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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).

Cutting corners triggers vapor explosion: CEO headed to jail

■ *Flammable vapors went unchecked*

Environmental health and safety should never take a back seat to making a profit!

The former president of an oil waste reclamation plant learned that lesson the hard way.

Peter Margiotta, 64 years old, just started an 18-month sentence in a federal prison after being found guilty of multiple criminal violations of the Clean Air Act (CAA).

Profits trumped process safety

Rushing to get up and running before all the T's were crossed and I's dotted landed three of his former employees in the hospital and blew up a sizable chunk of his plant.

Custom Carbon Processing was

wrapping up construction of a disposal well and oil reclamation facility in Wibaux, Wyoming.

But there was still a lot more work to do before the plant could accept and treat shipments of highly volatile and flammable waste from oil & gas operations in the surrounding area.

Each day the plant sat idle meant a loss of profits to Margiotta. So he decided to open the facility before all necessary wiring, ventilation and other safety controls could be installed.

The project manager balked at the decision in an email to Margiotta: "The control panels must be moved ASAP with the explosion-proof wiring. We also run the risk of killing someone, not only our operators, but

(Please see Cutting ... on Page 2)

TOXIC SUBSTANCES

Whistleblowers claim EPA bows to chemical industry

■ IS THERE PRESSURE FROM TOP TO HIDE CHEMICAL RISKS FROM PUBLIC?

Whistleblowers in EPA say the agency's Office of Chemical Safety and Pollution Prevention tampered with chemical risk assessments to keep substances in commerce and appease manufacturers.

The Intercept reports there's been "pressure within the agency to minimize or remove evidence of potential adverse effects of the chemicals, including neurological effects, birth defects, and cancer" going back at least five years and likely longer than that.

Since Congress strengthened the Toxic Substances Control Act, EPA has yet to ban any high-risk chemical or reject any new chemicals.

Investigations are underway

The EPA whistleblowers say they faced interference with chemical assessments and they reported their complaints more than once.

EPA's Office of Inspector General is investigating the claims, and Congress is asking for more info.

Info: theintercept.com/2021/07/02/epa-chemical-safety-corruption-whistleblowers

ESG REPORTING

What kind of enviro data matters most?

Compliance pros will be hearing a lot more about environmental, social and governance (ESG) issues.

Reason: The U.S. Securities and Exchange Commission (SEC) formed a task force to assess the accuracy and usefulness of publicly traded companies' ESG reporting.

And the SEC is just getting started on ESG reporting guidance that will hopefully help to differentiate the businesses making a difference on sustainability issues and who's merely "greenwashing" the public (*for recent stories on the topic, go to our website and search for "greenwashing"*).

Opportunities on enviro front

Feel like your company's behind schedule when it comes to ESG matters? If so, you're not alone.

A survey by Intelligize of hundreds of environmental pros finds companies are least focused on the "E" in ESG.

For example: On enviro issues, 30% are very focused and 15% say they're extremely focused.

Those figures are higher for social

issues and human capital initiatives including diversity outreach programs (45% and 22%) and governance (46% and 21%).

An eye-opening 35% of respondents say they don't know if

Feel like your behind schedule?

their companies' ESG reporting data is accurate!

Info: "The Conscience of Corporations: Public Company ESG Adoption," corporatecomplianceinsights.com/intelligize-survey-regulatory-guidance-esg-reporting

Cutting ...

(continued from Page 1)
also our customers."

The foreman repeatedly warned that the natural gas condensate they were using to thin slop oil wasn't effective, and flammable vapors could ignite. In addition, hydrocarbon vapors, extremely hazardous substances and air toxics would be released.

Prophetic warning went unheeded

While handling a shipment, vapors spread throughout the building and out to the truck loading dock. An ignition source sparked and triggered an explosion.

Three employees suffered injuries. Parts of the building, as well as the loading dock and a truck, were nearly torn apart.

Luckily no one died.

Margiotta potentially faced up to 15 years in prison for three CAA charges, but the judge sentenced him to 18 months.

SHARPEN YOUR JUDGMENT

This feature provides a framework for decision making that helps keep you and your company out of trouble. It describes a recent legal conflict and lets you judge the outcome.

IS STATE'S STORMWATER PERMIT AN OVERREACH?

Environmental Manager Buck Flanagan paced back and forth outside his company's building.

When you want a phone call from the state, they make you wait, Buck thought to himself.

That's just when his phone buzzed. "Thanks for calling me back," said Buck.

"Of course," said Bill Jones, the state permitting official. "I know you had a few questions."

"Just one," said Buck. "You're denying our discharge permit because of ammonia."

"We don't discharge ammonia," said Buck, trying to control his temper. "So I can't wrap my head around what the possible problem could be here."

'Potential' runoff targeted

"Ah-ha," said Bill. "You do handle dry materials in your processing area, isn't that right?"

"Yes," said Buck.

"That means there's potential for ammonia releases from your site," said Bill. "Our waterways are impaired with ammonia."

"That requires facilities like yours doing their part to keep it out of stormwater," said Bill.

"There's nothing in our discharge that could justify regulating us for it," said Buck.

"Our job is to protect the waters of this state," said Bill, "and we can set contaminant limits if we feel it's necessary to do that."

Did the company have to get a Clean Water Act discharge permit?

■ *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

Speeding truck driver causes diesel fuel spill

Company: Ace Hardware, multiple locations in Washington state.

Business: Big box hardware retailer.

Penalty: \$28,000.

Reasons for penalty: An Ace Hardware truck jackknifed on a snowy interstate highway. The fuel tank ruptured and spilled 120 gallons of diesel fuel into a ditch, stormwater system and fork of the Snoqualmie River. The driver was speeding nearly 20 miles above the posted speed limit and didn't have chains on the tires as required during snowy and icy conditions.

Note: Diesel contains carcinogenic compounds, is acutely toxic and can persist in the environment. When spilled, it can coat wildlife, impairing fish, birds and other creatures quickly.

Stormwater check hones in on site's runoff controls

Company: Starostka-Lewis, Lincoln, Nebraska.

Business: Construction firm.

Penalty: \$60,009.

Reasons for penalty: The company didn't use best management practices to keep sediment and construction pollution from running off to streams. The discharge of pollutants wasn't listed on the company's 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.

Note: A stormwater permit is required before you can disturb an acre or more of land adjacent to surface waters.

Didn't report use of portable generators: \$28K

Company: Green Mountain Power, Vergennes, Vermont.

Business: Power company.

Penalty: \$28,800.

Reasons for penalty: Green Mountain used two portable diesel generators for temporary power that didn't have monitoring equipment. The company was cited under National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines (RICE NESHAP). Combustion engines emit hazardous air pollutants.

Note: For help with the RICE NESHAP, go to Cornell University's website at: law.cornell.edu/cfr/text/40/part-63/subpart-ZZZZ

NPDES rule breakers are due for a reckoning

Company: City of Wapato, Washington.

Business: Wastewater treatment system.

Penalty: \$25,570.

Reasons for penalty: Wapato was cited for:

- 3,000 effluent limit violations for exceedances of ammonia, copper and zinc, and
- failing to update its quality assurance plan and facility operations and maintenance plan.

Note: Most of the city's violations were for zinc. It faces mandatory upgrades unless it can comply with limits for zinc and other pollutants under its National Pollutant Discharge Elimination System (NPDES) permit. More than 11,000 NPDES permittees violated

their permits in recent years (see ECA 9/11/21, Page 5).

Selling 'defeat devices' is a very costly mistake

Company: A-Plus Truck Sales, Windham, Maine.

Business: Used car and truck seller.

Penalty: \$168,700.

Reasons for penalty: From 2017 to 2019, A-Plus tampered with emission controls on diesel vehicles and sold them with aftermarket parts, aka "defeat devices," that lead to excess emissions of nitrogen oxides and particulates. The Clean Air Act prohibits devices that disable or bypass emission controls.

Note: Cracking down on defeat devices is one of EPA's National Compliance Initiatives. Search for "national compliance initiatives" at our website for more stories.

Records, inspections lax for hazardous waste tanks

Company: Chevron USA, Montebello, California.

Business: Petroleum bulk storage terminal. Also receives gasoline and diesel fuel by pipeline and blends them into petroleum products.

Penalty: \$132,676.

Reasons for penalty: Chevron violated the Resource Conservation and Recovery Act (RCRA) by failing to:

- conduct assessments and maintain certifications for tanks storing hazardous waste, and
- maintain records regarding compliance with RCRA air emission requirements regarding air toxics and volatile organic compounds.

Note: According to the EPA news release, "Montebello is a historically marginalized and overburdened community that experiences high cumulative pollution exposure."

AIR TOXICS

Plant closure follows EPA/OSHA pressure

Facilities that handle highly hazardous chemicals are better off over-monitoring ambient air quality for the sake of employees and surrounding communities.

A Montana manufacturing facility shut down for good under the full weight of federal agencies and attorneys for not keeping tabs on what their people were breathing in on a daily basis.

Steady pressure got results

U.S. Minerals owned a roofing material plant in Anaconda that converted black slag into roofing shingles (Black Diamond Abrasive Products). The slag is smelter waste left over from decades of copper mining which contains inorganic arsenic, a carcinogen.

In 2015 the National Institute for Occupational Safety and Health (NIOSH) inspected the plant.

Air samples showed employees

inhaled lead and arsenic at levels above NIOSH and OSHA exposure limits. Arsenic levels in particular were between 1.25 to 4.75 times above the OSHA limit.

OSHA cited the company with 19 serious citations for a \$106,800 fine. The Department of Justice and

Workers' safety a low priority.

EPA soon after launched a criminal investigation. The writing on the wall was clear: If the company couldn't afford to protect workers, it was time to shut down – which it did.

The company's not nearly done paying though. It just pleaded guilty to one count of negligent endangerment under the Clean Air Act and will pay \$393,200 in fines.

GREENHOUSE GAS EMISSIONS

Report: Oil & gas sector's serious about methane

INDUSTRY SLASHED GAS LEAKS BY MILLIONS OF TONS IN 3 YEARS

We've warned you in recent months about methane emission regs in the pipeline, particularly for the oil & gas sector (*see cover story, last issue*).

Yet even EPA admits industry's taken a hatchet to the warming gas over the past five years.

Repairs, upgrades paying off

According to an EPA report, between 2016 to 2019, facilities reduced methane emissions by a whopping 7 million metric tons (mts) of carbon dioxide equivalent (CO₂e).

EPA credits the drop to the Methane Challenge Program it started in partnership with several oil & gas

companies, "all through voluntary actions to mitigate emissions from key sources across their operations."

EPA data shows:

- Facilities kept over \$45 million worth of natural gas in pipelines and out of the atmosphere.
- Transmission segment companies cut methane leaks by nearly 6 million mts of CO₂e through planned pipe replacements and timely maintenance.
- Distribution segment companies replaced 4,000 miles of cast iron pipelines and 5,000 miles of unprotected steel pipelines to reduce methane leaks from old, leaky pipes by 744,000 mts of CO₂e.

Info: epa.gov/natural-gas-star-program/methane-challenge-partners

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.

REFUSING INSPECTOR'S HELP RESULTS IN \$12,000 FINE

To: Regional Enforcement Director
From: Inspector Bob Wiley
Re: Hazardous waste storage

You may remember me telling you about Acme and how they handle paint wastes.

Our compliance team offered them assistance with some of the problems we saw more than a year ago, but we were told they'd address it themselves.

That didn't happen based on what I saw during my last visit.

Acme keeps its waste bins on its loading dock. That wouldn't be a problem if they had a handle on the storage area.

A quick check revealed they don't just store waste paint in the bins, but also materials like paint thinner, acetone, solvent sludge and other potentially harmful substances.

'It's just a box of rain ...'

They're also not keeping the containers closed because I found they had about an inch of rain at the bottom of them.

There was no secondary containment around the containers. If any of them had been knocked over or broken, all of those chemicals would have spilled out, maybe down a storm drain.

I've written up a remediation plan that calls for moving their containers indoors. We went over the holes in their current system and why they can't continue.

We can't waive a fine, especially since the company didn't take us up on our offer to help.

I recommend a \$12,000 penalty on top of the corrective actions.

■ *Dramatized for effect. Based on a settlement with a Southwest building supply company.*

WETLANDS

Court dumps Trump clean water rule

The saga over what's a protected body of water under the Clean Water Act (CWA) took yet another turn on August 30.

An Arizona district court judge overturned the Trump administration's Navigable Waters Protection (NWP) rule over the objections of industry groups like the National Sand, Stone and Gravel Association – and EPA.

While EPA and the Army Corps of Engineers are working on a replacement rule for NWP that will broaden coverage of wetlands and intermittent streams, both agencies opposed the courts further muddying the waters for EPA and state regulators and industry.

Which is exactly what the Arizona court's done here.

Regulatory uncertainty in store

By vacating the NWP rule, a 1989 CWA policy is in effect – yes we're going back 30-plus years!

Veteran environmental compliance experts will remember that waters policy was reversed by the Supreme Court in 2006 in the landmark *Rapanos* decision.

Justice Antonin Scalia wrote a "significant nexus" must exist for a

Clean water policy takes trip back to 1989!

smaller body of water to be considered a Water of the U.S.

An appeal is underway, but may not be heard by the 9th Circuit Court of Appeals by year's end. The 9th Circuit was a thorn in the side of the Trump administration.

Info: earthjustice.org/sites/default/files/files/order_remand_and_vacate.pdf

HAZARDOUS WASTE

RCRA help: 3 keys for satellite accumulation areas

■ GENERATOR IMPROVEMENTS RULE PUTS FOCUS ON SATELLITE STORAGE

With close to 40 states having adopted the Hazardous Waste Generator Improvements (HWGI) rule, facilities can't afford to let compliance in satellite accumulation areas slide.

HWGI added some labeling and marking requirements for hazwaste containers to improve awareness of what's being stored on site and for how long.

Here are a few pointers to ensure containers are dated correctly:

Dates, labels matter

- Not all states mandate an initial accumulation date on containers

but some like California and Pennsylvania do. If you're taking over an operation, check what your state(s) calls for.

- A satellite area is in excess once it reaches 55 gallons of non-acute waste or one kilogram of acute hazwaste. Make sure to mark the date on a container when it happens. You then have three days to send excess waste to a central accumulation area or a treatment, storage and disposal facility.
- Containers and bins should have brief descriptive labels to alert employees, contractors on site or emergency responders to what's in them. Example: "Ignitable paint waste" or "mercury-containing lamps." *For more help, go to our website and search for "HWGI".*

TRENDS TO WATCH

■ BAYOU DIGGING ITSELF OUT FROM IDA'S HORRIBLE MESS

Louisiana and Mississippi were exempted from Reid Pressure Vapor (RPV) requirements for gasoline from August 30 to September 16 following Hurricane Ida.

EPA could extend the RPV exemption further to alleviate shortages in the fuel supply chain.

Both states sustained heavy flooding and weeks-long blackouts in the midst of hot and humid weather.

Hurricane Ida reportedly killed 48 people in five states.

Some good news: The levees built to protect New Orleans after Hurricane Katrina in 2005 stood up to the test.

The U.S. Army Corps of Engineers spent years and \$14 billion to construct a new system of levees and floodwalls.

Info: scientificamerican.com/article/after-a-14-billion-upgrade-new-orleans-levees-are-sinking

■ STATEWIDE FRACKING BAN TAKES IT ON THE CHIN

Environmentalists seeking to prohibit hydraulic fracturing in New Mexico were shot down by a federal district court judge.

Groups argued the Bureau of Land Management didn't do a sufficient environmental review before granting fracking permits in the Mancos Shale.

Chemicals used in fracking can cause groundwater contamination. Now there's a new threat: A study from Physicians for Social Responsibility warns that emerging contaminants per- and polyfluoroalkyl substances (PFAS), plus chemicals that could degrade into PFAS, are present in 1,200 fracking wells in six states, including New Mexico.

Info: environmentallawmonitor.com/fracking/fracking-ban-defeated-in-new-mexico

TSCA

Hydraulic/lubricant chemical gets axed

Heads up: A manufacturing ban on phenol, isopropylated phosphate (3:1), aka PIP 3:1, went into effect on September 4.

PIP 3:1 is widely used by the electronics, automotive, construction, manufacturing and other heavy industries as a plasticizer in plastic components such as wire covers and casings, and is flame-retardant.

Existing stocks of PIP 3:1 can still be used in hydraulic fluids for aviation or military purposes; lubricants and greases; replacement parts for motor and aerospace vehicles; and plastic to be recycled so long as no new PIP 3:1 is added.

Any discharges containing PIP 3:1 are prohibited under the Clean Water Act and must be reported.

Chemical actions heating up

PIP 3:1 was one of five persistent, bioaccumulative and toxic chemicals earmarked for production clampdowns under a Toxic Substances Control Act final rule in February.

The other chemicals manufacturers face restrictions and reporting obligations for are:

- decabromodiphenyl ether

- 2,4,6-tris(tert-butyl)phenol
- hexachlorobutadiene, and
- pentachlorothiophenol.

Info: 86 FR 894

Bumble bee found in Northwest is endangered

The Franklin’s bumble bee commonly found in southwest Oregon and northern California was listed as an endangered species.

The U.S. Fish and Wildlife Services listed the bee to “help ensure our native plants, gardens and crops will continue to have an adequate supply of pollinators.”

National Geographic reported on a decline in bumble bee populations in 2020. Discovered in 2006, the Franklin’s bee has the smallest geographic range in North America.

Activities like pesticide spraying and development (primarily on public lands) may be impacted by this Endangered Species Act listing.

Info: 86 FR 47,221

WHERE TO GET HELP

TOWNS WITH GREEN THUMBS MANAGE STORMWATER BEST

Some of the best green infrastructure solutions to manage stormwater are happening at the local level.

Many great examples are in a report from the Berkeley Law School’s Wheeler Institute of Water Law and Policy.

“Accelerating Cost-Effective Green Stormwater Infrastructure” analyzes the most cost-effective controls that also satisfy federal and state regs. It’s a free download.

Info: law.berkeley.edu/files/CLEE/GSI_Report_Full_2015-02-25.pdf

WASTE-HANDLING TOOL FOR LOWER GHG EMISSIONS

EPA’s Waste Reduction Model (WARM) lets municipalities and companies measure and minimize greenhouse gases (GHGs).

WARM lets you calculate how many tons of waste are recycled, landfilled, composted, combusted, generated and reduced.

You can enter 54 different types of common landfilled materials into the WARM calculator.

Info: epa.gov/warm

SHARPEN YOUR JUDGMENT – THE DECISION

(See case on Page 2)

No. Buck’s company won this battle with its state agency and didn’t have to apply for a Clean Water Act discharge permit for ammonia.

The state insisted on issuing a discharge permit to limit ammonia releases because the watershed surrounding the area was impaired due to ammonia.

Therefore the state tried to squeeze out any source of the contaminant, in this case, dust from the company’s processing areas that could run off in stormwater.

But the state’s environmental review board ruled discharge limits could only be set for actual discharge and point source releases, not on a non-point source.

Without any proof that the company’s dust was

contaminating the watershed, the state couldn’t require the company to get a discharge permit.

ANALYSIS: DISCHARGE PERMITS MUST BE FOR REAL – NOT THEORETICAL – DISCHARGES

Cities and states facing expensive water quality improvements will be looking at industry to foot a big chunk of the bill.

This case shows facilities can resist overly broad wastewater discharge standards during permitting negotiations.

Agencies can’t set discharge standards or require best management practices that target “potential” discharges from a facility.

Cite: *Rose Acre Farms v. North Carolina Department of Environment and Natural Resources*. This case has been dramatized for effect.

OIL & GAS

Biden's offshore drilling ban on the rocks

The oil & gas industry is one huge step from overturning a federal freeze on offshore drilling.

The Interior Department announced it would lift the offshore drilling moratorium while appealing a loss to industry groups in a federal district court.

The American Petroleum Institute and other groups that are suing argue the Biden administration violated “the Mineral Leasing Act, the Outer Continental Shelf Lands Act, the Administrative Procedure Act and other laws governing federal land management” according to *The Oil & Gas Journal*.

Drilling ban off but appeal brewing

Interior's appeal of *Louisiana v. Biden* is pending in the 5th Circuit Court of Appeals.

A loss by oil & gas advocates there could lead to an appeal to the U.S. Supreme Court.

Info: tinyurl.com/oilgasdrillingvictory659

Past time for EPA action on oil spill dispersants

Speaking of federal courts and the oil & gas sector:

EPA must crack down harder on chemical dispersants used on oil spills under an order from a judge for the Northern District of California.

The agency should've issued a final rule updating “Subpart J of the National Contingency Plan as required by the Clean Water Act regarding, among other things, the removal of oil and hazardous substances after oil spills,” the judge wrote.

Dangerous to humans, sea life

Environmental groups detailed how workers on the Exxon Valdez in 1989 and Deepwater Horizon in 2010

suffered respiratory ailments, which lingered for years for some, as well as skin blistering from being exposed to chemical dispersants.

Coast Guard first responders suffered health ailments after both of those notorious oil spills.

The judge ordered EPA to promulgate a rule for chemical dispersants by May 31, 2023.

Delaying a decision since 1994 was an egregious violation of the Administrative Procedure Act, according to the judge.

Info: VanNessFeldman.com/vnf.com/the-death-knell-for-dispersants

Mexico bans sale of animal-tested cosmetics

Cosmetics manufacturers that test on animals can't sell their products in Mexico any longer.

Mexico became the first North American country to ban makeup products tested first on mice, guinea pigs and other creatures.

More than 40 nations have enacted similar bans.

Will Congress pass its own ban?

Some of the largest cosmetics manufacturers like Unilever, L'Oreal and Avon have pledged to end all animal testing, and supported Mexico's legislation.

Caveat: The Mexican law doesn't prohibit animal testing itself, merely the sale of cosmetics products in which animal experiments are done.

In the U.S., Congress may reconsider a similar phaseout of cosmetics involving animal testing via the Humane Cosmetics Act.

Info: “In major win for animals, Mexico bans animal testing for cosmetics,” blog.humanesociety.org/2021/09

REAL PROBLEMS/SOLUTIONS

HAZWASTE PICTURES WORTH MORE THAN 1,000 WORDS

Most people take about two seconds before throwing an item in a trash can or recycling bin.

So any confusion caused by signs and labels on recycling containers can be counterproductive.

That's a big problem if employees are handling hazardous materials that must be recycled.

Getting the point across

We put pictures on or above containers that illustrate where to put food waste, paper, cans and bottles and – of course – trash.

Some sites use product-specific graphics, such as pictures of Coca-Cola bottles.

The underlying strategy needs to be: Less is more!

We avoid information overload that can trip up occupants.

Also: We keep folks posted about our recycling program with occasional emails that highlight successes and changes.

They're bound to take recycling more seriously and go the extra mile if they understand the benefits to the ecology.

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.

“Knowing about all kinds of regulatory changes is critical. ECA provides a good general overview of all areas and rules.”

David Sample
Environmental Specialist
Ajinomoto North America

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

NPDES PERMITS

Discharge permits can be issued using an alternative to the longstanding whole effluent toxicity (WET) test – the test of significant toxicity (TST).

The 9th Circuit Court of Appeals threw out an industry challenge of the TST method, which EPA gave the thumbs up in a guidance document.

While guidance docs aren't considered binding regulations, the courts view them as de facto regs when challenged by industry or environmental groups.

But it's always a "heads I win, tails you lose" proposition when groups sue, as the Southern California Alliance of Publicly Owned Treatment Works (SCAPOTW) found out.

The 9th Circuit ruled a challenge could be made only if EPA issued a rule, but not guidance.

SCAPOTW argued state agencies are free to refer to the TST method when issuing National Pollutant Discharge Elimination System (NPDES) permits, even if entities such as wastewater treatment plants prefer the WET test be used.

(Search for "11,000 permit holders" at our website for an important recent story on NPDES.)

Info: jdsupra.com/legalnews/whole-effluent-toxicity-clean-water-act-5581119

SUPERFUND SITES

Some of the worst oil and hazardous material contaminated sites were added to the National Priorities

List (NPL).

Superfund cleanups are underway or will be soon at:

- Westside Lead, **Atlanta**
- North 5th Street groundwater plume, **Goshen, Indiana**
- Lower Neponset River, **Boston/Milton, Massachusetts**
- Bear Creek sediments, **Baltimore County, Maryland**
- Michner Plating–Mechanic Street, **Jackson, Michigan**
- Southeast Hennepin area groundwater and vapor, **Minneapolis**
- Meeker Avenue plume, **Brooklyn**
- Bradford Island Cascade Locks, **Oregon**
- Ochoa Fertilizer, **Guánica, Puerto Rico**
- Galey and Lord plant, **Society Hill, South Carolina**
- National Fireworks, **Cordova, Tennessee**
- Unity Auto Mart, **Wisconsin**, and
- Paden City groundwater, **West Virginia**.

Several of these sites are legacy pollution cases involving companies that shut down years ago.

Reminder: Any entity that contributes to a contaminated site can be ordered to pay restitution as a potentially responsible party by EPA under the Superfund law.

Info: public-inspection.federalregister.gov/2021-19192.pdf

CLIMATE CHANGE

Pandemic preparedness and climate change top the list of President Biden's funding priorities for Fiscal Year 2023, starting October 1, 2022.

The White House sent a five-page memo to federal agency directors about future budgeting.

Federal agencies should be focusing on both topics along with equity (think Environmental Justice) when

developing their budgets.

According to *GovernmentExecutive.com*, climate change research and development priorities are:

- measuring and monitoring reductions in greenhouse gas emissions, as well as federal agencies' effectiveness at doing both (*go to the bottom of Page 4 for a related story*)
- increasing public access to climate change info and data, and
- prioritizing "promising and innovative climate technologies exiting the federal research & development pipeline to increase their marketability."

Info: tinyurl.com/govexccclimatechange659

FIFRA CRIMINAL FINES

We've reported on the increase in Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) enforcement over the past two years.

While civil cases against pesticide violators are on the upswing, so are criminal investigations against COVID-19 scam artists.

Starting last year, EPA has opened 60 criminal cases concerning sales of "unregistered or misbranded pesticides or devices that have made claims of efficacy against SARS-CoV-2," the agency reported.

(For examples, search for "coronavirus scam artists FIFRA" at our website.)

EPA prioritized enforcement of "persons hoping to cash in on the fear of the novel coronavirus by making fraudulent claims that their products or devices kill that virus."

Info: bdlaw.com/publications/epa-expands-use-of-fifra-criminal-enforcement-as-it-targets-covid-19-claim