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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).

Change is in the air: Courts nixing permits at 11th hour

■ Headaches and delays in store for industry

Federal courts are flexing their muscles in environmental disputes – and it means huge headaches for industry by the looks of it.

For example: The Mountain Valley (MV) natural gas pipeline connecting Virginia and West Virginia is nearly 95% complete.

Now that permit's in danger and the project's future is in doubt after the 4th Circuit Appellate Court (a rung below the U.S. Supreme Court) invalidated MV's permit over climate change concerns.

2 endangered fish stall gas pipeline

Appellate judges ruled U.S. Fish and Wildlife Service underestimated the project's impacts on the endangered Roanoke logperch fish

and candy darter fish. "In total, the [feds' biological opinion] spends one sentence discussing the impacts of climate change," the court wrote.

Two weeks earlier, the same court vacated decisions by the U.S. Forest Service and the Bureau of Land Management that allowed the pipeline to cross through a 3.5-mile swath of Jefferson National Forest.

Those decisions were sent back to the agencies for review.

Is an appeal possible?

The company putting up the most money for the pipeline, Equitrans Midstream, says it will continue fighting to finish the pipeline after

(Please see Change ... on Page 2)

ENFORCEMENT

Maximum environmental penalties on the rise

■ HOW HIGH CAN FINES GO? A FEW THOUSAND MORE THAN LAST YEAR

Inflation is rising and so are air, water and waste fine amounts that EPA can assess.

The Federal Civil Penalties Inflation Adjustment Improvements Act of 2015 made inflationary adjustments for environmental penalties the new reality for compliance pros.

'What's the damage?'

EPA can now tack on a few extra thousand bucks for violations:

- Clean Air Act infractions went up

from \$102,638 to \$109,024 (all increases per day, per violation)

- Clean Water Act: \$56,460 to \$59,973
- Resource Conservation and Recovery Act: \$76,764 to \$81,540
- Safe Drinking Water Act: 59,017 to \$62,689
- Toxic Substances Control Act: \$41,056 to \$43,611
- Emergency Planning and Community Right-to-Know Act: \$59,017 to \$62,689, and
- Federal Insecticide, Fungicide, and Rodenticide Act: \$20,528 to \$21,805.

LANDFILLS

What's driving food waste diversion?

Diverting food waste from landfills is gaining more traction for strengthening communities and reducing greenhouse gas emissions.

Eighteen companies were recognized for their food waste efforts through EPA's Food Recovery Challenge. The 600-plus facilities in the program:

- prevented about 1.2 million tons of food from entering solid waste landfills or incinerators
- saved \$61.5 million in landfill-associated costs, and
- reduced warming methane gas emissions from landfills that contribute to climate change.

Better pallets, audits for the wins

Two keys to managing food supplies better and cutting down on waste during the 2020-21 global pandemic were:

- school waste audits, which helps to eliminate food items that aren't eaten, and
- custom pallet building to maintain flexibility for those picking up



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recovered food.

Award winners included food manufacturing plants, grocery stores, hospitals, colleges and restaurants.

There's still a lot of low-hanging fruit to pluck. Over a third of food

\$61.5 million saved in landfill-associated costs.

is never eaten, and food waste is the most common material landfilled and incinerated at roughly 22% to 25% of all municipal solid waste.

Info: "From Farm to Kitchen" report, epa.gov/land-research/farm-kitchen-environmental-impacts-us-food-waste

Change ...

(continued from Page 1)

already going over budget and falling behind deadlines. Total funding spent on the regional energy project exceeds \$6 billion.

The company and its partners may decide to appeal the case to SCOTUS for a reversal. The high court is already hearing appeals concerning greenhouse gas emission rules on power plants as well as the scope of Waters of the U.S. this spring.

Red tape and delays ahead

Looking down the road, we could see more circuit courts take a harder line on oil & gas, mining and transportation projects.

The upshot for industry: more permitting delays, more regulatory uncertainty and more red tape from rulemaking agencies.

Info: *Appalachian Voices v. U.S. Department of Interior*, U.S. Court of Appeals, 4th Circuit, No. 20-2159.

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.

■ RUNOFF DRAINS INTO DITCH: OK NOT TO HAVE PERMIT?

Buck Flanagan, the company environmental director, smiled as he surveyed a construction project at his company.

Glad to see the crew is cleaning up after itself after the reminder I gave them, Buck thought.

Buck's good spirits sank as he saw Bob Wiley, the state water inspector, come trudging up a hill towards Buck.

"Hi Bob, didn't know you were stopping out today," said Buck.

Complaint spurs inspection

"I'm afraid we received a complaint," Bob replied, "about a muddy discharge from your property during that storm last week.

"I took a look at our records," Bob continued. "We don't have a record of you applying for a stormwater permit for this job."

"Not to worry," said Buck. "We're exempt."

"How so?" Bob asked.

"Simple," Buck replied. "Our runoff drains into those ditches over there." Buck pointed to them.

"We don't have any direct discharges into waterways."

"I'd say that's wishful thinking on your part," said Bob. "Based on the evidence, your runoff is draining into a creek somewhere. We're going to have to cite your company for not obtaining stormwater permit coverage."

The company tried getting the fine waived.

Did it win?

■ *Make your decision, then please turn to Page 6 for the court's ruling.*

Where other companies are stumbling over compliance

For more fines, visit: www.EnvironmentalComplianceAlert.com/category/who-got-fined-why

Needed a hazwaste permit to clean tanks: \$39K fine

Company: American Distillation, Leland, North Carolina.

Business: Hazardous waste treatment, storage and disposal facility.

Penalty: \$39,500.

Reasons for penalty: The company operated as a large quantity hazwaste generator but didn't apply for a permit. It's been using isopropyl alcohol and acetone to clean tanks for several years. The company failed to make hazwaste determinations on spent isopropyl alcohol and acetone solvents, and file to become a handler of hazardous secondary materials.

Note: The facility provides distillation, dehydration, reaction, carbon treating and blending activity services. It handles products containing ethyl acetate, tert butyl alcohol, isopropyl alcohol, ethyl alcohol, miscellaneous alkanes, amines, esters and ketones.

Lead emissions waft into neighborhoods, schools

Company: Republic Steel, Canton, Ohio.

Business: Leaded steel manufacturing.

Penalty: Clean Air Act penalties not assessed or published by EPA yet.

Reasons for penalty: Based on data collected at nearby air monitors, the plant exceeded the national

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.

lead emissions standard, which is 0.15 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) averaged over a 3-month period. Monitors recorded monthly average lead concentrations of 0.62 $\mu\text{g}/\text{m}^3$ and 0.49 $\mu\text{g}/\text{m}^3$ last spring, with recordings of over 2 $\mu\text{g}/\text{m}^3$ on multiple days.

Note: The Republic Steel facility is located in an overburdened community with three schools within a mile of it. Infants and young children can suffer behavioral problems and learning deficits from lead exposure.

Big boys pay \$77M to end groundwater cleanup

Companies: Montrose Chemical, Bayer CropScience, TFCF America, Stauffer Management and JCI Jones Chemicals, all doing business in or near the Montrose Chemical Superfund and Del Amo Superfund sites in Los Angeles County, California.

Business: Pesticide and various chemical manufacturing.

Penalty: \$77.6 million settlement with the U.S. District Court for the Central District of California.

Reasons for penalty: From 1947 to 1982, Montrose operated the largest manufacturing plant for the pesticide DDT (dichloro diphenyl trichloroethane). It was sprayed widely throughout the U.S. to prevent mosquito growth and prevent the spread of malaria and typhus. DDT was canceled in the 1970s after multiple studies showed it caused cancer.

Note: This settlement under the Superfund law has been 30 years in the making.

Filled a wetland with no permit: Must undo damage

Company: Barber Valley Development, Boise, Idaho.

Business: Building contractor.

Penalty: \$7,500.

Reasons for penalty: Barber Valley illegally discharged sand, gravel and rocks into wetlands adjacent to Council Spring Creek, which flows to the Boise River. The company never submitted a permit application for flood control work to the Army Corps of Engineers as required by the Clean Water Act.

Note: Barber Valley agreed to:

- remove unauthorized fill material
- restore the site, and
- enhance important forested habitats for raptors, small mammals, deer, coyote, elk and the endangered yellow-billed cuckoo.

Workers dime out chemical safety gaffes

Company: Cliffside Helium Enrichment Unit, owned and operated by the U.S. Bureau of Land Management (BLM), Amarillo, Texas.

Business: Federal chemical producing plant that refines and sells helium products to private entities.

Penalty: \$1,023,987 (since it's owned by the feds, it won't pay a fine but must make improvements).

Reasons for penalty: BLM violated OSHA's process safety management standard by failing to:

- inspect equipment
- train workers on energy control programs
- include relief system designs in process safety information
- include consequences of deviations from process operating limits in its operating procedures, and
- establish written procedures to maintain ongoing integrity of operating procedures.

Note: OSHA investigated the facility after receiving multiple complaints about a lack of chemical and facility safety measures.

MATS

EPA reaffirms air toxics reg for utilities

The Mercury and Air Toxics Standards (MATS) for power plants is alive and well.

EPA is reaffirming the scientific, economic, and legal underpinnings of the 2012 MATS and reversing a Trump administration rule which weakened MATS legally.

Bottom line: The agency will vigorously fight industry lawsuits that seek to weaken or reverse MATS for at least the next three years.

No changes made to rule

EPA is leaving MATS emission limits intact and isn't expected to revise Maximum Achievable Control Technology requirements.

"Controlling these emissions [of mercury, acid gases] improves public health for all Americans by reducing fatal heart attacks, reducing cancer risks [and] avoiding neurodevelopmental delays in children," reports EPA.

ENVIRONMENTAL JUSTICE

And speaking of air toxics enforcement ...

■ ENVIRO JUSTICE CONCERNS MAKE EPA TAKE 2ND LOOK AT SETTLEMENT

If local leaders and citizens' groups don't think EPA is coming down hard enough on environmental violators, they'll be more likely to demand action from the agency.

And a recent decision by EPA shows the agency's sympathetic to environmental justice concerns.

Million-dollar fine not enough?

EPA recently extended the comment period on a Clean Air Act (CAA) emergency order and enforcement action against the New Indy paper mill in Catawba, South Carolina (search for "Air toxics emitters taking it on the chin" at our website).

Stakeholders requested more time

"These public health improvements are especially important for children and particularly vulnerable segments ... such as Indigenous communities,

Air toxics compliance on EPA agenda.

low-income communities and people of color who live near power plants or are affected by air pollution."

Prior to MATS, power plants were the largest source of mercury, hydrogen chloride and selenium, and one of the largest sources of arsenic, chromium, cobalt, nickel, hydrogen cyanide, beryllium and cadmium.

In 2015, the Supreme Court ruled EPA should've considered the costs – \$9.6 billion per year – of MATS before promulgating it.

to chime in on the settlement at a public hearing. The new comment deadline is March 11.

Back in the spring of 2021, New Indy was ordered to install hydrogen sulfide (H2S) monitors at its fence line and to keep emissions at or below permit limits.

The paper mill failed to come into compliance after a few months, so EPA fined the company \$1.3 million, and issued a rare CAA Section 303 order to make immediate pollution control improvements.

New Indy's settlement could be amended with tougher requirements on the paper mill if EPA is convinced public health is threatened. EPA could shut the plant down if New Indy doesn't comply.

Info: justice.gov/enrd/consent-decree/us-v-new-indy-catawba-llc

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.

■ STORMWATER CONTROLS DIDN'T MATCH THEIR PLAN

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

I recommend we fine the Acme Company \$40,000 for failing to implement a stormwater pollution prevention plan (SWPPP).

The company is covered by the multi-sector general permit for industrial activities. A key requirement is preparing and drafting a stormwater plan.

Acme did create a SWPPP. But there was clearly a disconnect between the plan and how they trained staff to put it into action.

When we inspected Acme following that major storm last month, we spotted problems that should've been addressed.

Plan filed away, collecting dust

We spotted a stream of muddy water flowing into storm drains. So I asked to check the SWPPP.

Their plan called for plugging the storm drains that were in outdoor work areas and installing berms to divert much of the runoff to a retention pond for treatment.

All good ideas. Problem was, the company hadn't completed any of these projects.

Untreated, muddy stormwater was running directly down the drains to the city's sewer system.

We discovered they had scheduled these projects to be done, but someone had "dropped the ball" at some point.

Acme is taking care of putting in those controls to keep this from being a recurring problem.

■ Dramatized for effect. Based on a settlement with a Southern waste handling facility.

ENFORCEMENT

\$8 million fine for 11-year-old oil spill

Facilities should try to take advantage of three proven spill prevention and minimization techniques to keep oil and hazardous materials out of the environment:

- the latest and greatest in leak detection and repair technology
- timely predictive and preventive maintenance of valves, piping and the like, and
- secondary containment where a spill would do the most damage or is most likely to occur.

Reason: The feds aren't taking it easy on spill sites.

In fact, they're imposing big fines on companies that already paid to clean up spills 10 years earlier.

Rare dolomite wetland damaged

The owner and operator of a pipeline agreed to pay \$1.5 million in Clean Water Act (CWA) civil penalties and an additional \$7.2 million in damages to resolve a spill of over 1,800 barrels of oil.

The 2010 spill entered a rare dolomite wetland near Lockport, Illinois, a critical habitat for the endangered species Hine's emerald

\$7.2 million to restore dragonfly wetland habitat.

dragonfly. The Army Corps of Engineers will use the \$7.2M to restore the wetlands.

Accident investigators found the spill resulted from a breach in a 12-inch buried pipeline.

The owner, West Shore Pipe Line of Lemont, Illinois, and the operator, Houston-based Buckeye Pipe Line, took responsibility for the cleanup at the time.

Info: [justice.gov/enrd/consent-decrees](https://www.justice.gov/enrd/consent-decrees)

CORONAVIRUS

3 tips to avoid FIFRA fines: Is your labeling correct?

- AVOID 'GOTCHA' FINES: FIFRA PUTS ONUS ON MANUFACTURER CLAIMS

Demand for anti-microbial products has soared since the start of the coronavirus pandemic. The rush to put products out has put companies at risk for fines under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

Any product that's marketed as a bacteria killer falls under FIFRA because germs and bacteria are considered "pests."

Double check claims are legit

Here are a few practices to follow so you don't run afoul of FIFRA, courtesy of environmental attorneys Beveridge & Diamond:

- Many textiles, fabrics and some finished clothing that incorporate pesticidal substances such as mosquito repellents or antifungal agents must be registered with EPA.
- Be careful not to mix up product claims such as "antimicrobial" and "antiviral." Product labels and marketing should only include EPA-approved descriptions.
- EPA excludes some Food and Drug Administration (FDA) products, like liquid chemical sterilants, from FIFRA jurisdiction. Just be careful: There's no blanket FIFRA exemption for FDA-regulated goods.

Info: [bdlaw.com/publications/fifra-compliance-five-tips-for-antimicrobial-apparel-manufacturers-and-distributors](https://www.bdlaw.com/publications/fifra-compliance-five-tips-for-antimicrobial-apparel-manufacturers-and-distributors)

TRENDS TO WATCH

■ ONLY 12 STATES YET TO CHANGE HAZWASTE REGS

Texas and Vermont are the latest states to adopt EPA's hazardous waste generator improvements (HWGI) rule.

Both states' environmental agencies adopted HWGI officially at the beginning of February.

All of the mandatory parts of HWGI have been adopted in the following 38 states: Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

HWGI makes facilities responsible for labeling containers in satellite accumulation areas, notifying agencies of active status or closures, and providing site maps for the benefit of emergency responders.

EPA billed the reg as a red tape eliminator for industry but some of the requirements have added extra work for facilities (*for a timeline of the rule, go to our website and search for "HWGI"*).

Info: [tinyurl.com/vermonthazwaste669](https://www.tinyurl.com/vermonthazwaste669) and [tinyurl.com/texashazwaste669](https://www.tinyurl.com/texashazwaste669)

■ REGULATED SITES IN ALOHA STATE, STAY ON YOUR TOES!

Industrial facilities in Hawaii are getting fined hard and often by EPA these days.

In recent weeks, Monsanto was fined \$12 million for using banned pesticides on corn crops.

And two facilities in Kapolei – a synthetic natural gas facility and an oil refinery – paid six-figure fines to resolve multiple chemical safety violations under the Clean Air Act.

SNAP

New ozone-safe substitutes for factories

Manufacturers can choose from a wide variety of substitute chemicals that don't contribute to ozone layer depletion.

Several alternatives were approved under the Significant New Alternatives Policy (SNAP) program for use in:

- refrigeration and air conditioning equipment in cold storage warehouses, ice skating rinks and industrial process A/C
- foam blowing
- aerosol products
- cleaning solvents, and
- adhesives, coatings and inks.

SNAP was established under Section 612 of the Clean Air Act to identify substitutes for ozone-depleting substances.

Info: 87 FR 3,037

Millions in pollution prevention grants on tap

Do you have a pollution prevention (P2) initiative that needs funding and could potentially be replicated by other businesses?

Take a look at the \$23 million

worth of P2 grants recently announced by EPA.

Communities hit hardest by pollution will be given priority. EPA says 40% of all grant money will go to programs benefiting environmental justice neighborhoods.

Don't delay. The application deadline is April 11.

Info: epa.gov/p2

How far should reporting reg for PFAS go?

There's still time to chime in on Toxics Substances Control Act (TSCA) recordkeeping and reporting requirements for per- and polyfluoroalkyl substances (PFAS).

EPA's seeking representatives for a small business advocacy review panel to help craft a TSCA rule.

Manufacturers and importers of any PFAS since January 1, 2011 must report quantities under TSCA section 8(a)(7).

You can nominate yourself or a colleague for the panel.

Info: epa.gov/reg-flex

WHERE TO GET HELP

■ WHERE ARE WATER UPGRADE FUNDS LURKING? LOOK HERE

Publicly owned treatment works can tap a coalition of 15 federal agencies for help with wastewater and drinking water projects.

The Urban Waters Federal Partnership will promote coordination of seed funding opportunities and data sharing among EPA and other agencies.

Info: urbanwaterslearningnetwork.org

■ ENERGY STAR UPGRADES TO HELP FACILITY MANAGERS

City and state leaders looking to slash greenhouse gas emissions from commercial buildings can receive assistance from Energy Star.

New initiatives include:

- guidance for creating building performance policies
- improvements to the Portfolio Manager (PM) app for estimating emissions under different performance standards, and
- greater transparency in PM so building managers can see how similar buildings cut emissions.

Info: energystar.gov/buildings/tools-and-resources/portfolio-manager-0

SHARPEN YOUR JUDGMENT – THE DECISION

(See case on Page 2)

No. The company lost its challenge.

It couldn't get the fine reduced or waived and had to pay to obtain a stormwater permit.

The company argued that runoff from the construction project should be exempt from stormwater permitting because runoff didn't drain directly into a navigable waterway.

The site's runoff took the form of a nonpoint source discharge into manmade ditches.

The runoff later indirectly discharged into a creek that fed a navigable river miles away.

Since this wasn't a direct, point source discharge, no stormwater permit was required, the company claimed.

But the state appeals court rejected that argument.

The court cited the U.S. Supreme Court's *Rapanos* decision that stormwater permits are required whenever a discharge can ultimately reach a navigable waterway.

■ ANALYSIS: THERE ARE FEW PERMIT EXEMPTIONS IF RUNOFF CAN REACH NAVIGABLE WATERWAYS

This case emphasizes that the Clean Water Act's stormwater provisions extend to any discharge that eventually drains into a navigable waterway.

The reach of the law isn't limited to cases where facilities discharge directly into a navigable waterway.

To avoid stormwater permitting requirements, you have to show any manmade ditches won't drain into a pond, stream, etc., that leads to a navigable waterway.

Cite: *Garland v. Central Valley Regional Water Control Board*. Dramatized for effect.

TOXICS RELEASE INVENTORY

Regional sting eyes late TRI reports

New England chemical and waste handling facilities were the target of an EPA sting for Toxics Release Inventory (TRI) substance reporting.

CertainTeed in Norwood, Massachusetts; Manchester Street of Providence, Rhode Island; and Clean Harbors of Connecticut in Bristol missed TRI reporting obligations for two or more years.

Chemicals of concern were zinc compounds, chromium compounds, nitrate compounds and ammonia the companies manufactured or used from 2017 to 2019.

July 1 deadline approaching fast

Under the Emergency Planning and Community Right-to-Know Act Section 313, companies that use certain listed chemicals must report their releases each year by July 1 to the TRI-Me online portal.

All three companies are now up to date regarding TRI compliance.

However – they can't escape paying fines. CertainTeed got hit the hardest, taking a \$104,572 penalty.

Info: epa.gov/toxics-release-inventory-tri-program/reporting-tri-facilities

Supply-chain flexibility extended for pesticides

Manufacturers of certain conventional and biopesticide products that have been dealing with supply chain headaches gained some relief from EPA.

Facilities can continue substituting a combination of pre-approved alternate inert ingredients for inert ingredients derived from propylene oxide feedstocks.

Substitutions allowed thru 2022

Approved alternatives include glycerin, diethylene glycol, ethylene

glycol and 1,3-propanediol.

These substitutes can be added to a product formulation or a brand name mixture so long as registrants certify the inert ingredients maintain the product's acute toxicity category and physical/chemical characteristics such that no label modifications are required.

The ingredient flexibility extension runs through December 31, 2022.

Info: epa.gov/pesticides/epa-extends-flexibilities-minimize-supply-chain-disruptions-facing-pesticide-industry

Judge puts offshore oil & gas drilling on ice

A federal judge canceled offshore oil & gas drilling leases in the Gulf of Mexico weeks after the Biden administration signed off on them.

The companies now shut out of drilling are appealing the decision by the Washington DC District Court, and stand a good chance of having the decision overturned, but it could take a few months.

Will courts stymie fuel production?

The court wrote the sale of leases was "arbitrary and capricious" and that "a more complete consideration of total greenhouse gas emissions would have significantly informed the decision [because of] the importance of climate change."

The White House allowed the December lease sale auction for permits to drill within an 80 acre swath of the gulf's seabed after a federal court order in industry's favor from last spring.

Rising gasoline and crude oil prices prompted an opening of the strategic petroleum reserve by the White House in December.

REAL PROBLEMS/SOLUTIONS

■ PUTTING SUSTAINABILITY IN TERMS PEOPLE CARE ABOUT

Our employees and customers rank sustainability as one of their top priorities.

So when we planned a series of efficiency upgrades at our facilities, we made sure to share the environmental benefits with all of our shareholders.

Less energy, better living

Our upgrades included harnessing natural light in place of harsh fluorescent lighting wherever possible.

We replaced single-paned windows with more efficient ones in multiple buildings. We also switched to softer interior lighting that uses less electricity.

Part of the reason for that is we have fewer lamps and ballasts drawing current.

Our forecasts show we'll save \$375,000 a year in energy and operations costs.

We've made it known that's equivalent to 1.9 million kilowatt hours of electricity and 9,600 BTUs of steam.

Our websites and promotional materials include the results from our sustainability projects.

▼ 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.

"We have a busy daily schedule. ECA allows me to scan issues quickly and then move on. All of the sections are useful."

Steve Bruton
Director of Engineering
Mitchell Gold

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.

ENVIRO DISCLOSURES

The Securities and Exchange Commission (SEC) will be putting some very sharp teeth into environmental and social corporate governance (ESG) policies.

Publicly traded companies should brace themselves for:

- being forced to make ESG disclosures to the SEC
- revised ESG guidelines on preplanned stock sales and corporate share buybacks, and
- an increase in enforcement for at least the next three years.

According to attorneys Skadden, Arps, Slate, Meagher & Flom, undisclosed executive perks may result in SEC fines.

Info: [skadden.com/insights](https://www.skadden.com/insights), 1/19/22.

CLEAN WATER ACT

Heads up: EPA may be forced into action when nonprofit groups sue for a lack of clean water protections at the state level.

Flashback: The Northwest Environmental Advocates (NWEA) didn't think the Washington Department of Ecology was doing enough to preserve endangered aquatic life.

Nine years ago, NWEA petitioned EPA to force Washington state to enact tougher water quality standards. But the feds sat on the request for the next four years.

Result: The U.S. District Court for the Western District of Washington ruled EPA can't act as a "mere bystander" and choose not to take action or deny a petition.

EPA argued Washington's water quality standards were sufficient, but the court held EPA acted in an "arbitrary and capricious" manner that isn't reasonable under the Clean Water Act.

Info: [tinyurl.com/washingtoncleanwater669](https://www.tinyurl.com/washingtoncleanwater669)

EMERGING CONTAMINANTS

The emerging contaminants perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) will soon be listed as hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act, aka the Superfund law.

A proposed rule should be out by April after the White House budget office approves the decision.

Property owners and operators where PFOA and PFOS have contaminated groundwater and/or soil will have to monitor, report and remediate sites. Some areas could be designated Superfund cleanup sites, which often requires millions of dollars to remediate.

HAZARD COMMUNICATION

Employees need to know about chemicals used in the workplace or it can come back to haunt them and their employers.

For example, OSHA recently cited a Connecticut aircraft parts manufacturer accused of failing to provide adequate protection against the solvents hexavalent chromium and cadmium, both of which can cause cancer.

Exposure to the toxic substances occurred during electroplating, mixing and preparing, and painting and paint removal processes on small aircraft parts.

OSHA found workers weren't trained on hazards posed by these chemicals.

OSHA ENFORCEMENT

In other OSHA news: The safety agency is raising its fine amounts for 2022 based on cost-of-living adjustments.

The maximum monetary penalty is going up \$849 per serious violation and \$8,495 per willful or repeat violation.

From 2021 to 2022, the maximum penalty for serious violations increased from \$13,653 to \$14,502 per violation (pv) and the maximum fine for willful or repeat violations rose from \$136,532 to \$145,027 pv.

(See bottom of Page 1 for EPA's changes to penalties.)

EFFLUENT

Facilities in the Pacific Northwest aren't catching much slack for water pollution infractions.

EPA Region 10, which covers Alaska, Idaho, Oregon and Washington, announced 15 water enforcement actions carried out during the fourth quarter.

The cases covered violations of:

- stormwater management requirements at construction sites
- oil spill prevention and control
- wetlands protection, and
- pollution discharge limits at wastewater treatment and seafood processing plants.

None of the fines exceeded \$25,000. The largest was assessed to the City of Wapato, WA, for allowing 3,000 effluent exceedances from the wastewater plant containing high amounts of copper and zinc, and not submitting discharge monitoring reports in a timely manner.