



November 15, 2021

## WHAT'S INSIDE

- 2 Sharpen Your Judgment**  
Should firm's water permit address future business?
- 3 Who Got Fined & Why**  
Storm-sewer overflows need to be fixed immediately
- 4 Air Quality**  
Startup/shutdown policy leniency gets the ax
- 5 Water & Waste News**  
Minimizing hazardous waste is a RCRA duty
- 6 Enviro Regs Update**  
12 chemicals slated for Toxics Release Inventory reporting
- 7 What's Coming**  
2 keys to ensure risk management plan compliance

## 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](mailto:sball@SafetyNewsAlert.com)).

## Biden EPA's fining more facilities with no dip in sight

### ■ *Environmental Justice is Priority No. 1*

**R**egulated facilities like yours need to stay on their toes – EPA is ramping up enforcement of air quality, water, hazardous waste and chemical safety compliance.

The proof: EPA finalized 445 settlement agreements with violators in the 3rd quarter of this year for penalties amounting to \$11,467,487.

That's a big jump from the 2nd quarter total of 235 settlements as the new administration was still getting its feet wet.

#### **You've been warned! (by us)**

There's no question EPA has its sights set on facilities in and near environmental justice communities of poor, minority and non-English speaking residents.

While EPA plans to enforce compliance in areas historically hit hardest by pollution, the agency's still working out the kinks on all of the "next generation" mapping and screening tools it needs to zero in on refineries, chemical plants, manufacturers, et al., doing business in low-income areas.

In the interim, EPA is making it a point to highlight where a noncompliant facility does business and who its neighbors are in press releases to the media and general public.

For example: A refinery that didn't monitor and assess hazardous waste storage tanks properly is located in a "historically marginalized and

*(Please see EPA ... on Page 2)*

## GROUNDWATER

### **PFAS 'Road Map' takes aim at toxic contaminants**

#### ■ FOREVER CHEMICALS TO BE REGULATED UNDER MULTIPLE LAWS

**J**ust how low will EPA go in setting new maximum contaminant levels (MCLs) for per- and polyfluoroalkyl substances (PFAS)?

No one's seen the early fine print yet, but it's a good bet MCLs will be anywhere from three to five times more stringent than current EPA benchmarks of 70 parts per trillion.

The PFAS Road Map unveiled by EPA in October does spell out a handful of action items:

- PFAS will be designated as hazardous substances under the

Superfund law, making polluters financially accountable for cleanups as soon as 2023.

- Effluent guideline limitations under the Clean Water Act are in the works for nine industrial categories.
- Additional Toxic Substances Control Act regs are on the table if current regs are deemed ineffective.
- EPA will step up monitoring, data collection and research in coordination with states on PFAS.
- A final toxicity assessment is coming for Dupont's GenX, which is used in products like Teflon.

**Info:** [epa.gov/pfas](http://epa.gov/pfas)

## CHEMICAL REPORTING

### Will EPA demand more chemical data?

Could EPA try shifting from its historic practice of regulating chemical manufacturing and imports to finished articles?

It will if Michal Freedhoff, head of the agency's chemical program, gets her way.

Freedhoff told attendees at an industry conference the Toxic Substances Control Act (TSCA) is "very clear that when a chemical enters the U.S. or is distributed or processed in the U.S. – whether in bulk form or in an article – it can be subject to regulation under TSCA."

#### Recordkeeping hurdles abound

According to TSCA, a finished article is a final product that's not categorized as a firearm, food or food additive, pesticide, device or cosmetic.

Since TSCA was enacted in 1976, EPA has agreed with industry that analyzing and regulating every chemical ingredient in a product would be too time-consuming and expensive.

Bottom line: A move toward

knowing what's in any finished article would mean a whole new ballgame for chemical manufacturers, importers and processors.

We may already be seeing signs of a seismic change in TSCA rulemaking. Case in point: EPA recently promulgated three rules requiring

### A whole new ballgame

importers of finished articles to report if they contain PFAS or PIP (3:1).

**More Info:** *The Nickel Report*, 10/4/21, Hunton Andrews Kurth law firm blog, [www.huntonnickelreportblog.com](http://www.huntonnickelreportblog.com)

#### EPA ...

(continued from Page 1)

overburdened community that experiences high cumulative pollution exposure."

EPA made sure to mention that in the first paragraph, second sentence of the news release!

#### Mistakes with hazwaste, oil

Among the noteworthy fines EPA doled out in the 3rd quarter were:

- Three \$150,000-plus Resource Conservation and Recovery Act (RCRA) penalties for two manufacturers and a water treatment plant. RCRA violations included not reporting as a large quantity generator and failing to prevent vapor leaks. (*State agencies can hammer noncompliant sites for big fines too – see bottom of Page 3.*)
- 137 entities cited under the Clean Water Act for deficiencies in oil spill and containment plans and meeting discharge permit limits.

Info: [epa.gov/enforcement](http://epa.gov/enforcement)

## 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.

### SHOULD WATER PERMIT ADDRESS FUTURE BUSINESS?

Environmental Manager Buck Flanagan let out a loud "Whoop!" as his son's high school football team kicked off for a home game.

"Friday nights were made for football!" Buck said to his wife. At the end of the first quarter, Buck rushed to buy a couple of sodas.

#### While waiting in line ...

"Nice to see you, Buck," said Margaret Farley, the leader of a citizens' group that had sued Buck's company before.

"Margaret, how are you?" asked said Buck. "I didn't know you were a football fan."

"My son is on the cheerleading squad. I hate football," said Margaret. "As much as I hate to talk business off the job, do you plan on responding to our complaint?"

"Let's talk about it over there, away from the crowd," said Buck.

"My group is challenging your discharge permit," said Margaret. "There's no justification for the state letting you get away with discharging phosphorous."

"Phosphorous? We don't have a phosphorous problem!" said Buck.

"But there will be a problem," Margaret said. "There's organic farming along the river. If your discharges increase, it'll do a lot of damage to the river and the crops."

"You must have a crystal ball," Buck chuckled. "Our discharges are fine and our permit is up to par."

Margaret challenged the company's discharge permit.

Was a rewrite in order?

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

*Environmental Compliance Alert* (ISSN 1069-0131), November 15, 2021, Vol. 29 No. 662, is published semi-monthly, except once in December (23 times a year).

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal or other expert assistance is required, the services of a competent professional should be sought. — From a declaration of principles jointly adopted by a committee of the American Bar Association and a committee of publishers.

Copyright © 2021 Safety | News Alert. Please respect our copyright: Reproduction of this material is prohibited without prior permission. All rights reserved in all countries.

## Where other companies are stumbling over compliance

For more fines, visit: [www.EnvironmentalComplianceAlert.com/category/who-got-fined-why](http://www.EnvironmentalComplianceAlert.com/category/who-got-fined-why)

### **Storm-sewer overflows need to be fixed now**

**Company:** Northern Cheyenne Utilities Commission, Lame Deer Montana.

**Business:** Wastewater treatment facility on Indian reservation.

**Penalty:** \$1,000.

**Reasons for penalty:** From 2013 to 2016, numerous sanitary sewer overflows (SSOs) occurred at multiple locations around the facility's collection system and lagoon. Many if not all of the SSOs, containing untreated wastewater and raw sewage, flowed into Lame Deer Creek. The facility racked up multiple violations of its National Pollutant Discharge Elimination System permit.

**Note:** The utility's fines were whittled down to \$1,000 due to financial hardships. But the commission must make significant physical and operational improvements to the facility to ensure sustained public health and compliance.

### **Recycler didn't use VOC air controls: Half-million fine**

**Company:** Seller Industries, formerly known as General Iron Industries, Lincoln Park, Illinois.

**Business:** Metal shredding and recycling plant.

**Penalty:** \$500,000.

**Reasons for penalty:** General Iron

*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.*

failed to:

- obtain an operating permit from Illinois EPA, and
- use required emission capture and control equipment for volatile organic compounds (VOCs) while shredding scrap metal.

**Note:** Seller shut down the Lincoln Park facility at the end of last year in the wake of repeated air quality fines from the state and feds. General Iron agreed to two settlements with EPA in 2006 and 2012 involving its refrigerant recovery program and fugitive dust escaping the facility.

### **Flood knocked out storage tank: Firm's still paying**

**Company:** Noble Energy, Weld County, Colorado.

**Business:** Oil & gas production and tank batteries.

**Penalty:** \$1 million.

**Reasons for penalty:** Noble's oil & gas facilities are located in a flood plain. In 2014, the Poudre River flooded one of its buildings and broke a valve on a 300-barrel storage tank. Approximately 173 barrels of condensate and produced water ran off to the river and shoreline. Noble remediated damage from the spill and decommissioned the tank battery in 2019. Inspectors found deficiencies in Noble's Spill Prevention, Control and Countermeasure plan following the release, which the company's fixed.

**Note:** As part of its settlement, Noble will install steel spill containment berms, remote monitoring sensors and tank anchoring at all of its active tank batteries in floodplains.

### **Inspectors' & facilities' readings didn't match up**

**Company:** Riverbend Landfill, McMinnville, Oregon.

**Business:** Municipal solid waste

(MSW) landfill and recycling center.

**Penalty:** \$104,482.

**Reasons for penalty:** Riverbend failed to adequately monitor for methane gas leaks at least four times per year as required by its air permit issued by the Oregon Department of Environmental Quality. An EPA inspection in 2018 discovered nine separate instances of methane emissions greater than 500 parts per million (ppm) from different areas of the landfill. Riverbend hadn't reported a single methane reading above 500 ppm in the preceding four years. The landfill's permit requires it take corrective action following a high methane reading. EPA also cited the facility for not monitoring cover integrity at least once a month.

**Note:** MSW landfills are the third largest source of manmade methane emissions (*search for "landfills methane" at our website for related stories*). Landfill gases also contain air toxics like vinyl chloride, ethyl benzene, toluene and benzene.

### **Hazwaste gaffes at multiple sites = huge fine**

**Company:** Ulta Beauty, 161 stores throughout California.

**Business:** Cosmetics and makeup.

**Penalty:** \$752,000.

**Reasons for penalty:** Ulta stores failed to separate flammable, reactive, toxic and corrosive materials like cosmetics, fragrances, nail polish and electronics from normal trash. Hazardous waste was routinely transported to MSW landfills. Ulta also failed to properly document and store hazwaste or train employees on handling and safe disposal. Inspections of trash cans and dumpsters at dozens of facilities spurred a lawsuit by California district attorneys.

**Note:** Ulta launched a program to ensure stores properly dispose of hazardous materials in the future.

## EMISSION SPIKES

### Startup/shutdown leniency gets the ax

The writing is clearly on the wall: Any emissions spike due to a startup, shutdown or malfunction (SSM) event is now fair game for air quality fines.

Reason: EPA just rolled back a Trump policy which softened SSM enforcement for large emission sources and allowed for state-level SSM exemptions so long as National Ambient Air Quality Standards attainment wasn't threatened.

#### No more industry shield

Dating back to the 1970s, EPA always gave state agency directors the discretion to reduce or waive clean air penalties if an SSM event caused an emissions spike.

Then in 2015, a federal court ruled the so-called air "industry shield" violated the plain language of the Clean Air Act. EPA announced it would begin removing SSM allowances from air regs and

mandated states do the same.

In 2015, EPA issued a state implementation plan (SIP) call to eliminate SSM exemptions that impacted 36 states including Texas (for a timeline of the SSM rule change, go to our website and search for "startups shutdowns").

The Trump administration gave three states – Texas, North Carolina and Iowa – the green light to add SSM

### Permits should factor in possible SSM emissions.

provisions to their SIPs. EPA is reviewing those exemptions and will most likely revoke them, as well.

Info: [tinyurl.com/startupshutdownrollback662](http://tinyurl.com/startupshutdownrollback662)

## HYDROFLUOROCARBONS

### 10% HFC production & use cap starts in New Year

THE RACE TO FIND AND MAKE REFRIGERANT ALTERNATIVES IS ON

Consumption and production allowance caps through the year 2035 for hydrofluorocarbons (HFCs) are on the books.

This EPA final rule applies to companies that produce, import, export, destroy, use as a feedstock, reclaim, package or otherwise distribute HFCs for use in refrigeration and air conditioning equipment as well as manufacture of foam, fire suppressant and aerosol products.

Broad consumption/production caps are set at:

- 90% for 2022-23
- 60% for 2024-28
- 30% from 2029-33

- 20% in 2034-35, and
- 15% each year from 2036 on.

By October 1 of each year, EPA will issue production and consumption allowances for the following calendar year, based on historic baselines of HFC, hydrochlorofluorocarbon and chlorofluorocarbon amounts.

#### China using more HFCs

HFCs are potent greenhouse gases developed as replacements for ozone layer-depleting substances (ODS). Their global warming potential can be hundreds to thousands of times greater than carbon dioxide.

HFC use is growing worldwide as other ODS are phased out.

Info: [epa.gov/system/files/documents/2021-09/hfc-allocation-rule-nprm-fact-sheet-finalrule.pdf](http://epa.gov/system/files/documents/2021-09/hfc-allocation-rule-nprm-fact-sheet-finalrule.pdf)

## 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.

### HAZWASTE VIOLATORS NEED TO 'SHOW' COMPLIANCE

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

In reviewing recent RCRA settlements, I noticed our regional offices are insisting cited companies send digital images that show they're in compliance.

Our field inspectors can also request photographic proof that hazardous waste storage areas and containers meet RCRA guidelines.

Most businesses would rather avoid a site visit from us, and we can correct problems that may harm the environment if we see a problem.

### Pictures worth 1,000 words

This is a typical case where seeing improvements and day-to-day hazwaste practices would benefit a regulated company and us:

Acme Transportation handles a variety of hazwaste on site. They're no strangers to RCRA, but their program could use a refresh.

We found dented and dirty hazwaste bins with no lids in sight throughout the storage area. Some weren't labeled or marked any time in recent months. They had hazwaste piled inside.

The site manager gave me training records which came up woefully short. It was obvious Acme didn't train staff members, particularly new people, on hazwaste – and no one was doing weekly inspections.

Added up, Acme's fines come in at \$43,000.

(\* RCRA stands for the Resource Conservation and Recovery Act.)

Dramatized for effect. Based on a settlement with a Midwestern freight company.

## POLLUTION REDUCTION

### Minimizing hazwaste is a RCRA duty

You don't often hear about a company being penalized for this one particular requirement of the Resource Conservation and Recovery Act (RCRA).

But a hazardous waste generator is required to minimize waste, as spelled out in Item 15 of the manifest that's signed and sent to a treatment, storage and disposal facility.

Complying with RCRA tenets is one good reason to minimize hazwaste – so is reducing the risk of release to the environment, endangering employees and the public, and reducing the time and costs associated with compliance.

Here are a few ways to reduce waste other companies are taking advantage of today:

#### Puncture aerosol cans on site

Now that aerosol cans are a federally listed universal waste (UW), facilities can lower their generator status by recycling on site.

Recycling systems safely drain and puncture cans to render them safe from RCRA Subtitle C requirements.

UW can be stored on site for one full year and at another company facility for a second year before it must be sent to a recycler.

#### Re-use, recycle solvents

Many solvents can be recycled, including chloroform, hexanes and methanol.

The more solvents you use, the more you should rely on recycling to limit your exposure.

Also: Make sure departments keep you in the loop before ordering chemicals, paints, solvents and other hazardous materials.

That way you know what's on shelves throughout your facilities at any time.

You can also implement a "first-in, first-out" policy for chemicals and materials to help comply with RCRA storage limits.

## SUSTAINABILITY

### GAO: Chemical recycling key to slash plastic waste

FEDS SEE POTENTIAL BUT POLICYMAKERS MUST LEAD THE WAY

The U.S. Government Accountability Office (GAO) believes greater chemical recycling could slash the glut of plastic that winds up in landfills.

GAO recommendations frequently result in Congressional lawmakers hashing out tax incentives and funding to spur pollution prevention ideas.

#### Technologies are booming

The GAO says chemical recycling using heat or chemical reactions show great potential. Traditional mechanical recycling technology is costly, labor-intensive and results in lower-quality products than virgin plastic.

Chemical recycling promotes a closed-loop system aka a circular economy. The three categories are:

- conversion of polymers technologies including gasification or pyrolysis (see previous issue, top of Page 4, for related info)
- decomposition using solvents and enzymes, and
- purification which uses solvents to separate polymers from additives and contaminants.

Not all companies can take advantage obviously. Startup and operation costs are always a concern for potential investors. Also: Some polymer chains are irreversibly bonded together, making recycling impossible.

Info: [gao.gov/products/gao-21-105317](http://gao.gov/products/gao-21-105317)

## TRENDS TO WATCH

### ■ IT'S NOT RECYCLABLE UNLESS STATE REGULATORS SAY SO

**California** lawmakers are busier than ever adding new environmental health and safety rules for industry.

The latest: Senate Bill 343 cracks down on deceptive "recyclable" product claims, aka greenwashing.

Any product or packaging with a recycling symbol like the "chasing arrows" image must comply with recyclability criteria to be created by CalRecycle.

Info: [nytimes.com/2021/09/08/climate/recycling-california.html](https://www.nytimes.com/2021/09/08/climate/recycling-california.html)

### ■ BIG STATES BANNING GAS CAR SALES IN 15 YEARS

**New York** State has joined California in its bid to prohibit sales of gasoline-powered vehicles by the year 2035.

Empire State lawmakers passed a law banning sales or leases of all gas-fired cars, trucks, off-road vehicles and equipment within the next 15 years, coupled with a ban on medium- and heavy-duty truck sales by 2045.

New York is betting heavily on electric vehicles and renewable fuels to fill the gap. **Massachusetts** could soon follow suit.

### ■ STATES: BRING BACK FINES FOR FUEL EFFICIENCY SCAMS

A coalition of 13 state attorneys general is urging the National Highway Traffic Safety Administration (NHTSA) to restore fines for automakers that violate fuel economy regs.

Among the highest environmental penalties of the past decade were for fuel efficiency deception by foreign auto makers like Volkswagen and Mitsubishi.

NHTSA set a penalty of \$14 for every tenth of a mile-per-gallon an automaker falls below fuel economy standards in 2016, but the Trump administration later nixed it.

## TOXICS RELEASE INVENTORY

### 12 substances slated for TRI reporting

The Toxics Release Inventory (TRI) list is about to expand. EPA's proposing the following 12 chemicals be reported:

- dibutyltin dichloride
- 1,3-dichloro-2-propanol
- formamide
- HHCB
- N-hydroxyethylethylenediamine
- nitrilotriacetic acid trisodium salt
- p-(1,1,3,3-tetramethylbutyl)phenol
- 1,2,3-trichlorobenzene
- triglycidyl isocyanurate
- tris(2-chloroethyl) phosphate
- tris(1,3-dichloro-2-propyl) phosphate, and
- tris(dimethylphenol) phosphate.

#### TRI fine can be very steep

TRI reporting thresholds are mandated under Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA).

EPCRA requires facilities that manufacture, import, process or otherwise use listed chemicals to report them annually to EPA if they exceed thresholds.

For most chemicals on the TRI list, reporting thresholds are 25,000 pounds for chemicals manufactured (including imported) or processed, and 10,000 pounds for chemicals otherwise used.

The annual TRI reporting deadline is July 1.

Comments on this proposed rule are due December 17.

Info: 86 FR 57,614

### Federal contracts to be tied to greenhouse gases

Companies aiming to win a federal contract will be judged on their commitment to reducing climate change effects.

The Biden administration is weighing changes to federal procurement guidelines that would "require agencies consider a supplier's greenhouse gas (GHG) emissions when making procurement decisions and to give preference to bids from companies with lower GHGs."

Info: [whitehouse.gov/wp-content/uploads/2021/10/Climate-Finance-Report.pdf](https://www.whitehouse.gov/wp-content/uploads/2021/10/Climate-Finance-Report.pdf)

## WHERE TO GET HELP

### ■ STILL MORE DIRTY DIESEL SCHOOL BUSES TO REPLACE

School districts and municipalities can take advantage of \$17 million in federal rebates to replace older diesel school buses.

EPA is offering two rebate opportunities to replace inefficient, polluting diesel buses with:

- brand-new zero-emission electric buses, or
- diesel, gasoline, propane or compressed natural gas vehicles that meet current Clean Air Act emission standards.

Since 2012, EPA has awarded over \$55 million to replace more than 2,700 old diesel school buses.

Info: [epa.gov/dera/rebates](https://epa.gov/dera/rebates)

### ■ WHAT'S EPA'S CLIMATE AGENDA? FIND OUT HERE

EPA released its Climate Adaptation Action Plan, which describes the steps it will take to address the impacts of climate change on communities.

The plan details EPA programs, policies, rulemaking processes and enforcement actions to come.

Info: [epa.gov/climate-adaptation/climate-adaptation-plan](https://epa.gov/climate-adaptation/climate-adaptation-plan)

## SHARPEN YOUR JUDGMENT – THE DECISION

(See case on Page 2)

No. Buck's company won this legal battle with the watchdog group.

Buck's company didn't have to revise its national pollutant discharge elimination system (NPDES) permit for potential future phosphorus releases.

The group demanded the company control any phosphorous discharges so that an organic farming community that shared the waterway with the facility would be protected.

EPA's Environmental Appeals Board said eventually a phosphorus discharge limit might be needed, depending on the company's growth and output.

But this possibility was addressed in the NPDES permit's

"additional monitoring requirements."

Bottom line: There was no legal reason for rewriting the permit until phosphorous became a problem.

### ■ LESSON LEARNED: SPELL OUT HOW CONTROLS WILL SATISFY ALL ENVIRONMENTAL DUTIES

This case is an excellent example of why it's vital any and all permits reflect how your facility will comply with state and local environmental rules.

The more detail your permit includes, the more likely it'll dissuade a citizens' group from dragging your company into court over "potential" problems.

This company was right not to buckle under pressure and instead let EPA's appeals board decide the dispute.

Cite: *In re: Chukchansi Gold Resort and Casino*, EPA Environmental Appeals Board. This case has been dramatized for effect.

## ENFORCEMENT

### 2 keys to risk management compliance

Chemical safety will continue to be a compliance and enforcement priority for the feds (*see last item on Page 8 for related info*).

Inspectors can hammer facilities that aren't prepared for a release under the Clean Air Act's general duty clause and Risk Management Program guidelines.

#### Stay a step ahead

If your process involves substances like anhydrous ammonia, here are two steps you want to take to avoid compliance headaches, courtesy of *The Environmental Law Monitor*:

- Do a hazard review if you haven't done so recently, preferably with a qualified engineer leading it. Inspectors come into contact with facilities that don't have a good handle on what a release would even look like.
- Ask if you can do a records review on a video call. EPA is amenable to checking plans, permits and the like on zoom calls. Can't hurt to ask!

Info: [tinyurl.com/ELMriskplan662](http://tinyurl.com/ELMriskplan662)

#### Exempt from Superfund cleanup? Not so fast ...

Reminder: An indemnity clause between you and a hazardous waste handler won't necessarily protect you from being held liable for a Superfund or RCRA cleanup.

EPA often names hazwaste generators as potentially responsible parties (PRPs) to secure or recoup costs for site remediations.

The Superfund law classifies PRPs as current or past site owners or operators of a contaminated site, and anyone who arranged for or transported the disposal of hazardous substances at the site.

So even if your contract is crystal clear that your waste handler/transporter is solely liable for

pollution claims, the feds can still order you to pay up.

#### Contract is your saving grace

The good news: You can of course recoup cleanup-related costs from your waste-handling vendor(s).

In many cases, the "other party" will settle well before it goes to court, assuming your contract spells out who's liable.

Depending on how quickly you act, you may even get paid before you're legally required to contribute toward the cleanup.

Info: Adapted from "Indemnity clauses and CERCLA liability," by Anthony Cardno at [lionnews.com](http://lionnews.com)

#### Blue state blues for urban industrial sites

Blue state attorneys general are taking aggressive action against legacy pollution in overburdened Environmental Justice neighborhoods.

New Jersey negotiated settlements with industrial facilities for:

- not cleaning harmful polychlorinated biphenyls, toluene, fuel oils and heavy metals in groundwater and soil
- creating an illegal, 300,000-cubic yard stockpile of crushed glass mixed with plastic, paper, food debris and other waste, and
- not securing multiple 10,000-gallon, aboveground fuel oil storage tanks to their bases, which toppled during a heavy storm and spilled fuel oil into waterways and onto homeowners' and businesses' properties.

Camden Shipyard, Fast Oil in Newark and Pace Glass in Jersey City have done business in the Garden State's poorest cities for years.

## REAL PROBLEMS/SOLUTIONS

### LOOKED LONG & HARD FOR GREAT LIGHTING RETROFIT

Some of the best energy efficiency ideas come from brainstorming with various teams in any organization.

For example: We were struggling with how we could upgrade the ceiling lighting in one of our oldest buildings.

Funding wasn't the issue.

Our problem was there was no access from above ceilings so we could replace the fixtures, do the re-wiring and install new fixtures that drain far less electricity.

### Didn't look like it could be done

We thought we might be stuck. But on a hunch that it could be done, we went back and did more research on products – and we called in some vendors for their ideas.

Good move: We hadn't heard about a retrofit that uses light emitting diode (LED) lamps.

LEDs are even more efficient than the top fluorescent lamps.

Bonus: They don't contain mercury, always a safety and environmental headache when lamps break.

Overall we've cut energy use from the lighting by two-thirds.

## 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.

"ECA gives a good review of current topics and new issues on the way. It's pithy."

Larry Kennedy  
Environmental Manager  
Round Mountain Gold  
Nye County, Nevada

## Air, Water & Waste regs that affect your operations

**H**ere'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](http://www.EnvironmentalComplianceAlert.com/category/update-on-federal-rules)

### WOTUS

Businesses would love to know what constitutes a federally protected Water of the U.S. (WOTUS).

With the federal courts shooting down the Trump administration's definition a few weeks back (*search for "Navigable Waters Protection" at our website*), we're all in a period of limbo for at least the next year until EPA and the Army Corps of Engineers propose a new rule.

For the record, this is the seventh time the feds have tried to define WOTUS once and for all since the Clean Water Act became the law of the land in 1972.

Now that we've got that out of the way, here's your chance to weigh in on what a WOTUS should and shouldn't be.

Both agencies will be holding [regional roundtable discussions in December and January on WOTUS](#). Rulemakers want to hear about:

- how different regions are affected by the current WOTUS definitions
- stakeholder experiences, challenges, and opportunities, and
- how to create a durable and workable definition.

**Info:** [tinyurl.com/wotusroundtables662](http://tinyurl.com/wotusroundtables662)

### HAZARDOUS MATERIALS

The Department of Transportation's Pipeline and Hazardous Material Safety Administration (PHMSA) is reviewing five industry and trade association

[petitions to update hazmat regs.](#)

The five petitions deal with:

- new proper shipping names for lithium batteries (LBs) in cargo transport units and battery-powered equipment and vehicles. PHMSA's Emergency Response Guidebook includes separate emergency response guidelines for lithium-ion, lithium-metal and wet batteries, which can slow down a response.
- modifying the definition of "liquid." A redefinition would be based on the penetrometer test approved under United Nations modal regs.
- increasing the weight threshold for large LBs under the Materials of Trade above 66 pounds. Larger format LBs that can power a nighttime construction site must currently be transported as fully-regulated Class 9 hazmats, which entails strict packaging, handling and training requirements.
- making food-grade vinegar with 30% or less by weight acetic acid exempt from bulk shipment Special Permits, and
- lowering the minimum steel thickness threshold for reconditioning and reuse of steel drums. Hazmat packaging reconditioners asked for the change.

**Info:** [phmsa.dot.gov/hazmat/rulemakings/hazardous-materials-petitions](http://phmsa.dot.gov/hazmat/rulemakings/hazardous-materials-petitions)

### NATURAL GAS PROJECTS

The Federal Energy Regulatory Commission (FERC) will take a closer look at greenhouse gas (GHG) emissions before it [certifies any interstate natural gas projects](#) from now on.

FERC chairman Richard Glick told members of Congress the agency hasn't upheld its duties under the Natural Gas Act and National Environmental Policy Act when evaluating natural gas wells and pipelines for certification.

Case in point: The Washington DC Circuit Court of Appeals (one rung below the Supreme Court) threw out two permits issued by FERC because of insufficient analysis of GHG emissions and impacts on overburdened neighborhoods nearby.

In related news, FERC is weighing comments on making changes to its 1999 policy on how it does environmental reviews of gas projects.

**Info:** [tinyurl.com/hollandknightlawferc662](http://tinyurl.com/hollandknightlawferc662)

### EPA STRATEGIC PLAN

EPA's top priorities for the next five years won't be a surprise to regular readers of this newsletter.

The agency's proposed 2022-26 Strategic Plan is out, with Congress expected to vote on it in February.

The top EPA priorities in order are:

- [tackling the climate crisis](#) with an emphasis on reducing greenhouse gas emissions (*search for "Biden climate" at our website for stories*)
- taking decisive action to advance environmental justice and civil rights
- enforcing environmental laws and ensuring compliance (*see cover story for related info*)
- ensuring clean and healthy air and water for all communities
- safeguarding and revitalizing communities with an emphasis on clean-ups, and
- ensuring the safety of chemicals for people and the environment.

Unlike previous strategic plans, this one is longer and broader in scope than what we typically see from EPA.

Of course, the agency received the largest budget increase it's seen in 20 years, so it should be able to achieve a healthy chunk of its goals.

**Info:** [epa.gov/system/files/documents/2021-10/fy-2022-2026-epa-draft-strategic-plan.pdf](http://epa.gov/system/files/documents/2021-10/fy-2022-2026-epa-draft-strategic-plan.pdf)