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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).

No more excuses: EPA takes coal ash permit holders to task

■ *Clock's ticking for unlined coal ash sites*

Coal mining and combustion is on the rise – a development that EPA and climate change activists are none too happy about!

(See story below for more details.)

EPA is still working on a greenhouse gas emissions plan for power plants designed to survive court challenges which doomed previous administrations' efforts.

In the meantime, EPA is cracking down along the water front – namely coal ash landfills and ponds owned and maintained by utilities that don't comply with the coal ash rule.

EPA: 'No more extensions'

EPA just denied permit extension requests from coal ash impoundments

in Indiana, Iowa, Kentucky, New York, Ohio and other states, the upshot being sites will need to close down years ahead of schedule.

This move will force utilities to invest in safer ash containment or wean off coal.

EPA's concern is the threat of groundwater contamination posed by older, unlined (or damaged) impoundments. Coal ash contains contaminants like mercury, cadmium and arsenic.

Permit woes and more

Unlined coal ash sites faced an April 2021 deadline to be in compliance with the coal ash rule.

(Please see No more ... on Page 2)

CARBON EMISSIONS

King Coal on the rebound? Market is shifting gears

■ RESEARCHERS: CLEANER FUEL FUNDING NEEDS A SHOT IN ARM

Coal combustion rebounded mightily in 2021 as energy demand grew following the coronavirus pandemic.

Total carbon emissions increased 6.2% in 2021 according to the Rhodium Group, though emissions were slightly below 2019 levels.

More significantly, coal-fired electricity increased for the first time since 2014, says the U.S. Energy Information Administration.

Demand for coal was higher in Europe than the U.S. where some

countries shut down nuclear power plants in recent years, and face high natural gas rates set by Russia.

Coal fitting the bill

The Rhodium Group says that "without a way to prop up the cleaner [renewable] fuels," energy producers and utilities are likely to utilize fossil fuels more, all along the supply chain.

The Biden administration canceled gas pipelines and restricted any new drilling on federal lands in 2021 to help spur greater development of lower-emitting fuels.

Info: tinyurl.com/carbonjump667

CARBON EMISSIONS

SCOTUS to check EPA climate powers?

Heads up: The Supreme Court (SCOTUS) could scale back EPA's climate change rulemaking powers by the start of summer.

SCOTUS begins hearing oral arguments by EPA and industry lawyers starting February 28.

We'll keep you posted on what justices ask and their reactions.

Trump judges friendly to industry

At the heart of the matter: Does Section 111 of the Clean Air Act (CAA) allow EPA to "pick" the fuels industry uses to generate power?

Section 111 focuses on harmful emissions from stationary sources to protect human health and the atmosphere and waters.

EPA attorneys will argue the CAA's language is open-ended enough to justify rules like the Clean Power Plan, which favored natural gas and renewable fuels like hydro, wind and solar over coal and oil through measures like emissions trading.

Industry favors a regulatory scheme primarily focused on emissions that

stops at the fenceline and doesn't impose as many supply-chain restrictions on energy companies.

Until the SCOTUS ruling in *Massachusetts v. EPA* in 2007, the

SCOTUS Begins hearing arguments February 28th

agency had hesitated to regulate utilities' carbon dioxide and methane emissions via the CAA.

How SCOTUS rules will impact other areas such as the methane rule for the oil & gas sector set to be finalized this year.

Info: Troutman Pepper, 11/15/21, tinyurl.com/climate667

No more ...

(continued from Page 1)

EPA denied permit extensions to 52 of 57 applicants.

Permit woes aren't the only headaches facing coal-using utilities – big fines are also on the table if coal ash contaminants migrate.

Enforcement ramp-up imminent

Case in point: West Penn Power of Greensburg, Pennsylvania, was fined \$610,000 over water discharge violations at two coal ash impoundments.

West Penn Power must construct new gravity pipelines to reach outfalls in new receiving waters for each landfill, and collect data on instream boron levels in Peters Creek.

The firm was cited under the Clean Water Act and Pennsylvania's Clean Streams Law.

Info: epa.gov/newsreleases/epa-takes-key-steps-protect-groundwater-coal-ash-contamination

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 BUYER SUE SELLER OVER SLOW SITE CLEANUP?

"You know I don't like saying 'I told you so ...'" said Cliff Uplander, the attorney for an industrial company.

"Here we go," sighed Buck Flanagan, the company's environmental manager.

"... but I did warn against this company buying the River Road property," said Cliff.

"You did," said Buck. "The seller told us and the state warned us the cleanup would take at least three years before all the toxic soil could be removed.

"Now that the cleanup is going into year six, maybe we should've followed your advice," said Buck.

"Maybe," said Cliff.

"Let's talk about next steps," said Buck. "The seller is dragging its feet on this cleanup.

"They're on and off the site for weeks at a time. And until we get the green light from the state, we can't get our project started."

2 years behind schedule

"It's not a slam dunk strategy," said Cliff, "but we could file a suit for lack of access.

"The state lets a party sue if another party is acting in bad faith. If you're sure we can show the seller is dragging its feet, then we may have a shot," said Cliff.

"All I know is the state told us in writing the cleanup could be done in three years, and now it's two years overdue," said Buck.

Buck's company sued the seller for "loss of use." 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

Hot asphalt spill puts facility on the hot seat

Company: Gardner-Gibson, Tacoma, Washington state.

Business: Asphalt shingles and coating materials facility.

Penalty: \$650,000.

Reasons for penalty: Workers were transferring hot asphalt from rail cars to a storage tank when a connector separated from the tank. Hot asphalt escaped through an open valve and flowed into a nearby waterway. EPA cited the company under the Clean Water Act's Spill Prevention, Control and Countermeasures requirements, including failure to:

- maintain appropriate secondary containment in case of a spill
- inspect aboveground storage tanks
- identify appropriate qualifications for personnel performing tank integrity testing, and
- submit a Facility Response Plan to EPA after the spill.

Note: 60,000 gallons of hot asphalt spilled. Four ducks were contaminated with the asphalt and were then captured, cleaned and released into nature.

Sewer overflows a health hazard – time to pay piper

Entity: Bucks County Water and Sewer Authority, Pennsylvania.

To help your firm avoid common mistakes and violations, we present a cross-section of recent enforcement actions in each issue. Penalties for firms or individuals can include fines, mandatory facility upgrades, house arrest and even jail time.

Business: Publicly owned treatment works.

Penalty: \$45,000.

Reasons for penalty: Multiple sanitary sewer overflows – typically wastewater overflowing from manholes – over the years must be addressed. The Justice Department and Pennsylvania negotiated a deal with Bucks County to upgrade the combined storm sewer system. Sewer overflows are due to storms, improper system design, equipment failures, poor management, improper operation and maintenance, and vandalism.

Note: The main pollutants in raw sewage are bacteria, pathogens, nutrients, untreated industrial wastes, and toxic pollutants such as oil and pesticides.

'Cough! Cough!' Soot output under control now

Company: Red Arrow Products, Rhinelander, Wisconsin.

Business: Liquid smoke and grill flavor products.

Penalty: \$90,000.

Reasons for penalty: Red Arrow violated its state air permit when it failed to:

- keep particulate matter emissions below health-based standards
- construct smokestacks/flues in accordance with state approval, and
- maintain required records.

Note: The facility upgraded pollution controls to avoid future violations.

Broke air, water & waste laws: Fined \$3.35 million

Company: The DuPont Sabine River Works complex, Orange, Texas.

Business: Petrochemical manufacturing plant.

Penalty: \$3.35 million.

Reasons for penalty: DuPont let a number of environmental duties

slide for too long. It was cited for failing to:

- obtain permits to store and dispose of hazardous waste
- safely pretreat process water or obtain authorization to discharge
- comply with land disposal restrictions for hazwaste, and
- comply with national emission standards for hazardous air pollutants for benzene and other organic chemical manufacturing.

Note: As part of its settlement, DuPont agreed to monitor and control benzene emissions and pH levels in wastewater; conduct soil, sediment, and groundwater sampling; and perform any needed cleanup.

No spills here, but paperwork snafus a-plenty

Company: Avantor Performance Materials (APM), with facilities in Phillipsburg, New Jersey, and Paris, Kentucky.

Business: Laboratory and production service products.

Penalty: \$600,000.

Reasons for penalty: APM used and exported quantities of mercury but didn't follow three federal statutes that restrict mercury. EPA cited the company under the:

- Emergency Planning and Community Right-to-Know Act's Toxics Release Inventory (TRI) (the annual reporting deadline for TRI is July 1)
- Toxic Substances Control Act's (TSCA) Chemical Data Reporting (CDR) rule, and
- TSCA Mercury Export Ban.

Note: APM has since submitted CDR and TRI reports to EPA for a variety of chemicals including acids, bases, salts, solvents and metals, and it's no longer exporting elemental mercury.

HYDROGEN SULFIDE

Air toxics emitters taking it on the chin

Major sources of the most toxic hazardous air pollutants (HAPs) can't afford to run afoul of their permit limits – especially those near overburdened communities.

Case in point: EPA issued an emergency upgrade order against the New Indy paper mill in Catawba, South Carolina, last spring.

New Indy was ordered to install three hydrogen sulfide (H₂S) monitors at its fenceline, and cease emitting H₂S above health-based levels.

The paper mill's other option? Shut down day-to-day operations and eventually go out of business.

Air & water upgrades a must

While EPA doesn't do it often, it can issue emergency orders against problem polluters under the Clean Air Act (CAA) Section 303.

The agency primarily wants violators to upgrade pollution controls immediately, or if there's a financial

burden, take initial steps necessary to protect human health.

New Indy shelled out for the fenceline monitors. It has a lot more work to do.

As part of its settlement the mill is required to:

- operate a steam stripper unit to control HAPs
- treat sulfur-containing fuel condensate sent to the wastewater treatment system
- upgrade its wastewater treatment system
- install a carbon filtration system on its post-aeration tank to minimize emissions, and
- build a secondary containment system around the by-product black liquor storage area to prevent illicit discharges.

As if those changes won't cost enough, New Indy will have to pay \$1.1 million in CAA fines.

PM 2.5

States late with haze plans: Will EPA crack whip?

- STATES MUST ADDRESS SOOT EVEN IF VISIBILITY GAINS ARE MINUTE

EPA air officials and scientists are concerned tiny particulate matter (PM 2.5) pollution is too high, and want to crack down on emissions every which way possible.

(For a timeline, go to our website and search for "EPA PM 2.5 scientists.")

One way the agency can do it is by forcing states to promulgate tougher haze plans – or force states to comply with tough regional haze plans through litigation.

States: 'What's the point?'

Flashback: EPA called for states' 10-year implementation plans by July 31 of last year, but most didn't submit

by that deadline.

Guidance issued by EPA in 2021 acknowledges that pollution controls on industry and registered vehicles may not produce meaningful improvements in visibility throughout Western parks.

Even so, states must develop pollution controls for haze or face federal requirements.

The most common sources of haze pollution are:

- windblown dust and soot from wildfires and volcanic eruptions
- tailpipe emissions
- electric utility and industrial fuel burning, and
- manufacturing emissions.

Info: tinyurl.com/hazelettertostatesfromepa667

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.

■ TOXIC WASTE STREAM FELL THROUGH THE CRACKS

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

My latest report is proof that even recycling plants may need reminders about handling toxic materials safely.

We paid ABC Recycling a visit, expecting their crew would have a handle on Resource Conservation and Recovery Act guidelines.

ABC showed us complete training records. Their storage containers were labeled and in good shape. No visible problems of any kind in their storage area.

All except for one particular kind of waste stream.

No permit for toxics in bulk

ABC accepts and recycles light ballasts and other kinds of equipment that contain polychlorinated biphenyls (PCBs).

PCBs require special attention as you know. That's spelled out in the Toxic Substances Control Act (TSCA). But ABC wasn't following some key TSCA requirements.

For example, they kept several drums filled with PCB-containing ballasts despite not having the correct permit.

Only a handful of recyclers in the country have EPA permits for decontaminating products with PCBs in bulk.

We also found ballasts that weren't labeled "out of service" and a lack of secondary containment around storage containers in case of a spill or leak.

I suggest a \$23,000 penalty.

- *Dramatized for effect. Based on a settlement with a New England recycling facility.*

WASTE REDUCTION

Small firms getting sustainable results!

If you're a smaller-sized organization with a great idea for reducing waste or emissions, now's the time to let EPA know about it.

The agency has more money in its coffers than ever to fund sustainable initiatives and technologies that industry's looking for.

Consider these projects by small businesses that received just under \$3.6 million in EPA funds:

One idea sparks a dozen new ones

- Aquagga in Tacoma, Washington – a hydrothermal alkaline treatment process for destroying PFAS in contaminated groundwater
- Hyperion Analytical, Rancho Cucamonga, California – a fully automated analytical system for measuring N-nitrosamines and promoting water reuse
- Nikira Laboratories, Mountain View, CA – real-time ethylene oxide analysis for next-generation environmental monitoring

- OLIN in Philadelphia – a process that repurposes waste-stream glass into a sandy soil suitable for horticultural and green infrastructure projects
- PKS Consulting, in Anchorage, Alaska – a recycler that converts mobile plastic ocean waste into lumber industry products
- Quick-Med Technologies, Gainesville, Florida – long-term disinfectant coatings that kill viruses and bacteria on high-touch surfaces
- Pure Blue Technology, Seattle – anti-fouling membranes integrated with polyvinylidene fluoride transducers that promote efficient water reuse, and
- Triangle Environmental Health Initiative, Durham, North Carolina – a zero-waste system that maximizes chemical energy potential in wastewater and produces three valuable reuse streams.

Info: Small Business Innovation Research, epa.gov/sbir

CONTAMINATED RUNOFF

7 stormwater areas facilities often overlook

■ KEEP AN EYE ON COMMON PROBLEM AREAS THAT LEAD TO PENALTIES

You're always better off spotting Clean Water Act mistakes before inspectors do.

The feds can drop the hammer – up to \$50,000 in fines per day until violations are corrected.

Easy fixes, big reward

Here are some often overlooked areas for stormwater violations:

- vehicle-washing and detailing operations. Washwater must be pretreated and not discharged directly to drains
- surface cleaning discharges. The wastewater from pressure-washing systems, steam cleaners and degreasing equipment must be discharged to a pretreatment or municipal sewer system, never to a storm drain
- sediment that's tracked out from unpaved private roads onto public streets
- trash, raw materials, oil containers and heavy equipment that's stored out in the elements
- waste and scrap materials that aren't covered outdoors
- leaking valves or other pipe connections. Telltale signs are stains on the pavement or ground that go unreported, and
- poor spill response planning. Examples include not providing cleanup materials near areas where spills are likely.

TRENDS TO WATCH

■ BLACKOUTS COMING FOR NEW ENGLAND'S GRID

New Englanders should brace for rolling electricity blackouts this winter, warns the regional power grid operator.

Natural gas is in shorter supply than normal so any long cold snap will put a heavy strain on power plants to keep up with demand.

The year-long surge in gas prices is forcing power plants in New England to rely more on oil. Natural gas is about 50% more expensive than it was in 2020.

Lawmakers have called for greater reliance on renewable fuels but the transition's been slow.

For example, a project to bring Canadian-generated hydropower to Maine has stalled.

Average electricity bills in Maine are going up \$30 per month.

Info: wbur.org/news/2021/12/11/rolling-blackouts-possible-this-winter-regional-grid-warns

■ ANOTHER STATE UPDATES HAZARDOUS WASTE RULES

Oregon hazardous waste generators need to comply with EPA's hazwaste generator improvements (HWGI) rule from now on.

The Oregon Department of Environmental Quality (DEQ) adopted HWGI and other major changes to the Resource Conservation and Recovery Act promulgated by EPA over the past five years.

In addition to HWGI, the DEQ also adopted a streamlined testing method for ignitable waste, a defective airbag handling exemption, and the hazwaste pharmaceuticals rule which prohibits flushing or rinsing pharm waste down toilets and sinks.

Info: oregon.gov/deq/Hazards-and-Cleanup/hw/Pages/HW-Rules.aspx

NATIONWIDE PERMITS

Streamlined dredging permit saves time

The U.S. Army Corps of Engineers is cutting red tape for construction and other industrial sectors that dredge and fill.

The Corps finalized a Nationwide Permit (NWP) allowing projects with “minimal adverse environmental effects” to discharge dredged or filled materials into waterways without needing a Clean Water Act Section 404 permit.

The average time to obtain an NWP is about 45 days while a Section 404 permit can take up to nine months.

Info: 86 FR 73,522

Superfund, brownfields programs to focus on EJ

Environmental justice (EJ) concerns will be incorporated into EPA cleanup programs such as Superfund, brownfields, emergency response, solid waste management and corrective action, and underground storage tanks.

“During my Journey to Justice Tour, I spoke with concerned residents who have been dealing with the severe impacts of longstanding pollution

where they live, work, go to school and pray,” says EPA administrator Michael Regan. “Pursuing EJ for historically underserved communities is central to EPA’s mission.”

This new program will get off the ground with \$1 billion from the infrastructure act.

Info: tinyurl.com/envirojusticeactionplan667

Tougher air limits in place for copper smelting

A small handful of copper smelting plants must clamp down on particulate matter emissions after EPA revised the National Emission Standards for Hazardous Air Pollutants (NESHAP).

The NESHAP sets new limits for concentrate dryers, smelting furnaces, slag-cleaning vessels, converters and fugitive emissions.

EPA also removed the industry shield that allowed for emission spikes during startup, shutdown and maintenance events.

Info: 87 FR 1,616

WHERE TO GET HELP

■ ALL THE STORMWATER IDEAS YOU NEED, AT 1 WEBSITE

EPA promotes using green infrastructure so developers and facilities can capture runoff on site and keep it there.

The agency’s Green Infrastructure website highlights the advantages of using vegetation, soils and natural processes to manage and control stormwater runoff.

The website emphasizes environmental, social and economic benefits associated with green infrastructure and controls.

You can take advantage of tools and apps for stormwater management, such as:

- a stormwater management tool
- the National Stormwater Calculator, helpful to operations with locations in multiple states
- the Green Infrastructure Wizard, an interactive web application that provides you with customized reports and EPA apps/tools, and
- the Visualizing Ecosystems for Land Management Assessment model, a program for architects, engineers and builders.

Info: epa.gov/green-infrastructure

SHARPEN YOUR JUDGMENT – THE DECISION

(See case on Page 2)

No, Buck’s company lost. The court ruled it couldn’t sue under the loss of access statute because the seller was still in the middle of a cleanup.

That cleanup was negotiated between the state environmental protection agency (EPA) and the seller before Buck’s company agreed to buy the property.

It’s possible that if the state EPA had cited the seller for renegeing on cleaning up the mess, Buck’s company would’ve have had a stronger case.

This lawsuit came down to how much money the company thought it was due because it couldn’t start work on the property.

The state EPA estimated the cleanup at three years.

But that “estimate” fell far short of being a contract guarantee between the two companies.

Side note: The court did award Buck’s company \$73,000 in damages, but that was a lot less than the company argued it lost by buying the property.

■ LESSON LEARNED: COURTS FREQUENTLY ‘PUNT’ ON BUYER-SELLER CLEANUP ARGUMENTS

This company took a risk by buying a contaminated property at an attractive price, with tax rebates to boot.

Sometimes the risk pays off, often it doesn’t.

Filing a loss of access suit in many states hasn’t worked out well for companies in similar situations.

The best advice is, if a company can’t afford to wait, it should be wary of buying a known “problem” site.

Cite: *Newell Brands v. Kirsch Lofts*. This case has been dramatized for effect.

EMISSIONS

State law in pipeline an onus on industry

Industry's saying "enough is enough" to California Governor Gavin Newsom (D), who's backing a ban on new gas-powered, small off-road engines (SOREs).

Reason: Other states often look to California rulemakers for their own air regs.

Zero-emission substitutes fall flat

The California Air Resources Board would enforce the ban on "spark-ignition engines rated at or below 19 kilowatts (25 hp)." Products on the hit list: hand-held and backpack leaf blowers, grass and hedge trimmers, pressure washers, snow blowers, certain chain saws, and walk-behind and riding lawn mowers.

Industry groups oppose the legislation because zero-emissions equipment costs twice as much as SORE models, they're less powerful, and the batteries require more time to charge which will be burdensome to many small businesses.

Info: tcimag.tcia.org/news-opinions/should-government-mandate-the-adoption-of-zero-emission-equipment

Texas regulators take aim at accident sites

A string of chemical and petroleum accidents in Texas in recent years has sparked a major regulatory change by the Texas Commission on Environmental Quality (TCEQ).

To wit: A facility that's experienced an emergency (spill, release, fire, explosion) risks having its compliance history classification "updated."

TCEQ would be able to reclassify a facility as "under review" or "suspended" if "circumstances exist due to an event at a site, such as a major explosion or fire, that significantly impacts the surrounding community and environment, [or] causes emergency response efforts by

federal or state authorities to address pollutants, contaminants or other materials regulated by [TCEQ]."

Forces firms to invest in safety

TCEQ currently does five-year lookbacks and classifies facilities as unclassified (no compliance history), unsatisfactory, satisfactory or high performer. Once a site is designated unsatisfactory, TCEQ can amend a permit or deny renewal.

Under this proposed rule, a site reclassified as "suspended" would be treated the same as an unsatisfactory performer, and the suspended tag can remain in place for one to three years depending on the facility's progress to come into compliance and make necessary improvements.

Info: huntonnickelreportblog.com, 12/29/21.

Making industrial sites pretreat water a priority

Publicly owned treatment works and state regulators keep teaming up to pinpoint "problem" dischargers and force them to pretreat wastewater on site.

Case in point: Lightlife Foods, a soy food plant in Montague, Massachusetts, discharges to the municipal sewer system.

Lightlife's permit requires it meet strict pH limits but the facility struggled to comply. The company soaks soybeans in lactic acid to prepare its products and uses acidic cleaners to sanitize equipment.

Low-pH wastewater is prohibited under the Clean Water Act, leading to disruptions in service, raw sewage discharges and replacement costs for sewer lines and pumping stations.

Result: Lightlife was fined \$225,000 and paid to install a wastewater pretreatment system.

REAL PROBLEMS/SOLUTIONS

■ PARTNERSHIP KEEPS DIRTY DISCHARGES TO A MINIMUM

Industry in our state does a good job, by and large, of complying with National Pollutant Discharge Elimination System (NPDES) regs.

The compliance rate for industry is 98% – quite a bit better than state and municipal facilities and grounds where the rate is 72%.

A big part of that success is through our state agency outreach.

We've been promoting the benefits of NPDES electronic reporting.

So far 50% of all regulated sites are e-reporting.

We're ahead of the curve as e-reporting becomes mandatory nationwide.

Work with firms that self-report

We want industry to continue doing a good job of keeping our lakes and rivers as clean as possible.

To that end we work with facilities that self-report.

Example: A company found it wasn't tied into the sewer line and was discharging into a river.

They reported it. We found no evidence of the firm hiding it.

Since they're fixing the issue, we plan on keeping it out of enforcement.

▼ 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 provides a quick heads-up on regs and compliance initiatives. That's why I renew."

Dennis Waldroup
Senior Environmental Engineer
Domtar Paper
Hawesville, KY

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

METHANE LEAKS

Thousands of stakeholders have chimed in on EPA's methane rule for oil & gas wells after the agency extended the comments deadline to January 31.

That's despite the fact no technical support documents or impact analyses have been released yet, according to attorneys Vinson & Elkins.

The methane rule calls for:

- regulating a million wells, 2,000 natural gas compressor stations and 500-plus gas processing plants
- expanding the number of storage tank batteries that meet the volatile organic compound emission threshold
- banning excess gas flaring unless the operator can show it can't be sold
- mandating public comments on regulating of abandoned wells, pigging operations and tank truck loading operations, and
- holding well liquid unloading stations to a zero emissions limit.

A Supreme Court ruling on the Clean Air Act this year could force EPA to put the methane rule on hold (*see Page 2 for more*).

EPA hoped to publish a final rule by October.

Info: velaw.com/insights/epa-proposes-far-reaching-methane-rules-for-the-oil-and-gas-sector

OZONE LAYER ALTERNATIVES

EPA approved the refrigerant R-1234yf under the Significant New Alternatives Policy (SNAP) program.

The SNAP listing applies to newly manufactured off-road vehicle and certain on-road vehicle air conditioning systems.

EPA is also allowing unique servicing fittings for use with small refrigerant cans (two pounds or less) of R-1234yf used to service on- and off-road vehicles.

SNAP is designed to minimize or phase out usage of refrigerants, propellants and chillers with chemicals that deplete the ozone layer.

Info: 86 FR 68,962

RENEWABLE FUELS

Renewable energy developers are in the driver's seat with federal land leases up for grabs.

The Departments of Agriculture, Defense, Energy and Interior along with EPA want to expedite the development of 25 gigawatts of renewable energy on public lands by 2025.

The agencies are working together through a memorandum of understanding to facilitate the goals of the Energy Act of 2020.

Info: natlawreview.com/article/five-agencies-issue-ambitious-renewable-energy-goals-federal-lands-25gw-2025

ENDANGERED SPECIES

Endangered Species Act listings in the pipeline will impact industrial facilities and developers.

These ESA actions by the Interior Department are pending:

- reclassifying the whooping crane as threatened
- listing the lesser prairie-chicken and the Sonoran desert tortoise
- listing the northern long-eared bat and establishing a critical habitat for it, and
- protecting several species of mussels in central Texas.

Interior is rolling back Trump administration regs that sought to stymie ESA listings and give industry some breaks.

Info: "Department of the Interior Releases Hefty Agenda," Nossaman Attorneys at Law, jdsupra.com/legalnews/department-of-the-interior-releases-1732626

OSHA COVID-19 MANDATE

OSHA's COVID-19 vaccination emergency temporary standard (ETS) for employers with 100 or more employees was blocked January 13 by the Supreme Court.

The Supreme Court ruled the Occupational Safety and Health Act doesn't grant OSHA the authority to institute a mandate forcing 80 million workers to either vaccinate against COVID-19 or wear masks and be tested weekly.

In the 6-3 vote to block the ETS, the court said OSHA's mandate "draws no distinctions based on industry or risk of exposure" and is "a significant encroachment into the lives – and health – of a vast number of employees."

A coalition of 26 trade associations that filed emergency appeals called the court's opinion a victory for employers. "Before the mandate was announced, many of our companies [had already] led their own vaccination efforts," said Joshua Bolten, CEO of the Business Roundtable.

OSHA can continue holding employers accountable for protecting workers from exposure to the virus, under the COVID-19 National Emphasis Program and the General Duty Clause.

A separate vaccine mandate on healthcare workers was upheld by the Supreme Court.

Florida Governor Ron DeSantis (R) pledged not to enforce the healthcare mandate and other states may follow suit.