

The RT Review

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NJDEP PROPOSES SECOND SET OF REVISIONS TO SOIL CLEANUP CRITERIA

In early May, the New Jersey Department of Environmental Protection (NJDEP) proposed a second set of revisions to the Site Remediation Program Soil Cleanup Criteria (SCC). The 1998 Brownfields Law required NJDEP to set soil cleanup criteria using the lowest exposure assumptions for non-residential areas. Standards, as proposed, will impact not only all remediation site projects in New Jersey, but will also be used to determine whether a release has occurred at a site when environmental consultants take soil samples and to determine whether there is any needed remediation.

RT commented on the first proposed draft Soil Cleanup Criteria rulemaking, recommending that a limit for arsenic be set at a practical level, and that, as appropriate, SPLP leaching procedures be used to determine in what instances contamination in soil is a threat to groundwater.

DEP has addressed both issues, positively, which are major steps. Our review of the new Soil Cleanup Criteria proposal is as follows:

- The new residential Soil Cleanup Criteria for Arsenic is 19 mg/kg. The current standard is 20 mg/kg. RT believes that NJDEP has selected a practical standard for use statewide, and the revised SCC will have minimum impact on added costs for sites undergoing remediation.

- The Synthetic Precipitation Leaching Procedure can now be used to determine whether metals present in soil have the potential to impact groundwater. The proposed regulations do not make it clear how this will be applied, but, in the past, consultants have typically run "total" metals for laboratory analysis for the constituents of concern at the site, and then taken samples with the four highest concentrations, and run

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NEW APPLICATION FOR ADDRESSING PCB IMPACTED FLOOR SURFACES FOR FUTURE RESIDENTIAL USE IS SUBJECT OF PATENT APPLICATION

An integrated system, using a false floor and dedicated utility routing to minimize exposure to PCBs, is the subject of a patent application to the U.S. Patents Office. The system uses a unique combination of features to eliminate direct contact with PCBs in order to effect a pathway elimination system and prevent direct contact by residents or utility workers in facilities where it is impractical to remove all PCBs to unrestricted use residential levels.

As residential conversion of former industrial structures is considered, use of this new system is expected to play a role in allowing the reuse of certain buildings for which the only current option is demolition and expensive management of PCB impacted concrete. In certain manufacturing buildings, PCBs historically became mixed with oil, and penetration of PCB/oil mixtures has been found to go below the depth at which scarification cleanup is possible. In some buildings, penetration goes into and below the

reinforcing bar level, which makes floor scarification/cleanup of costs prohibitive and technically impractical.

The system uses an extra level of protection by using a combination of regulatory requirements under the Toxic Substance Control Act (TSCA), design and construction features, and cleanup technologies above and beyond that normally required in PCB cleanup plans at typical sites. However, because the most expensive parts of PCB remediation (involving scarification or removal) are avoided, the overall system is considered very cost effective, when compared with building demolition and subsequent redevelopment.

Inventors of the new system include Larry Bily and Gary Brown of RT Environmental Services and Kevin Traynor of Preferred Real Estate Investments. The approach has been approved for use at a North Philadelphia site which is a candidate for residential redevelopment.

BUILDING ENGINEERS, MANAGERS AND MAINTENANCE STAFF

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SPLP analysis. The DEP has a simple lookup table to determine what leaching standard must be met.

- For other constituents, including volatile organics, NJDEP has presented a table which show soil to groundwater limits based on total analysis. Many of the limits, including benzene, show significant reductions from current standards, with the likely outcome being significant increases in remediation costs, particularly at tank release and service station remediation sites.

- One major SCC reduction for a key parameter of concern is for benzo[a]pyrene, this involves a reduction in the non-residential Statewide Health Standard to 0.2 mg/kg from 0.66 mg/kg. For many years, New Jersey's very low level for benzo[a]pyrene has been criticized as unrealistic, and this proposed change will make it even more so. Benzo[a]pyrene is associated with fuel and coal combustion, so wide areas of urbanized New Jersey have surface soils with concentrations above the residential and non-residential benzo[a]pyrene Soil Cleanup Criteria. One aspect of the standard for this parameter does not make sense – the peer reviewed Statewide Health Standard in Pennsylvania is 2.5 mg/kg, more than an order of magnitude higher than the proposed reduced New Jersey value. Based on comparison with cleanup standards in other states, it would appear that the non-residential SCC in New Jersey was not developed based on the requirements of the legislature as specified in the Brownfields Law.

In addition to surface soil concentrations in urbanized areas commonly being above the residential SCC, historic fill, prevalent along rivers and in former marsh lands and floodplains in many urbanized areas of the state typically also has PAHs, typically from partially burned or unburned coal. The artificially low proposed non-residential SCC could make it difficult and much more costly to remediate Brownfield sites, as more materials will likely have to be landfilled, at a time when the state has few landfills left. More contaminated soil having to be managed as waste going out of state is a possible outcome.

RT would recommend that NJDEP revisit the benzo[a]pyrene SCC, because it makes no sense to remediate “islands” in urbanized areas at Brownfield sites, and not remediate adjacent areas where thousands of residents live. There is no question that benzo[a]pyrene is a carcinogen, but setting Soil Cleanup Criteria below typical “urbanized” background concentrations causes loss of program credibility because everyone knows that billions upon billions of dollars will never become available to deal with the many thousands of square miles of urbanized areas in the state which have benzo[a]pyrene concentrations over newly lowered SCCs. The good news is though, at many sites, because coal combustion as well as combustion of many heavier fuel ceased years ago as New Jersey became less industrialized, normal topsoiling and revegetation practices, combined with cleaner dust fall, mean that there is actually less exposure from year to year, as compared to the historic urbanized area conditions experienced up through the middle of the last century.

Overall, we at RT are impressed with the new Soil Cleanup Criteria, as being reasonably protective, but we think that the Soil Cleanup Criteria for Benzo[a]pyrene should be re-examined and made more practical. Practical solutions to minimizing benzo[a]pyrene exposure are frequently available, without the heavy hand of having a contaminant release warranting remediation being needed at the many tens of thousands of properties in New Jersey where elevated benzo[a]pyrene concentrations are present. We hope that a more realistic SCC for benzo[a]pyrene, particularly for the non-residential category, can be included in the final revised SCCs.

Justin Lauterbach, General Manager of RT's New Jersey office testified at the recent hearing to receive comments on the revisions to the Soil Cleanup Criteria. His testimony included all of the above comments, and he is available at (856) 467-2276 to answer any questions. Justin can be reached by e-mail: jlauterbach@rtenv.com. More information on the Rule Making can be found @: <http://www.state.nj.us/dep/srp/reg/s/>.

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RT STAFF & PROJECT NEWS

The late spring and summer period, at RT Review press time was especially busy, with RT reporting record billings in May. Major assignments at Brownfield sites in Philadelphia and Bellmawr New Jersey are high on RT's agenda.

Glenn Graham, Walter Hungarter, Joe Lang and Jaci Kopacz were leading an extensive and in-depth site investigation at a NJ site as well as a soil reuse plan at a site with three former landfills scheduled for redevelopment in 2008.

Larry Bily and Mark Cefalo are leading a major PCB delineation project at a former industrial building in North Philadelphia, already going through Phased development on a planned future mixed used property. New EPA PCB protocols are being used to characterize PCBs on floor surfaces throughout a former industrial complex.

Tom Donovan, Walter Hungarter, and Gary Brown are undertaking due diligence work at a major Santa Rosa, California industrial site where consolidation of industrial operations to a smaller number of buildings is expected to be followed by redevelopment, on a large industrial campus. The facility involved has a solvent release pump and treat program, under the supervision of the California Water Board.

RT, working with California environmental consultant Lee Hurvitz completed extensive Phase II work to help confirm adequacy of the existing remedy.

Tony Alessandrini and Robert McKenzie are handling an expanding number of mold projects, with many involving apartment buildings and condominium units throughout the Tri-State area. Fundamental issues with building design and maintenance continue to arise, and, RT, as always focuses on building engineering issues so we can identify, as soon as possible, the source of the problem as our clients need to make sure any remediation dollars are well spent, and problems will not recur.

Justin Lauterbach and Chris Ward are busy on a large number of new pharmacy retail sites, many of which involve redevelopment. Adam Meurer and Gary Brown were busy on tank release projects in Union County and Jersey City, with the Union County project involving peer review of the remedial approach and independent certification of remedial dollars spent at a substantial service station release remediation project.

Kristin Foldes has been reviewing analytical data and overseeing loading of accepted fill material from a site in

Brooklyn to the Bellmawr Landfill.

John Yaman has been providing oversight for a stream reconstruction project at a home in Delaware County, and for a stormwater runoff control project at a concrete plant in Bucks County.

Joe Lang is continuing work at a Maryland site where slope stability and stormwater erosion issues on a condominium association project are being addressed to involve long standing questions and issues which go back to complex construction in the late 1990s. Gary Brown is also working on a number of expert projects, some involving waste sites where injuries occurred, and with another involving a serious tank release incident caused by drilling activities puncturing a gasoline tank.

In response to strong client demand this year, new staff joining RT includes Heather Emrich, Adam Messner, Mark Cefalo, and Michael Geiger. Heather has a BS Degree in Geoenvironmental Science from Shippensburg University.

As always, we thank our clients for the opportunity to be of service, and will be glad to answer any questions you may have regarding our capabilities or expertise.

CHESTER PENNSYLVANIA'S FORTUNES ARE ON THE RISE

With the advent of casino gambling in Chester, PA, a second and third part of Town are seeing the real fruits of redevelopment activities. The first major redevelopment project was the Award Winning redevelopment of the former PECO Chester Generating Station by Preferred Real Estate Investments (PREI). The recently open Harrah's Casino, however, has provided a major boost to the City as substantial expenditures are being made by Harrah's locally, for both goods and services.

Already, certain businesses, including a bakery have expanded, and Pennsylvania officials have decided to be flexible regarding casino licensing so that the maximum number of Chester residents can be gainfully employed in such occupations as cooking at the Casino.

In addition to the above, an early positive spin off is that Downtown businesses are beginning to see traffic increases as casino patrons take the train to Downtown Chester, after which they can short taxi ride to the Casino. After decades of central district decline, expanded business hours in the Downtown Business District are under consideration.

Meanwhile, back along the Riverfront near the Generating Station, the Buccini Pollin Group has plans to residentially redevelop the area between the Generating Station and Barry Bridge Park. According to Mr. David Sciocchetti, Chester Economic Development Authority Director, Chester is well situated when it comes to I-95 and U.S. 322/Commodore Barry Bridge access, and

improvements are on the drawing boards for even better access in the years to come. An access ramp to I-95 south from the Widner College has already been added, and a substantial number of future ramps, many with improved Riverfront access are scheduled to be constructed.

Already, there is an afternoon buzz at Harrah's, as patrons enjoy our region's newly discovered Riverfront, every day.

A scant ten years ago, environmental justice concerns focused on Chester as it was felt that minorities were hosting, unwittingly, too many waste treatment facilities. But there is a reason that you haven't heard anything bad about Chester in recent years – Chester, PA is on the rise! Chester, PA is leading the way with Riverfront redevelopment – first, the Generating Station, then a new Casino and planned residential redevelopment with improved access will help all residents enjoy the river again, as they haven't been able to for generations, when industrial concerns simply ruled the Riverfront.

With federal and state support, as well as Pennsylvania's Act 2 Award Winning Land Recycling Program, we are finding out that Chester can be a good place to be, for many of the Riverfront proximity reasons that caused it to be a growth area in the first place!

RT salutes both the City of Chester and Harrah's entertainment on reaching the major milestone of the successful "first Casino" opening. RT has assisted Harrah's as part of its Atlantic City/municipal landfill expansion, and RT also serves as Brownfields consultant to the Chester Redevelopment Authority.

PA UPDATES

PADEP INTERIM WATER QUALITY ANALYSIS MODULE

The Pennsylvania Department of Environmental Protection (PADEP) has issued the "Interim Water Quality Analysis Module" 3930-PM-WM0035a". This is required to be filed in connection with any project requiring a stormwater NPDES permit. This module requires applicants to document many site-specific conditions, sets performance criteria and requires thermal discharge issues to be addressed.

(Courtesy – Terre Hill)

PENNSYLVANIA MANUFACTURERS APPROVE GOVERNOR'S ENERGY STRATEGY

A coalition of major manufacturers from western Pennsylvania Friday threw their collective weight behind Governor Edward Rendell's Energy Independence Strategy.

The strategy, first announced in February, is intended to help reduce electricity prices by enabling large energy consumers to sign long-term contracts with electricity providers that offer stable and cheaper prices, or to generate their own power through "microgrids."

Also, electricity providers would have to demonstrate efforts to keep prices down by investing in conservation before expensive new generation and transmission, and by buying a portfolio of electricity resources at wholesale prices through long-term and short-term contracts, instead of "spot market" deals.

The strategy would accelerate the production of clean energy components and systems by making more than \$100 million available in the form of venture capital, loans and grants so Pennsylvania firms can attract private sector investors and grow.

New state resources would direct up to \$500 million for infrastructure improvements,

construction, early project development costs and equipment purchases to attract private investment in energy-related economic development projects including solar manufacturing, advanced coal technologies, biofuels and energy conservation, efficiency, and energy demand management projects.

Representatives from the United States Steel Corp., Allegheny Technologies, and Duquesne Light met with Environmental Protection Secretary Kathleen McGinty and Community and Economic Development Secretary Dennis Yablonsky to express their support. The Legislature will take this program up in the fall.

(ENS – 5/29/07)

RECYCLING HITS RECORD LEVEL IN PENNSYLVANIA

Pennsylvanians recycled a record 4.86 million tons of municipal waste in 2005, according to state government figures. This level of recycling saved consumers and industries nearly \$263 million in disposal waste costs and provided materials to businesses with an estimated market value of \$577 million.

"The recycling industry is a significant contributor to Pennsylvania's economic vitality and environmental health," said Governor Ed Rendell. "We're building market demand for recyclable materials, while benefiting and supporting the communities that collect these materials."

The Commonwealth's recycling and reuse industry includes more than 3,200 establishments with total annual sales of \$18.4 billion. The industry employs more than 81,000 people and has an annual payroll of \$2.9 billion. The employment, payroll and sales numbers are more than any other state in the northeast United States and are the second highest in the nation.

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In addition, Pennsylvania's recycling and reuse industry provides an estimated \$1.8 billion in indirect benefits to the economy and a direct impact of \$305 million each year through the tax base.

"The more we recycle, the less we put into our landfills," the governor said. "And, the more we recycle, the more economic opportunities we create by providing raw materials for Pennsylvania's manufacturers."

According to reports filed by Pennsylvania counties for 2005, the most recent year for which statistics are available, the state diverted 4.86 million tons of municipal waste from disposal at landfills and waste-to-energy facilities, continuing an upward trend that began with passage of the state's recycling law in 1988.

Recycling in 2005 eliminated more than 2.5 million metric tons of carbon equivalent - a savings of approximately 3 percent of all greenhouse gas emissions in the commonwealth.

Pennsylvania recycling conserved natural resources. By recycling nearly 1.2 million tons of steel cans, appliances and similar materials, Pennsylvania industries saved 1.5 million tons of iron ore, 829,786 tons of coal and 71,124 tons of limestone.

Through recycling newspapers, phone books, office paper, cardboard and mixed paper, the state saved the equivalent of 78 million tree seedlings grown for 10 years.

(ENS – 5/14/07)

NJDEP SET TO ANNOUNCE EXPANDED SRP PROGRAM PRIVATIZATION

At NJPA Journal pressed time, the New Jersey Department of Environmental Protection was getting ready to announce expansion of its highly successful CLEANUP STAR Program. The CLEANUP STAR Program allows pre-certified individuals to reach endpoint cleanup decisions on sites, or facilitate concurrence that a site is "clean", so long as rules known as the "Technical Requirement for Site Remediation" are followed and a Preliminary Site Assessment is completed. Sites where only Phase I Environmental Site Assessments (ESAs) are completed do not qualify for this opportunity.

To date, the CLEANUP STAR Program has only been able to be used where sites are found to be clean, or, where complete impacted soil removal to the most stringent standards has been completed. The planned expansion of the CLEANUP STAR Program is expected to include the ability to use the program for unregulated tank removal/closure projects, and for sites where there are groundwater concerns. In a latter instance, groundwater although, it may be impacted within a site, will have to be shown to meet the most stringent standards, before leaving the site.

In addition, DEP is expanding Ken Kloof's Brownfields Group, so that attention is given to redevelopment sites, reducing case backlogs. New Jersey, unfortunately, has a large backlog of cases awaiting review in the overall site remediation program which delays real estate transactions in some instances. Although there is no requirement that real estate transactions wait until No Further Action/Covenant Not To Sue

letters are received from NJDEP, the nature of contamination at some sites and the potential for the need to have to install borings or monitoring wells later within buildings after they are built does cause long delays in transactions at many sites.

Long term, plans are also afoot in New Jersey to greatly expand privatization, within about two years. If these initiatives come to fruition, New Jersey would follow the model of Connecticut, Ohio, and Massachusetts wherein certified individuals would conduct the entire remediation, with minimal or no DEP oversight. We at RT hope that the important lessons learned in Pennsylvania, particularly with respect to DEP concurrence in addressing offsite groundwater concerns are followed in designing the NJ privatization program so that the state can concur with the appropriate offsite impacted groundwater remedy.

The CLEANUP STAR Program allows for thirty day service, although, the DEP is completing final reviews under the CLEANUP STAR Program as soon as five days. RT has a number of CLEANUP STAR assignments underway, including a Preliminary Assessment/impacted soil removal project in Vineland, and, at a residential site in Gloucester County, which is located near a remediated Superfund site. RT is finding that having the final No Further Action letter/Covenant Not To Sue in hand prior to development is very attractive to our many residential development clients. We are finding that many commercial retail site developers are finding the program attractive as well.

TECHNOLOGY UPDATES

FLORIDA TO LICENSE FIRMS PROVIDING SERVICES FOR MOLD INSPECTIONS AND ABATEMENT

In late June, Florida Governor Charlie Crist signed into law a bill to begin regulating those providing home inspection services, all remediation services, and mold assessment services. The new law takes affect in July 2010.

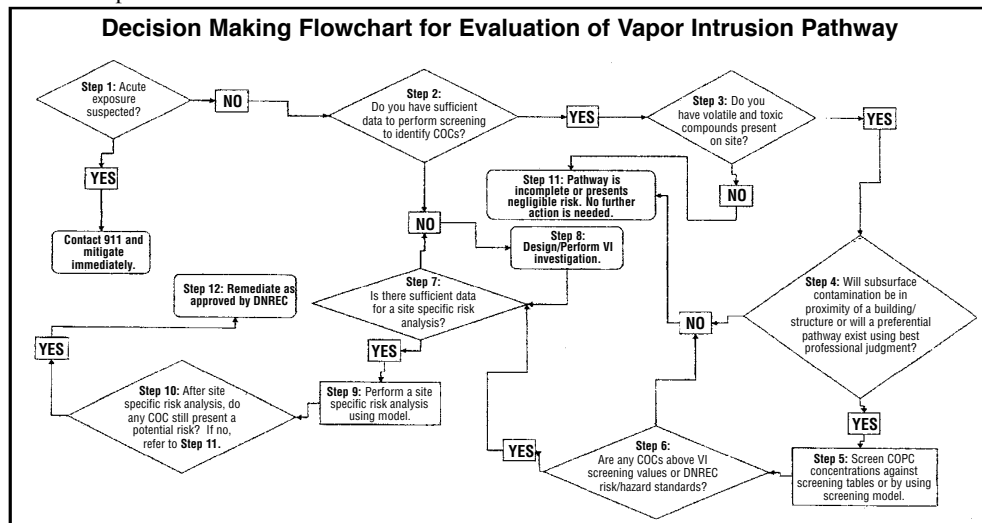
Specifics of regulation on those who now must become licensed is left to the Florida Department of Business and Regulation.

DNREC ISSUES VAPOR INTRUSION POLICY

In March 2007, the Delaware Department of Natural Resources and Environmental Control (DNREC) issued a Policy concerning the investigation, risk determination and remediation for the Vapor Intrusion VI pathway.

This policy:

- Identifies VI as a pathway by which humans can be exposed to dangerous levels of invisible and otherwise unnoticeable toxic vapors
- Provides a temporary supplement to Section 9 of the HSCA Regulations Cleanup Levels (other media-specific procedures are presented for groundwater, surface water, and soil).
- Determines when a vapor intrusion investigation should be conducted.
- Provides the procedures which serve to evaluate the Vapor Intrusion risk.



The rulemaking includes:

- Uniform Risk-based Standards (URS) for 107 compounds.
- Based on cancer risk of 10⁻⁶, hazardous quotient = 1
- Workplace levels based on OSHA PELs (if OSHA program is in-place).
- Allows for site specific standards through J&E model.

ARCTIC ICE RETREATING 30 YEARS AHEAD OF PROJECTIONS

Arctic sea ice is melting much more quickly than projected by even the most advanced computer models, a new government funded study has found. Comparing actual ice observations with climate models, the scientists conclude that the Arctic could be seasonally free of sea ice as early as 2020.

Scientists at the National Center for Atmospheric Research and the University of Colorado's National Snow and Ice Data Center have demonstrated that the Arctic's ice cover is retreating more rapidly than estimated by any of the 18 computer models used by the Intergovernmental Panel on Climate Change in preparing its 2007 assessments.

"While the ice is disappearing faster than the computer models indicate, both observations and the models point in the same direction – the Arctic is losing ice at an increasingly rapid pace and the impact of greenhouse gases is growing," says co-author Marika Holland of the National Center for Atmospheric Research, NCAR.

Whereas the computer models indicate that about half of the ice loss from 1979 to 2006 was due to increased greenhouse gases, and the other half due to natural variations in the climate system, the new study indicates that greenhouse gases, and the other half due to natural variations in the climate system, the new study indicates that greenhouse gases may be playing a significantly greater role.

The study, "Arctic Sea Ice Decline: Faster Than Forecast?" appeared in early May in the online edition of "Geophysical Research Letters." It was led by Julienne Stroeve of the National Snow and Ice Data Center and funded by the National Science Foundation and by NASA.

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But newly available data sets, blending early aircraft and ship reports with more recent satellite measurements that are considered more reliable than the earlier records, show that the September ice actually declined at a rate of about 7.8 percent per decade during the 1953-2006 period.

"This suggests that current model projections may in fact provide a conservative estimate of future Arctic change, and that the summer Arctic sea ice may disappear considerably earlier than IPCC projections," says Stroeve.

The study indicates that, because of the disparity between the computer models and actual observations, the shrinking of summertime ice is about 30 years ahead of the climate model projections.

(ENS – 4/30/07)

BACTERIA FOUND THAT CAN CLEAN UP PCBs WITHOUT DREDGING

Researchers have identified a group of bacteria that can detoxify a common type of polychlorinated biphenyls, PCBs. These carcinogenic compounds, once used as coolants and lubricants, have contaminated more than 250 U.S. sites, including lake and river sediments.

The discovery is a first step toward a bioremediation strategy that would naturally detoxify the PCBs without risky removal of the sediments in which they persist.

Development of bioremediation technologies for PCB cleanup would offer an alternative to sediment dredging and disposal in landfills, which is the most commonly used method for removing PCBs used today. Dredging is controversial because of the invasive nature of this technology and risk of spreading contaminants.

In research funding by the National Science Foundation and General Electric, PCB expert Donna Bedard, a biology professor at Rensselaer Polytechnic Institute, analyzed sediments from the Housatonic River in Massachusetts.

This area is contaminated with PCBs that were used by the General Electric Company in its transformer and capacitor divisions in Pittsfield. GE released the chemicals into the river between 1929 and the passage of the Clean Water Act in 1977. Dredging to remove the Housatonic PCBs is now underway and is expected to be complete on one section of the river this year.

Bedard collaborated with microbiologists at the Georgia Institute of Technology to study microbial degradation in Aroclor 1260, a common, highly chlorinated PCB mixture. Working with sediment samples from the Housatonic, the team was able to determine that bacteria in the Dehalococcoides, Dhc, group were responsible for the dechlorination of Aroclor 1260.

These microbes replace the chlorine atoms in Aroclor 1260 with hydrogen, which fuels their growth and initiates the PCB degradation process, explained Frank Loeffler, an associate professor in the Georgia Tech School of Civil and

TECHNOLOGY UPDATES (Continued)

Environmental Engineering and the School of Biology.

Once Dhc bacteria dechlorinate Aroclor 1260 to a certain level, other microbes will degrade it further and completely detoxify PCBs, Loeffler said. The research results were published April 15 in the journal "Applied and Environmental Microbiology."

(ENS - 5/1/07)

SUPREME COURT LIMITS THE ENDANGERED SPECIES ACT

In a 5-4 decision in June, the U.S. Supreme Court today limited the obligation of federal agencies under the Endangered Species Act to ensure that their actions do not jeopardize federally listed threatened or endangered species.

In two combined cases - EPA v. Defenders of Wildlife and National Association of Home Builders v. Defenders of Wildlife - the court reversed an appeals court decision that required the U.S. EPA to consider the protection of listed species before handing Clean Water Act permitting authority over to the states.

The Clean Water Act requires that the EPA transfer permitting powers to the states if nine criteria are met.

The Endangered Species Act, ESA, requires that a federal agency must consult with other relevant agencies to ensure its actions do not jeopardize the continued existence of any endangered species or threatened species.

The question resolved by the court ruling is whether the ESA consultation requirement is effectively a tenth criterion on which the transfer of Clean Water Act permitting power must be based. The majority concluded that it is not.

Delivering the majority opinion, Justice Samuel Alito wrote, "The transfer of permitting authority to state authorities - who will exercise that authority under continuing federal oversight to ensure compliance with relevant mandates of the Endangered Species Act and other federal environmental protection statutes - was proper. We therefore reverse the judgment of the United States Court of Appeals for the Ninth Circuit."

(ENS - 6/25/07)

U.S. LEADS THE WORLD IN WIND POWER GROWTH

U.S. wind power capacity increased by 27 percent in 2006 and the country had the fastest growing wind power capacity in the world in 2005 and 2006, according to Energy Department's first Annual Report on U.S. Wind Power Installation, Cost, and Performance Trends, released Friday.

The report provides a detailed and comprehensive overview of development and trends in the U.S. wind power market.

More than 60 percent of the U.S.'s total wind capacity - over 7,300 Megawatts (MW) - has been installed since President George W. Bush took office in 2001, said DOE Assistant Secretary for Energy Efficiency and Renewable Energy Alexander Karsner.

"Wind power is one of the most important, emissions-free sources of energy being deployed to address climate change and improve our energy security," said Karsner.

The Energy Department report says wind power has consistently been priced at, or below,

the average price of conventional electricity generated by coal, nuclear, or natural gas, but the cost of turbines has risen since 2002, driving the cost of wind power up.

Wind project performance, has increased sharply over the last several years, the Energy Department said. This has been driven in part by improved project siting, and technological advancements.

In 2006, the U.S. installed 2,454 MW of wind power capacity, enough to power the homes in a city the size of Philadelphia. The U.S. produced roughly 16 percent of the worldwide wind market, followed by Germany, India, Spain, and China.

(ENS - 6/4/07)

PESTICIDES, FERTILIZERS LINKED TO U.S. PREMATURE BIRTHS

The rising premature birth rate in the United States is associated with increased use of pesticides and fertilizers containing nitrates, according to research by a professor of clinical pediatrics at the Indiana University School of Medicine.

Paul Winchester, MD, reported his findings in May at the Pediatric Academic Societies' annual meeting in Toronto, Canada, a combined gathering of the American Pediatric Society, the Society for Pediatric Research, the Ambulatory Pediatric Association, and the American Academy of Pediatrics.

"A growing body of evidence suggests that the consequence of prenatal exposure to pesticides and nitrates as well as to other environmental contaminants is detrimental to many outcomes of pregnancy. As a neonatologist, I am seeing a growing number of birth defects, and preterm births, and I think we need to face up to environmental causes," said Dr. Winchester.

A premature baby is born before the 37th week of pregnancy. Premature birth occurs in between eight to 10 percent of all pregnancies in the United States.

The rate of premature birth in the United States has risen about 30 percent between 1981, when the government began tracking premature births, and 2005, according to the National Center for Health Statistics, a division of the Centers for Disease Control and Prevention.

The prematurity rate was 9.4 in 1981; it has increased every year since then except for slight dips in 1992 and 2000.

Winchester and his colleagues found that preterm birth rates peaked when pesticides and nitrates measurements in surface water were highest, from April through July, and were lowest when nitrates and pesticides were lowest, in August and September.

(ENS - 5/7/07)

HEXAVALENT CHROMIUM + VITAMIN C = CANCER

Even tiny amounts of hexavalent chromium can cause cancer, and Brown University researchers have found a connection between that effect and the nutrient vitamin C.

Naturally occurring vitamin C reacts inside human lung cells with chromium 6, or hexavalent chromium, and causes massive DNA damage, researchers found.

Low doses of chromium 6, combined with

vitamin C, produce up to 15 times as many chromosomal breaks and up to 10 times more mutations - forms of genetic damage that lead to cancer - compared with cells that lacked vitamin C altogether.

This finding is startling, said Anatoly Zhitkovich, an associate professor of medical science at Brown who oversaw the experiments, funded by the National Institutes of Health.

Outside cells, Zhitkovich said, vitamin C actually protects against the cellular damage caused by hexavalent chromium, the toxic chemical that starred as the villain in the Hollywood drama, "Erin Brockovich."

This is the toxic metal, found in drinking water in a small California town, that Erin Brockovich campaigned against, successfully winning residents a record settlement of \$333 million in 1996.

Vitamin C is a powerful antioxidant, blocking cellular damage from free radicals. Specifically, the vitamin rapidly "reduces," or adds electrons, to free radicals, converting them into harmless molecules. This electron transfer from vitamin C to chromium 6 produces chromium 3, a form of the compound that is unable to enter cells.

Vitamin C has been used as an antidote in industrial accidents and other instances when large amounts of chromium are ingested.

But when chromium and vitamin C come together inside cells Zhitkovich and his team found that vitamin C acted as a potent toxic amplifier, sparking more chromosomal breaks and cellular mutations.

(ENS - 3/12/07)

MARYLAND PASSES TOUGH STORMWATER RUNOFF CONTROLS

Maryland has enacted a law that sets higher standards for new development to reduce the polluted runoff that washes off parking lots, roofs, and roads, to end up damaging streams and polluting the Chesapeake Bay.

The Stormwater Management Act of 2007 was signed into law April 24 by Governor Martin O'Malley along with 172 other bills. It requires the state Department of the Environment to adopt new regulations and a model ordinance to manage stormwater runoff.

Stormwater runoff is the fastest growing source of nitrogen and phosphorous pollution in the Chesapeake Bay. Stormwater runoff also carries chemicals and other toxins into Maryland's rivers and the bay.

Scientists suspect stormwater runoff was responsible for the cancerous lesions found on fish in the South River last summer.

The Stormwater Management Act is a fiscally neutral bill that applies to all new major development. It requires developers to use environmental site design as the primary method for managing stormwater, and requires no net increase in runoff from a development site.

The legislation requires cities and counties to update archaic local zoning codes to allow for low impact design techniques.

It also directs the Maryland Department of the Environment to study and recommend the implementation of an appropriate fee schedule to increase enforcement of stormwater laws. The department must also create a comprehensive process for permitting development that will

TECHNOLOGY UPDATES (Continued)

protect state waters from the first groundbreaking to the final stages of development and beyond.

(ENS – 5/10/07)

CALIFORNIA AIR BOARD ADDS CLIMATE LABELS TO NEW CARS

New regulations adopted Friday by the California Air Resources Board, ARB, will require automobile manufacturers to label their vehicles' smog and greenhouse gas emission characteristics.

The label will allow consumers to consider and compare a vehicle's environmental impacts.

"This simple tool will empower consumers to choose vehicles that help the environment," said ARB Chairman Dr. Robert Sawyer. "Most Californians recognize climate change as a very serious problem. This label will help consumers make informed choices."

Californians purchase about two million new vehicles each year.

The 25 million vehicles on California roads travel about 900 million miles each day. Daily, this produces 2,288 tons of smog precursor emissions and 350,000 tons of greenhouse gas emissions.

California's Smog Index Label has been required on new vehicles since the 1998 model year. The label was intended to help consumers compare the smog forming emissions from different vehicles within that model year.

The law now requires ARB to include information about emissions of global warming gases. This new label will be affixed to the window of every new car sold in California beginning in 2009.

Also Friday, community, health and environmental advocates from across the state urged the Board to improve its current plan to reduce smog and particle pollution.

"If the current smog plan is approved, a child born today won't be able to breathe clean air until he graduates from high school," said Tim Carmichael, policy director for the Coalition for Clean Air. "Air pollution costs the state \$50 billion annually. This plan can, and must, be strengthened before it is approved."

"The current plan is anemic and will defer meeting clean air standards until 2023," said Adrian Martinez, an attorney in the Southern California Air Project at Natural Resources Defense Council.

The groups urge the Board to add all available measures to its smog plan - more stringent reductions of diesel truck emissions, commitments to use cleaner ship fuels, reduction in pesticide use, and specific commitments to use cleaner agricultural equipment.

"Many measures to strengthen the plan are available today," said Rey Leon, senior policy analyst with the Latino Issues Forum. "We just need the Board to incorporate them into the state plan today. There is no excuse to leave residents suffering any longer. In the San Joaquin Valley that will be up to 11 additional years."

(ENS – 6/25/07)

GLOBAL WARMING BRINGS PERPETUAL DROUGHT TO U.S. SOUTHWEST

Human-caused climate change is likely to lead to long periods of extreme drought throughout

the American Southwest starting early this century, finds a new study released today by the Lamont-Doherty Earth Observatory, a member of The Earth Institute at Columbia University.

The researchers compared the coming drought to the Dustbowl of the 1930s that sent millions of environmental refugees fleeing to California from across the Great Plains.

In contrast to past droughts, future drying is not linked to any particular pattern of change in sea surface temperature but seems to be the result of "an overall surface warming driven by rising greenhouse gases," researchers said.

"The arid lands of southwestern North America will imminently become even more arid as a result of human-induced climate change just at the time that population growth is increasing demand for water, most of which is still used by agriculture," said Richard Seager, senior research scientist at the Lamont-Doherty Earth Observatory and one of the lead authors of the study.

Projections of climate change caused by human activities conducted by 19 different climate modeling groups around the world, using different climate models, show widespread agreement that southwestern North America, and the subtropics in general, are heading toward a climate even more arid than it is today.

Appearing April 5 in the journal "Science," the research shows that there is a broad consensus amongst climate models that this region will dry in the 21st Century and that the transition to a more arid climate may already be underway.

As the planet warms, the study documented how the Hadley Cell, which links together rising air near the Equator and descending air in the subtropics, expands toward the poles.

Descending air suppresses precipitation by drying the lower atmosphere, so this process expands the subtropical dry zones.

At the same time, and related to this, the rain-bearing mid-latitude storm tracks also shift poleward. Both changes in atmospheric circulation, which are not fully understood, cause the poleward flanks of the subtropics to dry.

Other land regions expected to be affected by subtropical drying include southern Europe, North Africa and the Middle East as well as parts of South America.

"The West, and in particular, the United States and Mexico, need to plan for this right now, coming up with new, well-informed and fair deals for allocation of declining water resources," warned author Seager.

(ENS – 4/5/07)

GROUPS WANT GENDER-BENDING DETERGENTS BANNED

Laundry workers, commercial fishermen and environmental and public health groups petitioned the EPA on Tuesday, asking the agency to provide health and safety protections from the endocrine-disrupting chemicals, nonylphenol and nonylphenol ethoxylates (NPEs). The chemicals are used principally in cleaning products and detergents.

The groups are calling for further health and safety studies, labeling of products containing the chemicals, and banning their use in industrial and consumer detergents, since safer alternatives are available.

"When fish change gender and develop sexual deformities because of the chemicals we discharge into our streams, it's a danger signal we should take very seriously," said Ed Hopkins, director of the Environmental Quality Program at the Sierra Club, one of the petitioning groups.

Even at low levels, NPEs are known to cause male fish to produce eggs, disrupt normal male-to-female sex ratios and harm the ability of fish to reproduce. Cases of such "intersexed" fish have been documented from the Potomac River to the Pacific coast.

Although research into the human health effects of NPEs is limited, one study shows that exposure of the human placenta to NPEs byproduct, nonylphenol, may result in early termination of pregnancy and fetal growth defects.

Almost 400 million pounds of NPE products are produced in the United States each year, yet the government has failed to analyze the potential health effects on the general public or workers who handle these products regularly, the petitioners say.

(ENS – 6/7/07)

ARCTIC SEA ICE MELT MAY SET OFF CLIMATE CHANGE CASCADE

Arctic sea ice that has been shrinking for decades may have reached a tipping point that could trigger a cascade of climate changes reaching Earth's temperate regions, finds a new study from the University of Colorado at Boulder.

Dr. Mark Serreze, a senior research scientist at CU-Boulder's National Snow and Ice Data Center who led the study synthesizing results from recent research, said Arctic sea ice extent has been decreasing in every month since 1979, when satellite recordkeeping began.

Serreze and his team attributed the loss of ice, about 38,000 square miles annually as measured each September, to rising concentrations of greenhouse gases and strong natural variability in Arctic sea ice.

"When the ice thins to a vulnerable state, the bottom will drop out and we may quickly move into a new, seasonally ice-free state of the Arctic," Serreze said. "I think there is some evidence that we may have reached that tipping point, and the impacts will not be confined to the Arctic region."

The review paper by Serreze and Julienne Stroeve of CU-Boulder's NSIDC and Dr. Marika Holland of the National Center for Atmospheric Research titled "Perspectives on the Arctic's Shrinking Sea Ice Cover" appears in the March 16 issue of the journal "Science," published by the American Association for the Advancement of Science.

(ENS – 3/19/07)

PA AND NJ JOIN OTHER STATES FORM CLIMATE REGISTRY TO TRACK GREENHOUSE GAS EMISSIONS

Thirty-one states, representing over 70 percent of the U.S. population, in May announced that they are charter members of The Climate Registry, marking the largest national effort to take action on climate change.

The list of founding member states and tribes includes the states of Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Kansas, Maine, Maryland,

TECHNOLOGY UPDATES (Continued)

Massachusetts, Michigan, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Utah, Vermont, Washington, Wisconsin, Wyoming and the Campo Kumeyaay Nation.

Two Canadian provinces, British Columbia and Manitoba, have also committed to participate in the Climate Registry.

"States cannot wait any longer for leadership on global warming from the federal government," said Illinois Governor Rod Blagojevich. "States are creating a system that gives businesses and organizations an opportunity to step up to the plate and take responsibility for reducing their greenhouse gas emissions.

The newly formed climate registry is a tool to measure, track, verify and publicly report greenhouse gas emissions accurately, transparently and consistently across borders and industry sectors. This is a critical first step in developing robust programs to reduce GHG emissions. The Registry will support voluntary, market-based and regulatory GHG emissions reporting programs.

Participants range from states that have been moving forward with mandatory greenhouse gas emissions reduction programs, to those that are taking initial steps to address the challenge. Both Republican and Democratic governors are represented and the states are geographically diverse.

(ENS - 5/8/07)

PPG INDUSTRIES PERFORMANCE GLAZINGS

For more than a century, PPG has been a leading manufacturer of residential glass products. PPG's Performance Glazings business recently introduced a new product, Solarban 70XL Solar Control Low-E Glass. This product represents a major industry innovation, as it transmits 63 percent of the sun's natural light while blocking 73 percent of its solar energy. Solarban 70XL glass can reduce significantly the amount of energy it takes to cool large commercial buildings, thereby allowing architects and building owners to drastically reduce the cooling capacity and equipment requirements for their buildings. The \$5,000 award will go to Phipps Conservatory and Botanical Gardens.

(PA Env. Digest - 6/11/07)

HEALTH HIGHLIGHTS: MOLDY, DAMP HOMES CAUSE CHILDHOOD ASTHMA: STUDY

Children living in damp, mold-infested homes may be at increased risk of developing permanent asthma, says a Finnish study in the European Respiratory Journal. Researchers surveyed the homes of more than 300 children and found that serious dampness or visible mold was

two to three times more common in homes where there were asthmatic children, BBC News reported. The findings offer clear evidence that mold and damp cause asthma in children, and don't just worsen or trigger attacks in children whose asthma has another underlying cause, the study authors said.

(IAQA Digest - 3/7/07)

COST TO REMOVE MOLD IS DEDUCTIBLE

The IRS has privately ruled that the business expense a taxpayer incurred for removal of mold from a building they owned and leased out was deductible as an ordinary and necessary expense under U.S. Code Sec. 162. The cost would not have to be capitalized.

Generally, repairs are deductible as an ordinary and necessary trade or business expense under Code Sec. 162 if they merely keep the property in an ordinary, efficient operating condition. But expenses must be capitalized if they're needed to place the property in an ordinarily efficient operating condition (as in the case of expenses to remedy a condition that existed when the property was acquired), or if they add to the property's value, substantially prolong its useful life, or adapt it to a new or different use. [See Code Sec. 263(a), Reg. § 1.263(a)-1(b), Reg. § 1.162-4] These rules also apply for environmental cleanup costs (Rev Rul 94-38, 1994-1 CB 35).

(Mercer News - 4/07)

HALOGENATED SOLVENT DEGREASER RESIDUAL RISK RULE

Approximately 50 of the largest degreasing facilities will reduce air toxics emissions under tighter EPA standards, which will prevent an additional 1,700 tons of solvent emissions and save the industry more than \$1 million per year. Degreasers, also known as the halogenated solvent cleaning industry, use solvents to remove soils such as grease, oils, waxes, carbon deposits, and tars from metal, plastic, fiberglass, and other surfaces.

Most degreasing facilities are well-controlled and already meet the amended standards. The rule focuses on the remaining higher emitting sources. For these degreasers, the Environmental Protection Agency is requiring facilities to reduce emissions of the solvents methylene chloride, perchloroethylene, and trichloroethylene. The emission limits will provide affected facilities with the flexibility to reduce their emissions using any traditional methods available.

EPA issued a national rule to limit emissions of air toxics from degreasing operations in 1994. This rule is one of 96 rules called maximum achievable control technology (MACT) standards that require 174 industry sectors to eliminate 1.7 million tons of 187 air toxics. Congress

listed these toxic air pollutants in the Clean Air Act. There are nearly 1,900 degreasing operations in the United States. EPA estimates that the 1994 standards prevent nationwide emissions of air toxics by 85,300 tons per year.

The rule addresses the residual risk and the eight-year technology review provisions in the Clean Air Act. These provisions direct EPA to review existing control technology standards and tighten them if needed to protect health or if improvements are made in emissions reduction methods.

(Env. Tip of the Week - 4/23/07)

GENETICALLY ENGINEERED BIOSENSOR SNIFFS EXPLOSIVES

Temple University School of Medicine researchers have developed a new biosensor that sniffs out explosives and could be used to detect landmines and deadly agents, such as sarin gas, according to a paper in the June issue of "Nature Chemical Biology."

To create the biosensor, Danny Dhanasekaran and colleagues genetically engineered a yeast strain with rat olfactory signaling machinery and genetically linked it to the expression of green fluorescent protein.

Into these yeast cells, they cloned individual rat receptors for smells.

When the olfactory receptor "smells" the odor of DNT, an ingredient in the explosive TNT, the biosensor turns fluorescent green. The research team is the first to identify, clone and sequence this novel olfactory receptor.

"We suspected that harnessing the potential of the olfactory system, which can detect innumerable chemical agents with unparalleled sensitivity and selectivity, would be of immense value in the detection of environmental toxins and chemical warfare agents even at sublethal levels," said Dhanasekaran, associate professor of biochemistry at Temple's Fels Institute for Cancer Research and Molecular Biology.

The research team is now perfecting the biosensor by shortening its response time. The scientists believe that the potential therapeutic applications extend beyond the detection of chemical agents.

"With further genetic fine-tuning of the olfactory receptor pathway, this system could also be used to screen experimental medications, a crucial step in the development of new drugs," said Dhanasekaran.

The Temple team says biosensors, which are made from natural ingredients, are preferable to man-made sensors, which can be expensive, cumbersome and inflexible.

Dhanasekaran envisions that the biosensor will soon be incorporated into a handheld device or a remote device that can be left at a location and monitored from afar.

(ENS - 5/8/07)

AMERICAN NATIONAL STANDARDS INSTITUTE APPROVED HVAC SYSTEM CLEANLINESS STANDARD

The American National Standard Institute (ANSI) recently approved a standard called "Restoring the Cleanliness of HVAC Systems". The new standard establishes minimum criteria for restoring the cleanliness of HVAC systems that require cleaning activity beyond those performed in HVAC maintenance and servicing. It includes procedures to be followed to control contaminants which may be released during or after the cleaning process, including

methods to verifying system cleanliness. The standard was developed by the Air Conditioning Contractors of America (ACCA) Education and Institute Standard Task Team, and ANSI - Accredited Standards Developer. The new standard is available for purchase from the ACCA bookstore at: www.acca.org.store - in the "New Products" section.

(Indoor Environment CONNECTIONS - June 2007)

FEDERAL REGULATORY UPDATES

EPA FACING INCREASED PRESSURE OVER LEAD 'CLEANING VERIFICATION'

Activist and industry groups are putting increased pressure on EPA to revise requirements the agency is proposing to ensure workers do not leave behind dangerous levels of lead dust as part of a controversial rule setting work practice standards for renovation jobs at contaminated buildings, with activists arguing for more stringent requirements and industry demanding they be deleted entirely.

At issue is the cleaning verification requirement in EPA's proposed lead renovation, repair and painting (LRRP) rule, which mandates that renovation workers clean job sites after work is complete in order to ensure that lead dust levels meet EPA standards. Activists support abandoning the proposed cleaning verification system in favor of a more stringent method known as "clearance testing," while industry maintains EPA should not require renovation workers to do any verification of lead-dust levels.

In comments filed in May on two studies related to EPA's proposed rule, the National Association Home Builders (NAHB) cites the results of a recent telephone survey that it claims supports its position that requiring cleaning verification puts undue burden on businesses.

In the NAHB commissioned survey, researchers called homeowners and asked them whether they would be willing to pay \$200 per room for testing that would ensure a safe lead dust level. More than 80 percent of homeowners planning to hire renovation workers within the next two years answered in the negative which NAHB says is evidence that most people believe such testing is not justified.

"Ideally every homeowner would pay for this test, but clearly the vast majority does not believe the cost justifies the results despite living in at-risk homes". NAHB Remodelers Chairman Mike Nagel said in an April 17 press release.

NAHB included its new survey results in April 16 comments on two studies related to the proposed rule. The first study, EPA's Jan. 23 *Draft Final Report on Characterization of Dust Lead Levels After Renovation, Repair and Painting Activities*, found some of the rule's proposed requirements result in "substantial" levels of lead arguments that generally following more flexible work practice guidance on the issue by EPA and the Department of Housing & Urban Development (HUD) "reduces lead levels in homes and actually improves existing conditions."

NAHB has long opposed the proposed rule, arguing it imposes undue burdens on industry that will increase the cost of professional remodeling jobs, therefore encouraging homeowners to do repairs themselves or hire workers untrained in lead-safe work practices. But in its April 16 comments, the group appears to soften its opposition to the rule in its entirety and instead focuses on persuading EPA to remove particular aspects of the proposed regulation.

NAHB says it "has changed its position on these positive and valid measures" but adds "there are still portions of this regulatory scheme that are economically difficult, scientifically unjustified, unauthorized by the statute and inconsistent with existing regulations."

In particular, NAHB says its "greatest concern" over the rule is cleaning verification, noting that such a requirement "would impose the positive duty to permanently remove lead-based paint hazards, which is the goal of abatement contractors, not remodelers." NAHB says EPA's economic analysis for the proposed rule shows eliminating such a requirement "would reduce costs 8% and only decrease and only decrease benefits by 1.8%."

But in April 16 letter to EPA Administrator Stephen Johnson, a coalition of 13 activist groups, including the Alliance for Healthy Homes, the National Center for Healthy Housing and the Natural Resources Defense Council, says the "proposed rule is not sufficiently protective: and that the EPA lead dust study shows "the proposed cleaning 'verification' is adequate for verifying that dust lead levels after cleanup are below EPA standards."

(*SUPERFUND REPORT* – May 7, 2007)

EPA EXTENDS SPCC COMPLIANCE DATES AGAIN

On May 10, 2007 EPA Administrator Steve Johnson signed a rule: "<http://epa.gov/oilspill> dates for owners and operators of facilities preparing or amending and implementing SP Countermeasure (SPCC: <http://epa.gov/oilspill>)" <http://epa.gov/oilspill> dates for owners and operators of facilities preparing or amending and implementing SP Countermeasure (SPCC: <http://epa.gov/oilspill>) plans. This final rule extends the amend and implement its SPCC plan until July 1, 2009. EPA expects to propose further extended and compliance dates in order to provide the time necessary for the regulated requirements that EPA expects to propose in 2007.

For facilities (other than a farm) that started operations on or before August 16, 2002, SPCC plan and amend and implement the plan no later than July 1, 2009. If the facility through July 1, 2009, it must prepare and implement an SPCC plan no later than July 1, after July 1, 2009, it must prepare and implement an SPCC plan before beginning operations.

If a farm started operations on or before August 16, 2002, it must maintain its existing plan when EPA promulgates a rule specific for farms. If a farm began operations after implement an SPCC plan when EPA promulgates a rule specific for farms.

A factsheet is also available explaining changes in the regulation of animal fats and vegetable oils:

http://epa.gov/oilspill/spcc_dec06.htm#factsheets under the SPCC rule.

(*Env. Tip of the Week* – 5/15/07)

EPA PROPOSES NEW HAZARDOUS WASTE EXCLUSION

EPA is proposing to allow certain manufacturing waste to be safely burned for energy recovery in industrial boilers. This action will remove what the agency describes as unnecessary regulatory costs while maintaining current levels of protection of human health and the environment.

EPA is proposing to expand the Resource Conservation and Recovery Act's Hazardous Waste Comparable Fuels Exclusion to encompass a new category of liquid hazardous waste-

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- SPCC Deadlines Extension, pg. 9
- LBP Cleaning Verification, pg. 9
- Haz Waste Exclusion, pg. 9
- Cleanup Cost Recovery, pg. 11

derived fuel known as emission-comparable fuel (ECF). ECF is produced from a hazardous waste but generates emissions when burned in an industrial boiler that are comparable to those from burning fuel oil. ECF would be subject to the same regulations that currently apply under the Comparable Fuels Exclusion but would be exempt from the specifications for certain hydrocarbons and oxygenates. It also would have to meet certain storage and burner conditions.

For details, see the agency's Document: http://www.epa.gov/epaoswer/hazwaste/combust/compfuels/q_acompfuel.htm and Fact Sheet <http://www.epa.gov/epaoswer/hazwaste/combust/compfuels/compfuel-fs.htm>

<http://www.epa.gov/epaoswer/hazwaste/combust/compfuels/compfuel-fs.htm> and attend Environmental Resource Center's Advanced Hazardous Waste Management : <http://www.ercweb.com/classes/course.aspx?course=1006> <http://www.ercweb.com/classes/course.aspx?course=1006>.

(*Env. Tip of the Week* – 6/5/07)

NEW TRI REPORTING REQUIREMENTS

EPA's Toxics Release Inventory Program recently issued a final rule expanding reporting like compounds category. There are seventeen distinct members of this chemical category requires that, in addition to the total grams released for the entire category, facility individual member on a new Form R Schedule 1. EPA will then use the individual mass quantity will be made available to the public along with the mass data. The final rule also remains distribution of compounds in the category.

EPA currently requires that facilities report, in grams, the total amount of dioxin and facility. When available, the facility must also provide a single "distribution," show individual dioxin and dioxin-like compounds. This single distribution must represent either media (air, land, water) for which the facility has the best information.

Although useful, total releases are not the best measure of the actual toxicity of the own level of toxicity. To account for how compounds vary in toxicity, weighted values to calculate TEQs, a value is assigned describing how toxic each dioxin and dioxin-like members of the category: 2, 3, 7, 8-tetrachlorodibenzo-p-dioxin and 1, 2, 3, 7, 8-pentachlorophenol.

Expressing data for dioxin and dioxin-like compounds as TEQs allows the public to understand management at facilities that report under the TRI program. For example, a facility regarding dioxin and dioxin-like compounds may or may not be of greater interest than a facility combination. However, a facility releasing 3 grams TEQ of dioxins is of greater environmental gram TEQ to the same environmental medium (e.g. air, land, water).

TEQs will allow the public too make more informed environmental decisions within their

FEDERAL REGULATORY UPDATES (Continued)

facility and waste management information in grams TEQ will also permit easier comparisons between international data.

TRI Dioxin and Dioxin-like Compounds Toxic Equivalency Final Rule – Federal Register Notice:

<http://www.epa.gov/tri/tridata/teq/TRI%20TEQ%20Final%20Rule.pdf>.

Further information on this final rule is available from the following:

*The Emergency Planning and Community Right-to-Know Hotline, (toll free): 1-800-424-9? Or (toll free) TDD: 1-800-553-7672.

(Env. Tip of the Week – 5/22/07)

SUPREME COURT DECIDES CARBON DIOXIDE CAN BE CONSIDERED A CLEAN AIR ACT POLLUTANT

In *Massachusetts v. EPA*, 05-1120, the Supreme Court ordered the federal government April 2 to take a fresh look at regulating carbon dioxide emissions from cars, a rebuke to Bush administration policy on global warming.

In a 5-4 decision, the court said the Clean Air Act gives the EPA the authority to regulate the emissions of carbon dioxide and other greenhouse gases from cars. Greenhouse gases are air pollutants under the landmark environmental law, Justice John Paul Stevens said in his majority opinion. The court's four conservative justices – Chief Justice John Roberts and Justices Samuel Alito, Antonin Scalia and Clarence Thomas – dissented.

Many scientists believe greenhouse gases, flowing into the atmosphere at an unprecedented rate, are leading to a warming of the Earth, rising sea levels, and other marked ecological changes. The politics of global warming have changed dramatically since the court agreed last year to hear its first global warming case.

Carbon dioxide is produced when fossil fuels such as oil and natural gas are burned. One way to reduce those emissions is to have fuel-efficient cars.

The court had three questions before it:

- Do states have the right to sue the EPA to challenge its decision?
- Does the Clean Air Act give EPA the authority to regulate tailpipe emissions of greenhouse gases?
- Does EPA have the discretion not to regulate those emissions?

The court said yes to the first two questions. On the third, it ordered EPA to re-evaluate its contention it has the discretion not to regulate tailpipe emissions. The court said the agency has so far provided a "laundry list" of reasons that include foreign policy considerations. The majority said the agency must tie its rationale more closely to the Clean Air Act.

(Env. Tip of the Week – 4/14/07)

EPA PROPOSES NEW OZONE STANDARD

EPA is proposing to strengthen the nation's air quality standards for ground-level ozone <<http://epa.gov/groundlevelozone/>>, revising the standards for the first time since 1997. According to the agency, the proposal is based on the most recent scientific evidence about the health effects of ozone – the primary component of smog. The proposed standard is being made under a

court-supervised settlement with the American Lung Association, Environmental Defense, the Natural Resources Defense Council and the Sierra Club.

"Advances in science are leading to cleaner skies and healthier lives," said EPA Administrator Stephen L. Johnson. "America's science is progressing and our air quality is improving. By strengthening the ozone standard, EPA is keeping our clean air momentum moving into the future."

The proposal recommends an ozone standard within a range of 70 to 75 parts per billion (ppb). That is lower than the current eight-hour standard of 80 ppb but higher than the 60 to 70 ppb unanimously recommended by the EPA's Clean Air Scientific Advisory Committee last October.

EPA also is taking comments on alternative standards within a range from 60 ppb up to the level of the current eight-hour ozone standard.

EPA also is proposing to revise the "secondary" standard for ozone to improve protection for plants, trees, and crops during the growing season. The secondary standard is based on scientific evidence indicating that exposure to even low levels of ozone can damage vegetation. EPA is proposing two alternatives for this standard: a standard that would be identical to the "primary" standard to protect public health, and a cumulative standard aimed at protecting vegetation during the growing season.

EPA is estimating the health benefits of meeting a range of alternative ozone standards based on published scientific studies and the opinion of outside experts. These findings will be detailed in a regulatory impact analysis to be released in the next few weeks that will include both the estimated costs and benefits. EPA projects that health benefits of the proposed standard could be in the billions of dollars. However, EPA does not consider costs in setting ozone standards.

(Env. Tip of the Week – 6/25/07)

EPA'S TRI FORM R SOFTWARE UPDATED AND ONLINE

On June 4, EPA released TRI-MEweb, the new Internet-based reporting application, to facilities in states that were participating in the TRI State Exchange Network as of April 2007. Facilities in Colorado, Delaware, Illinois, Indiana, Kansas, Kentucky, Michigan, Minnesota, Oklahoma, Oregon, South Carolina, Utah, Virginia, and Washington are eligible to use TRI-MEweb if they have reported in previous years. New facilities are not eligible to use TRI-MEweb for reporting year 2006.

Facilities located within these 14 states that have provided valid e-mail addresses in previous TRI submissions will receive an e-mail with instructions on how to access TRI-MEweb. Facilities that have not provided a valid e-mail address will receive a letter with instructions. Facilities that have not received instructions by June 11 should contact the TRI-ME/CDX help desk at epacdx@csc.com

"mailto:epacdx@csc.com" <mailto:epacdx@csc.com> or (888) 890-1995.

Facilities that are not located within one of these 14 states should continue to report using the desktop version of the TRI-ME reporting software available at:

<http://www.epa.gov/tri/report/software>

PRESIDENT BUSH CALLS FOR GLOBAL GREENHOUSE GAS EMISSIONS GOALS

President Bush announced on May 31 that the United States will work with other nations to establish a new framework on greenhouse gas emissions for when the Kyoto Protocol expires in 2012. By the end of next year, the president aims to reach an international agreement that establishes a long-term global goal for reducing greenhouse gases. "In recent years, science has deepened our understanding of climate change and opened new possibilities for confronting it," said President Bush. "The United States takes this issue seriously."

To help develop this goal, the United States plans to convene a series of meetings of nations that produce most greenhouse gas emissions, including nations with rapidly growing economies like India and China. Over the course of the next 18 months, the president envisions participating nations bringing together industry leaders from different sectors of their economies, such as power generation, alternative fuels, and transportation. These leaders will form working groups that will cooperate on ways to share clean energy technology and best practices. Each country also will establish midterm national targets and programs that reflect its own mix of energy sources and future energy needs. The participating countries also will create a strong and transparent system for measuring each country's performance.

According to the president, this new framework would help the United States fulfill its responsibilities under the United Nations Framework Convention on Climate Change (UNFCCC).

(Env. Tip of the Week – 6/12/07)

EPA PANEL CALLS FOR RULES TO ALLOW CONTROVERSIAL CLEANUP INSURANCE

An EPA financial advisory panel is calling for the agency to require that companies seeking to use a controversial self-insurance mechanism during cleanup and closure at contaminated sites provide certain financial assurances that it can meet remedial obligations in the event of bankruptcy or other financial problems.

The recommendation to add requirements before allowing the use of such self-insurance comes in the wake of criticisms raised in recent years by congressional auditors over its use and after several states have barred employment of the mechanism at certain types of waste sites. State environmental regulators, concerned about the validity of such insurance policies, have favored national regulations to address the matter, the panel says.

At a March 20 meeting in Atlanta, members of the agency's Environmental Financial Advisory Board (EFAB) approved a final letter to the EPA administrator that calls for setting the requirements. The letter tells the agency it should require that if a company uses a captive insurance policy to provide financial assurance, it should pass a financial test grading a company's solvency. The Resource Conservation & Recovery Act (RCRA) generally requires companies to provide financial assurance for its cleanups through a variety of mechanisms including bond ratings, insurance policies, and a

FEDERAL REGULATORY UPDATES (Continued)

financial solvency test.

Large corporations sometimes will establish an insurance company as a subsidiary, which in turn insures all or part of the risks of the parent company. This coverage is known as captive insurance. The coverage can be less expensive than policies provided by third parties, making them especially appealing to larger companies with a number of subsidiaries.

The insurance mechanism is also used in areas other than environmental protection where corporate parent companies find it advantageous compared to purchasing insurance policies from a commercial carrier. For example, worker's compensations in an area in which captive insurance is often used to cover the unexpected costs of sick or injured employees, the EFAB document says.

The final recommendations by the EFAB go beyond an earlier draft from this past August that called on the agency only to issue guidance to states on how to regulate captive insurance. The final document advises EPA to require that a company seeking to use captive insurance at waste sites – such as brownfields, landfills, leaking underground storage tank sites or other contaminated properties – “pass the financial test and unconditionally guarantee the obligations of the” corporation or possess a positive insurance rating from a reputable rating organization, such as AM Best.

(SUPERFUND REPORT – April 9, 2007)

DRAFT GUIDE ALLOWS FIRST-TIME EPA OVERSIGHT OF SOME WORKPLACES

EPA for the first time is suggesting that agency-established environmental exposure levels should be considered a certain occupational settings, initiating a landmark move by the agency to regulate indoor air and assert jurisdiction over properties typically under the Occupational Safety & Health Administration's (OSHA) purview.

A draft EPA vapor intrusion policy document is circulating among agency regional and headquarters offices, and could be released by the end of the year. The draft advises agency and industry officials to consider strict EPA risk-based cleanup standards to limit vapor intrusion and indoor air contamination at certain workplace settings in lieu of weaker OSHA standards – a move that could prompt extensive remediation and widespread litigation, sources say.

Under the draft guidance, EPA is suggesting it can impose its own environmental exposure standards at sites in which workers are exposed to chemicals not used in the workplace, or when workers are exposed to chemicals used in a nearby workplace, sources say. Such a situation could occur in a mixed-use office park, a medical facility or a manufacturing center.

The guidance comes despite the fact that, historically, OSHA authorities have set cleanup standards at occupational sites. OSHA standards are typically less stringent than EPA risk-based standards, often by order of magnitude.

California and states in the Northeast have the most vapor intrusion sites that have been found, but any state has a history of manufacturing, industry or military operations is likely to have a large number of properties with the potential for contamination from the vapors. Sources have

also suggested that agricultural lands may also have vapor intrusion that results from pesticide contamination or leaked fuel from farm equipment and underground fuel tanks.

While the EPA policy document is not publicly available, sources say it could follow along the lines of state efforts to address the issue. New York, New Jersey, Michigan, California, Indiana and Colorado have all taken some action to advise industry and regulators on when environmental risk-based standards, rather than OSHA workplace standards, should be considered in occupational settings to limit vapor intrusion.

Colorado's guidance, for example, calls for OSHA limits to be followed in cases where workers have voluntarily accepted known risks of exposure; where controls are set to protect worker health; and when workers are informed of the contamination. But sources say the leaves the door open for regulators to suggest that environmental risk-based standards should be considered at office parks and non-industrial occupational settings.

Following EPA standards at occupational sites, however, could lead to widespread litigation, attorneys say, because real estate developers and other property owners may not want to remediate contaminated sites to the strict EPA cleanup levels when OSHA levels will likely require less costly cleanup.

OSHA develops permissible exposure limits (PELs) designed to keep workers protected in occupational settings during the typical 8-hour workday. PELs, however, are often much less stringent than EPA's risk-based cleanup standards, which are developed for residential settings. Following EPA standards at commercial and industrial occupational sites could force real estate developers and property owners to fund extensive cleanup efforts in areas that do not have as stringent cleanup levels as residential settings.

For example, the OSHA PEL for the ubiquitous Superfund contaminant trichloroethylene (TCE) is about six times weaker than EPA's level. EPA risk-based standards for a number of other common vapor intrusion contaminants – such as vinyl chloride, benzene and tetrachloroethene (PCE) – are several orders of magnitude more stringent than OSHA levels.

Observers tracking the issue say any effort by EPA to establish more stringent cleanup levels to limit occupational exposure to vapor intrusion runs counter to a 1990 memorandum of agreement (MOU) between EPA and OSHA that established OSHA has primary workplace authority. The MOU includes language that says EPA and OSHA agree to coordinate work in areas of potentially overlapping authority.

EPA and OSHA sources say that in recent years, OSHA has rebuffed efforts by EPA to develop joint guidance on vapor intrusion for industrial and occupational settings. “Our role was mainly to educate EPA on how we derive [PELs] and to explain our enforcement authority with respect to workplaces that have contaminated air, as a result of vapor intrusion,” an OSHA spokesman says.

Sources say pressure from some EPA regional and state officials may have encouraged EPA headquarters officials to take an aggressive role in setting stringent cleanup levels to limit exposure to vapor intrusion, regardless of whether the

building is in an occupational or residential setting.

Many sources note that OSHA is more qualified to address worker safety issues and that the industrial workplace is vastly different than residential and public spaces. However, the sources note that while industrial workers are trained to work with dangerous chemicals and know how to protect themselves, workers in government buildings, academic settings and common office buildings can be exposed to contamination without knowledge or protections.

(SUPERFUND REPORT – 4/23/07)

NAS PANEL SEEKS MAJOR SHIFT IN HOW EPA ASSESSES CHEMICALS' TOXICITY

A National Academy of Sciences (NAS) panel is calling for a major shift in how EPA assesses chemicals' toxicity, recommending that the agency base its toxicological research and regulatory processes on how substances affect biological pathways – which send information within and between cells – rather than so-called health endpoints, such as cancer. An NAS report unveiled June 12 recommends that EPA in the next two decades move away from its current toxicological testing methods toward embracing research on how substances affect the behavior and function of individual cells and chemical receptors.

(SUPERFUND REPORT – 6/18/07)

SUPREME COURT ALLOWS PRP TO RECOVER CLEANUP COSTS FROM OTHER PRPs, INCLUDING THE FEDERAL GOVERNMENT

On June 11, 2007, the United States Supreme Court unanimously held that potentially responsible parties (“PRPs”) may recover cleanup costs, even if voluntarily incurred, from other PRPs. The Court based the decision on the plain language of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9607 et seq. (“CERCLA”), as amended by the Superfund Amendment and Reauthorization Act of 1986 (SARA). Specifically, in the United States v. Atlantic Research, the issue before the Court was whether section 107(a) of CERCLA provides a PRP with a cause of action to recover from other PRPs – which the Court held, it does.

The Supreme Court rejected the government's arguments that (1) section 107(a) does not allow PRPs to recover costs from other PRPs and that section 113(f) is the exclusive route by which a PRP may seek contribution from other PRPs; (2) Atlantic Research's interpretation would effectively allow PRPs to evade section 113(f)'s shorter statute of limitations; (3) PRPs will avoid equitable apportionment under section 113(f) and instead pursue joint and several liability under section 107(a); and (4) providing a right of contribution for parties who voluntarily cleanup contaminated sites frustrates Congress's intent to encourage supervised cleanups through settlements with the government. The government argued that allowing pre-enforcement contribution claims, PRPs could evade section 113(f)'s settlement bar, which protects settling parties from lawsuits by other PRPs.

The Court refused to adopt the government's reading of the statute, which would have pre-

FEDERAL REGULATORY UPDATES (Continued)

cluded virtually all PRPs who had not been sued or had not settled with the government from recovering costs.

Had the Supreme Court refused to allow a section 107(a) claim for PRPs seeking cost recovery from other PRPs, it is likely that the number of private parties conducting voluntary cleanups would significantly decline – a result that is contrary to CERCLA's legislative intent. As pointed out by the thirty-eight states filing a brief as *Amicus Curiae*, the federal and state governments do not have the resources necessary to bring all the CERCLA actions needed to clean up all hazardous waste sites in the United States, and PRPs conducting voluntarily cleanups advance CERCLA's goal of encouraging prompt cleanups and/or settlements, given the threat of potential litigation from other PRPs.

Environmental Land Use and
Natural Resources Alert

By William H. Hyatt, Jr., Emily L. Won,
Karyllan Dodson Mack with contributions from
Erin Carroll and Shannon Hennessy, June 2007
(K&L Gates – 6/13/07)

EPA, ARMY CORPS ISSUE JOINT WETLANDS GUIDANCE

The U.S. Environmental Protection Agency, EPA, and the U.S. Army Corps of Engineers Tuesday issued joint guidance for their field offices to ensure America's wetlands and other water bodies are protected under the Clean Water Act.

The guidance is issued in view of the U.S. Supreme Court decision handed down on June 19, 2006 in the case of developer John Rapanos and others that federal agencies have no authority under the Clean Water Act to regulate truly isolated, non-navigable, intrastate water bodies.

The high court ruled that federal agencies have no authority under the Clean Water Act to regulate any area merely because it has a hydrological connection with downstream navigable-in-fact waters.

The court also determined that federal agencies have no authority under the Clean Water Act to regulate remote drains and ditches with insubstantial flows.

The interagency guidance will enable the agencies to make clear, consistent, and predictable jurisdictional determinations, said Woodley. "The results, once posted on agency websites, will document how the scope of the Clean Water Act jurisdiction is being determined."

During the first six months implementing the guidance, the agencies are inviting public comments on case studies and experiences applying the guidance.

Upon publication of the notice of availability in the Federal Register, comments can be submitted to docket EPA-HQ-OW-2007-0282 through www.regulations.gov.

(ENS – 6/6/07)

EPA TO PROBE PUBLIC HEALTH EFFECTS OF PERCHLORATE, MTBE

The U.S. Environmental Protection Agency has decided to investigate the impacts of two water contaminants – perchlorate and MTBE – on human health.

Most of the perchlorate manufactured in the

United States is used as the primary ingredient of solid rocket propellant. Wastes from the manufacture and improper disposal of perchlorate-containing chemicals are increasingly being discovered in soil and water.

MTBE is a fuel oxygenate, added to gasoline to make it burn more cleanly. Releases of MTBE to ground and surface water can occur through leaking underground storage tanks and pipelines, spills, emissions from marine engines into lakes and reservoirs.

For those two contaminants, the EPA is providing a summary of current health, occurrence, and exposure information. The agency is seeking comment and additional information from the public to determine if regulation of these chemicals in drinking water would reduce risks to human health.

(ENS – 4/12/07)

SIX CRITICAL AIR POLLUTANTS DOWN IN 2006

Preliminary air quality and emissions data for 2006 shows continued improvement in the nation's air quality over the long term, according to the latest figures from the U.S. Environmental Protection Agency, EPA, released in late April.

Under the Clean Air Act, the EPA sets national air quality standards for six key pollutants—nitrogen dioxide, ozone, sulfur dioxide, particulate matter, carbon monoxide and lead.

Emissions of these six pollutants have dropped by more than half since 1970 and the national average concentration for each criteria pollutant is below the level of its air quality standard.

While national average concentrations of the six key pollutants are below national standards, results vary by site, and annual levels at some individual sites do remain above one or more of the national air quality standards, the EPA said.

Annual pollution levels at some monitoring sites do remain above one or more of the national air quality standards, with ozone and particulate matter remaining as the most persistent problems.

Carbon monoxide levels show the greatest improvement, down 62 percent from 1990 levels; lead is down 54 percent and sulfur dioxide is down 53 percent from 1990 levels.

The EPA points out that while emissions of the six key pollutants and the compounds that form them continue to decline, the United States has continued to grow and prosper.

(ENS – 4/30/07)

U.S. CHEMICAL FACILITIES MUST MEET NEW ANTI-TERRORISM STANDARDS

For the first time, high risk chemical facilities will have to abide by federal security regulations to safeguard against terrorist attacks, according to a rule issued in April by the Department of Homeland Security, as required by Congress. The rule meets with the approval of chemical companies, but critics worry that rail transport of hazardous chemicals is not covered.

The rule establishes risk-based performance standards and requires chemical facilities housing quantities of specified chemicals to complete a screening assessment that determines their level of risk and identify security vulnerabilities.

About half of U.S. chemical plants, about 7,000 facilities, are thought to be at high risk of

either a terrorist attack or an accident, the department said.

This summer, the department will begin conducting site inspections and audits, focusing first on the 300 to 400 facilities considered to be of the highest concern.

If a company has even the smallest amount of some chemicals, such as carbon monoxide, hydrogen cyanide and methyl bromide, on-site, it must do a screening assessment. The list of "Chemicals of Interest" specified under the rule is available online at:

http://www.dhs.gov/xprevprot/laws/gc_1175537180929.shtm.

High risk facilities must develop and implement Site Security Plans that meet the risk-based performance standards.

(ENS - 4/4/07)

BUSH ORDERS FIRST FEDERAL REGULATION OF GREENHOUSE GASES

After resisting the regulation of greenhouse gases since he took office in 2001, President George W. Bush in May signed an Executive Order directing four federal agencies to develop regulations limiting greenhouse gas emissions from new mobile sources. Greenhouse gases, such as carbon dioxide emitted by the combustion of fossil fuels, contribute to global climate change.

The President directed the U.S. Environmental Protection Agency, EPA, the Department of Transportation, the Department of Energy, and the Department of Agriculture to work together "to protect the environment with respect to greenhouse gas emissions from motor vehicles, nonroad vehicles, and nonroad engines, in a manner consistent with sound science, analysis of benefits and costs, public safety, and economic growth," the Executive Order states.

The President's new policy is based on a decision by the U.S. Supreme Court April 2 in *Massachusetts v. EPA* that the Bush administration failed to follow the requirements of the Clean Air Act when it refused to regulate greenhouse gas emissions from motor vehicles.

Announcing his new policy at the White House in May, President Bush said, "Last month, the Supreme Court ruled that the EPA must take action under the Clean Air Act regarding greenhouse gas emissions from motor vehicles. So today, I'm directing the EPA and the Department of Transportation, Energy, and Agriculture to take the first steps toward regulations that would cut gasoline consumption and greenhouse gas emissions from motor vehicles, using my 20-in-10 plan as a starting point."

The president announced his "20-in-10 plan" in January during his State of the Union address. It aims to cut America's gasoline usage by 20 percent over the next 10 years.

Bush has sent Congress a proposal that would meet this goal in two steps. First, a mandatory fuel standard that requires 35 billion gallons of renewable and other alternative fuels by 2017. "That's nearly five times the current target," he said.

The second step is an increase in fuel efficiency standards for light trucks and cars. Developing regulations will require "coordination across many different areas of expertise," Bush said.

FEDERAL REGULATORY UPDATES (Continued)

"This is a complicated legal and technical matter, and it's going to take time to fully resolve. Yet it is important to move forward, so I have directed members of my administration to complete the process by the end of 2008." Bush's term of office expires January 20, 2009.

(ENS - 5/14/07)

EPA EXEMPTION FOR INCINERATORS RULED ILLEGAL

A federal court has thrown out an attempt by the U.S. Environmental Protection Agency, EPA to exempt tens of thousands of waste incinerators from the controls of the Clean Air Act.

In a decision June 8 by the U.S. District Court

for the District of Columbia, a panel of three judges ruled that facilities that burn waste are incinerators, not "boilers" or "process heaters" as claimed by the EPA, and so must meet the Clean Air Act's incinerator standards.

The case was brought by the Natural Resources Defense Council, the Sierra Club, the Louisiana Environmental Action Network, and the Environmental Integrity Project.

Many industrial facilities, including chemical plants, refineries, metal smelters, and paper mills, burn the waste they generate in on-site incinerators.

Among the wastes they burn are chemicals, industrial sludges, plastics, agricultural waste

treated with pesticides, chemically treated wood wastes, and used tires.

Emissions from these incinerators include mercury, lead, arsenic, dioxins, polychlorinated biphenyls, PCBs, and other highly toxic pollutants. Exposure to these emissions can cause cancer, birth defects, neurological problems in young children and babies, and lung and heart problems.

EPA attorneys argued that the agency could set less protective standards for these incinerators by treating them as though they were "boilers" or "process heaters" that burn only fossil fuels.

The court rejected that argument.

(ENS - 6/15/07)

NJDEP PROPOSES TO INCREASE PROTECTION OF NEW JERSEY WATERS

By Adam Meurer

In April the New Jersey Department of Environmental Protection (NJDEP) announced proposals to amend two major sets of water quality regulations: the Water Quality Management Planning (WQMP) Rules and the Surface Water Quality Standards (SWQS). The passage of these amendments will significantly affect the course of development activities throughout the state of New Jersey.

With the expiration of the current WQMP Rules fast approaching (October 28, 2007), the NJDEP has issued proposed amendments which will include the restructuring of wastewater management plans and amendments, shift planning responsibility to the County Boards of Chosen Freeholders, allow for the withdrawal and redesignation of wastewater service areas where local Wastewater Management Plans (WMPs) have not been updated within the mandatory six year timeframe, and requirements for municipalities to ensure proper septic system maintenance and densities are achieved. Furthermore, the proposal establishes standards for delineating sewer service areas to protect environmentally sensitive resources and specific review criteria of WMP amendments to ensure those protections are adequate. These review controls include evaluation of development impacts on wastewater, water supply, nonpoint source pollution (i.e. stormwater, steep slopes, riparian zones, etc.), and habitat of threatened and endangered species.

In short, all new development with wastewater discharges greater than 2,000 gallons per day (gpd), residential construction involving six or more dwelling units, or existing facilities wishing to expand that have not previously assessed environmental impacts will be required to address the impacts resulting from the development through an amendment to the local WQMP. The intention of the required amendments is to determine if the proposed development will result in the degradation of water quality or the destruction of habitat for threatened and endangered

species, as these resources are afforded special protections by the State.

The forthcoming adoption of these proposals will have far reaching impacts on the area of real estate development. Projects will not only be required to satisfy a more comprehensive list of environmental inquires, but may also meet with delays in progression due to increased review. Additionally, municipalities may elect to not update their WMP and voluntarily have wastewater service area designations withdrawn, effectively preventing substantial future development. The recent anti-sprawl initiative witnessed in New Jersey makes this possibility much more plausible.

Similar to the WQMP Rules proposal, the proposal to the SWQS will affect the patterns and locations of future development. The proposal redefines "Category One" water designation, thereby increasing the protection of over 900 miles of waterways and 1,300 acres of reservoirs. The NJDEP uses three tiers of surface water designations in their antidegradation policy, which include, in order of most protective to least, Outstanding National Resource Waters (ONRW), Category One, and Category Two. ONRWs are maintained in their natural state and no changes due to anthropogenic activities are permitted. Category One and Category Two waters are so classified due to their clarity, color, setting, ecological or recreational significance, water supply, or fisheries resource. They utilize the same water quality standards, but no measurable changes are permitted to Category One waters, whereas lowering of existing quality parameters better than criteria are allowed in Category Two waters. In order to maintain the quality of these waters, a 300' buffer zone is established along these corridors. Infringement into these buffer zones is periodically allowed, but only when the applicant can prove that no significant ecological or water quality degradation will occur by completing a functional value assessment, and in no case can development occur within 150' of Category One waters.

Waterways that will be afforded the protections of Category One waters include portions of the Musconetcong River, Wallkill River, Pequest River, Ramapo River, Stony Brook, Lamington River, Salem River, Pompeston Creek, Maurice River, Toms River, Rockaway River, and Pequannock River. Additionally, the Split Rock Reservoir, Oak Ridge Reservoir, Canister Reservoir, and tributaries of the Swimming River and Wanaque Reservoirs will also be upgraded to the be included in the new antidegradation designations.

The foreseeable acceptance of these proposed rules shows that the NJDEP is committed to ensuring that the development community adheres to a strict set of guidelines. Regulations such as these are becoming the norm in the environmental field and it is expected that these programs will only become increasingly strict in the coming years. This trend further underscores the need for early inquiries into the environmental condition at proposed project sites and will force developers to become more dynamic during the planning process. Unfortunately, the implementation of increased regulatory oversight will likely increase delays in obtaining approvals and authorizations. Thus, a thorough review of all environmental issues at proposed development and redevelopment sites is recommended to facilitate positive project progression, and we at RT are prepared to provide full support in these efforts.

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NJ REGULATORY UPDATES

“UNDERPRODUCTIVE USE” OF PROPERTY NOT ENOUGH TO WARRANT REDEVELOPMENT

By: *Henry L. Kent-Smith & Phillip J. Morin, III*

On June 13, 2007, the New Jersey Supreme Court issued its decision in *Gallenthin Realty Development, Inc. v. Borough of Paulsboro* (A-51-2006). The Supreme Court reversed the lower court decisions that upheld the Borough of Paulsboro's designation of the subject property as “in need of redevelopment” pursuant to N.J.S.A. 40:12A-5(e). In reaching its decision, the Supreme Court held that the term “blighted areas” was not applicable where the sole basis for redevelopment is that a property is “not fully productive.”

In 2003, the Borough of Paulsboro classified a 63-acre parcel of largely vacant wetlands as “in need of redevelopment” because the property's unimproved condition rendered it “not fully productive.” The sole basis for the designation was the Borough professional planner's recommendation that the vacant, unimproved property could be more beneficial to the community if it were developed for commercial uses. Paulsboro relied on N.J.S.A. 40:12A-5(e), which permits a municipality to classify land as “in need of redevelopment” if it finds:

- Growing lack or total lack of proper utilization of areas caused by the condition of the title, diverse ownership of the real property therein or other conditions, resulting in a stagnant or not fully productive condition of land potentially useful and valuable for contributing to and serving the public health, safety and welfare

- Paulsboro asserted that the phrase “other conditions” referred to any possible condition, “not fully productive” and the property is “potentially useful and valuable for contributing to and serving the public health, safety and welfare.” The owner of the tract appealed the designation, asserting that the Gallenthin property did not meet any of the statutory criteria necessary to designate the site as “in need of redevelopment.”

Article VIII, Section 3, paragraph 1 of the New Jersey Constitution authorizes the taking of “blighted areas” for redevelopment. However, the Constitution does not define what constitutes a “blighted area.” The New Jersey Legislature provides guidance through the Local Redevelopment and Housing Law (“LRHL”), N.J.S.A. 40A:12A-1 to 73. N.J.S.A. 40A:12A-5, which delineates eight criteria municipalities may use to declare properties “in need of redevelopment.”

The Supreme Court rejected the Borough's broad interpretation of N.J.S.A. 40A:12A-5(e), stating the interpretation was too all-encompassing and would make “most property in the State” eligible for redevelopment. Although the criteria have a degree of overlap, the Supreme Court found that Paulsboro's interpretation would entirely subsume all other subsections of the statute. Since eight specific criteria and delineation in the LRHL, the Supreme Court limited the applicability of N.J.S.A. 40A:12A-5(e) to circumstances where the orderly development of a particular area is frustrated by its peculiar configuration. In other words, N.J.S.A. 40:12A-5(e)

only applies if diversity of ownership and title of a particular area impedes sound land use planning and/or the redevelopment of a site. Notably, the Court stated that its holding did not preclude the Borough from a future study as to whether the Gallenthin property is “in need of redevelopment” based upon any of the eight enumerated criteria.

New Jersey's municipalities may no longer declare a site in need of redevelopment solely for being an “underproductive use” of the property. The Supreme Court sent a clear message to municipalities that they must provide specific factual support when designating sites in need of redevelopment. Perfunctory recommendations from municipal professionals will be insufficient.

(Saul Ewing Bulletin – 6/18/07)

DEP EXPANDS SPECIAL PROTECTION ALONG WATERWAYS DELIVERS ON COMMITMENT TO PROTECT NEW JERSEY'S WATER QUALITY

Department of Environmental Protection Commissioner Lisa P. Jackson in April announced more than 900 miles of waterways and 1,300 acres of reservoirs that supply drinking water to millions of New Jerseyans deserve special protection from the dangers of development – one or two unprecedented water-quality initiatives unveiled by Governor Jon S. Corzine's Administration to mark the 37th anniversary of Earth Day.

Along with recommending Category One protection for high-quality waters in 11 counties, Commissioner Jackson also advanced a major regulatory proposal that would vastly improve wastewater management statewide.

“This Category One proposal is our largest ever, and will mean safer drinking water for New Jersey's families and cleaner habitat for rare species of wildlife,” Commissioner Jackson said at a press conference held near the Stony Brook in Mercer County's Hopewell Township. “Through the Corzine Administration's new Water Quality Management Planning rules, we will strengthen our ability to shield environmentally fragile areas from the threats that invariably accompany inappropriate development,” the Commissioner said.

The Category One designation, the state's highest level of water-quality protection, limits development impacts and discharges of pollutants to streams, rivers and lakes, ensuring no further degradation to waters that either support critical wildlife or feed into drinking-water source.

Portions or all of the following waters have been selected for Category One protection: Wallkill River, Sussex County; Musconetcong River and Pequest River, Warren County; Stony Brook, Mercer County; Pompeston Creek, Burlington County; Salem River and Oldmans Creek, Salem County; Toms River, Ocean County; Rockaway River and Split Rock Reservoir, Morris County; Swimming River Reservoir Tributaries, Monmouth County; Oak Ridge Reservoir and Wanaque Reservoir Tributaries, Passaic County; Lamington River,

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Somerset County; and Ramapo River, Bergen County. Approximately 250 miles of streams are in the Highlands Preservation Area, and already receive some level of protection.

For the first time, the proposed water quality management planning rules address the impacts of septic systems on groundwater, and establish new standards for wastewater management planning, removing environmentally sensitive lands from sewer service areas.

Under these rules, municipal planning authorities would be required to update their wastewater management plans. Currently, 141 municipalities are without plans and another 298 municipalities have outdated plans.

Further, the new rules, once adopted, would give counties a nine-month grace period to submit an application to update their wastewater management plan or face withdrawal of their sewer service area designation. Without a sewer service area designation, developers cannot obtain sewer hookups for new development. The rules propose that upon completion of a wastewater management plan, the appropriate sewer-service area designation will be restored.

Both sets of proposed regulations were published in the May 21 edition of the New Jersey Register. Following a 60-day public comment period, final rules will be adopted.

To view a copy of the Category One rule proposal or the proposal to amend the state's Water Quality Management Rules, visit the DEP's Website at: www.nj.gov/dep/rules/notices.html

(NJ News Releases – 4/23/07)

NEW JERSEY INDUSTRIES BOOST OUTPUT, CUT WASTE

New Jersey's industries are increasing their economic output while simultaneously reducing the amount of wastes they discharge to the environment, finds an analysis of pollution prevention trends released by the Department of Environmental Protection, DEP.

“Pollution prevention encourages the reduction or elimination of industrial waste at the source through the use of better management practices,” said DEP Commissioner Lisa Jackson. “This analysis provides quantifiable evidence that pollution prevention protects the environment and public health while fostering a productive industrial economy.”

New Jersey industries increased annual production by 25 percent while the amount of waste they generated, known as non-product output, declined by 45 percent, or 87 million pounds, according to the report entitled “Industrial Pollution Prevention in New Jersey: A Trends Analysis on Materials Accounting Data 1994-2004.”

Meanwhile, the overall amount of waste released into the environment decreased from

NJ REGULATORY UPDATES (Continued)

12.5 million pounds to 2.5 million pounds, or 80 percent, continuing the trend indicated in a DEP analysis issued three years ago.

"From the public's perspective, these trends show that New Jersey is clearly moving in the right direction," Jackson added.

The report tracks the use, generation and release of hazardous substances at approximately 550 facilities, including petroleum refineries, chemical plants and major manufacturers.

New Jersey is one of only two states that require industries to provide a more detailed view of hazardous substances used in manufacturing than offered by federal Toxic Release Inventory reports.

DEP uses a "production index" to calculate whether waste reductions are due to pollution-prevention measures or result from variations in production, such as those caused by process shut-downs or inefficient operations.

The analysis tracks three separate groups of chemicals of concern - carcinogens, substances that persist in the environment, and Extraordinarily Hazardous Substances. Tracking these substances individually allows DEP to prioritize resources in its enforcement and permitting programs and keeps the public informed about trends in the use of these chemicals.

For a copy of the report, go to:

www.nj.gov/dep/oppcc/reports.html#p2

(ENS - 3/23/07)

NEW JERSEY OFFERS READINESS CHECKLIST TO PERMIT APPLICANTS

The New Jersey Department of Environmental Protection, DEP, has drafted a Readiness Checklist to help permit applicants and department program staff and managers better understand project readiness for permitting.

Use of the readiness checklist will help identify, before the start of the regulatory process, if a planned project is ready for detailed review by the department and to identify regulatory issues that may need to be addressed.

In addition to framing the project site - lot and block information, acreage, topographic mapping - the checklist addresses project ownership, local zoning consistency, water supply, wastewater capacity, the need for additional internal and external governmental approvals, and proposed environmental enhancements.

The checklist is organized into a series of questions in 39 sections that help to identify project readiness.

A score is not actually tabulated, but the identification of regulatory consistency issues is aimed at helping the applicant and the department to determine, before a proposed project is submitted to DEP for review, whether the project will easily meet DEP technical and policy requirements, or if it will require a more complicated review and/or project modifications.

In addition to business practice improvement, the Readiness Checklist provides the opportunity to encourage and facilitate environmentally sustainable projects.

Projects are asked to voluntarily identify and propose innovative and beyond compliance

environmental enhancements such as high performance and/or green building design, open space preservation and/or restoration of natural resources.

The Readiness Checklist is intended to facilitate environmentally sustainable projects in locations with existing or readily available infrastructure capacity that lack natural resource constraints. In many cases this will be redevelopment and/or brownfield projects.

Use of the Readiness Checklist by the Department will not result in a reduction of minimum program standards but rather a more comprehensive and progressive approach to environmental protection.

In introducing the new Checklist, the DEP said it has historically been in a "reactive" mode, primarily processing permit applications only as they were submitted, as opposed to a more "proactive" or "strategic" mode in helping to guide development and redevelopment from an environmental perspective.

This was partially the case due to limitations in the DEP's ability to combine data on environmental factors using the appropriate information technology systems.

"The Department's extensive efforts in the advancement of information technology systems, such as through NJEMS, i-MapNJ, Data Miner, ENDEX and GIS now provide us with unprecedented opportunities to share information and review it in an integrated and strategic manner," the DEP says on its website.

The version of the Readiness Checklist currently posted on the site at:

www.nj.gov/dep/readiness/checklist_6_6_07.pdf is still considered a draft and continues to be modified as it is vetted within the Department and piloted on project proposals.

DEP officials hope that the Readiness Checklist can be implemented for all major projects before December 31, 2007. Upon implementation, all major projects submitted to any DEP program may voluntarily complete the Readiness Checklist and schedule a pre-application meeting.

Full implementation will integrate the Readiness Checklist information with DEP's enterprise data systems, NJEMS and iMapNJ DEP, providing a tool that automates project information for the applicant and helps inform both the micro-regulatory process between DEP program areas and macro-statewide environmental planning.

For further information, contact Liz Semple, Manager, Office of Planning and Sustainable Communities at 609-292-1997. Submit comments in writing to HYPERLINK "mailto:readiness@dep.state.nj.us" readiness@dep.state.nj.us

(ENS - 6/11/07)

DEVELOPMENT GOBBLING UP NEW JERSEY'S OPEN SPACE

Using high-resolution aerial photographs, the New Jersey Department of Environmental Protection, DEP, has created a new snapshot of New Jersey's landscape, comparing the results with data from prior years.

The results indicate that New Jersey is losing

open space at the rate of 15,000 acres a year, roughly the same loss in one year reported during the entire 10 year period between 1986 and 1995.

The DEP will use the findings from the new study to develop strategies to curb overdevelopment.

Among the initiatives that are being considered are increased flood hazard control measures, sustainable growth planning, and regulatory protections for threatened and endangered species.

"Our land use cover data is continually updated," DEP Deputy Commissioner John Watson said. "This mapping program will assist local officials, developers and homeowners in their decisionmaking."

This latest release of land use information is part of an ongoing effort to provide the public with current and reliable information about New Jersey's environment. The land use data has been incorporated into the Department's interactive mapping tool, i-MapNJ.

The i-MapNJ program allows the public to access data from DEP programs and overlay the information on Geographic Information Systems maps of New Jersey. The agency's GIS maps include land use areas, locations of contaminated sites and location of natural resources.

I-MapNJ is online at: www.nj.gov/dep/gis.

To access the updated land use cover data visit the DEP's website at:

www.nj.gov/dep/gis/lulc02shp.html.

(ENS - 5/7/07)

MORE NEW JERSEY BUSINESSES MUST REVIEW CHEMICAL SAFETY

As part of a proposal to increase chemical security throughout the state, New Jersey Governor Jon Corzine has announced a new proposal to more than double the number of facilities required to conduct reviews for a chemical safety program.

"We have a solemn responsibility to protect the people of the state," said Corzine. "As governor, I will continue to go to whatever lengths necessary to do just that."

The program, entitled Inherently Safer Technology, conducts reviews to ensure that companies identify how they can reduce the potentially hazardous materials they use.

Companies are reviewed to determine how they could substitute safer materials, use the least dangerous process, or use equipment and processes that reduce danger to public safety and to the environment.

"Protecting the state's critical infrastructure is one of my office's central responsibilities," said Richard Canas, director of the New Jersey Office of Homeland Security and Preparedness.

"Today's initiative extends our efforts in working with the private sector to minimize vulnerabilities and the potential consequences of a terrorist attack or other disaster," he said.

Standards adopted by New Jersey's Domestic Security Preparedness Task Force currently apply to 42 chemical manufacturers. With the newly proposed Toxic Catastrophe Prevention Act, TCPA, regulations, the number will be expanded to 94 facilities and will include

NJ REGULATORY UPDATES (Continued)

petroleum refineries, water suppliers, major food distributors, wastewater treatment plants, pesticide and agricultural manufacturers, and other facilities covered by the TCPA.

(ENS – 3/19/07)

NEW JERSEY GLOBAL WARMING EMISSIONS JUMP 14 MILLION TONS

Greenhouse gas emissions in New Jersey increased by 14 million metric tons between 1990 and 2004, a 13 percent increase, according to "The Carbon Boom," a new analysis of state fossil fuel consumption data released today by Environment New Jersey.

Using data compiled by the U.S. Department of Energy, the report examines trends in carbon dioxide emissions from fossil fuel consumption between 1990 and 2004, the most recent year for which state-by-state data are available.

In New Jersey, it documents, carbon dioxide emissions from burning gasoline in cars and SUVs increased by 31 percent between 1990 and 2004, rising from 28.5 million metric tons to 37.5 million metric tons.

New Jersey ranked 6th nationwide for the largest absolute increase in carbon dioxide emissions from motor gasoline consumption over the

15 year period. Overall, New Jersey ranked 10th nationwide for the most carbon dioxide emissions from motor gasoline consumption in 2004.

(ENS – 4/18/07)

FEDS URGED TO REGULATE SOLID WASTE ALONG RAIL LINES

A loophole in federal law allows piles of garbage 20 feet high to accumulate along rail lines across the country. The trash, mostly construction debris that can include elevated levels of arsenic and mercury, is kept at sites along rail lines before being shipped to landfills in other states.

In April, the federal Surface Transportation Board, STB, was asked to regulate this practice by Senator Frank Lautenberg, a New Jersey Democrat who serves as chairman of the Senate Commerce Committee's subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety and Security. The subcommittee has jurisdiction over railroad issues and oversees the confirmation of STB board members.

"Unregulated waste facilities, whether on a rail line or not, are bad for our communities, the senator said. "States like New Jersey need the

ability to regulate them to protect the health and safety of their residents - and it's critical for the Board to act today to make sure states have those rights."

"While I have a bill that would give states the tools they need, the Board could resolve this problem far sooner. I urge the Board to act quickly."

Lautenberg and New Jersey Senator Robert Menendez, also a Democrat, have sponsored the Clean Railroads Act of 2007 to close the federal loophole and allow New Jersey and other states to regulate solid waste facilities on rail property for environmental, health, and safety reasons.

The case before the Surface Transportation Board concerns an attempt by New England Transrail, a New Jersey company, to assert that it can operate a solid waste processing facility along rail lines in Massachusetts without abiding by pertinent regulations because it is in effect a railroad and therefore subject only to the STB and not state regulators.

The Board will determine if it has jurisdiction over solid waste processing. If it does not, jurisdiction would then fall to the states.

(ENS – 4/23/07)

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- Service Pages / Fact Sheets on CBP, ACM and Mold
- Project Profiles
- Past *RT Review* Articles

NEW LAWS AND REGULATION REVISIONS MOVING IN NEW JERSEY

A significant number of proposed environmental law and regulatory changes are on the move in New Jersey. These include, in addition to those discussed elsewhere in *RT Review* articles:

❖ Assembly Bill No. 4115 – this would require engineering firms conducting remediation projects using monies from the Hazardous Discharge Site Remediation Fund to be properly qualified by training and experience.

❖ Assembly Bill No. 4285 – this would allow those who are owners or operators of childcare centers who have applied for a license to receive a grant from the Hazardous Discharge Site Remediation Fund for the cost of Preliminary Assessments.

❖ Assembly Bill No. 4265 – this would allow municipal and county Boards of Health to have enforcement authority with the state over Class B Recycling Centers within their jurisdiction.

❖ New Jersey Department of Environmental Protection (NJDEP) has also proposed revisions to the Groundwater Quality Standards, including an Anti-Degradation Rule which would impact the extent of cleanup projects in the Highlands Water Protection and Planning Area. This rule is a companion rule to the recently proposed Water Quality Management Planning Rule (NJAC 7:15) which also regulates discharges to

groundwater from domestic treatment works. Another measure considers a secondary and cumulative impact on watersheds. Nitrates are considered as a key pollutant of concern.

❖ NJDEP has proposed to readopt federal the Hazardous Waste Rules.

❖ Amendments are also proposed to the Technical Requirement for Site Remediation, which involve revisions to the remediation standards for soil and re-codifying certain amendments to remediation standards for surface water and groundwater. The new remediation standards will form the minimum standards to which all sites in New Jersey are required to be remediated.

Finally, the DEP is proposing to use a new "Primary Review Checklist for Projects", which, will, among other goals, help DEP to prioritize projects including development and redevelopment projects. A big push will be included to use "environmentally friendly design", under this initiative. DEP hopes to prioritize permit application reviews to those projects which are environmentally friendly, as well as those which have infrastructure commitments in other needed approvals already in place.

Should you have any questions regarding any of these proposed revisions, please call Joe Lang or Justin Lauterbach in our New Jersey Office at 856-467-2276.

NJDEP PROPOSES TO REVISE WATER QUALITY AND MANAGEMENT PLANNING RULES; COUNTY OFFICIALS CONCERNED

NJDEP has proposed to revise its Water Quality Management Planning Rules. Since the 1970s, NJDEP has required counties to have a Wastewater Management Plan, approved by NJDEP before wastewater treatment or collection systems can be expanded, and, before significant new connections will be allowed. There is concern that the revisions to the rules are principally aimed at "sprawl control", although, traditionally, in NJ planning and zoning is traditionally a home rule (municipal rule) function.

Initial discussions between DEP and County Official have led to the following concerns on the rule revisions:

► Statewide, the Counties will have a relatively short period of time, a matter of months, to update their existing counts Wastewater Plans to be in compliance with the new requirements.

► Discussions with DEP Officials indicate that all existing county plan will not likely meet the new requirements, because of policies which are not in the proposed rules and revisions.

► Similar to revisions under other recent land use rule proposed changes, DEP wants to see a thorough analysis of "maximum buildout intensity" completed, so that when wastewater facilities and collections systems are expanded, they will serve for a long term, not just a 10 or twenty year wastewater planning horizon.

If the concerns of County Officials RT has spoken to come to pass, there will be a fairly substantial "state wide hold" on many development and redevelopment projects which would have to make use of new or expanded wastewater collection systems.

Although the rules would not require an out right ban on new connections, the alternative development wastewater management scheme that a new developer or redeveloper would have to use would to make use of individual subsurface sewage disposal systems, which in most cases, would be to only develop approximately 3 residential development units over 10 acres.

In the past, DEP has taken the opposite tack to control growth, e.g. – DEP would challenge a planned expansion or wastewater system extension to be the

minimum that could be justified, seemingly, to control growth. Recent statements by DEP Officials are indicating a full reversal in DEP engineering and planning approaches, so that the concern that all or most existing county wastewater management plans will not be sufficient under the new rules, certainly appears to be very real.

In the past, major changes in DEP's rationale in water and waste water planning were not successful, and in the 1970s, 1980s, such changes, outside of regulations, were struck down the Courts. We at RT think that there is an important need for proper wastewater planning and management, and, development and redevelopment pressures in NJ are very great. However, creating an unrealistic crisis, and applying technical criteria which are not in the rules or regulations is more likely than not to further delay the proper planning and implementation of wastewater collection and treatment facilities in NJ.

We hope that reason prevails, because, de facto wastewater connection bans, an inability of DEP itself to review revised wastewater plans for all counties in a short time period, and lack of coordination between the county and state and political and technical leaders is unlikely to result in anyone's objectives being met. At the very least, NJDEP owes the counties, if it is changing the rules of the game, a reasonable period of 3-5 years to revise wastewater management plans using an orderly process, with reasonable assurance that all technical criteria are included in the rules or spelled out in guidance, so that the planning process is fair and equitable.

DEP Commissioner Lisa Jackson promised Morris County Freeholders, at the time of partial withdrawal of the "Big Map", that the future planning process would be fair and reasonable. Let's hope that the rules are revised before promulgation following through on this promise, and allowing there to be a reasonable timeframe for wastewater planned revisions, so that the long term planning work by county and municipal planning and wastewater official is not lost in the frenzy of artificially short deadline not focused on the truly important goal – how environmentally proper

wastewater service can be provided and/or expanded in NJ, taking both water quality management and public and private needs into account.

More information on the Rulemaking can be found @:

- Table Identifying Locations of Proposed New Provisions and Comparing Existing Water Quality Management Planning Rule with Proposed Major Changes Published in the May 21, 2007 New Jersey Register May 21, 2007

- Nitrate as a Surrogate for Assessing Impact of Development Using Individual Subsurface Sewage Disposal Systems on Groundwater Quality April 16, 2007

- A Recharge-Based Nitrate-Dilution Model for New Jersey, v5.1 (MS Excel)

- A Recharge-Based HUC 11-Scale Nitrate-Carrying-Capacity Planning Tool for New Jersey, v1.0 (MS Excel Workbook)

- A Recharge-Based Nitrate-Dilution Model for Small Commercial Establishments in New Jersey, v1.1 (MS Excel)

- US EPA 2002, EPA Review of 2002 Section 303(d) Lists and Guidelines for Reviewing TMDLs under Existing Regulations.

- US EPA 2002, Establishing TMDL Wasteload Allocation (WLAs) for Stormwater Sources and NPDES Permit Requirements Based on those WLAs

- US EPA 2006, Establishing TMDL "Daily" Loads in Light of the Decision by the U.S. Court of Appeals for the D. C. Circuit and Friends of the Earth, Inc. v. EPA et al.

www.state.nj.us/dep/watershedmgt/rules.htm

Rule Information

Authority: N.J.S.A. 13:1D-1 et seq., 58:10A-1 et seq., and 58:11A-1 et seq.

Effective Date: September 22, 1994

Rule Expiration Date: May 1, 2007

Announcements:

Proposed Readopted with Amendments

Scheduled for publication in the New Jersey Register May 21, 2007.

RT EXPANDS WETLANDS AND THREATENED AND ENDANGERED SPECIES SERVICES

Following a recent situation in Cape May County where a developer thought he had all permits in hand, but was arrested by state and federal officials at the start of development, due to protected owl habitat presence the issue of wetlands and endangered species has become much more important to those seeking to develop or redevelop land. The City of Philadelphia and the Commonwealth of Pennsylvania, including Governor Rendell, recently also found that plans had to change when a bald eagle was found to have nested in an area of the Philadelphia Navy Yard, which had been scheduled for redevelopment into a food distribution center, port, and/or rail yard expansion. Although bald eagles have resurged dramatically, knowing all critical details about wetlands and endangered species at development and redevelopment sites has never been more important. Having threatened or endangered species at a site can stop a development or redevelopment cold, even when all permits are in hand. The regulated community has more and more realized that depending on the species involved, there can be unexpected federal involvement by the U.S. Fish and Wildlife Service, which can shelve all previously developed plans at an individual site.

RT's expanded services for wetlands and threatened endangered species will be managed by Mr. Adam Meurer. Adam is already working on projects related to threatened and endangered species, including a turtle species and on a riverfront project in Pennsylvania, and, a threatened and endangered owl species in Southern NJ. RT, as a service to its clients, will mention this issue during the Phase I ESA process at sites, where experience tells us this may be an issue. Both Pennsylvania and New Jersey have been making more information available on known habitat areas within the last year, due to several federal enforcement cases where, due to U.S. Fish and Wildlife Service involvement at sites, expensive development plans had to be shelved when threatened and

endangered species habitats were found to be present. This year as compared to last year, we are finding that many more development and redevelopment clients want to do an initial screening early, to avoid investing in expensive site plans which then have to be altered or perhaps not be able to be implemented.

Mr. Meurer received a bachelor's degree from Alleghany College and a master's from the University of Virginia, and he has already inventoried in detail all Pennsylvania and New Jersey as well as federal regulations. He will be working with a team of RT Professionals to implement wetlands and endangered species projects. Mr. Randy Piersol another team member, of RT's King of Prussia office has in-depth wetlands experience, having previously worked for the U.S. Corps of Engineers. Randy has handled in-depth wetlands evaluation and re-permitting work in Bellmawr, NJ, and, helped resolve an enforcement case in Hazelton, PA.

For more information on RT's expanded wetland/threatened and endangered species services, you can reach Adam at 800-214-5612, or by Email at HYPERSLINK "mailto:ameurer@rtenv.com" ameurer@rtenv.com.

Since our firms inception in 1988, we have received many positive compliments from our clients that one of our attributes is our ability to explain environmental laws and regulations in such way that they understand how we are going about our work, and understand clearly the regulatory program, and what their options are. We are pleased to announce the expansion of our wetlands and threatened endangered species services to build on our motto of we take the mystery out of environmental services!

RT Environmental Services, Inc.

Gary R. Brown, P.E., President

800-725-0593 Ext. 34

gbrown@rtenv.com

FEDERAL REGISTER NOTICES<http://www.epagov/homepage/fedrgstr>**Environmental Protection Agency** Nonattainment New Source Review (NSR). Final Rule.*(Federal Register -3/8/07)***Environmental Protection Agency** Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Reasonable Possibility in Recordkeeping; Proposed Rule.*(Federal Register – 3/8/07)***Environmental Protection Agency** Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; National Primary Drinking Water Regulations; and National Secondary Drinking Water Regulations; Analysis Sampling Procedures; Final Rule*(Federal Register -3/12/07)***Department of the Interior** Clean Air Act Title V Operating Permit Program Revision; New Jersey. Proposed Rule.*(Federal Register -3/20/07)***Environmental Protection Agency** New York: Incorporation by Reference of State Hazardous Waste Management Program. Immediate final rule.*(Federal Register -3/26/07)***Department of the Interior** Revisions to the Definition of Solid Waste; Supplemental Proposed Rule. EPA is publishing a supplemental proposal which would revise the definit*(Federal Register -3/26/07)***Environmental Protection Agency** Guidelines Establishing Test Procedures for the Analysis of Pollutants; Analytical Methods for Biological Pollutants in Wastewater and Sewage Sludge; Final Rule.*(Federal Register -3/26 /07)***Environmental Protection Agency** Control of Emissions of Air Pollution from Locomotive Engines and Marine Compression-Ignition Engines Less Than 30 Liters per Cylinder; Proposed Rule.*(Federal Register -4/3/07)***Environmental Protection Agency** National Emission Standards for Hazardous Air Pollutants for Area Sources: Acrylic and Modacrylic Fibers Production, Carbon Black Production, Chemical Manufacturing: Chromium Compounds, Flexible Polyurethane Foam Production and Fabrication, Lead Acid Battery Manufacturing, and Wood Preserving; Proposed Rule*(Federal Register – 4/4/07)***Environmental Protection Agency** National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries; Proposed Rule.*(Federal Register – 4/17/07)***Environmental Protection Agency** Clean Air Fine Particle Implementation Rule; Final Rule.*(Federal Register – 4/25/07)***Environmental Protection Agency** Supplemental Notice of Proposed Rulemaking for Prevention of Significant Deterioration and Nonattainment New Source Review: Emission Increases for Electric Generating Units; Proposed Rule.*(Federal Register – 5/8/07)***Environmental Protection Agency** Standards of Performance for Petroleum Refineries; Proposed Rule*(Federal Register – 5/14/07)***Environmental Protection Agency** Control of Emissions from Nonroad Spark-Ignition Engines and Equipment; Proposed Rule.*(Federal Register – 5/18/07)***Environmental Protection Agency** Lead Renovation, Repair, and Painting Program; Supplemental Notice of Proposed Rulemaking.*(Federal Register – 6/5/07)***Environmental Protection Agency** Prevention of Significant Deterioration New Source Review: Refinement of Increment Modeling Procedures; Proposed Rule.*(Federal Register - 6/6/07)***Coast Guard:** Landowner Defense to Liability Under the Oil Pollution Act of 1990: Standards and Practices for Conducting All Appropriate Inquiries. Notice of Proposed Rulemaking.*(Federal Register – 6/12/07)***Environmental Protection Agency** Expansion of RCRA Comparable Fuel Exclusion; Proposed Rule*(Federal Register – 6/15/07)***Environmental Protection Agency** Amendments to National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting and Secondary Copper Smelting Area Sources. Proposed Rule.*(Federal Register – 7/3/07)***Environmental Protection Agency** Consumer and Commercial Products: Control Techniques Guidelines in Lieu of Regulations for Paper, Film, and Foil Coatings; Metal Furniture Coatings; and Large Appliance Coatings; Proposed Rule.*(Federal Register – 7/10/07)***THE PITTSBURGH PROTOCOL FOR MOLD REMEDIATION – AN IMPORTANT DEVELOPMENT**

The consensus school of thought in mold remediation was to never pressure wash to conduct mold remediation. However, in Pittsburgh, after a water problem involving both mold and sewage inundation, an appropriate combination of mold and sewage remediation technologies using pressure washing has proven both effective and viable.

Featured in the Spring 2007 Edition of Restoration and Remediation, the protocol involved pressure washing and treatments, as well as capture of water used during the process. An obvious benefit of the protocol is that in many situations, it is less labor intense than attempting to remove mold in a dry state

by hand, and, it could well be more cost effective, for many projects.

The Pittsburgh protocol technique is considered an especially cost effective approach for completing mold remediation in such places as basements and crawl spaces.

Should you need any further information on mold investigation and remediation, contact Mr. Gary Brown at 800-725-0593 Extension 34, or Mr. Anthony Alessandrini at 856-467-2276; both are Certified Microbial Consultants who will be glad to answer any questions you may have.

PENNSYLVANIA BULLETIN NOTICES

March 9, 2007 Improvements to NPDES Post-Construction Stormwater Management Permitting Process.	3/9/07
Final: Guidelines for Conducting Underground Storage Tank (UST) Facility Operations Inspections.	3/16/07
Air Emissions Permit Streamlining – The Environmental Quality Board (Board) proposes to amend Chapter 127 (relating to construction, modification, reactivation and operation of sources).	3/24/07
May 5, 2007 Beneficial Use of Alternative Fuels for CFBs; Proposed General Permit WMGR116	5/5/07
May 5, 2007 Earth Disturbance Associated With Oil and Gas Exploration, Production, Processing or Treatment Operations or Transmission Facilities; Indent to Issue General Permit (ESCGP-1).	5/5/07
May 5, 2007 Beneficial Use of Waste Foundry Sand; Renewal of General Permit WMGR019	5/5/07
Technical Guidance – Substantive Revision: Coal and Industrial Mineral Mining Inspections.	5/5/07
Draft Technical Guidance: Incidental Coal Extraction for Government-Financed Construction Projects or Government-Financed Reclamation Projects	5/5/07
Final Technical Guidance – Guidelines for Submitting Oil and Gas Well Bonds	5/5/07
Proposed Rulemaking – Public Notice on Drinking Water Systems: DEP is proposing changes to the Safe Drinking Water to strengthen the public notice requirements for imminent threats and situations (known as Tier I incidents). Tier 1 incidents situations that have the significant potential to cause serious adverse effects on human health as a result of short-term expos affected water.	5/11/07
Proposed Rulemaking – Mine Safety and Health Administration (MSHA Consistency): This proposed rulemaking update requirements in Chapter 209 (relating to coal mines) to be consistent with the federal Mine Safety and Health Administration.	5/11/07
Final-Omitted Rulemaking – Alternative Fuels Incentive Grant Regulations: This final-omitted rulemaking will repeal the regulations to eliminate conflicting requirements in the out-dated regulations. Repealing the out-dated regulations will enhance effective administration of the AFIG program, since the AFIG program can be adequately and effectively administered utilizing instructions contained in the act, as amended.	5/11/07
Proposed Rulemaking – Hazardous Waste Amendments: The proposed amendments remove obsolete provisions and correct inaccurate references currently in the regulations; delete the outdated co-product transition scheme; and simplify the reporting requirements for hazardous waste manifests and universal wastes to eliminate unnecessary reports and to reduce paperwork requirements. The rulemaking also proposes the addition of two new categories of universal wastes, including oil-based finishes, varnishes, stains, etc.) and silver containing spent photographic solutions. Universal wastes are managed under reduced requirement order to encourage recycling and proper management.	5/11/07
Nonattainment New Source Review – Includes DEP Southeast Region	5/19/07
Pilot Plan for Streamlining Air Quality and Plan Approval Applications	5/16/07
Proposed General Plan Approval and/or General Operating Permit for Fleets of Rental Portable Electric Generators (BAQ-GPA/GP-23	5/26/07
Proposed Rulemaking-Chapter 109, Safe Drinking Water Rulemaking: This proposed rulemaking amends the department's Drinking Water regulations through a general update to accomplish the four following goals: 1) Incorporate necessary federal requirements needed to obtain and/or maintain primary enforcement authority (primacy) for the Phase II/IIIB/V Rule, Filter Back Recycling Rule, Lead and Copper Rule, and the Radionuclide Rule; 2) Amend several sections to improve data quality and state reporting process, including mandatory electronic reporting via the department's secure web application called Drinking Water Electronic Lab Reporting system; 3) Ensure consistency and analytical, monitoring and training requirements associated with Certification and Environmental Laboratory Accreditation regulations; and 4) Clarify how the department determines complaints Maximum Contaminant Levels	6/15/07
Proposed Rulemaking – Chapter 130, Subchapter B, Consumer Products: This proposed rulemaking amends the existing products in Chapter 130 by adding volatile organic compounds (VOC) content limits for 11 additional categories of co-products, including adhesive removers, antistatic product, electrical cleaner, electronic cleaner, fabric refresher, footwear or leg product, graffiti remover, hair styling product, shaving gel, toilet/urinal care product and wood cleaner. The VOC content limits in the proposed rule are more stringent than federal requirements, but will assure additional reduction emissions, which are reasonably necessary for achieving and maintaining and health-based eight-hour ozone National Ambient Air Quality Standard.	6/15/07
Final Rulemaking – Chapter 245, Storage Tank Program Amendments:	6/15/07
June 29, 2007 Draft Guidance – Stream Well and Raw Water Diversion Permitting Procedures	6/29/07
June 29, 2007 Draft Guidance – Administrative Manual for the Special Projects Funding Program of the Pennsylvania Chesapeake Bay Program	6/29/07
July 6, 2007 Draft: Mine Drainage Treatment Trust Real Property Disposition Guidelines	7/6/07

KEY HIGHLIGHTS

FEDERAL UPDATES

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TECHNOLOGY UPDATES

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