



September 14, 2021

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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 cracking down on methane leaks from 3 sectors

■ *Guess who's facing tough regs first?*

One ton of methane released into the upper atmosphere will produce the same warming effects as 80 tons of carbon dioxide over a 20-year period.

That's why scientists and EPA reg writers are targeting methane leaks from sources like oil & gas wells, cattle feedlots and solid waste landfills (*go the "Greenhouse Gases" tab at our website for related stories*).

Bottom line: At least one major study says sharply cutting methane emissions now would lessen the impact of global warming by 33% before 2050.

Startling views from high above

Using infrared pictures taken by a satellite 500 miles above the earth,

researchers can pinpoint where methane is spiking.

Foremost is a 150-mile-wide swath of Texas and New Mexico in the Permian Basin where 2.9 million metric tons of methane float skyward every year.

According to a Bloomberg News report called "The Methane Hunters," the sources of methane leaks are typically "broken valves, malfunctioning engines and open hatches ... [and malfunctioning] flare stacks ... that can go undetected for days to weeks."

Some oil companies are stepping up with more aerial monitoring using airplanes and drones, and investments in the latest-and-greatest

(Please see Methane ... on Page 2)

ENFORCEMENT

Air, water & waste rule-breaking costs firm \$2M

■ CREATIVE STATE ENFORCEMENT HELPS SCHOOL DISTRICT, ECOLOGY

State regulatory agencies typically don't hammer environmental violators with million-dollar penalties like the feds do, but there are always exceptions to the rule.

Case in point: Momentive Performance Materials, a silicone manufacturer in Waterford, New York, agreed to a \$2.3 million settlement with the NY Department of Environmental Conservation.

The payout resolves multiple complaints of air toxics and water discharge exceedances dating back to

2007. Momentive also circumvented pollution controls on its incinerator while burning hazardous waste, and mismanaged waste.

Community will benefit most

Broken down, the settlement includes \$1 million in air, water and waste fines, \$1 million towards a local conservation project, and \$300,000 in tax forgiveness for the Waterford-Hamilton school district.

The company's shifting from production of mass silicones to specialty silicones under new ownership.

DELTA VARIANT

OSHA tightens face mask policy

Preliminary evidence that fully vaccinated people can spread the Delta variant has prompted new workplace guidance from OSHA.

OSHA recommends fully vaccinated workers in areas of substantial or high community transmission wear masks to protect unvaccinated workers and to reduce their own risk of infection.

You can find whether the county where you're located is an area of substantial or high transmission on the Centers for Disease Control and Prevention's COVID webpage at [covid.cdc.gov/covid-data-tracker/#county-view](https://www.cdc.gov/covid-data-tracker/#county-view)

Steps you may need to take

In manufacturing facilities, meat processing plants and assembly line operations (including in agriculture), employers should:

- Ensure adequate ventilation, or if feasible, move work outdoors.
- Put space between workers, ideally at least 6 feet apart, and ensure people aren't working directly across from one another.

- Barriers aren't a replacement for face coverings and physical distancing – at least 6 feet of separation should be maintained between people if possible.

Put space between workers

- Stagger workers' arrival, departure and break times, to avoid groups of unvaccinated or otherwise at-risk workers in parking areas, locker rooms, and near time clocks.
- Provide visual cues such as floor markings or signs as a reminder to maintain physical distance.

Info: [osha.gov/coronavirus](https://www.osha.gov/coronavirus)

Methane ...

(continued from Page 1)

in leak detection technology. Filling the void are nonprofit groups and citizen activists monitoring oil & gas facilities, and letting companies and regulators know what they find.

Oil & gas is squarely on EPA radar

While decaying materials in landfills and cow belches are major methane contributors, reducing leaks in the oil & gas supply chain will deliver the biggest bang for the buck because it's the easiest problem to tackle.

Congress recently pulled a Trump administration rule that relaxed leak monitoring and technology requirements for oil & gas wells, giving EPA the green light to promulgate the toughest methane reg on the books.

In the meantime, Title V and greenhouse gas permitted sites need to stay on their toes to avoid fines.

Info: [bloomberg.com/features/2021-methane-hunters-climate-change](https://www.bloomberg.com/features/2021-methane-hunters-climate-change)

S HARPEN 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 FACILITY ON ITS OWN PAYING FOR CLEANUP?

Environmental Manager Buck Flanagan was in a bind. A property his company had purchased was contaminated with chemicals.

"There's a plume about 15 feet down, no doubt about it," said Buck. "I wish we'd known about it before making this deal."

"These are nasty chemicals no one uses anymore," said Buck.

"I see," said Cliff Uplander, the company's attorney. "Is it a threat to the neighborhood?"

"No," said Buck. "It's just smack dab in the middle of where we were going to lay down a concrete pad."

"I think we need to clean it up now," said Buck. "Take a look at the estimate I got."

Cliff took a glance at the estimate. "Ouch! Those remediators sure aren't starving, are they?" Cliff laughed.

Chemicals are near an aquifer

"I know," said Buck. "So shouldn't we go after the seller to help pay for a cleanup?"

"I've got a letter from the health department. The head of water quality there says the chemicals are above the aquifer," said Buck.

"Whoa. That is serious," said Cliff. "And it helps our case. This isn't just about the company having to pay more just so we can build on the location – the public's health could be at risk down the road."

"Should we sue?" asked Buck.

The company did sue. Was it able to force the other company to accept cleanup liability?

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



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Where other companies are stumbling over compliance

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

Soil samples tell tale: Firm bungled hazwaste duties

Company: Dick's Auto Wreckers, Fontana, CA.

Business: Metals recycler.

Penalty: Up to \$25,000 per day per violation in which the facility remains in noncompliance.

Reasons for penalty: The facility violated California Title 22 related to hazardous waste (*for help, go to dtsc.ca.gov/regulatory-assistance-frequently-asked-question*). Inspectors with the CA Department of Toxic Substances Control (DTSC) found high levels of cadmium, copper, lead and zinc in piles of soil mixed with metal at the facility. DTSC issued citations for:

- mismanaging hazwaste
- not minimizing the risk of hazwaste releases, and
- failure to train employees.

Note: DTSC asked the Los Angeles County Superior Court to authorize penalties up to \$25,000 a day for each violation. The facility's required to submit site investigation reports to DTSC, including a detailed cleanup plan.

Corrosion in water system: Zinc discharges spike

Company: U.S. Navy Joint Base Pearl Harbor-Hickam, Honolulu, Hawaii.

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.

Business: Wastewater treatment plant.

Penalty: Federal facility compliance agreement costing hundreds of thousands of dollars to implement.

Reasons for penalty: The plant exceeded its National Pollutant Discharge Elimination System permit limits for cadmium, zinc, oil and grease, pH and total effluent toxicity. Inspectors also found numerous operational and maintenance violations, including algae growth, warped and disconnected parts, cracked concrete tanks and severely corroded equipment.

Note: The Navy agreed to replace, repair or refurbish the plant's three primary clarifiers, five of six secondary clarifiers and the effluent pump station by the end of 2024.

No mercy for late reporting: \$40K EPA fine

Company: Cargill, Swanton, Vermont.

Business: Animal feed manufacturing.

Penalty: \$40,294.

Reasons for penalty: Cargill failed to submit Toxics Release Inventory (TRI) reports for zinc and manganese compounds it processed. TRI-listed chemicals must be reported if they exceed thresholds under the Emergency Planning and Community Right-to-Know Act.

Note: To determine if you meet or exceed TRI thresholds, go to EPA's screening tool: cdxnodengn.epa.gov/cdx-tri-threshold-screening-tool/action/home#!/

Illegal shortcut: They buried oily waste on site

Company: TFW Industrial Supply & CNC Machine, Godley, Texas.

Business: Metal manufacturing for the oil & gas, aerospace, mining and telecommunication industries.

Penalty: \$11,812.

Reasons for penalty: TFW violated

Industrial Solid Waste (ISW) rules enforced by the Texas Commission on Environmental Quality (TCEQ). It was cited for:

- dumping and burying oil-based waste on the southwest corner of its property in violation of ISW guidelines, and
- failing to conduct hazardous waste determinations and classifications for waste streams.

Note: TFW was ordered by TCEQ to remove and properly dispose of contaminated soil, conduct waste classifications for cutting and hydraulic fluids, and submit written certification of ISW compliance.

Process safety equipment damaged or not up to par

Company: Praxair (now known as Linde), Carson, CA.

Business: Carbon dioxide liquefaction plant.

Penalty: \$127,000.

Reasons for penalty: Praxair failed to:

- immediately notify the National Response Center (NRC) of a significant release of anhydrous ammonia (*for a related story, go to bottom of Page 4*)
- properly label the facility's process and emergency equipment
- install proper emergency controls
- replace damaged or missing insulation
- properly seal doors, and
- protect electrical equipment with coverings.

Note: Praxair waited hours to report an ammonia release to the NRC. The company was cited under the federal Comprehensive Environmental Response, Compensation and Liability Act (aka the Superfund law) for late reporting. All other citations fall under the Clean Air Act's Risk Management Plan program.

CLIMATE CHANGE

Court set higher bar for pipeline permits

Natural gas pipelines and facilities will face higher permitting hurdles from the Federal Energy Regulatory Commission (FERC).

Reason: The Washington DC Circuit Court of Appeals (a rung below the Supreme Court) didn't adequately consider the impact of liquefied natural gas (LNG) facilities near Brownsville, Texas.

The DC Circuit agreed with citizens' groups arguing FERC didn't analyze the plants' long-term greenhouse gases and how climate change will harm poor and minority communities.

While the DC court stopped short of vacating the LNG permits, future pipelines can expect FERC to focus more on climate and Environmental Justice (EJ) factors.

Road map for gas facilities

The DC Court said FERC should consider the Social Cost of Carbon,

which is mandated for all federal agencies. The Biden administration wants to reinstate mathematical factors that were stymied by President Trump, set at:

- \$51 a ton for carbon dioxide
- \$1,500 a ton for methane, and
- \$18,000 a ton for nitrous oxide.

(Search for "Biden social cost carbon" at our website.)

As for EJ impact, the LNG projects analyzed pollution impacts within a two-mile range. The Court ruled the

Two-mile radius not far enough.

facilities' air pollution impact could extend 31 miles out, which the permit applications didn't analyze.

Info: tinyurl.com/pipelines658

EPCRA

Section 312 chemical sting nabs facilities in 1 county

INSPECTORS: 'AS LONG AS WE'RE CHECKING UP ON THIS COMPANY ...'

We've told you about multiple facilities being fined for similar infractions in the same state or region of the country.

Check out this county-level sting eyeing cold storage facilities that use anhydrous ammonia, an extremely hazardous substance.

These three businesses in Yakima County, Washington, were fined a total of \$354,000 for not reporting their chemical stocks to local, state and national emergency planning committees, as well as local fire departments, as required by the Emergency Planning and Community Right-to-Know Act (EPCRA), specifically Section 312.

EPCRA's planning and reporting

threshold for anhydrous ammonia is 500 pounds, which all of the companies' eight facilities in total exceeded. Responders would've been in the dark if they'd had to respond to an accidental release.

Anhydrous ammonia can quickly cause irritation of the eyes, ears and throat when it's released.

Ammonia a mystery to responders

- Stadelman Fruit, with four freezer facilities in Zillah, is paying the heaviest price – \$238,875.
- Hollingbery CA and Cold Storage, which operates three buildings on the same avenue in Yakima, was fined \$96,600.
- Hollingbery and Sons was fined \$21,600 for not reporting ammonia storage at its one facility in Yakima.

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.

■ THEY NEVER REPORTED THEY WERE DUMPING WASTE

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

We caught wind of Acme violating Resource Conservation and Recovery Act (RCRA) regs.

But it wasn't an anonymous call that tipped us off – it was a contractor.

Acme has a RCRA permit, so any time it dumps waste, it needs to let us know within 15 days.

After it hired a contractor to get rid of some hazwaste and solid waste, the contractor sent a report to us about the dumping.

The problem? We didn't have any records of a new trash dump.

Acme never let us know it was going to be dumping anything – or where.

Wasn't handled correctly

I went out to the site to check things out.

Sure enough, there was a dump, just like the contractor said.

When I started talking to some of the employees, I found out the dump had been there for well over a year.

Whether this was an honest mistake or not, we wouldn't have found out if it weren't for the contractor.

And this isn't Acme's first hazwaste problem. A few years ago, it dumped some hazardous waste that contaminated surrounding groundwater.

I suggest a \$79,500 fine and order Acme conduct a cleanup immediately.

■ *Dramatized for effect. Based on a settlement with a military base.*

POLYCHLORINATED BIPHENYLS

Long-banned chemical still causing woe

Polychlorinated biphenyls (PCBs) may be banned, but they're still lurking in many buildings.

New construction and renovations can expose workers and occupants to these cancer-causing chemicals, which were a common ingredient in caulking and joint materials, coolants in hydraulic systems, and dielectric fluids in fluorescent lighting ballasts and various kinds of electrical equipment up until 1979 when PCBs were banned by EPA.

Liability costs for PCBs can be steep: Chemical maker Monsanto recently settled with three public school teachers in Washington state who claimed PCBs in light fixtures caused them brain damage.

The payout? \$185 million.

What you need to check

Attorneys Beveridge & Diamond recommend doing a risk analysis, especially before renovations or demolition. Under the Toxics

Substances Control Act, building material containing at least 50 parts per million of PCBs are prohibited and should be removed.

Indoor air and wipe sampling is a good way to start tests.

Materials to consider testing include: paints, varnishes and lacquers; plastic and rubber materials in electrical cables; old rubber and felt gaskets; insulation materials (fiberglass, felt, foam and cork); adhesives and tapes; caulk, grout and joint material (putty, silicon, and bitumen); pipe hangers; plastic applications, including vinyl and PVC; mastics; acoustic ceiling and floor tiles; asphalt roofing and tar paper; synthetic resins and floor varnish; and sprayed-on fireproofing.

Waste materials from renovations or demolition must be identified as such and separated from trash.

Info: tinyurl.com/PCBbeveridgediamond658

STORMWATER

Contaminant spike at any discharge point a violation

■ CHEAPER & SAFER TO FIND AN EXCEEDANCE BEFORE INSPECTORS

Stormwater compliance needs to include monitoring for each and every discharge point.

If an inspector records a permit exceedance from just one point – or identifies a drainage channel from your site that isn't being monitored – it'll cost you, as a steel parts manufacturer found out.

Penalty, upgrades won't be cheap

Fought & Company in Tigard, Oregon, fabricates structural steel components for large-scale construction projects such as bridges, high-rises, stadiums, and industrial buildings. During storm events, it

discharges stormwater off site and to nearby Fanno Creek.

It's regulated under the Clean Water Act National Discharge Elimination System program through the state. Its monitoring reports didn't show any exceedances for contaminants, but inspectors decided to double-check.

Result: The steel facility wasn't monitoring all discharge points and had a deficient pollution control plan for keeping zinc runoff in check.

Inspectors also found the company wasn't inspecting grass and sand controls designed to absorb water and reduce runoff.

The plant has to pay an \$82,000 fine and install additional treatment capacity for zinc discharges.

TRENDS TO WATCH

■ EPA V. HOMEOWNERS RE: WETLAND STILL IN COURTS

EPA demands final word on what constitutes a protected body of water, despite the U.S. Supreme Court ruling against the agency.

Idaho homeowners Mike and Chantell Sackett are still tied up in court with EPA over a wetlands dispute dating back 17 years!

At the time, EPA threatened the Sacketts with fines of up to \$75,000 per day if they didn't agree to restore the two-thirds of an acre property to its previous condition.

EPA wouldn't allow the Sacketts a hearing to resolve the dispute. Their lawsuit eventually reached the Supreme Court, with the judges ruling they were entitled to a hearing under the Administrative Procedure Act. The case was then remanded to lower courts.

The 9th Circuit Court of Appeals just ruled the Sacketts' property on which they built includes a protected wetland (agreeing with EPA's view).

The Sacketts are appealing, and the Supreme Court may end up settling the case once and for all sometime next year.

■ PAYOUTS TO STATES FOR PFAS POLLUTION ROLLING IN

Legacy chemical pollution cases keep getting more and more expensive for companies.

The latest: DuPont settled a per- and polyfluoroalkyl substances (PFAS) class-action case in Delaware for \$50 million.

Money will go toward restoration, improvement, sampling and analysis, community environmental justice and equity grants and other natural resource needs, according to Delaware's attorney general.

DuPont agreed to spend up to \$4 billion to resolve PFAS claims in the states it did business in.

FIFRA

EPA puts end to controversial pesticide

EPA is banning chlorpyrifos from use on all food products, reversing a move by the Trump administration that kept the pesticide in commerce.

Farmers should be seeking alternative pesticides as EPA is revoking all tolerances for chlorpyrifos (tolerances establish amounts that a pesticide can be allowed on food).

The agency will also cancel registered uses of chlorpyrifos under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

Danger to farm worker children

EPA's move satisfies a 9th Circuit Court of Appeals order from 2007 for a reg that will protect farm workers, especially children.

Chlorpyrifos is an organophosphate insecticide used on soybeans, fruit and nut trees, broccoli, cauliflower and other row crops.

Chlorpyrifos inhibits an enzyme, which can trigger neurotoxicity, and also causes neurological defects in children.

Additional restrictions on non-food uses of chlorpyrifos may be coming in the next year through FIFRA rulemakings by EPA.

Info: epa.gov/system/files/documents/2021-08/pre-pub-5993-04-ocspp-fr_2021-08-18.pdf

States can put kibosh on Section 401 permits

All 50 states and Indian tribes were granted an extension to review and certify 41 Nationwide Permits (NWP) proposed by the Army Corps of Engineers in 2020.

NWPs are needed for pipeline, mining, telecommunications, infrastructure, dam and highway construction and other kinds of projects under the Clean Water Act Section 401 to protect surface and groundwater sources.

This move will give Democrat governors power to stall or kill projects that contribute to global warming or pollute waters for at least the next four years.

A Trump EPA/Corps rule finalized last year gave states a one-year limit to certify or reject Section 401 permits. The White House is nixing that reg.

Info: tinyurl.com/permits568

WHERE TO GET HELP

SMART SECTORS EPA WEBSITE HAS LOTS TO OFFER

If you haven't checked out EPA's Smart Sectors website recently for sustainability strategies and pollution trends, you may want to take a look.

Smart Sectors features graphs and interactive charts with environmental indicators and data for a dozen sectors over time. You can analyze sector-level trends, and also toggle to display recessions and other relevant events.

A summary page for each sector includes links for additional info. Smart Sector pages cover:

- aerospace
- agriculture
- automotive manufacturing
- cement/concrete
- chemicals/petrochemicals
- construction
- electronic products
- iron & steel
- maritime & port transportation
- mining
- oil & gas
- paper & wood products, and
- utilities and power generation.

Info: epa.gov/smartsectors

SHARPEN YOUR JUDGMENT – THE DECISION

(See case on Page 2)

No. Buck's company had no luck getting the property seller to help pay for a cleanup.

A federal court ruled the company hadn't proven there was an "imminent or substantial" threat to the public's drinking water supplies.

One letter not enough to make winning case

The court considered the letter from local water regulators, but concluded it wasn't enough to make the seller liable.

In order for the seller to be liable, the court needed third-party expert testimony that the chemicals were likely to contaminate water supplies.

Reason: Proximity alone isn't a key indicator that a problem will occur soon, the court explained.

LESSON LEARNED: MULTIPLE EXPERT REPORTS ARE WORTH THE TIME AND MONEY

Resolving a hazardous waste cleanup situation takes time, a lot of work and money.

Companies facing situations like this one are smart to hire outside experts to weigh in on all the risks and potential obstacles.

That's not to say getting a state regulator's opinion is worthless.

But since the health department couldn't determine one way or the other if the chemicals posed a threat, its testimony was no help.

Cite: *Sullins v. ExxonMobil*, U.S. District Court, Northern Dist. CA, No. 08-4927. Dramatized for effect.

CONGRESS

Infrastructure bill boosts water plants

The trillion-dollar-plus infrastructure bill passed by Congress channels huge sums to environmental and energy projects.

Roughly 23% of funds will go toward highway, bridge, rail, airport, marine port, bikeway and walkway construction and renovations.

Fifty-five billion dollars is earmarked for drinking water facilities to deal with lead and emerging contaminants such as per- and polyfluoroalkyl substances.

Publicly owned treatment works (POTWs) susceptible to flooding and tropical storm damage will get \$25 million annually for climate change resiliency upgrades through 2026. Some existing POTWs, conveyances and discharge system components will be relocated to withstand climate change-related damage.

And a national electric vehicle charging station program that's just getting off the ground will receive \$7.5 billion

Info: congress.gov/bill/117th-congress/house-bill/3684

Study: Cities driving bulk of greenhouse gases

Twenty-five cities out of the world's largest metropolises are churning out more than half of urban greenhouse gas (GHG) emissions.

A study published in the journal *Frontiers in Sustainable Cities* analyzed data from 167 urban areas in 52 countries.

Nearly all of the cities on the Top 25 list are in China. Shanghai, Suzhou, Dalian, Handan and Tianjin have the largest stationary emission totals resulting from coal-fired energy production, manufacturing and transportation services.

Four cities decreased GHGs substantially between 2012-16:

Houston; Seattle; Bogota, Colombia; and Oslo, Norway.

Info: frontiersin.org/articles/10.3389/frsc.2021.696381/full

Tank car service firms face tough OSHA scrutiny

Transportation tank cleaning operations in Arkansas, Louisiana, New Mexico, Oklahoma and Texas are subject to a new regional emphasis program (REP) by OSHA.

This REP targets companies involved in the cleaning, repair and maintenance of transportation tanks.

Between 2016 and 2021, OSHA conducted 165 inspections within the industry, resulting in 318 violations.

Thirty-six percent of inspections followed workplace fatalities with about 20% involving workers entering confined spaces and breathing in toxic fumes.

OSHA has initiated a similar tank cleaning REP in the Chicago region.

Electronics are growing source of lead poisoning

Toxic metal emissions from electronics manufacturing are seeping into our bones, a study from Hebrew University of Jerusalem warns.

Researchers exhumed human remains from before metal production began from a cemetery in Rome, and found lead poisoning in bone fragments. Higher lead levels were recorded in bones after mass production of lead began.

The researchers warn lead emissions from mass manufacturing of electric vehicles, smartphones, batteries, solar panels, wind turbines and other devices may increase lead poisoning.

Info: tinyurl.com/leadpoisoning568

REAL PROBLEMS/SOLUTIONS

■ PARTNERSHIP HELPED REDUCE RECYCLING FEES

One of our biggest recycling headaches was the large amount of plastic, glass and aluminum containers we collected.

All of that material increased recycling costs.

And it took up an awful lot of space to boot.

We did some brainstorming, sought help from internal "experts" and came up with a much better strategy.

Outreach to community works

Some employees knew of a charitable organization that collects recyclables for cash.

The charity was more than happy to take us on as a client.

It's a win-win for everyone.

The charity makes money turning in the containers.

The more they collect, the more funds help the cause.

Businesses win because they eliminate recycling fees.

We promoted the partnership to employees and we remind them about it periodically.

It gives everyone an incentive to put their recyclables in the right bins, and not throw away those valuable cans and bottles.

▼ FROM OUR SUBSCRIBERS

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

"The value of ECA is that it's quick and concise. It keeps me updated on the important issues."

Brent Hanson
Environmental Manager
SNF
Riceboro, GA

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

CROSS-STATE AIR POLLUTION

The never-ending cross-state air pollution battle rolls on!

In the latest chapter: New York and four other states just reached an agreement with EPA to crack down harder on upwind states putting their neighbors into nonattainment for ozone.

According to NY Attorney General Letitia James, "the Trump administration's EPA refused to carry out its mandatory statutory duty to approve or reject state implementation plans (SIPs) submitted by Indiana, Kentucky, Michigan, Ohio, Texas and West Virginia."

Under the good neighbor provision of the Clean Air Act, neighboring states can be regulated for criteria pollutants that waft across state lines, impacting states' ability to comply with National Ambient Air Quality Standards (NAAQS).

The agreement requires EPA to act on SIPs from upwind states by April 30, 2022.

If EPA rejects one or more SIPs by February 28, 2022 and proposes federal implementation plans, EPA will have until December 15, 2022 to finalize rejected SIPs.

Info: 86 FR 40,825

HAZMAT LABELS

The Department of Transportation (DOT) updated its *Hazardous Materials Markings, Labeling and Placarding Guide*, more commonly known as Chart 17.

DOT removed some obsolete markings from the chart:

- the lithium battery handling marking which is replaced with the 2019 handling label
- the other regulated materials – domestic (ORM-D) label, which was phased out of ground transportation at the beginning of 2021, and
- an outdated version of the DOT Class 9 (miscellaneous) hazard label which featured a dividing line.

Also: The symbols indicating whether an intermediate bulk container (IBC) is designed for stacking or not is also off the chart, but they remain applicable.

For shipping packages or vehicles with United Nations identification numbers, Chart 17 now also illustrates three options: in an orange panel, in the middle of a placard or in the middle of a white placard-like device.

Info: phmsa.dot.gov/sites/phmsa.dot.gov/files/2021-06/WEB-Ver-USDOT-CHART-17-0187-0621.pdf

HAZARDOUS WASTE CHANGES

Oregon is the latest state to adopt EPA's hazardous waste generator improvements (HWGI) rule.

The OR Department of Environmental Quality (DEQ) implemented multiple changes to hazardous and universal waste guidelines for regulated facilities in addition to the 2015 HWGI rule:

- aerosol cans have been added to the state's universal waste list
- pharmaceutical waste is prohibited from being flushed down toilets or poured down sink drains
- facilities can use modern test methods to identify ignitable wastes
- federal hazwaste import and export requirements are in effect, and
- the hazwaste electronic manifest system is available for hazwaste generators and treatment, storage and disposal facilities.

We've covered HWGI and all of these other hazwaste regs in recent years. You can search for them at our website.

Info: oregon.gov/deq/Regulations/rulemaking/RuleDocuments/HazWaste2021Notice.pdf

OZONE NAAQS

Arizona's attainment status for ozone remains intact following a citizen activist lawsuit against EPA.

Following a major wildfire in southeast California in 2015, six air quality monitors in the Phoenix region registered abnormally high concentrations of ground-level ozone in excess of the NAAQS.

Arizona argued to EPA that if not for those six exceedances, the state would've been able to demonstrate it attained the ozone NAAQS by the summer of 2018.

EPA excluded the readings under the exceptional events rule for wildfires, volcanic eruptions and other "acts of God."

The 9th Circuit Court of Appeals denied the citizens' lawsuit, sustaining EPA's ozone NAAQS attainment decision for the Phoenix area.

PFAS

The Agency for Toxic Substances and Disease Registry (ATSDR) recommends stringent minimal risk levels (MRLs) for several per- and polyfluoroalkyl substances (PFAS) found in groundwater wells.

The MRLs are anywhere from seven to 10 times tougher than EPA's non-binding health advisory level of 70 parts per trillion (ppt) for PFOA, PFOS PFHxS and PFNA.

Several states have implemented PFAS screening levels more stringent than 70 ppt.

Info: dickinson-wright.com/news-alerts/fleisher-final-minimum-risk-levels