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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).

Why EPA will be red-flagging more chemicals than ever

■ Parsing the details of 'whole chemical' scope

Say goodbye to “no unreasonable risk” assessments for a range of chemicals still in commerce and potentially new ones subject to premanufacture notices.

Reason: The Biden EPA’s “whole chemical” approach is coming into focus following a re-do of risk assessments for toxic substances (*search for “Full speed ahead! EPA widens chemical regulatory powers” at our website*).

Just before New Year’s, EPA revised its risk assessment for cyclic aliphatic bromide cluster (HBCD), a solvent used as a flame retardant and wetting agent.

HBCD was one of 10 chemicals EPA chose for risk assessments in 2016. Trump agency leadership

declined to ban any of the substances to the consternation of health and environmental groups.

While HBCD hasn’t been manufactured in the U.S. in over five years, the substance is still in commerce and is an ingredient in equipment and materials used every day by facilities.

Lawsuits won't go industry's way

So what’s the likely outcome of more chemicals being labeled as posing an unreasonable risk to the public?

Attorneys Hunton Andrews Kurth (HAK) argue the public will end up taking EPA warnings with a grain of

(Please see EPA ... on Page 2)

ENFORCEMENT

Group: EPA doesn't have enough boots on ground

■ NOT ENOUGH CRIMINAL INVESTIGATORS TO GET JOB DONE?

EPA says it’s making environmental criminal enforcement a priority, but the progress on the ground suggests the train is stalled.

Public Employees for Environmental Responsibility (PEER) found EPA is short on investigators despite a major jump in funding.

“Biden’s EPA is not going to reinvigorate criminal enforcement, or there’s no sign that they’re moving in that direction,” says Jeff Ruch, director of PEER. “Their environmental justice [initiative]

depends upon prosecution and one of the first steps they need to do is hire more investigators – significantly more investigators – than they are.”

Still room to grow force

EPA’s criminal special agent force is at 161, well short of the Obama administration high of 175 in 2012, and below the congressionally mandated limit of 200.

During Fiscal Year 2021, EPA referred the lowest number of cases to the Department of Justice for criminal enforcement in decades.

Info: tinyurl.com/epacrime668

COVID-19

How pandemic spurred greener facilities

The coronavirus pandemic forced businesses to adapt quickly and change how they do things.

One positive outcome for some facilities? A greater focus on waste reduction and sustainability.

Slashed paper use in half

For example: The Bonneville Power Administration (BPA) in Portland, Oregon, transitioned the bulk of its personnel to telework in March 2020.

Before COVID-19, BPA relied on paper for nearly all administrative tasks. That had to change right away.

The company encouraged using e-signatures and electronic filing for documents. Meeting materials changed from printouts to digital links and attachments, and printed reports became online-only.

These changes saved over 4 million sheets of paper and reduced paper consumption by nearly 50%.

Made the facility more efficient

In the months after shifting to telework at BPA, waste generation fell

47%, water usage dropped 15% and electricity for the building dipped 3% – but natural gas use rose 13%.

BPA increased air intake to filter out germs while the pandemic raged, thus triggering more gas to heat air.

BPA offset the gas spike by switching out HVAC filters, and

changes reduced consumption by nearly 50%

lighting and HVAC controls to reflect the lower number of building occupants. When all was said and done, BPA saved \$785,000 in 2020 by becoming more sustainable.

Info: epa.gov/fgc

EPA ...

(continued from Page 1)

salt and not paying much attention to product labels, like Californians who encounter Proposition 65 cancer warnings on countless products.

Companies face the threat of more litigation: “Whole chemical risk determinations may give plaintiff lawyers new ammunition by enabling them to (correctly) claim that EPA determined a chemical posed an unreasonable risk to human health, even if EPA determined that the specific condition of use the plaintiff experienced posed no risk.”

And of course, juries tend to give more weight to federal rules from agencies like EPA, warns HAK.

Manufacturers and distributors should keep a close eye on TSCA rules in the pipeline for at least the next three years. As always, we’ll keep you posted too.

Info: huntonnickelreportblog.com, 1/18/22. And see “Where to Get Help” column on Page 6 for related info.

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 FIRM BE SUED FOR NO AIR PERMIT, 10 YEARS LATER?

Buck Flanagan, environmental manager, was buried in a pile of reports on his desk. A knock at his door startled him.

“Buck, I need your help right away,” said Cliff Uplander, the company’s attorney. “We’re being sued.”

Buck sighed. “You mean you didn’t stop by to chat?” Buck asked.

Cliff didn’t smile. “Never mind,” said Buck. “What’s the suit?”

“The environmental group Green Acres is suing us for a Clean Air Act violation. They say we didn’t get Prevention of Serious Deterioration permits more than a decade ago,” said Cliff.

Firm hopes suit is time-barred

“Prevention of Significant Deterioration permits from over 10 years ago?” Buck corrected Cliff without insulting him.

“That’s before I worked here. And it’s before this company owned the facility, if I’m not mistaken?”

“That’s true,” said Cliff. “But you know how it works. Premium Industrial went bankrupt. We’re fair game for any violations.”

“Isn’t there a statute of limitations for suing now?” asked Buck. “They’re going after us for permit issues over 10 years old!”

“You can never tell how the courts will rule, especially with our industry,” said Cliff.

Buck’s company fought the suit, saying the statute of limitations had run out.

Did the court agree?

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

Owners going to jail for role in deadly explosion

Individuals: Stephen and Adam Braithwaite, brothers and owners of Nebraska Railcar Cleaning Services, Omaha.

Business: Oil and hazardous chemical cleaning company.

Penalty: 30 months in prison for Stephen and one year for Adam, plus \$100,000 in restitution paid by each.

Reasons for penalty: Nebraska workers would scrape gasoline, food waste, pesticides and petroleum byproducts off railcar surfaces. One day in 2015, a spark ignited flammable gases inside a car where three employees were working. No one tested the railcar first despite the presence of benzene and an unacceptably high explosive gas level. Two of the men were killed by the blast and the third was gravely injured. OSHA inspectors found the company lacked a hazardous waste program, didn't monitor air quality properly in confined spaces or train workers on hazardous material safety. OSHA issued a \$963,000 fine. Company executives Stephen and Adam Braithwaite allegedly tried hiding the violations from OSHA, so OSHA referred the case to EPA and the Justice Department which later brought 22 criminal charges under the Resource Conservation and Recovery Act.

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.

Chemical safety plans didn't cut the mustard

Company: George Prepared Foods, Caryville, Tennessee.

Business: Ready-to-eat chicken, hamburger and sausage products.

Penalty: \$89,908.

Reasons for penalty: George uses anhydrous ammonia, a highly hazardous chemical, in its refrigeration system. Inspectors found noncompliance with the Chemical Accident Prevention Provisions and the Clean Air Act Risk Management Program (RMP). The company failed to:

- identify and address hazards associated with its ammonia refrigeration system, and
- design and maintain a safe facility as required by RMP.

Crushed metals, didn't capture chemicals: \$442K

Company: Derichebourg Recycling, Houston (headquarters).

Business: Scrap metal recycling facilities in Texas and Oklahoma.

Penalty: \$442,500.

Reasons for penalty: The recycler failed to recover ozone layer depleting refrigerants from appliances and motor vehicle air conditioners before disposing of them. It also didn't verify if suppliers emptied refrigerants first.

Note: Derichebourg agreed to:

- implement refrigerant recovery management programs at all 10 of its U.S. facilities
- give suppliers notice that refrigerants must be removed from appliances and air conditioners
- reject any appliances or vehicles if there's evidence of refrigerant venting, and
- ensure all R-12 refrigerant it collects is handled safely.

No more sewage outfalls puts town in compliance

Municipality: Town of Lebanon, New Hampshire.

Business: Publicly owned treatment works.

Consent decree culmination: Lebanon entered into a Clean Water Act consent decree in 2009 after discharging up to nearly 14 million gallons of combined wastewater and stormwater per year from as many as 60 to 70 combined sewer overflow (CSO) events per year. Since making widespread improvements to its sewage system, Lebanon has now eliminated all of its CSO outflows.

Note: The city spent \$70 million to upgrade water lines, install granite curbing, asphalt and concrete sidewalks and complete full-depth road reconstruction.

Overflared to stay under radar: Millions to fix it

Company: LyondellBassel (LB), with five facilities in Texas and one in Clinton, Iowa.

Business: Plastics, chemicals and refining.

Penalty: \$3.4 million.

Reasons for penalty: LyondellBassel routinely "oversteamed" industrial flares which led to volatile organic compounds (VOCs) and air toxics not being combusted properly and released. EPA identified potential environmental justice concerns at LB's two Channelview, Texas plants where residents were exposed to harmful amounts of tiny particulate matter and cancer risks.

Note: LB will install controls to reduce the need for flaring. Emissions of greenhouse gases will decline by 92,000 tons per year (tpy). VOCs should drop 2,700 tpy and air toxics, including benzene, 400 tpy.

ENFORCEMENT

EPA cops take to the air to nab polluters

Look! Up in the sky! It's a bird!
It's a plane! No, it's ASPECT, the environmental monitoring airplane from EPA!

Out-of-compliance facilities won't think it's so funny if air surveillance leads to an inspection and penalties, of course.

EPA's Airborne Spectral Photometric Environmental Collection Technology (ASPECT) "combines high-tech air pollution monitoring with boots-on-the-ground inspectors to address pollution," according to an agency news release.

The ASPECT airplane will be called on to monitor facilities suspected to be out of compliance from the sky while mobile vehicles can measure pollution levels on the ground.

Checking for emerging pollutants

Next Generation technology like ASPECT will be aimed squarely at facilities in the chemical, oil & gas,

manufacturing and heavy industry sectors located upwind of disadvantaged neighborhoods as part of EPA's environmental justice initiatives.

EPA plans to monitor for hazardous air pollutants as well as emerging pollutants like chloroprene and ethylene oxide (*search for "ethylene oxide" at our website for recent stories*).

Southern facilities up first

Facilities in EPA Regions 4 and 6 will be targeted first for air monitoring.

States in those regions are: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, Tennessee and Texas.

Info: epa.gov/emergency-response/aspect

CLEAN AIR ACT

Risk plan paperwork gaffes can cost you big! \$144K

■ ARE PLANS UP TO DATE? RESPONDERS KNOW THE SCORE? DON'T WAIT!

It's never a bad time to take stock of chemicals and solvents your organization manufactures, uses in its processes or provides employees with to wash parts or clean equipment.

Fail to comply with one of many reporting obligations and it can easily result in a six-figure fine.

Missed boat on RMP requirement

Fuller Industries in Great Bend, Kansas, produces a variety of chemical cleaning products.

Turns out Fuller was storing and using quantities of isobutane and propane at or above the reporting threshold of the Risk Management Plan (RMP) rule.

Inspectors wrote the company up for not following release prevention requirements such as:

- developing adequate standard operating procedures
- establishing piping inspection procedures
- conducting required process safety reviews, and
- following hazard assessment and recordkeeping requirements.

The company quickly corrected the problems and is now RMP-ready. That's the good news – the bad news is, it must pay a \$144,924 fine.

Isobutane and propane are flammable gases. High levels of exposure may lead to dizziness, weakness, loss of consciousness, nausea, choking and death.

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.

■ RISK PLAN WAS WOEFUL FOR CHEMICAL HAZARDS AT SITE

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

My full report on Acme Industries' inspection is attached.

Here are the key points from our inspection.

Acme was in violation of at least eight Risk Management Plan (RMP) guidelines. The most egregious was their lack of an emergency response plan despite housing more than 10,000 pounds of ammonia.

Our biggest concern is the nearly hour-long distance between the facility and nearest emergency responder. Acme is located in a downtown area where an ammonia release could cause devastating health problems.

Yet Acme doesn't have many of their industry's generally accepted engineering practices to prevent and contain a leak.

Community projects are a must

I'm recommending a \$60,500 Clean Air Act penalty.

As part of Next Generation enforcement, we should focus squarely on protecting people and the environment.

We've spoken with Acme and they're prepared to spend money on emergency response equipment for the local fire department.

In addition, Acme is committed to upgrading their engineering practices, including an enhanced ammonia detection system and state-of-the-art alarm system.

Acme has also submitted an emergency response plan.

■ *Dramatized for effect. Based on a settlement with a food storage warehouse.*

UNIVERSAL WASTE

Common waste gaffes that bring fines

Know where many of the most common environmental violations are lurking?

Try in or around commercial facilities' dumpsters.

EPA fines businesses tens of millions of dollars a year for throwing away hazardous waste and universal waste (UW).

Knowing facts from fiction

UW violations are the most preventable because simple training and oversight will keep businesses in compliance.

Make sure the people who handle UW know their facts from fiction:

- "Once you ship out UW, it's the transporter's responsibility."
- Fiction! Businesses can be fined and sued if their UW ends up in the wrong place. Get it in writing where the end destination is for your waste from the transporter.
- "UW must always be locked up and

out of site."

Fiction! Many industrial facilities store boxes of fluorescent lamps and ballasts out in the open.

The area should be marked as a waste storage area. Painting yellow lines works as an additional warning.

- "You can store UW for more than a year in some cases."
- Fact. And in many cases, waste haulers won't pick up UW unless drums or boxes are full.

Get your recycling company's policy in writing so you can justify storing certain kinds of UW for more than a year.

Also: Companies can store some waste at a second facility for an additional year before it must be shipped for recycling. These are the two main ways companies can gain a temporary exemption for the one-year storage rule for UW.

Info: epa.gov/hw/frequent-questions-about-universal-waste

RCRA

EPA emphasizing hazardous waste tank vapor leaks

COMPLIANCE WITH RCRA & LDAR DATABASE REQUIREMENTS A MUST

One of EPA's National Compliance Initiatives is to reduce the health and safety threats posed by volatile organic compound leaks from hazardous waste tanks.

(For a timeline of stories, search for "National Compliance Initiatives" at our website.)

An incinerator facility in Grantsville, Utah just got the message loud and clear.

Improper LDAR database reporting

The incinerator operates under a RCRA (Resource Conservation and Recovery Act) permit.

Inspectors issued a fine of \$224,903

for failure to:

- monitor tank components using Method 21
- use a device capable of responding to constituents being monitored using Method 21
- properly train employees
- cap or plug open-ended lines
- operate pressure relief devices to meet the no-detectable-emissions standard
- record monitoring, repair and leak information in the leak detection and repair (LDAR) database
- operate in a manner that minimizes the possibility of a hazardous waste release to the air, and
- repair equipment leaks within 15 days of detection.

TRENDS TO WATCH

POWER PLANTS FACE TIGHTER CARBON EMISSION LIMITS

Recently reelected New Jersey Governor Phil Murphy (D) wants power plants to slash carbon dioxide (CO2) emissions and transition to greener renewable fuels.

The NJ Department of Environmental Protection (DEP) has proposed a rule for large fossil fuel-fired electric generating units (EGUs):

Beginning January 1, 2024, the emissions limit declines to 1,700 pounds of CO2 per megawatt hour of the EGU's gross energy output, measured in megawatts per hour (1,700 lb/MWh).

EGUs face an emissions limit of 1,300 lb/MWh in 2027 before ramping down to 1,000 lb/MWh by 2035.

The deadlines can be extended if power grid operators show electricity shortages are imminent.

Also: Fossil-fuel boilers in large manufacturing facilities, hospitals, schools, office buildings and apartment buildings will be phased out for electric boilers under the DEP rule.

Info: nj.gov/dep/climatechange

RECYCLED CONTENT MANDATE FOR NORTHWEST

Washington state manufacturers must use more recyclable materials in their products starting next year.

These products must contain between 10% to 15% post consumer recycled content beginning in 2023:

- plastic trash bags
- beverage bottles
- bottles for household cleaning and personal care products
- 187-milliliter wine containers, and
- dairy milk containers.

Producer registration is due by April 1 to the Washington Department of Ecology.

Info: ecology.wa.gov/Regulations-Permits/Reporting-requirements/Plastic-producer-registration

NESHAP

1-bromopropane HAP listing is official

The list of hazardous air pollutants (HAPs) has its first new addition since the early 1990s.

A final rule making 1-bromopropane a HAP was published in the *Federal Register*.

The largest user of 1-BP are halogenated solvent cleaning facilities, followed by dry cleaners.

All sources emitting 1-BP will need to reevaluate compliance duties under National Emission Standards for HAPs. Some sources may require Title V permits.

Info: 87 FR 393

Pesticide registration mishap brings \$668K fine

Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) violations have increased in the last five years. Mistakes like failure to register and late registrations are easy pickings for regulators!

Last quarter, the biggest civil fine issued by EPA involved a series of FIFRA mistakes.

Nutrien Ag, a pesticide distributor

in Kansas, continued selling three dicamba products after they'd been canceled.

The company also used other dicamba products in a manner inconsistent with labeling requirements. Fine: \$668,100.

Info: For related stories, search for "FIFRA" at our website.

OSHA safety fines keep getting more expensive

OSHA violations will cost businesses more in 2022. The safety agency announced:

- the maximum civil penalty for serious, non-serious, failure to correct and failure to post required information violations is now \$14,502, and
- willful or repeat safety violations can now bring a maximum civil penalty of \$145,027. The minimum fine increased to \$10,360.

Among the top 10 safety violations every year is hazard communication, frequently involving lack of safety data sheets or warning labels for chemicals in the workplace.

WHERE TO GET HELP

FENCELINE RISKS A PRIORITY FOR TSCA RISK EVALUATIONS

Chemical manufacturers should take a gander at EPA's new screening methodology for evaluating chemical exposure and risk to fence-line communities.

EPA will assess air, water or disposal exposures to the general population when doing Toxic Substances Control Act (TSCA) risk assessments of chemicals with tools like this new method.

Info: epa.gov/system/files/documents/2022-01/draft-fenceline-report_sacc.pdf

CITIES' ERODING WATER SYSTEMS GETTING A BOOST

Congress allocated \$50 billion for water infrastructure projects, and slowly but surely EPA is doling out funds to where they can do the most good.

Water Infrastructure Finance and Innovation Act (WIFIA) loans totaling \$688 million will bolster upgrades and new infrastructure in Baltimore, Milwaukee and the San Francisco Bay area.

Publicly owned treatment works can apply for WIFIA and state revolving funds at EPA's website.

Info: epa.gov/wifia

SHARPEN YOUR JUDGMENT – THE DECISION

(See case on Page 2)

Yes, the court agreed with Buck's company and dismissed the lawsuit.

The court ruled that alleged permit violations weren't "continuing" or "ongoing."

Since that wasn't in dispute, the decision came down to the law:

What does the statute of limitations say?

LESSON LEARNED: CLEAN AIR ACT SPELLS OUT STATUTE OF LIMITATIONS FOR LAWSUITS

The Clean Air Act (CAA) is clear: EPA, state agencies, citizen's groups or individuals must file suit over a CAA violation within five years.

There wasn't much question that the previous owner violated the CAA.

The company had modified a power plant without:

- applying for a Prevention of Significant Deterioration permit, and
- installing Best Available Control Technology.

As the court wrote, "[Foregoing the necessary permit] was a risky strategy because if someone had contested the decision within the statute of limitations, then [the company] might have had to pay hefty penalties."

That "risky strategy" could've put the new owner in serious financial jeopardy too!

But the court went by the law – which was crystal clear – and luckily the company won.

Cite: *U.S. and IL v. Midwest Generation*. This case has been dramatized for effect.

CONSENT DECREES

EPA civil enforcement at 4-year high

Environmental enforcement data from fiscal year (FY) 2021 is in and it's clear EPA is making good on a Biden administration promise:

"Enforcement is back."

(Criminal enforcement on the other hand could use a jolt. See bottom of Page 1 for more info.)

Keep in mind the first four months of data comes from the tail end of President Trump's term when the dogs got called off. Don't be surprised to see a bigger spike in FY 2022.

Investigations, fines on rise

EPA concluded 114 civil judicial actions, the agency's highest number in four years. The settlement process with a facility begins once a consent decree is finalized.

Civil enforcement resulted in:

- the reduction, treatment or elimination of 285 million pounds of pollution
- proper treatment, minimization, or disposal of over 7.5 billion pounds of hazardous and non-hazardous waste
- commitments of over \$6 billion to return facilities to compliance, and
- \$1.05 billion in fines.

Some of the heaviest hitters in industry were nailed for years of ignoring air, water, waste and chemical safety rules. The bulk of settlements will go toward upgrading facilities in pollution controls at facilities owned and operated by Dow Chemicals (\$294 million) and Toyota (\$180 million).

Info: epa.gov/enforcement/enforcement-annual-results-fiscal-year-2021

Water facilities a prime target for cyber attacks

When hackers go after companies, it's not just employees and investors

who get hurt – people's health and the ecology may also be at risk.

Case in point: The feds believe publicly owned drinking water and wastewater plants are a prime target for cyber attacks.

A recent tech report found at least one in 10 water plants has critical security holes.

To counter the threat, EPA announced the *Industrial Control Systems Cybersecurity Initiative – Water and Wastewater Sector Action Plan* to help protect water systems from cyber attacks.

The plan, which will be rolled out over the next 100 days, focuses on strategies the water industry can use for early detection of threats and how to share data quickly.

Actions include creating a task force of water sector leaders, pilot projects to increase incident monitoring, better data sharing and technical support to water systems.

The plan was developed by EPA, the National Security Council, the Department of Homeland Security, and the Water Sector Coordinating Council and Water Government Coordinating Council.

(For related stories, search for "cyber attacks" at our website.)

Info: zdnet.com/article/white-house-epa-release-100-day-cybersecurity-plan-for-water-utility-operators

FIFRA pesticide reporting deadline is March 1

The March 1 deadline for pesticide manufacturers to report 2021 stocks is here.

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requires annual reporting of pesticides, and in most cases, active ingredients.

Info: epa.gov/compliance/pesticide-establishment-registration-and-reporting

REAL PROBLEMS/SOLUTIONS

■ TESTING FOR AIR TOXICS & PM? DON'T RELY ON 1 TEST

There's an understandable tendency at some facilities to choose a one-size-fits-all emissions sampling method.

If you're testing for more than one type of air toxics, you can spend a lot of hours taking samples and pulling data together.

But we've learned that relying on just one testing method can get you into trouble and skew your results – badly.

For example: We've stepped in and helped facilities that are required to test for particulate matter and hazardous air pollutants (aka air toxics).

These facilities often have one thing in common: They use EPA's Method 5, which determines PM emissions from stationary sources, for air toxics too.

Method 5 may not cover bases

The results for air toxics like mercury are often reliable ... until they aren't!

That's when we step in with a testing program that covers all the bases instead.

In most cases, that results in taking advantage of at least two or more air testing methodologies.

▼ 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.

“ I find the short and concise nature of the articles to be valuable. It allows for a quick evaluation of what is happening on the national stage.”

Sean Lieske
Environmental Services Manager
City of Aurora Water

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

CARBON CAPTURE

The Department of Energy (DOE) shelled out \$1.1 billion for carbon capture and sequestration (CCS) projects that bore little to no fruit, according to a federal watchdog report by the Government Accountability Office (GAO).

“DOE’s process for selecting coal projects and negotiating funding agreements increased the risks that DOE would fund projects unlikely to succeed,” GAO says.

In addition, “DOE fully committed to coal projects at their initial selection as opposed to allowing time for further review, as it did for selected industrial CCS projects.”

GAO noted nearly all of the CCS projects failed or were canceled. Coal and oil & gas CCS projects were funded through the Obama administration’s stimulus package.

Info: gao.gov/assets/gao-22-105111.pdf

LEAD PAINT

Make no mistake: Property owners and operators are responsible for containing lead dust and protecting occupants – namely children and youth – during renovations that include chipping and removing paint made before 1978.

EPA is withdrawing answers to two misleading Frequently Asked Questions on its website concerning property management companies responsibilities under the Toxic Substances Control Act and lead Renovation Repair and Painting

(RRP) rule.

“EPA will assess RRP compliance based on the broadly applicable language of the rule, whether [a] property management company uses its own employees or hires an outside firm to perform the renovation,” the agency clarified.

This enforcement clarification goes into effect on March 21. EPA recently lowered the acceptable dust levels used to determine if lead paint remediation needs to be done in older homes or facilities that care for children to:

- 10 micrograms per square foot ($\mu\text{g}/\text{ft}^2$) for floors (previously 40 $\mu\text{g}/\text{ft}^2$), and
- 100 $\mu\text{g}/\text{ft}^2$ for window sills (up from 250 $\mu\text{g}/\text{ft}^2$).

Info: epa.gov/system/files/documents/2022-01/oeca-22-000-1701.pdf

SULFUR NONATTAINMENT

The Detroit area is now classified nonattainment for sulfur dioxide (SO₂) by EPA because it didn’t meet a 2018 deadline.

EPA’s move comes after U.S. Steel declined to install pollution controls in 2017. Subsequently a state court shot down a rule by the Michigan Department of Environment, Great Lakes and Energy that would’ve reduced SO₂ emissions.

The area will now be subject to a federal implementation plan in the works. U.S. Steel will either shell out for air controls or eventually have to shut the plant down.

If U.S. Steel does comply, EPA will assess Clean Air Act fines that take into account the economic advantage the company earned by delaying needed emission controls.

Air pollution in the Detroit area has declined since it was designated nonattainment in 2013.

SO₂ emissions are down more than 70% since then at about 44 parts per billion (ppb). The National Ambient Air Quality Standard for SO₂, set in

2010, is 75 ppb.

Info: michigan.gov/egle

GAS CYLINDERS

There’s a nationwide shortage of metal cylinders for medical and industrial gases.

To ease the supply chain bottleneck, the Department of Transportation (DOT) will allow shipments of Division 2.2 nonflammable gases in cylinders that are less than a year overdue for periodic requalification.

Caveat: Cylinders must comply with all other requirements under DOT’s Hazardous Materials Regs.

DOT will extend enforcement discretion until May 16 with the possibility of another extension if cylinder supplies don’t increase.

The policy was initiated back in April 2020 at the height of the coronavirus pandemic.

Info: phmsa.dot.gov/news/phmsa-notice-enforcement-discretion-regarding-cylinders-exceeding-periodic-requalification

OFFSHORE DRILLING

Oil & gas drilling may be stymied on government-owned lands but offshore drilling is set to take off in the Gulf of Mexico.

The Biden administration allowed a lease sale auction for permits to drill within an 80 acre swath of the gulf’s seabed after a federal court order.

Previously the White House signaled it would stall a permit auction. Oil & gas companies sued to force a decision.

Climate change activists derided the decision as a “huge carbon bomb” which came days after United Nations climate talks in Scotland.

Info: For related stories, go to our website and search for “Biden climate.”