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

## What does EPA's recycling strategy mean for industry?

### ■ *Regs not on the table – yet*

Facilities that generate little to no waste and embrace sustainable initiatives will most definitely have a leg up once EPA proposes recycling rules for industry.

Make no mistake, that's the end game of EPA's "National Recycling Strategy," announced in the days leading up to Thanksgiving.

EPA cites four reasons for a greater push to recycle:

- dwindling markets for once-valued recyclable materials
- infrastructure that hasn't kept pace with today's diverse and changing waste streams
- confusion about what materials can be recycled, and
- varying methodologies to measure

recycling system performance for investors and start-ups.

Perhaps the greatest driving factor was China's refusal to accept solid waste imports from the U.S. and Western nations four years ago.

The result's been backed-up warehouses filled with plastics, metals, paper and textiles that no one wants and are being dumped in landfills, particularly on the West Coast (*for a timeline of the ban, go to our website and search for "China import recycling waste"*).

### More money is on the table

Federal funding for recycling is about to go up. For example, the

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

## CALIFORNIA

### West Coast facilities can't catch a break from regs!

#### ■ FAILURE TO LABEL PRODUCTS CORRECTLY WILL LEAD TO FINES

California retailers and manufacturers face a half-dozen new regs and requirements from the state legislature.

Six bills expected to be signed by Governor Gavin Newsom (D) take aim at product labeling and single-use waste items.

#### Higher bar for compliance

Bills on the table include:

- tougher requirements for labeling product as recyclable and using the

green chasing arrows symbol

- a similar truth-in-advertising rule for compostable items
- requiring dine-in restaurant customers to request plastic utensils
- requiring "do not flush" labels on certain wipe products, and
- limiting the amount of mixed plastics that can be exported.

Businesses that sell or make products without California-mandated warnings can be fined for thousands of dollars.

**Info:** [jdsupra.com/legalnews/california-passes-sweeping-package-of-2306955](https://jdsupra.com/legalnews/california-passes-sweeping-package-of-2306955)

## CERCLA

### Court clarifies liability for manufacturers

Can the manufacturer of a product be held liable as an “arranger” or “operator” when it sells a product that releases hazardous substances into the environment?

The simple answer is “yes.”

But in many cases, it’s an uphill battle for a user of the product to prove a claim in court.

#### Court: Maker acted in good faith

Case in point: Penn Central Railroad bought and used transformers and railcars that contained a coolant with toxic polychlorinated biphenyls (PCBs) which were manufactured by General Electric (GE).

American Premier Underwriters (APU), the property and casualty insurance company that owns Penn Central Railroad, sued GE under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) to recover damages.

APU alleged GE arranged for the release of PCBs into the environment because the railcars were designed to

“burp” coolant.

Result: The U.S. Court of Appeals, 6th Circuit, ruled GE designed the railcars to release coolant so as to release pressure and prevent tanks from rupturing, and not to dispose of harmful contaminants.

The 6th Circuit also determined GE hadn’t directed Penn Central

### Can manufacturer be held liable?

Railroad employees how to operate, though GE did give recommendations on product use.

**Info:** [mgkflitigationblog.com/sixth-circuit-holds-ges-pcb-no-arranger-operator-CERCLA](http://mgkflitigationblog.com/sixth-circuit-holds-ges-pcb-no-arranger-operator-CERCLA)

### Recycling ...

(continued from Page 1)

infrastructure act includes \$350 million for waste and recycling grants.

Public-private partnerships at the municipal and county levels have sparked many of the most fruitful recycling programs still going strong.

#### Where changes are needed

To further improve the recycling system, EPA calls for:

- increasing the collection of recyclable materials
- upgrading technology/infrastructure
- reducing contamination of waste streams via public outreach and education
- increasing federal agency coordination to create new programs and policies for recycling
- standardizing measurements, and
- increasing data collection through standardized definitions, measures, targets and performance indicators.

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

## SHARPEN YOUR JUDGMENT

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

### ■ CAN EPA CHOOSE YOUR POLLUTION CONTROLS?

Environmental Manager Buck Flanagan let out a loud cheer as he scanned the email.

His state air office had finally delivered the permit he’d worked months on getting approved.

“At last,” said Buck. “I’ve got to let the top brass know about this.”

Company execs and senior managers were glad to hear they could get production started.

### Bad news a few days later

Buck got a startling call later in the week from EPA Regional Chief Barbara Sulani.

“Good morning, Mr. Flanagan. I’m calling about the new source review permit the state just approved for your facility.”

“All right,” gulped Buck.

“We see a problem with the technology you’ve chosen,” said Sulani. “Most facilities like yours install best available control technology (BACT) for reducing nitrogen oxides.”

“I see,” said Buck. “We chose an alternative technology because it works best for our operations. Some of the chemicals in your preferred BACT could be dangerous when mixed with our chemicals.”

“You can see we went into great detail on why we went the way we did,” Buck concluded. “It’s there in our permit application.”

“I’m sorry, but EPA’s overriding your permit,” said Sulani. “Our BACT option is the better choice.”

Buck’s company fought EPA’s order in court. Did it win?

■ *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](http://www.EnvironmentalComplianceAlert.com/category/who-got-fined-why)

### **Plants over-flared to meet emission limits: \$3.4M fine**

**Company:** LyondellBasell Industries (LBI), with facilities in Channelview, Corpus Christi and LaPorte, Texas, and Clinton, Iowa.

**Business:** Petrochemical manufacturing.

**Penalty:** \$3.4 million.

**Reasons for penalty:** LBI routinely over-steamed flares, and didn't monitor or operate its flares properly. This led to excess emissions of volatile organic compounds and air toxics because harmful gases weren't being combusted properly.

**Note:** EPA singled out LBI for harming residents of environmental justice neighborhoods. The company must make significant air quality improvements, such as:

- operating flare gas recovery systems that recover gases to be re-used or sold instead of combusting them in flares, and
- installing new monitoring systems to measure combusted gases.

### **Keep tabs on hazwaste storage limit – or else**

**Company:** Phillips 66, Carson, California.

**Business:** Oil refinery.

**Penalty:** \$87,276.

**Reasons for penalty:** The refinery

*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.*

stored oily hazardous waste longer than its permit allowed. The waste included multiple types of sludge and solids from the petroleum refining process. Phillips 66 cited mechanical issues and reduced processing capacity due to decreased demand for its unpermitted accumulation of oil-bearing waste.

**Note:** In addition to paying a fine, Phillips 66 agreed to process the remaining excess oil-based waste into a usable product by year's end.

### **Toxics use a mystery to neighborhood, firefighters**

**Company:** Cornell Forge, Chicago.

**Business:** Steel product manufacturer and finisher using drop hammers and mechanical presses.

**Penalty:** \$165,197.

**Reasons for penalty:** Cornell didn't report releases and transfers of substances including chromium, nickel, ethylene glycol and manganese to the Toxics Release Inventory online portal (TRI-Me), as required under the federal Emergency Planning and Community Right-to-Know Act.

**Note:** Emergency planning committees depend on up-to-date records on dangerous chemicals in case of a fire or explosion that can endanger employees and neighbors.

### **Workers not protected from toxic solvents**

**Company:** Kaman Air Vehicles, Bloomfield, Connecticut.

**Business:** Aircraft parts manufacturer.

**Penalty:** \$308,168.

**Reasons for penalty:** The company failed to:

- provide employees with info on hexavalent chromium (HC) and cadmium
- train on chemical hazards
- examine nostrils of exposed

employees periodically

- determine employees' exposure to both chemical solvents
- label tanks containing hazardous substances with health info
- provide personal protective equipment including chemical-resistant gloves, impervious aprons and respirators, and
- implement controls and work practices to reduce overexposure.

**Note:** Kaman employees were exposed to carcinogenic HC while electroplating, as well as mixing, preparing, painting and removing paint on small aircraft parts. The company was inspected as part of OSHA's national emphasis program on HC hazards ([osha.gov/hexavalent-chromium](http://osha.gov/hexavalent-chromium)).

### **Spot checks of wastewater plants bear fruit for EPA**

**Entities:** Cities of Winchester and Craigmont, Idaho.

**Business:** Municipal wastewater treatment plants.

**Penalty:** \$15,000 (each town).

**Reasons for penalty:** A review of the treatment plants' records in 2019 found they regularly discharged wastewater that exceeded permit contaminant limits into creeks. Winchester also failed to maintain a quality assurance plan for all monitoring required in its permit. Winchester's plant discharges treated wastewater into Lapwai Creek, and Craigmont's plant discharges into John Dobb Creek.

**Note:** In addition to paying fines, the cities will implement facility plans laying out specific actions, upgrades and remedial measures to comply with effluent limits in their Clean Water Act permits. Craigmont agreed to abide by interim measures to keep chlorine limits in check until it can finalize a facility plan.

## COMPLIANCE

### 3 ways to make online training better

Looking to take online training to the next level?

Consider these three steps:

#### 1. Focus on learning objectives

When reviewing learning objectives, make sure they're clear, focused and measurable.

Good learning objectives need to satisfy this general question: At the end of the training, do the participants know the training objective or not?

Determine how you'll know whether trainees understand training. An example of a question you might ask trainees: "What's the benefit of this training?"

If the training is required, tell trainees why it's mandatory.

#### 2. Build in activities

In online training, trainees aren't in the same room as you. That doesn't mean all they should be doing is

watching the screen.

Use games, online polling, item hunts ("find me an example of ..."), on-screen demonstrations, etc.

"Find an item" activities allow participants to get up, move around, stretch and take a quick break.

#### 3. Make sure workers are engaged

Zoom fatigue is real. As a facilitator, conducting online training can make you wonder if attendees are actually listening.

If the training is asynchronous (not live, attendees work at their own speed), design the module so the person needs to be regularly using the mouse to do something.

If it's synchronous (live) training, use the four-minute rule: Focus on one thing for no more than four minutes.

*(Presented by Marilyn Hubner, at ASSP 2021, <https://au.linkedin.com/in/marilyn-hubner-7146bb35>)*

## RISK MANAGEMENT PLANS

### Statewide chemical safety sting sends a message

■ EPA: MAINTENANCE AND PREPAREDNESS MUST BE PRIORITIES

Inspectors who checked up on a facility that uses highly hazardous chemicals decided to drop in on another in-state business to check its records too.

Suffice to say, both Maine manufacturers weren't doing enough to prevent and minimize the effects of an accidental release of more than one dangerous substance.

And each is paying fines under the Clean Air Act's Risk Management Plan (RMP) requirements and the General Duty Clause.

#### Loosey-goosey won't cut it

GAC Chemical, a chemical manufacturing and distribution

facility in Searsport, uses anhydrous ammonia, aqueous ammonia and sulfuric acid in its operations.

Inspectors couldn't help but notice worn parts and lax maintenance practices on GAC's tanks and pipes. That and a lack of a sufficient RMP for ammonia and sulfuric acid set GAC back \$305,000 in fines.

About two hours up the road, Tate & Lyle Ingredients Americas in Houlton manufactures specialty foods and industrial starches. It uses propylene oxide, sulfuric acid, compressed natural gas, acetic anhydride, hydrogen chloride and propane.

EPA noted "serious concerns" regarding the company's use of these regulated chemicals, enough to warrant a \$240,919 fine and order to attain compliance.

## 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.*

### ■ FOUND SAME SPILL PLAN PROBLEMS AT FIRM'S SITES

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

We've wrapped up our multi-state investigation of ABC Railroads' spill prevention and response plans.

As you know, it required coordination among inspectors in four states and a lot of legwork, but it's paid off.

ABC knows where its deficiencies are and is already making improvements where needed.

#### Backup for leaks was lacking

We found the exact same kinds of oil spill problems at each of ABC's rail yards.

The most glaring problem was lack of secondary containment in fuel transfer locations and alongside storage tanks.

ABC had a spill event that we followed up on which could have been minimized further with better secondary containment.

Another glaring problem was the lack of state-of-the-art spill response equipment.

ABC has obviously been very careful to prevent oil spills and leaks over the years, but those kinds of "winning streaks" eventually come to an end.

Their staffers weren't as prepared as they needed to be in the event of a major spill. With the volume of oil and fuel ABC handles, that can't be overlooked.

I've listed the Clean Water Act and Oil Pollution Act violations for you as well. They total more than \$600,000.

■ *Dramatized for effect. Based on a recent settlement between EPA and a Southwestern rail company.*

## STORMWATER

### The greener your parking lot, the better

There are many ways facilities can control runoff from parking lots, which is the primary source of contaminated stormwater for the average commercial facility.

Here are two steps your business can take today:

#### 1. Prohibit and fine the leakers

Some environmentally conscious companies are already doing this:

Have the facility department check parking spots for oil and brake fluid leaks.

Then find out which employees(s) are the leakers.

Employees are then told, get your car serviced or don't park in the company parking lot.

For vendors and contractors, drivers can be penalized as long as it's spelled out in the service contract.

Making vendors that do business with your organization pay for their leaking vehicles can help prevent

further instances of oil, antifreeze and other fluid leaks you don't want.

#### 2. Look beyond asphalt

Permeable parking surfaces that filter water and fluids into the ground are catching on.

For example, aggregate material (soil, pebbles) that lets stormwater

### Take control of your parking lot!

trickle down into the soil, but filters out contaminants.

Other types of stormwater controls, such as high-cut grass, impoundment ponds, etc., also reduce runoff from parking lots. Combined with a permeable surface, you can greatly reduce stormwater contaminants.

**Info:** [tinyurl.com/stormwaterparkinglots664](http://tinyurl.com/stormwaterparkinglots664)

## HAZARDOUS WASTE

### Don't risk your RCRA exemption: Inspectors checking

■ NO RCRA PERMIT NEEDED? MAKE SURE YOUR TEAM ISN'T COMPLACENT

The majority of facilities that generate and store hazardous waste don't need Resource Conservation and Recovery Act (RCRA) permits.

They're exempt when they follow basic RCRA requirements – but a permit can be on the table if inspectors find a violation or three.

A report by Lion Technology highlights a lubricating oil and greases manufacturer that didn't:

- label hazwaste containers
- maintain sufficient aisle space in its central accumulation area
- ship out hazwaste for treatment or disposal within 90 days

- monitor and inspect pumps and valves, or
- control volatile organic emissions.

The facility qualifies as a large quantity generator but since it didn't comply with RCRA, inspectors considered it to be an unpermitted treatment, storage and disposal facility. Total fine: \$255,344.

#### Sloppy hazwaste handlers on alert

Word of warning: EPA enforcement actions are on the rise.

Inspectors won't hesitate to hammer a hazwaste violator, particularly one in a poor and minority neighborhood.

**Info:** [lion.com/Lion-News/September-2021/RCRA-Generator-Exemptions-3-Case-Studies](http://lion.com/Lion-News/September-2021/RCRA-Generator-Exemptions-3-Case-Studies)

## TRENDS TO WATCH

### ■ 2 MORE STATES SETTING EXTREMELY LOW PFAS LIMITS

**North Carolina** and **Pennsylvania** are the latest states to take a stab at per- and polyfluoroalkyl substance (PFAS) contamination.

The NC Department of Health and Human Services set a health goal for GenX in drinking water of 140 parts per trillion (ppt).

GenX is one of the most commonly used PFAS in products like non-stick coatings for kitchenware. High levels of GenX were detected in groundwater wells near Cape Fear River a decade ago.

The PA Department of Environmental Protection is proposing maximum contaminant levels of:

- 14 ppt for PFOA, and
- 18 ppt for PFOS.

The current EPA advisory limit for both substances is 70 ppt.

PFAS are widely-used, long-lasting chemicals, components of which break down very slowly. Runoff and seepage to wells has been found in multiple states.

**Info:** [tinyurl.com/northcarolinapfas](http://tinyurl.com/northcarolinapfas) and [tinyurl.com/pennsylvaniapfas](http://tinyurl.com/pennsylvaniapfas)

### ■ LAND OF LINCOLN AIMS FOR FOSSIL FUEL-FREE FUTURE

**Illinois** is steering taxpayer funds toward renewable energy projects via the Climate and Equitable Jobs Act (CEJA).

CEJA calls for a transition to renewable sources, with 40% of in-state electricity generation coming from wind, solar, hydro and biomass by 2030.

The eventual goal is 100% carbon-free power by 2050. Consumers will get incentives to switch to electric vehicles.

**Info:** [ilga.gov/legislation/publicacts/102/PDF/102-0662.pdf](http://ilga.gov/legislation/publicacts/102/PDF/102-0662.pdf)

## NESHAP

### New duties for coating, manufacturing

National Emission Standards for Hazardous Air Pollutants (NESHAP) were revised for multiple industry sectors.

None of EPA’s residual risk and technology reviews for the NESHAP call for more stringent emission limits or new control technologies.

But all sectors face more monitoring and reporting requirements in the form of performance tests and electronic reporting of test results and compliance reports.

Also: EPA removed all exemptions for periods of startup, shutdown and malfunction (SSM). Emission standards always apply even during an SSM event (*search for “startup shutdown” at our website for a timeline of this reg change*).

#### Mistake fixed in some regs

Here’s the list of industrial sectors whose NESHAP were updated:

- flexible polyurethane foam fabrication
- carbon black production and cyanide manufacturing
- paint stripping and miscellaneous surface coating operations, and

- refractory products manufacturing. EPA also corrected technical mistakes in NESHAP for:
- surface coating of automobiles and light-duty trucks
- surface coating of metal cans
- boat manufacturing, and
- clay ceramics manufacturing.

**Info:** [epa.gov/stationary-sources-air-pollution/national-emission-standards-hazardous-air-pollutants-neshap-9](http://epa.gov/stationary-sources-air-pollution/national-emission-standards-hazardous-air-pollutants-neshap-9)

### Army Corps pulls 16 nationwide permits

The Army Corps of Engineers put a freeze on all applications for Nationwide Permits (NWP).

The move affects NWPs for fracking and other oil & gas activities, coal and mineral mining, utility lines, renewable energy projects and agriculture.

A federal district court remanded 16 types of NWPs in October. The White House wants to ban drilling and other development on public land.

**Info:** [www.spk.usace.army.mil/Missions/Regulatory](http://www.spk.usace.army.mil/Missions/Regulatory)

## WHERE TO GET HELP

### ■ STEAL THESE GREEN FACILITY IDEAS FROM THE EXPERTS

There’s always room for more sustainability ideas for older and newer facilities.

Steal a page from the American Society of Heating, Refrigerating and Air-Conditioning Engineers’ (ASHRAE) “Green Guide: Design, Construction and Operation of Sustainable Buildings.”

The guide is designed for HVAC engineers, architects, building owners, managers/operators and contractors charged with designing green buildings.

Info is provided on each stage of the building process, from planning to operation and maintenance of a facility, with emphasis on teamwork.

The book provides useful techniques for areas such as:

- rain gardens
- green roofs
- data centers, and
- landscaping using local and regional plants and grass.

Cost: \$145.

**Info:** [ashrae.org/technical-resources/bookstore/ashrae-greenguide-the-design-construction-and-operation-of-sustainable-buildings](http://ashrae.org/technical-resources/bookstore/ashrae-greenguide-the-design-construction-and-operation-of-sustainable-buildings)

## SHARPEN YOUR JUDGMENT – THE DECISION

(See case on Page 2)

Yes. Buck’s company won.

That meant it could stick with its own preferred emissions controls and didn’t have to go with EPA’s recommended best available control technology (BACT) option.

A federal court rejected EPA’s demand that the company install costly BACT to reduce nitrogen oxides emissions.

#### Safety argument wins over court

The key in this victory was not focusing on how much BACT would cost the company. Instead the company stressed the potential hazards employees would face if it went with EPA’s preferred technology.

Company data showed the BACT technology was a potential mismatch with the processes and chemicals the firm uses.

### ■ LESSON LEARNED: STICKING TO ITS GUNS – AND DOING ITS HOMEWORK – PAID OFF BIG FOR FIRM

Companies can disagree with EPA over the selection of emission control systems and pick a different BACT, as long as there’s good data backing them up.

Pointing out the negative effects that may happen can help win permit battles with states, EPA and citizens’ groups.

This company put EPA on the defensive by harping on safety and health concerns. The court rejected the agency’s case as a result.

**Based on:** *U.S. v. Minnkota Power*. This case has been dramatized for effect.

## CIVIL RIGHTS

### Enviro rights a winning issue with voters

Add the right to a clean environment to long-enshrined Constitutional rights of Americans!

New York state voters approved a resolution on the November ballot to do just that:

“The proposed amendment to Article I of the New York Constitution would establish the right of each person to clean air and water and a healthful environment. Shall the proposed amendment be approved?”

It won with 68% of voters.

#### Green light for NY lawmakers

The Democrat-controlled legislature and Governor in the Empire State have passed several climate change and plastic waste bills in recent years.

Voters made it clear they want more done to protect the ecology.

Pennsylvania voters were the first to add environmental civil rights to the Keystone State constitution in 1971.

Five other states followed suit – Hawaii, Illinois, Massachusetts, Montana and Rhode Island.

#### Texas ramping up hazardous waste fees

Texas industrial facilities will be shouldering the costs of hazardous waste inspections and cleanups.

Industrial hazardous waste management (IHW) fees will go up 45% over the next four years for sites that generate Class 1 solid waste and RCRA hazardous waste in the Lone Star State.

The Texas Commission on Environmental Quality (TCEQ) expects a 12% increase next year and 11% spikes each of the following three years.

#### More incentive to recycle?

Under the TCEQ increase, the maximum per ton fee (mptf) for

hazwaste goes up from \$2 to \$6, and the mptf for non-hazardous waste increases from \$0.50 to \$2.

Among the industrial sectors that'll be paying more are oil & gas drilling, refineries, petrochemical plants and manufacturing.

TCEQ says the fees may spur some companies to recycle more and switch to greener chemical alternatives.

The Texas health and safety code allows TCEQ to collect up to \$16 million per year from IHW fees. TCEQ's increases bring the expected total right up to that cap.

Info: [tceq.texas.gov](http://tceq.texas.gov)

#### Breakdown of earmarks in the Infrastructure law

The Infrastructure Investment and Jobs Act signed into law by President Biden includes funds for a range of environmental issues.

Here are just three areas about to get an infusion of cash:

- “More businesses will be able to get assistance [\$100 million over five years] to reduce toxic pollutants, cut water usage and improve efficiency,” according to the bill. Companies looking to take advantage of pollution prevention grants want to act quickly as funds are liable to dry up quickly.
- \$11.7 billion in drinking water revolving funds and \$15 billion for lead service line replacements will go toward much-needed municipal upgrades. These funds are the largest investment in water the federal government's ever made.
- Advanced battery material research, including raw and processed forms of minerals, metals, chemicals or other materials, is eligible for generous grants and programs.

Info: [epa.gov/newsreleases/fact-sheet-epa-bipartisan-infrastructure-law](http://epa.gov/newsreleases/fact-sheet-epa-bipartisan-infrastructure-law)

## REAL PROBLEMS/SOLUTIONS

### ■ GAME PLAN FOR PROJECTS KEEPS US AHEAD OF GAME

Our company puts a lot of thought into sustainability before we break ground on any project, big or small.

And how you design the project is at least 60% of the work, at least in our case.

We minimize unpleasant surprises by smart design.

What works for us too is following a flow chart (essentially a template) when we're past the design stage and getting started with the permitting process.

#### 5 steps we stick to

- When it's needed, we hire consultants with top expertise in a specialty area and a track record of success (vapor intrusion, stormwater protection, etc.).
- We identify special studies or analyses that may be required.
- We engage regulatory stakeholders and citizens' groups early in the process, and we provide them with info.
- Working ahead is key. Stay ahead so there's adequate time for receipt of permits.
- Our applications include construction means and methods to answer all questions.

## ▼ 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 sufficient information to guide me, or it directs me to more in-depth sources where I can do further investigation.”

Curtis Rounds  
Operations Manager  
IEC

## 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)

### CITIZENS' LAWSUITS

Compliance orders by regulatory agencies should, in theory, supersede lawsuits brought by citizens' groups.

A recent ruling by the 1st Circuit Court of Appeals (one rung below the Supreme Court) is helping to upend that legal precedent.

The 1st Circuit agreed to hear a dispute between the Massachusetts Department of Environmental Protection (DEP) and a Bay State nongovernmental organization (NGO) over a water cleanup.

The NGO didn't think the DEP went far enough to protect the environment and make the polluting party pay its fair share.

This is the second Clean Water Act case brought by an NGO that the 1st Circuit's agreed to hear this year.

Why it matters: Regulated entities need to know what their responsibilities are when it comes to a cleanup or enforcement order. Regulatory certainty won't be possible if the higher courts make a habit of tossing aside agency orders and siding with NGOs.

**Info:** [natlawreview.com/article/you-should-care-first-circuit-decided-yesterday-to-reconsider-again-its-respect-role](http://natlawreview.com/article/you-should-care-first-circuit-decided-yesterday-to-reconsider-again-its-respect-role)

### COVID-19 POLICY

OSHA's COVID-19 vaccine mandate has been put on hold temporarily – and may be down for the count.

The 5th Circuit Court of Appeals granted a stay of the mandate

on employers with 100 or more workers, brought by 20-plus state attorneys general.

Judges ruled the policy was “fatally flawed” and likely unconstitutional.

OSHA agreed to abide by the court's order and not take further steps to implement the COVID-19 Emergency Temporary Standard.

**Info:** [natlawreview.com/article/fifth-circuit-stays-osha-s-vaccine-or-testing-emergency-temporary-standard-what-s](http://natlawreview.com/article/fifth-circuit-stays-osha-s-vaccine-or-testing-emergency-temporary-standard-what-s)

### OZONE NAAQS

Uh oh: A more stringent ozone standard from EPA is about two years down the road.

The agency announced it's reconsidering the current national ambient air quality standards (NAAQS) for ground-level ozone.

A rule could be finalized by December 2023.

How low could EPA go?

Before the Obama EPA set the 70 parts per billion (ppb) NAAQS, some agency scientists were calling for a limit as low as 60 ppb.

The American Lung Association estimates about 40% of Americans are living in areas with unsafe smog levels, particularly during summer months.

**Info:** *State of New York v. EPA*, U.S. Appeals Court, Washington DC Circuit, No. 21-1028, 10/29/21.

### GAS BY RAIL

The Department of Transportation (DOT) is suspending rail transport of liquefied natural gas (LNG).

This move freezes a Trump-era rule that allowed refrigerated methane to be transported in bulk in certain DOT specification 113 tank cars with enhanced outer tank requirements.

President Biden issued an executive order at the beginning of his term for agencies like DOT to review all 11th hour Trump regs that may pose

environmental or safety risks.

The DOT's Pipeline and Hazardous Materials Safety Administration is accepting comments on this reversal.

Agency contact is Lily Ballengee, (202) 366-8553.

**Info:** [regulations.gov/document/PHMSA-2021-0058-0002](https://www.regulations.gov/document/PHMSA-2021-0058-0002)

### CHEMICAL HAZARDS

Facilities in the Midwest that handle dangerous chemicals may be getting a visit from OSHA inspectors very soon.

OSHA announced a regional emphasis program targeting the agency's top 50 high-hazard health industries to ensure:

- workers are provided with and properly use personal protective equipment like gloves and eyewear
- emergency procedures are up to date and workers receive training
- storage tanks, piping and other equipment are maintained and in good working order, and
- engineering practices and hazard analysis meet industry standards.

OSHA will focus its inspections on employers with documented employee exposure through previous agency inspections and at companies in similar industries.

Workers in high-hazard industries may not show signs of health problems due to chemical exposure until decades later.

Chemicals of concern include asbestos, benzene, beryllium, cadmium, ethylene oxide, formaldehyde, hexavalent chromium (see *Fines on Page 3* for related info) and nickel.

**Info:** [osha.gov/sites/default/files/enforcement/directives/CPL\\_2-21-001.pdf](https://www.osha.gov/sites/default/files/enforcement/directives/CPL_2-21-001.pdf)