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## NEW TOXIC SUBSTANCES CONTROL ACT (TSCA) CHEMICAL RISK EVALUATION PROCEDURES

The Environmental Protection Agency (EPA) has published a rule that establishes a process to conducting risk evaluations for chemical substances. The risk evaluations are completed on chemical substances to determine if the substance presents an unreasonable risk of injury to human health or to the environment. The published rule identifies the steps of the risk evaluation process. The steps include the following:

- Scope
- Hazard assessment
- Exposure assessment
- Risk characterization
- Risk determination

The risk evaluation will be the second step, after prioritization, in the new process. The EPA will begin using the new process for the high-priority substances, which include substances such as asbestos and trichloroethene (TCE). Upon completion of the risk evaluation, the EPA will determine if unreasonable risk is present. If unreasonable risk is determined the EPA will impose restrictions to eliminate the unreasonable risk. The EPA is required to meet the scientific standards in TSCA for best available science, utilizing a weight of scientific evidence approach when conducting risk evaluations. These standards will be documented and available for public comment throughout the risk evaluation process.

The final rule is scheduled to become effective on September 18, 2017. By completing risk evaluations, the EPA will continue to have a better understanding of what effects toxic substances have on human health and on the environment. The results of the risk evaluations will lead to better risk management practices, which will continue to reduce the exposure to toxic substances.

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## WATERS OF THE UNITED STATES EXPANDED DEFINITION

The U.S. EPA and Army Corps of Engineers finalized a rule in August of 2015 that significantly expanded the definition of “waters of the United States (WOTUS)” under the Clean Water Act (CWA) of 1972. The concerns of farmers, ranchers, developers, and other industry were virtually ignored during the enactment of this rule, and many feel that the EPA vastly expanded the scope of its authority beyond limits that had been previously approved by Congress and the Supreme Court.

The Rule eliminated any limitations that the term “navigable” previously imposed on the jurisdiction of EPA and the Corps, allowing them to regulate any or all waters within a state, no matter how small and regardless of whether they were connected to federal interests. Opponents of the rule argued that it provided none of the certainty and clarity that it originally promised, and that it provided the unlimited authority to regulate low-lying ditches that collect water, ephemeral drainage areas, isolated ponds, and isolated wetlands. Litigation challenging the rule began in several states across the U.S.

The Government Accountability Office (GAO) issued a ruling that EPA violated federal law by engaging in “covert propaganda” through its use of social media to urge and gain public support for the Obama administration rule that intended to better protect the nations waters. Federal law prohibits government agencies from engaging in propaganda and lobbying. The EPA claimed that it did not encourage the public to contact any legislators regarding the rule. Although the GAO’s ruling did not lead to any civil or criminal prosecution, it did confirm that the EPA used illegal tactics to manufacture ill-informed support for the rule. There were a total of thirty one lawsuits filed against the original WOTUS rule.

President Trump and EPA Administrator Pruitt announced, in February 2017, their intent to withdraw the 2015 rule and replace it with a “lawful rule.” Pruitt, as Oklahoma

Attorney General, had previously sued EPA over the rule claiming it “unlawfully broadens” the definition of WOTUS and imposes “numerous and costly” obligations on landowners. Trump signed the executive order instructing the agencies to change the interpretation of a 2006 Supreme Court Decision regarding what falls under federal jurisdiction under the Clean Water Act. The executive order indicated that federal officials should rely on the dissenting opinion of the late Justice Antonin Scalia, who argued that the law should only apply to “navigable waters.” Although, no court has ever ruled that this test is the single threshold for triggering protection under the Clean Water Act, Trump directed the EPA to begin the legal process for rolling back the rule, calling it “one of the worst examples of federal regulation.”

Mr. Pruitt released a proposed rule in June of 2017 that would rescind the original Obama Administration rule. Publication of that plan was the first step in a lengthy legal process that must be followed to eventually enact a new regulation. The administration will also be required to provide legal justification and reasoning for scaling back the rule, one issue that special interest environmental groups are sure to oppose and subsequently challenge. The proposed rule was published in the Federal Register on July 27, 2017 and is open for public comment until August 28, 2017.

The final version of WOTUS, released in 2015, came packaged with an economic analysis and a technical report offering scientific justification for what streams and other water features were included or

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## WATERS OF THE UNITED STATES EXPANDED DEFINITION

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excluded from the regulation. The proposed rule issued by the Trump Administration does not dispute, or even reference, the Obama technical report (E&E News, 7-28-17). Instead, the proposed rule makes policy arguments for repealing the original 2015 rule. The proposal cites FCC vs. Fox and relies on this case heavily to avoid a scientific debate about the rule's merits. In FCC vs. Fox, the majority ruled that an agency "need not demonstrate to a court's satisfaction that the reasons for the new policy are better than the reasons for the old one" (Science, 7-28-17). The proposed rule does not dispute the reasoning under which waters are considered protected under the CWA.

The Trump proposal makes two major policy arguments. The first focuses on the 6th U.S. Circuit Court of Appeals' stay on WOTUS. The Supreme Court is currently considering whether challenges to the rule belong in circuit or district courts and that stay could dissolve if the high court rules in favor of district courts. The Trump EPA proposal also argues that rescinding WOTUS and reverting back to the 1986 regulation would maintain the status quo and avoid "inconsistencies, uncertainty, and confusion" (Science, 7-28-17). The Trump proposal also argues WOTUS didn't adequately consider Section 101(b) of the Clean Water Act, which describes the role that states play in regulating water quality. It faults WOTUS for failing to provide a discussion in the rule preamble of the meaning and importance of Section 101(b) in setting bounds of jurisdiction. The proposed repeal

also cites a section of the 2015 WOTUS regulations which states that determining which waterways are covered under federal jurisdiction "is not a purely scientific determination."

Many legal pundits believe that the Trump administration is correct in that they do not have to show that the old rule was scientifically wrong or that something has changed. Many believe that the argument that rescinding WOTUS would revert back to the status quo because the regulation is stayed could be considered a reasonable argument. Others believe that one could easily argue that there is no reason to repeal the regulation because of the stay. Many are also troubled that the Trump EPA proposed rule does not deal with any content of the 2015 regulation.

*We at RT believe that the 2015 rule was an overreach by the Obama Administration, and imposing of this rule will lead to an exorbitant amount of uncertainty and confusion over which water bodies are regulated. We believe it should be rescinded, however we are unsure as to whether the Trump Administration's reliance solely on policy arguments will get us to the point where we should be with the regulations. The rule deals with scientific issues which leads us to believe that some of the argument will revert back to the science.*

*The public is invited to submit comments identified by Docket ID No. EPA-HQ-OW-2017-0203, at <http://www.regulations.gov>.*

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## EPA WATER QUALITY DECISIONS UNDERScore GROWING "TRUST" OF STATES

Opinions are mixed after recent EPA decisions reveal increasing trust in an individual states' ability to implement policies and satisfy federal requirements, particularly with respect to water quality. In an attempt to avoid case-by-case reviews, so long as the EPA believes a state's environmental program is "generally sound", state environmental agencies are able to make their own decisions when it comes to permitting and enforcement actions. Although many support this shift to more trust in state environmental agencies, like those in EPA Region 6, many environmentalists in states like California, Ohio, New York, and Montana are dissatisfied with this new "hands off" approach and the sudden and rapid EPA approval of long-stalled

impaired waters lists and water quality standards and are pursuing legal action. It is unclear what the outcome of these legal actions will be and whether this new deference to state decisions on water quality will remain the new approach.

*We at RT will continue to meet our client's needs by ensuring that the applicable state and federal standards for water quality are met. We are optimistic that this shift to more limited federal oversight will increase efficiency and enhance our ability to serve our clients, while still prioritizing human health and the environment.*

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## GET TO KNOW . . . RT'S CHRIS BLOSENSKI

Chris Blosenski graduated from the California University of Pennsylvania in 2011, and got his Bachelor of Science Degree in Environmental Science.



He works in RT's Western PA office located in Washington. Chris works very hard on RT projects involving everything from asbestos and mold to soil and groundwater. He is a PA licensed building inspector and holds the Army Corps of Engineer's wetland certification. Chris handles wetland delineation work and mitigation project inspections throughout RT's service area, with his main focus being in Pennsylvania and New Jersey.

Chris joined RT in 2014 and works directly under RT Vice President, Justin Lauterbach. Prior to joining RT, Chris worked for three years at a consulting firm that specialized in completing Environmental Risk Assessments at Brownfield Sites. Since he has joined RT, Chris has been extensively involved in several Brownfield Projects throughout the Northeastern U.S.

He is very experienced in completing Environmental Site Assessments, Phase II and Site Investigation Reports, Remedial Investigation Reports, and Remedial Action Reports. Chris is an Assistant Project Manager and oversees completion of fieldwork activities for several of RT's projects with ongoing monitoring requirements. His skills include data management, groundwater modeling, public notification

and public health assessments, the statistical evaluation of analytical data.

Some of his key project experience includes:

- Completion of Phase I Environmental Site Assessments including large portfolios of properties for large multi-national retail companies. He has experience with large residential, commercial, industrial, and agricultural properties throughout the northeast.

- Completion of Phase II Environmental Site Assessments and associated fieldwork oversight involving the installation of soil borings, test pits, monitoring wells, underground storage tank removals, and large excavations. He is extremely familiar with field sampling procedures in PA and NJ.

- Providing environmental oversight services for sites undergoing redevelopment. This includes characterization of soil and groundwater and evaluation of potential vapor intrusion issues. He has experience with subsurface materials management including management of historic fill, impacted soils, and clean fill.

- Managed a large asbestos abatement project involving removal of 17,000 square feet of asbestos floor tile for a large grocery store chain in Western PA. Chris provided day to day oversight for the 90 day project, ensured all regulations were followed, and managed the project in a manner that allowed the store to remain open during this time. abatement in a large grocery store chain. He was responsible for setting schedules with the Construction Project Manager for the grocery store and the General Contractor in order to efficiently abate the store in a timely matter.

- Completion of fate and transport mod-

eling and receptor-specific exposure pathway evaluations for brownfield sites. Chris handles several brownfield sites with impacted soil and groundwater.

- Completion of brownfield projects in which site-specific soil and groundwater standards have been established. He is experienced in using various models, including the Johnson and Ettinger (J&E) model, in which risk assessment information is utilized to back calculate from a standard risk and hazard index to determine the acceptable soil concentrations for potential and specific receptors at a site. Chris has a strong understanding of the assumptions and limitations of site-specific modeling.

In addition to these assignments, Chris has worked with Gary Brown to evaluate coal ash sites in a number of southeast states, including the large historic coal ash site failure at the TVA power plants near Knoxville Tennessee. Mr. Brown acted as an expert on behalf of plaintiff properties which were impacted by the facility failure, and Chris assisted Mr. Brown in research and report writing on the project.

Chris is the type of employee who can handle projects from start to finish. He is a trusted scientist out in the field and is also skilled at report preparation and completion of project management duties. Chris is originally from Lititz, PA and currently lives in Washington, PA with his fiancé. They enjoy spending time outdoors with their new puppy. Chris is an avid runner and participates in marathons across the nation.

Chris can be reached at 724-206-0348 x300 or on his cell at 724-674-9089, or by email at [cblosenski@rtenv.com](mailto:cblosenski@rtenv.com).

## EPA FACES UNCERTAIN PROSPECTS IN ANY APPEAL OF METHANE NSPS STAY RULING

The EPA is currently looking to appeal a July 3, 2017 ruling to vacate a 90 day stay of methane standards created during the Obama Administration for new oil and gas operations. For the EPA, the best chance at winning an appeal of this ruling is hanging on the opinion of Judge Janice Rodgers Brown that the court who made the ruling may not have had the authority to do so in the first place. If an appeal were to be successful, it would indicate to environmentalists that they would be able to challenge

other rulings under the Trump Administration in which regulations were made less strict.

*We will keep you posted on further developments on this issue in the **RT Review**.*

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## RT STAFF AND PROJECT NEWS

Christian Alarie has joined RT as a project manager, working out of RT's King of Prussia office. He is a graduate of Rochester Institute of Technology and Rhode Island College. He is completing a number of Phase I Environmental Site Assessment projects, and is working a North Jersey project involving impacted stormwater at an LSRP site.

Ben Bailey is working on a significant number of field assignments, including work at a site in Philadelphia where there were former lead operation, and upgrading of a cap is under consideration.

Chris Ward is working on a series of LSRP projects, including two in North Jersey at industrial facilities, having to complete Preliminary Assessments under the Industrial Site Recovery Act.

Walter Hungarter, P.E. is working on a Philadelphia project

which is planned to go through the Act 2 Land Recycling Program, and expand operations for construction materials recycling and beneficial use.

James Sieracki is working on a Central Pennsylvania dam modification project, as well as working on site plans for expansions of beneficial use facilities, one near York and one near Harrisburg.

Late summer is shaping up to be very busy at RT, and we anticipate the market to pick up further after Labor Day and into the fall.

As always, RT appreciates the opportunity to be of further service to our clients.

- Gary R. Brown, P.E.  
President

## TECHNOLOGY UPDATES

### OHIO EPA UPDATES CHAPTER 6 OF ITS TECHNICAL GUIDANCE MANUAL FOR HYDROGEOLOGIC INVESTIGATIONS AND GROUNDWATER MONITORING

The Ohio EPA is updating Chapter 6 of Technical Guidance Manual for Hydrogeologic Investigations and groundwater monitoring. Gary Brown president of RT, a Certified Professional in Ohio, is very impressed that Ohio is taking the lead in moving all its technical guidance documents forward at a more rapid pace.

For more information, go to:

<http://www.epa.ohio.gov/ddagw/DrinkingandGroundWaters.aspx#116689773-groundwater-support-technical-guidance-manual>  
[http://epa.ohio.gov/ddagw/gw\\_support/tabid/6071/LiveTabId/126911/Default.aspx#126937182-chapters](http://epa.ohio.gov/ddagw/gw_support/tabid/6071/LiveTabId/126911/Default.aspx#126937182-chapters)

Please contact 614-644-2752 for any questions or concerns.

You can check your subscription status by logging into Ohio EPA's Customer Support Center and reviewing your "Profile" information. You may add additional information to

### TECHNOLOGY UPDATES

- Ohio EPA Updates Chapter 6 of Technical Guidance Manual, pg. 4

your profile (company name, phone number, etc.) and change your subscription status (subscribe to additional groups or unsubscribe). Or email [kevin.shoemaker@epa.ohio.gov](mailto:kevin.shoemaker@epa.ohio.gov) to unsubscribe.

## ENVIRONMENTAL BILL OF RIGHTS INTRODUCED FOR NEW YORK STATE

The concept of constitutional environmental rights has gained traction in the New York State Legislature. In their Earth Day package, Assembly member Steven Englebright (4th AD) and Senator David Carlucci (38th SD) proposed legislation that would create a constitutional right to "clean air and water and a healthful environment" in New York State. The New York Assembly passed the proposed legislation (A6279) with a vote of 106-23. Now the legislation (S5287) moves to the State Senate. If the legislation passes this year, it will have to pass a second vote in the next legislative session before it can be put before the New York voters in 2019.

The Delaware Riverkeeper Network is working with Environmental Advocates of New York (EANY) and other environmen-

tal organizations to promote environmental rights in New York State. The Delaware Riverkeeper Network stands on the firm belief that everyone deserves the right to pure water, clean air, and a healthy environment at the highest level of protection. Learn more at [www.forthegenerations.org](http://www.forthegenerations.org).

### Background reading on environmental rights:

Since 1971, the Pennsylvania Constitution has included the promise of pure water, clean air, and a healthy environment, but the people of Pennsylvania had to wait until 2013 to achieve the legal framework and opportunity to defend these constitutional rights. In December 2013, the Pennsylvania Supreme Court responding to legal arguments championed before the court by the Delaware

Riverkeeper Network--rendered a decision in Robinson Township, Delaware Riverkeeper Network, et al. v. Commonwealth that affirmed that "pure water, clean air and a healthy environment" was more than a pure statement of policy, it was a substantive legal right.

Since this victory, the Delaware Riverkeeper Network has worked to further this important legal precedent in Pennsylvania as well as to advocate for this same high level of legal protection for the other states in the Delaware River Watershed.

*(River Rapids – Summer 2017)*





## FEDERAL REGULATORY UPDATES

### EPA DELAYS IMPLEMENTATION OF CERTIFICATION PESTICIDES APPLICATION RULE BY ONE YEAR

In May, EPA announced a one-year delay in the implementation of the Certification Pesticides Application Rule. The Rule would have been effective on March 6th. The Rule establishes a minimum age of 18 for pesticide applicators and requires that applicators be able to read and write. Applicator safety training was also to be increased to yearly.

*(Environmental Resource Center – 5/15/2017)*

### NEW SOURCE PERFORMANCE STANDARDS FOR LANDFILL METHANE ARE DELAYED

In late May, EPA issued a 90-day administrative stay for New Source Performance Standards and Emission Guidelines for Municipal Solid Waste Landfills. The Standards and Emission Guidelines were put forth in August 2016. The Rules would require certain landfills to measure and capture methane. EPA expects to prepare a proposed rule as part of the reconsideration process which will go public comment.

### EPA ISSUES DIRECT FINAL RULE – ALL APPROPRIATE INQUIRY

EPA has taken direct final action to amend the standards and practices for All Appropriate Inquiries so that the standard practice recently revised by ASTM International is appropriately tied to the All Appropriate Inquiries Rule. Specifically, there is now reference to ASTM International's E2247-16 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forest Land or Rural Property") and allow its use to satisfy the

statutory requirements for conduction All Appropriate Inquiries under the Comprehensive Environmental Response, Compensation and Liability Act. This Rule is effective on September 18, 2017.

### SUPERFUND TASK FORCE RECOMMENDATIONS

EPA Administrator Pruitt commissioned a task force to provide recommendations on how to speed up the remediation of the Nation's 1,336 sites currently on the National Priorities List (NPL). The task force had 30 days to provide recommendations focused on five main goals: expedite the cleanup process, boost incentives of involved parties, encourage private investment, promote community revitalization, and bring more partners and stakeholders to the table. The Task Force report provides 42 recommendations that can be implemented without changing existing laws, and serves as a starting point to launch such efforts.

Highlights of the 26-page report include: Creation of an "Administrator's Top Ten List" that will designate those sites needing the most critical attention, including those at which human exposure to contamination is not under control. The Administrator will receive monthly progress reports on these sites until they are cleaned up and removed from the NPL. Financial incentives for Potential Responsible Parties (PRPs) would include reducing oversight costs where the PRP agrees to "provide timely, quality work"; reimbursements to PRPs that complete remediation ahead of schedule; and distributing money from special accounts for sites with high redevelopment potential.

The report goes on to identify that one of the largest barriers to private investment is the liability that third parties can potentially face when remediating, buying, selling

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- AAI Rule Update Pg. 5
- NSPS – Landfill Methane Pg. 5

and/or redeveloping an NPL site. The Task Force recommends exploring such options as Environmental Liability Transfer agreements. While the industry uses these types of agreements, they do not legally bar the EPA from going after the PRP at any time. To this the report states that when sites have such arrangements, the EPA "needs to consider mitigating its retained rights".

Further recommendations include providing training on the basics of Superfund cleanup processes, specifically to the local governments where the NPL sites are located. This will aid municipal planners in developing alternatives in their community land use planning, so that these uses will be considered during the Remedial Investigation stage, and implemented in the Remedial Action stages. Finally, the Task Force recognizes that all stakeholders in process need to be identified so that the EPA can engage in "robust" communications that will lend itself to strong partnerships, including government entities, local organizations, contractors, corporations, and financial institutions.

*The full United States Environmental Protection Agency's Superfund Task Force Recommendations Report can be downloaded at:*

*<https://www.epa.gov/superfund/superfund-task-force-recommendations>*

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## PROPOSED CHANGES TO OFF-SITE WASTE AND RECOVERY OPERATIONS

EPA recently proposed amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Off-Site Waste and Recovery Operations (OSWRO), that operate any of the following: hazardous waste treatment, treatment storage and disposal facilities (TSDF); Resource Conservation and Recovery Act (RCRA) exempt hazardous wastewater treatment facilities; non-hazardous wastewater treatment facilities other than publicly-owned treatment works; used solvent recovery plants; RCRA exempt hazardous waste recycling operations; and used oil refineries.

The proposed amendments address an issue related to monitoring pressure relief devices (PRDs) on containers. This issue was raised in a petition for reconsideration of the amendments to the OSWRO NESHAP finalized in 2015 based on the residual risk and

technology review (RTR).

Among other things, the 2015 amendments established additional monitoring requirements for all PRDs, including PRDs on containers. For PRDs on containers, these monitoring requirements were in addition to the inspection and monitoring requirements for containers and their closure devices, which include PRDs that were already required by the OSWRO NESHAP. This proposed action would remove the additional monitoring requirements for PRDs on containers that resulted from the 2015 amendments because EPA determined that they are not necessary.

According to EPA, this action, if finalized as proposed, would not substantially change the level of environmental protection provided under the OSWRO NESHAP.

*(Environmental Resource Center – 8-14-17)*

## PA UPDATES

### PROPOSED INDUSTRIAL CLEANING SOLVENT RULEMAKING BY PA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Users of industrial cleaning solvents are the subject of PA Department of Environmental Protection (DEP) rulemaking recently issued by the Department. Based on the Department's evaluation, as many as 576 facility owners and operators statewide may be subject to this rule making; however, key provisions of the proposed rule could reduce that number significantly. The proposed rule would require reasonably available control technology (RACT) and RACT emission limitations from existing stationary sources of volatile organic compounds (VOCs) from industrial cleaning solvents not regulated elsewhere in Chapter 129, 130. DEP estimates that VOC reductions from affected facilities could be as much as 12,499 tons per year.

The requirements apply to an owner/operator facility where industrial cleaning

solvents are used or applied in a cleaning activity to remove a contaminant (i.e. adhesive, ink, paint, dirt, soil, oil, grease, etc.) with emissions greater than or equal to 2.7 tons of VOC emissions per 12-month rolling period. The rule defines "compliant solvents" - industrial cleaning solvents with VOC content less than or equal to 0.42 lbs-VOC/gallon as applied, or with a VOC composite vapor pressure less than or equal to 8mm Hg at (68oF) as applied. The Department indicated that most industrial cleaning solvents (Stoddard solvent, mineral spirits, etc.) provided by suppliers have vapor pressures well below the 8mm Hg compliance limit. As such, the number of affected facilities is expected to be significantly reduced.

The rule indicates that owners and operators of affected facilities would be required to maintain records sufficient to demonstrate compliance with the applicable requirements (VOC content and vapor pressure) and emissions below the threshold of 2.7 tons of

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VOC emissions per 12-month rolling period. Maintaining this documentation of these records onsite will be essential for answer questions during potential future DEP inspections.

*The Department was accepting comments on the proposed rulemaking through August 21, 2017. As the Department evaluates comments received, we will continue to monitor the progress of this recently proposed rule. For questions related to the proposed rule and to see if you may be affected, contact Walter H. Hungarter, III at RT's King of Prussia Office [whungarter@rtenv.com](mailto:whungarter@rtenv.com)*

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## PADEP UPDATES

Wolf Administration Announces Successful First Year for Expanded Agricultural Inspections in Chesapeake Bay Watershed  
<http://www.ahs.dep.pa.gov/NewsRoomPublic/articleviewer.aspx?id=21272&typeid=1>

DEP Chronicles Story of Susquehanna River Stresses and Cites Successes on New Interactive Multimedia Website  
<http://www.ahs.dep.pa.gov/NewsRoomPublic/articleviewer.aspx?id=21262&typeid=1>

Wolf Administration Announces Project to Reclaim 40 Acres, Restore Designated High-Quality Coldwater Fishery in Sproul State Forest  
<http://www.ahs.dep.pa.gov/NewsRoomPublic/articleviewer.aspx?id=21257&typeid=1>

### PRUITT ENDORSES SWEEPING SUPERFUND OVERHAUL USING CLEANUP INCENTIVES USING CLEANUP INCENTIVES

Scott Pruitt has authorized 42 recommendations in an effort to reform the Superfund program, all of which are to be initiated within 12 months. The recommendations do not include any legislation for implementing such changes, although it is likely some rulemaking will have to occur in order to apply some of the recommendations. The reforms have been developed to accelerate the manner in which the program begins and completes site clean ups and focus on the reuse of sites. Eleven of these recommendations are to be implemented immediately, and these reforms focus on addressing immediate risks and human exposures at currently contaminated sites.

The recommendations focus on changing the initiation-to-completion cleanup timeline by taking different approaches to financing cleanups. The major idea is to push for private investment, Pruitt believes that the use of third party investments will be critical in the motion to accelerate cleanups and promote reuse of sites. There will be a select number of reuse sites that will be

first to attempt implementation of these changes, these sites are selected based on existing toxicity risk to humans.

The recommendations also focus on changing the relationship between potentially responsible parties (PRPs) and the Superfund program. This will be done through incentives, such as lowering EPA oversight costs. The idea is that this will encourage PRPs to quickly move along in developing negotiations with the program and completing cleanup plans. The recommendations also include the possibility of assigning one agency or third party to supervise the cleanup process.

Pruitt's recommendations have seen some push back from grassroots organizations, including from the Center for Health, Environment and Justice and the People's Task Force on the Future of Superfund.



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## TWENTY YEARS OF STORMWATER SAMPLES

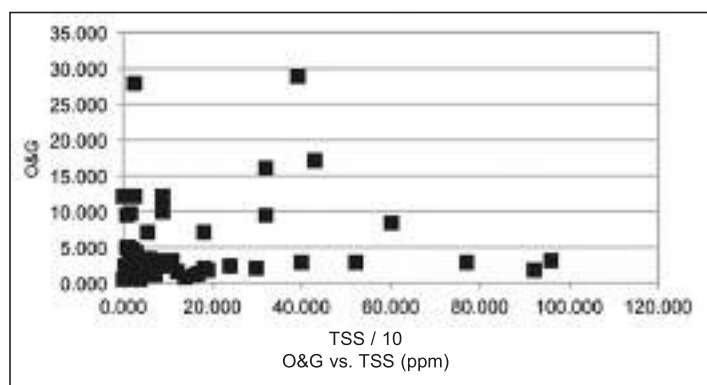
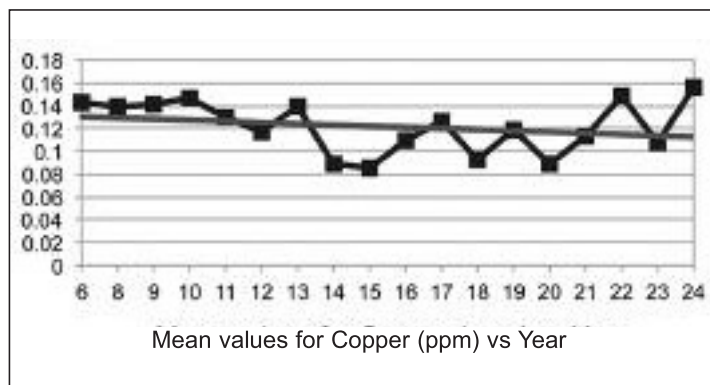
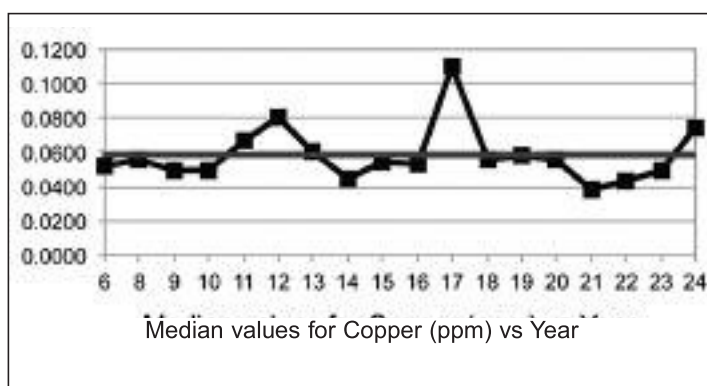
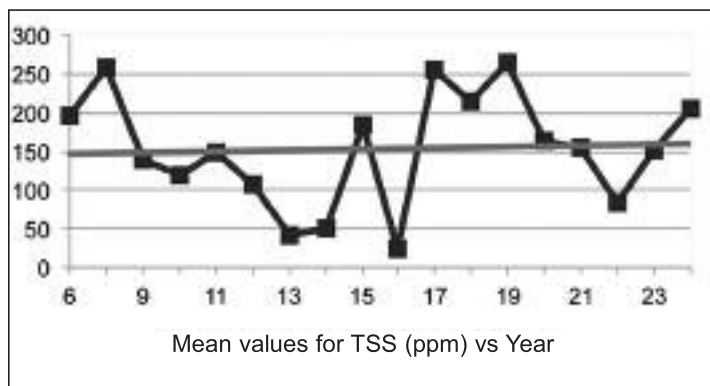
Stormwater Journal, the Journal for Surface Water Professionals recently published an article on 20 Years of Stormwater Samples. This article was published in Stormwater Journal's July/August 2017 issue, and the article was prepared by Frederick Martin of NEST Environmental Services.

The article contains information on industrial stormwater samples and information is presented on total suspended solids,

and mean values for metals constituents, as well as median values for total suspended solids. Interesting findings include Tables summarizing 20 years of data for tested contaminants including metals, conductivity and pH. Key Tables of interest are shown below.

You can find a copy of the article at [www.stormh2o.com](http://www.stormh2o.com).

		Median	Mean	Std. Dev.	Minimum	Range	Count	Trend
Zinc	Mean	0.341	0.917	0.289	0.547	0.973	18	0.0172
	Median	0.34	0.899	0.066	0.22	0.34	18	-0.00367
TSS	Mean	47.64	153	73.6	22.73	243	18	0.662
	Median	51.5	153.25	26.28	5	87	18	0.4088
TOC	Mean	22.96	46.34	12.63	28.3	42.1	17	-1.415
	Median	21.6	41	7.42	10	30	17	-0.509
Lead	Mean	0.0311	0.1082	0.0365	0.043	0.149	18	-0.004
	Median	0.0342	0.1084	0.0176	0.0002	0.0608	18	-0.002
Copper	Mean	0.0582	0.1215	0.0227	0.085	0.07	18	-0.0005
	Median	0.055	0.1223	0.063	0.038	0.0702	18	-0.001
Conduct	Mean	150.9	440.6	28.03	396.5	92.82	18	-0.516
	Median	141	440.3	38.71	100	130	18	-2.32
pH	Mean		6.75	0.292	6.17	1.06	18	0.0239
	Median							





## NJ UPDATES

### THE NEW JERSEY DEPARTMENT OF CHILDREN AND FAMILIES READOPTED THE MANUAL OF REQUIREMENTS FOR CHILD CARE

The New Jersey Department of Children and Families readopted the Manual of Requirements for Child Care with amendments which became effective on March 6, 2017.

An important requirement is that the applicant or facility operator must provide documentation of water testing for lead and copper, even when the water is supplied by a community water system. The New Jersey Department of Environmental Protection's Bureau of Safe Drinking Water as well as the New Jersey Department of Children and Families will be posting additional guidance, such as the required sampling protocol, submittal of test results, and mitigation measures if elevated levels are detected.

These will be posted on the respective Departments' websites:  
[www.nj.gov/dep/watersupply/pw\\_child.html](http://www.nj.gov/dep/watersupply/pw_child.html)  
 and [www.nj.gov/dcf/providers/licensing/](http://www.nj.gov/dcf/providers/licensing/)

### DEP PROMOTES CAMPAIGN ASKING TWO RIVERS AREA RESIDENTS TO HELP IDENTIFY PROPERTIES AS PART OF FLOOD RESILIENCY PLANNING

The Department of Environmental Protection and officials in the Two Rivers region of northeastern Monmouth County are encouraging the public to identify buildings and other facilities in their communities that should be part of focused flood-resiliency planning efforts.

The Two Rivers, One Future campaign provides a unique opportunity for the public

to use an online mapping website and social media to have a role in determining future flood-protection strategies for their communities. The DEP will evaluate the project with plans to expand it to other parts of the state.

Located in northeastern Monmouth County around the Navesink and Shrewsbury rivers - short and wide estuary-like waterways - the Two Rivers region encompasses 15 municipalities, an area that is vulnerable to coastal flooding.

As part of the campaign, the community is asked to identify places such as public buildings, police and fire stations, municipal buildings, hospitals or urgent care centers, schools, important businesses, and popular gathering spots. The DEP will be conducting extensive outreach in Two Rivers communities this month to promote the campaign.

There are three ways the public can report locations:

- Go to [www.TwoRiversOneFuture.nj.gov](http://www.TwoRiversOneFuture.nj.gov) to drop pins at favorite locations, then describe in the comment field why the place is important.
- Tweet photos, websites, names or locations of the places that matter most, along with a reason why, and use the hashtags #MapWhatMatters and #TwoRiversOneFuture. The same hashtags may also be used on Instagram.
- Visit the Two Rivers, One Future #MapWhatMatters booth at a number of public festivals, markets and locations throughout the Two Rivers region this month. A schedule of events is available at [www.nj.gov/dep/oclu/njframes-engage.html](http://www.nj.gov/dep/oclu/njframes-engage.html)

The Two Rivers, One Future campaign is

### NJ UPDATES

- Child Care Rules – Pg. 8
- Two Rivers Area – Flood Planning Pg. 8

the latest component of the three-year New Jersey Fostering Regional Adaption through Municipal Economic Scenarios (NJ FRAMES) Project, which will use resiliency planning to help the Two Rivers Council of Mayors region prepare for and respond to coastal hazards and flooding risks.

The 15 communities in the Two Rivers region include Eatontown, Fair Haven, Highlands, Little Silver, Long Branch, Middletown, Monmouth Beach, Ocean Township, Oceanport, Red Bank, Rumson, Sea Bright, Shrewsbury Borough, Tinton Falls and West Long Branch.

NJ FRAMES is one of several resilience planning grants and projects funded by NOAA. To learn more about the project, visit: [www.nj.gov/dep/oclu/njframes.html](http://www.nj.gov/dep/oclu/njframes.html)

Learn more about the DEP's Coastal Management Program at:  
[www.nj.gov/dep/cmp](http://www.nj.gov/dep/cmp) and follow @NJCoastalManagement on Instagram.

### NJDEP MAKES USE OF ONLINE PORTAL MANDATORY FOR REMEDIAL ACTION WORK PLANS AND REMEDIAL ACTION REPORTS

Starting May 22nd, NJDEP made the submittal of Remedial Action Work Plans, Remedial Action Reports and associated forms mandatory. Instructions can be found and downloaded on the NJDEP online page at <http://www.njdeponline.com>.

### SENATORS SIGNAL BIPARTISAN SUPPORT TO RENEW SUPERFUND COST ASSESSMENT

When it comes to public health and safety, it appears both political parties in Washington, D.C. can find common ground and there is bipartisan support.

At an Environment & Public Works Committee panel hearing in August, members of both Republican and Democratic Parties voiced support for the EPA to renew an effort to estimate remaining cleanup Superfund program site costs. A 30% cut to the Superfund budget has been proposed. Superfund expert Kate Probst said that a 30% budget cut would be harmful to the Superfund program, likely focusing it on removal actions rather than larger scale remediation site cleanups.

Both Republicans and Democrats worry that the proposed budget cuts potentially put public health at risk for financial benefit. Ranking California stated that Democratic Member and Junior Senator Kamala Harris said that "We should reject efforts to expe-

dite cleanups if it means cutting corners on health and environmental standards."

*We at RT support the congressional bipartisan effort to maintain the integrity of the Superfund program. Public safety and environmental health should be a top priority for the government, both at a federal and state level. Though the benefit of redevelopment and reuse is obvious, the main priority of the Superfund program is to protect the public. Instead of cutting the budget, understanding the anticipated costs of remaining and future cleanup should provide a more streamlined and cost efficient Superfund process.*

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## INDUSTRY, ENVIRONMENTALISTS SPAR OVER MINING RULE

In response to the EPA's draft Superfund financial assurance rule for the hardrock mining sector, signed by the Obama administration last December, Industry and environmental groups are preparing by bolstering their opposing arguments. EPA's proposed rule would require owners and operators of hard rock mines and mineral processing facilities to set up financial assurance mechanisms backing their ability to pay for potential future releases of hazardous substances from their facilities. These mechanisms can include insurance, corporate guarantees and bonds, among other mechanisms.

Industry is saying that the EPA failed in showing such legal financial assurance requirements are warranted. The National Mining Association (NMA) argues that existing regulatory framework programs were established over the past 40 years of EPA inaction, but presently, the EPA is stepping in to solve nonexistent problems. Industry stands behind the argument that this framework is hard evidence that these programs already reduce the risks of industry operations and that the EPA by law has limited authority (according to CERCLA section 108(b)) in issuing financial assurance limiting the EPA's ability to fully evaluate

the industry's levels of risks.

Environmentalists oppose any changes to the rule as Industry must be held responsible in cleanup scenarios during this time of immense slashes to the federal environmental budgets. Environmentalists do not want to see any restrictions to the Superfund financial assurance rules which address cleanup liabilities, as a host of environmental groups led by Earthworks, believe "if you make a mess; you clean it up." Environmentalists say, that with an estimated backlog of \$20 to \$54 billion for clean-up of hardrock mines, taxpayers already face an enormous financial burden.

Environmentalists most strongly support the option of preventing the use of corporate guarantees which are essentially a promise as a financial assurance mechanism. These promises are not backed by real assets and they believe that the EPA should only step in financially once obligations are met by owners and operators as water treatment cleanups tend to take place long after mining operations. These groups also oppose the current EPA approach in authorizing an "all or nothing approach" to financial assurance reductions as this would rely solely on engineering controls to prevent releases and does

not take into account, the human or mechanical failure risks.

*RT supports the EPA requirements for these owners and operators of these mining facilities to set up financial assurance mechanisms to guarantee their ability to pay for cleanups of potential future releases of hazardous substances from their facilities. Engineering controls may be efficient yet expensive assurances to prevent the potential devastating facility releases to the environment but this does not guarantee that responsible parties will be held accountable financially, if a release is to occur. It should not fall on the taxpayer's dollar to clean up after a mining industry operating irresponsibly. If you make a mess, you must clean it up. This needs to be guaranteed and more so now than ever as Superfund budgets are being dwindled by federal cuts. Proper financial assurance can only further guarantee timely and most affective cleanups to protect the environment and human health.*

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## UNFAIR UTILITY CONTRACTOR STANDBY TIME

Under current Pennsylvania law, utility companies are not liable for the financial consequences caused by failing to accurately mark their own underground lines, unless someone is personally injured or property is damaged.

Utilities can charge contractors for any damage to a marked line, but the law does not reciprocate fair payment when a contractor locates/damages mis-marked or unmarked lines. In other words, even though a utility negligently causes thousands of dollars in damages to a contractor that hits an unmarked or mismarked underground line, the utility pays NOTHING for that negligence unless a catastrophic injury or property damage occurs.

This result is costly project delays adding up to millions of dollars each construction season. This does not make sense. This impacts the delivery of highway, water and sewer projects by causing costly project delays. Utility companies are in a much better position than contractors to locate their facilities using various proven tools and techniques to detect, locate and mark their lines.

Utilities currently get a free pass because a legal loophole created by the judicially-created "economic loss doctrine," immunizes the utility companies. This principle of law holds that, except in certain recognized exceptions, a plaintiff cannot recover "economic" (i.e., financial or monetary) damages due to negligence, unless the plaintiff also has some personal injury or property damage.

This loophole seriously affects utility contractors. Contractors performing excavation work face the danger of unmarked or mismarked underground utility lines every day. It is not only the danger of gas explosions, power outages, flooding or massive telecommunications

breakdowns, but also the financial impact caused when a contractor's entire operation is shutdown and incurring "standby time" while waiting for a damaged line to be repaired.

"Standby Time" occurs when an unmarked or improperly marked line has been damaged and causes the excavator to stop his work causing otherwise productive equipment and labor to stand idle. The contractor still has to pay wages for non-productive labor, and rental charges for non-productive equipment. Today, "standby time" under current law is an economic loss that cannot be recovered absent personal injury or property.

The Pennsylvania Underground Utility Line Protection Act (a/k/a "The One Call Act") establishes a public safety system by which contractors can request, and utilities are required to mark the location of their underground lines. But unlike several other state laws or court decisions (New Jersey, California, Illinois and Florida,) the Pennsylvania One Call Act does not create a NARROW exception to the economic loss doctrine.

*RT agrees with the National Utility Contractors Association (NUCA) that the Procurement Code be amended to include a provision that not only entitles contractors to recover for standby, but includes a reciprocal provision allowing utilities to recover against contractors, as well. New Jersey law already provides for this.*

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**WOOL FIBERGLASS NESHAPE EMISSIONS LIMITS EFFECTIVE DATE EXTENDED**

In the July 27, 2017 Federal Register the Environmental Protection Agency (EPA) published both a direct final rule and proposed rule amending 40 CFR 63 Subpart NNN, National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing. However, if EPA does receive significant adverse comments, the direct final rule will be withdrawn and move forward with the proposed rule. The proposed change provides affected sources a 1-year extension, to comply with the emission limits for flame attenuation lines. The deadline would be extended until July 31, 2018. The direct final rule will be effective October 25, 2017, unless significant adverse comments are submitted by August 28, 2017.

EPA has proposed this extension of the compliance deadline in response of two recent comment issues. EPA wishes to review and process data to determine whether any actions are necessary.

The EPA has proposed extending the compliance deadline for sources regulated under 40 CFR 63 Subpart NNN, National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing to

comply with the emission limits for flame attenuation lines. The deadline will be extended for one year, through July 31, 2018. EPA believes this extension is noncontroversial, and has therefore issued a direct final rule.

**Sources:**

EPA, Direct Final Rule, National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing; Flame Attenuation Lines, 82 FR 34858, July 27, 2017

EPA, Proposed Rule, National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing; Flame Attenuation Lines, 82 FR 34910, July 27, 2017

*If you have any questions in regards to the proposed rule for wool fiberglass emissions, please call Tony Alessandrini at 856-467-2276.*

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**FEDERAL REGISTER NOTICES**

<http://www.federalregister.gov>

Notice EPA – Thirty-First Update on the Federal Agency Hazardous Waste Compliance Docket (<https://www.federalregister.gov/documents/2017/06/06/2017-11693/thirty-first-update-of-the-federal-agency-hazardous-waste-compliance-docket>)

(Federal Register – 6-6-17)

Rule EPA – Procedures for Chemical Risk Evaluation Under the Amended Toxic Substances Control Act (<https://www.federalregister.gov/documents/2017/07/20/2017-14337/procedures-for-chemical-risk-evaluation-under-the-amended-toxic-substances-control-act>)

(Federal Register – 7-20-17)

Proposed Rule EPA – Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019 (<https://www.federalregister.gov/documents/2017/07/21/2017-14632/renewable-fuel-standard-program-standards-for-2018-and-biomass-based-diesel-volume-for-2019>)

(Federal Register – 7/21/17)

Proposed Rule EPA – Review of the Primary National Ambient Air Quality Standards for Oxides of Nitrogen (<https://www.federalregister.gov/documents/2017/07/26/2017-15591/review-of-the-primary-national-ambient-air-quality-standards-for-oxides-of-nitrogen>)

(Federal Register – 7-26-17)

Proposed Rule EPA – Definition of “Waters of the United States” – Recodification of Pre-Existing Rules (<http://www.federalregister.gov/documents/2017/07/27/2017-13997/definition-of-waters-of-the-united-states-recodification-of-pre-existing-rules>)

(Federal Register – 7/27/17)

Rule EPA – National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing; Flame Attenuation Lines (<https://www.federalregister.gov/documents/2017/07/27/2017-1490/national-emission-standards-for-wool-fiberglass-manufacturing-flame>)

(Federal Register – 7-27-17)

Proposed Rule EPA – Approval and promulgation of Implementation Plans; New Jersey; Regional Haze Five-Year Progress report State Implementation Plan (<https://www.federalregister.gov/documents/2017/08/01/2017-15997/approval-and-promulgation-of-implementation-plans-new-jersey-regional-haze-five-year-progress-report>)

(Federal Register – 8-1-17)

**PENNSYLVANIA BULLETIN NOTICES**

5/27/17 – The Environmental Quality Board published formal notice of its acceptance of a Delaware Riverkeeper rulemaking petition to reclassify a portion of the Delaware River

6/17/17 – The Environmental Quality Board published notice of proposed rulemaking to control volatile organic compound emissions from industrial cleaning solvents, aerospace manufacturing and rework and additional RACT requirements for major sources of nitrogen oxides and volatile organic compounds

7/29/17 – The Environmental Quality Board published notice of a final regulation making changes to Environmental Laboratory Accreditation regulations, including increases in permit fees. (PA Bulletin page 4085)

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## EPA RESETS TSCA INVENTORY BY DISTINGUISHING ACTIVE VS. INACTIVE SUBSTANCES

The 2016 amendments to the Toxic Substances Control Act (TSCA) required EPA to designate chemical substances on the TSCA Chemical Substance Inventory as either "active" or "inactive" in U.S. commerce. To accomplish that, EPA is establishing a retrospective electronic notification of chemical substances on the TSCA Inventory that were manufactured (including imported) for nonexempt commercial purposes during the 10-year time period ending on June 21, 2016, with provision to also allow notification by processors. The deadline for the submissions is February 7, 2018.

EPA will use the new TSCA notifications to distinguish active substances from inactive substances. EPA will include the active and inactive designations on the TSCA Inventory and as part of its regular publications of the Inventory. EPA is also establishing procedures for forward-looking electronic notification of chemical substances on the TSCA Inventory that are designated as inactive, if and when the manufacturing or processing of such chemical substances for nonexempt commercial purposes is expected to resume.

On receiving forward-looking notification, EPA will change the designation of the pertinent chemical substance on the TSCA Inventory from inactive to active. EPA is establishing the procedures regarding the manner in which such retrospective and forward-looking activity notifications must be submitted, the details of the notification requirements, exemptions from such requirements, and procedures for handling claims of confidentiality.

Chemicals reported as being manufactured or imported from 2012–2015 under the 2016 CDR rule are being added to an interim list. EPA is including chemicals that meet this reporting exemption as "active" in the reset TSCA inventory. Companies do not need to notify EPA of such chemicals during the retrospective reporting period. A copy of the interim list of active substances is available here <https://www.epa.gov/tsca-inventory/interim-list-active-substances>.

This final rule became effective on August 11, 2017.

*(Environmental Resource Center – 8-14-17)*

## EPAS GUIDANCE RULE ON COAL ASH PERMIT PROGRAMS

EPA is in the process of developing permit guidance following a provision inserted in a 2016 water infrastructure law that delegates ash disposal oversight to the states, which alters the regime of the Obama administration's first-time RCRA rule on disposing of coal ash. RCRA 2002(b) provides that each of EPA's hazardous and non-hazardous waste rules "shall be reviewed (by EPA) and, where necessary, revised not less frequently than every three years". Until recently, no one had used this provision to obtain a court established deadline by which EPA must review and revise a waste rule. In April 2012, ten environmental groups and an Indian Tribe brought a citizens suite seeking to force EPA to review its 40 CFR Part 257 non-hazardous waste rules relating to coal ash, its "Bevill" rule at 40 CFR Section 261.4(b)(4) exempting coal ash from regulation as a hazardous waste, and the toxicity characteristic leaching procedure (TCLP) at 40 CFR Section 261.24 as it relates to the regulation of coal ash. The environmental plaintiffs hope that EPA would regulate coal ash under the RCRA Subtitle C hazardous waste rule.

Environmental groups recently met with EPA and Trump administration official's to develop a formal rule on how it will review current state coal ash disposal permit programs in order to ensure

that they comply with EPA's ash waste rule. The power sector is also pressing the Trump administration to promptly release EPA's draft guidance for states on developing permit programs which govern coal ash disposal, stating that the release of federal guidance is crucial to give state officials certainty on what the federal procedures will be for reviewing and approving states' ash permitting efforts.

This debate will continue until the draft guidance is released for review and comment. Although the 2016 Water Infrastructure Improvements for the Nation Act (WIIN) allows states to design ash permit programs rather than having facilities follow the nationwide standards in the 2015 federal rule without local oversight, it is speculated that the proposed EPA guidance will require that a state's permit program be "at least as protective" as the federal standards.

*RT will continue to follow the development of the draft permit guidance for coal ash disposal. RT specializes in waste characterization and permit preparation projects.*

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## OHIO EPA ISSUES NEW GUIDANCES FOR CENTRALIZATION OF NFA REVIEW LETTERS AND OTHER ITEMS

The Ohio EPA has issued four new Technical Guidance Compendium documents as follows:

" VA30011.16.001 - Proper Abandonment of Monitoring Wells (<http://www.epa.ohio.gov/portals/30/vap/tgc/VA30011-16-001.pdf>)

" VA30000.17.001 - Asbestos Remediation under the VAP (<http://www.epa.ohio.gov/portals/30/vap/tgc/VA30000-17-001.pdf>)

" VA30009.17.001 - Supplemental values for chemicals of concern without Generic Numerical Standards (<http://www.epa.ohio.gov/portals/30/vap/tgc/VA30009-17-001.pdf>)

" VA30009.17.002 - Property-specific standards using updated exposure factors and toxicity information (<http://www.epa.ohio.gov/portals/30/vap/tgc/VA30009-17-002.pdf>)

The index of all TGC documents may be found at [http://epa.ohio.gov/Portals/30/vap/tgc/TGC\\_Index.pdf](http://epa.ohio.gov/Portals/30/vap/tgc/TGC_Index.pdf)

The VAP also decided to move forward with implementing centralization of NFA's for volunteers requesting a CNS. This means that NFA letters will no longer be conducted in the OPEA District Offices. You can call the VAP at 614-644-2924 if you have any questions.



## KEY HIGHLIGHTS

### TECHNOLOGY UPDATES

- Ohip EPA Updates Chapter 6 of Technical Guidance Manual, pg. 4

### FEDERAL UPDATES

- Pesticides Application Pg. 5
- AAI Rule Update Pg. 5
- NSPS – Landfill Methane Pg. 5

### ENERGY UPDATES

- Coal Ash Permit Programs Pg. 11

### PA UPDATES

- Cleaning Solvent Rulemaking Pg. 6
- DEP Updates Pg. 6

### NJ UPDATES

- Child Care Rules – Pg. 8
- Two Rivers Area – Flood Planning Pg. 8

### OHIO UPDATES

- VAP Guidances Pgs. 4,11

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