kurth noted several stakeholders want a focus on Environmental Justice (EJ) neighborhoods at greatest risk from chemical releases and fires.

An agency staffer said EJ would be a "critical" consideration in the revised RMP rule.

Multiple stakeholders called for a mandatory Safer Technologies and Alternatives Analysis (STAA) for all chemical plants.

The Trump administration stripped this requirement because the costs to industry outweighed the benefits. [Reviving the STAA will lead to industry lawsuits](#) and a likely loss in federal court.

And finally, some stakeholders argued new regulation wasn't the answer to boost chemical safety, rather EPA should step up enforcement of noncompliant facilities.

Info: huntonnickelreportblog.com, June 22.

NPDES

Maui County's sewage disposal wells, which triggered a groundbreaking change in Clean Water Act (CWA) precedent, is once again in the news.

A federal judge ruled the county needs a National Permit Discharge Elimination System (NPDES) permit because of frequent discharges to the Pacific Ocean.

The **Hawaii** Wildlife Fund sued Maui a few years back after it traced sewage on the shore and beaches. The group argued the wells constituted a point source as defined under the CWA and that an NPDES permit needed to be issued.

(For a timeline of the story, go to our website and search for "Maui groundwater.")

Groundwater to surface water pollution had been excluded from the CWA since it became the law of the land in 1972. The Supreme Court reversed decades of precedent in its *Maui* ruling two years ago.

There are thousands of wastewater wells used by publicly owned utilities. [Some utilities will face lawsuits and NPDES permitting](#) in some cases if environmental groups or inspectors detect underground leaks are contaminating ponds and streams.

Info: natlawreview.com/article/end-road-maui

WOTUS

The Trump administration's Navigable Waters Protection (NWP) rule is the law of the land for the next two years until EPA and the Army Corps of Engineers finalize a new "Waters of the U.S." rule.

Government lawyers convinced judges to vacate all pending lawsuits against the NWP rule. Attorneys told judges that a new WOTUS definition would settle the matter once and for all where federal jurisdiction begins and ends.

We'll see about that!

Reason: This will mark [the eighth time EPA's attempted to broaden or limit the scope of protected waters](#) since the 1970s.

Many legal experts predict it won't be EPA, the Corps or even Congress

that clarifies WOTUS – it's the federal courts who'll get final say.

NWP removed about half of the wetlands singled out for federal protection under the Obama WOTUS rule. Until we see what the Biden WOTUS reg looks like, federally protected waters are restricted 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 spelled out in NWP.

Info: 85 FR 22,250

STATE PLANS

EPA still isn't adequately addressing [a backlog of air quality state implementation plans \(SIPs\)](#) according to the agency's Inspector General.

Delayed SIP decisions are putting areas into nonattainment for National Ambient Air Quality Standards (NAAQS) for criteria pollutants like ground-level ozone and particulates.

The IG recommends EPA:

- take final actions on SIPs backlogged for 10 years
- urge states to withdraw some SIP submittals, and
- engage with state agencies before they submit SIPs.

States are given broad leeway to craft SIPs that achieve attainment with NAAQS, but EPA must ensure they comply with Section 110 of the Clean Air Act.

The IG praised EPA for making a dent in the backlog in recent years. An SIP is backlogged if it hasn't been approved or rejected within 12 months of submittal.

Info: jdsupra.com/legalnews/state-implementation-plans-clean-air-2802019