

# The RT Review

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### NEW JERSEY LSRP PROGRAM – THE APPROACH IS “OLD HAT” TO THE RT TEAM

Operating under New Jersey’s upcoming Licensed Site Professional rules will not be a new challenge to the RT team. For more than a decade, the extended RT Team has been working on privatized cleanup sites in Ohio, Connecticut, and Massachusetts. Two in Massachusetts are particularly noteworthy. RT teams with Andy Irwin of IRWIN Engineers, on two large scale, long term Massachusetts cleanup sites.

In Ohio, Gary Brown, RT’s President, worked under the Ohio Voluntary Action Program to help a large Philadelphia corporation define the scope of a large scale cleanup of leaded, china and residues, at a site near Cleveland. In Connecticut, RT continues to work with Carver Glezen, a Connecticut Licensed Environmental Professional, at a solvents impact site, which has a volatile extraction system.

The two largest sites are in Massachusetts, one in West Springfield, and one in Attleboro. On these sites, on the groundwork, as previously mentioned is by Andrew Irwin, P.E., LSP, TURP, CPEA, who is also the current President of the Licensed Site Professional Association in the state of Massachusetts.

The West Springfield site involves a retail location, where perchloroethylene (PCE) was discharged into leaking tanks, prior to 1965. High levels in the retail space of PCE, caused immediate implementation of volatile extraction system, and, later, reconstruction of the retail space with a vapor barrier. Extensive on and off site investigation work was conducted, as the site is within 1,000 feet of the Connecticut River. Currently, remaining elements remediation are being addressed through in-situ treatment, of a shallow impacted zone, where PCE concentrations remained high until recently. A pilot test showed that in-situ treatments were highly successful, so the property owner has elected to proceed with a more complete cleanup, which is underway this year.

For a major Philadelphia area redeveloper, RT has been working at a large scale electrical/electronics components and research site in Attleboro, Massachusetts, which continues to undergo redevelopment. A large scale groundwater pump and treat operation is underway at that site, and facilities were reconstructed as divestitures and scale back occurred, and new tenants and purchasers

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### GLOUCESTER CITY’S SOUTHPORT – REDEVELOPMENT MAKEOVER

While residential redevelopment has been “all the rage” in many US urban waterfront areas in the last decade, declining residential housing market caused pullback and reexamination of development plans at Gloucester City’s Southport Redevelopment site. Southport was the home of river edge viewing pavilions, athletic facilities, and horse training until the early 20th century, when heavy industry moved in. Southport shore offer superlative views of the Walt Whitman Bridge, and Philadelphia to the west, and a major pier which reaches nearly to the Delaware River ship channel is present, there is extensive frontage with natural views to Big Timber Creek, to the south. Due to a bend in the river, one riverfront view goes directly down the river to the Navy Yard, airport, and Chester, the way a ship captain would view the river. Southport is located directly above the bend in the river (see photo).

Heavy industries which operated at the site, which is a port location with rail access, included manufacturing of titanium (used in paint), floor tile containing asbestos and other products as well as roofing materials, and production of specialty chemicals, including antimony. The sites had been planned for residential redevelopment, and were being assessed to determine the degree of remediation needed, under New Jersey’s highly successful Brownfields program. With the demise of the residential redevelopment, Develcom, a Bellmawr New Jersey redeveloper of impacted sites, and RT Environmental Services, Inc. were brought in by Gloucester City redevelopment officials to evaluate non-residential redevelopment options.

The heavy industrial facility sites on the riverfront were found to be in various states of assessment, but assessments will be made easier because NJDEP appointed a Brownfields Coordinator, William Lindner, to regularly attend meetings in Gloucester City and to provide his expertise to help keep the project moving. A riverfront tour of

bulkheads and pipings was already conducted with DEP officials, and updated environmental investigation work plans prepared for each site, to move the project forward. Develcom already has a number of users interested in port use, because, in Port Newark, certain classes of import operations are being moved out, as part of a long term Port Authority of New York and New Jersey expansion plan.

Identification of potential future uses, as practiced by Develcom, allows the NJDEP site remediation process to be conducted more efficiently, than would otherwise be the case. The reason for this is New Jersey DEP Case Managers have the authority and flexibility to allow site investigation delineation and remedial action planning to take into account future use, and in some cases, presumptive remedies such as capping can be proposed early, as more becomes known about the site. For example, extensive historic fill containing coal ash is present at many of the Southport sites and those sites are already planned to be capped, to eliminate direct contact. Capping in that context

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**GLOUCESTER CITY'S REDEVELOPMENT**

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is considered a "presumptive remedy", and, in some instances, less work has to be performed, as compared to the remediation work needed at a residential site, if it is not known that capping will or will be implemented. Currently, RT is poised to begin work at four Southport sites, and Marathon Environmental and Engineering is nearing completion of the first phase of work at one sites. A collaborative approach is being used, with weekly meetings held with government officials. Monthly stakeholder group meetings are also held, to disseminate information and help facilitate early non-residential redevelopment as investigative findings become available.

Howard Clark, Gloucester City Urban Enterprise Zone Coordinator, has been fielding calls and conducting waterfront visits with officials from international companies, because interest in Southport for port use is already growing. With respect to the collaborative efforts of the project team, Mr. Clark recently commented that "it's amazing how much can be quickly accomplished, when smart people work together".

We at RT are proud to be a part of the Southport project, and see early indications that Southport will be a key part of the

region's return to its "river roots", for many of the same reasons that riverfront sites were developed in the first place – water access, including public access, excellent infrastructure, and jobs where people need them. In recent years, Gloucester City has also redeveloped a popular riverfront park with public access, with boat ramps and docking facilities, which has become attractive to Gloucester City residents, in a very short time.

RT looks forward to working with Gloucester City officials as well NJDEP officials, on the Southport project.

Principal RT Field Investigators for this project are Jaclyn Evans and Burling Vannote. Glenn Graham is RT's Project Manager, and Gary R. Brown, P.E., RT's President, is Principal in Charge.



**NEW JERSEY LSRP PROGRAM - THE APPROACH IS "OLD HAT" TO THE RT TEAM**

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came onto the site. The industrial wastewater site was converted for offsite (liquid hauled in) commercial use, and this is now operated by NewStream LLC. NewStream provides cost effective industrial wastewater treatment operations, serving a large area of New England.

Licensed Site Professional programs are actually nothing to fear, and RT intends to help facilitate the process in New Jersey, by commenting on and making recommendations to NJDEP, as the regulatory proposals which go with the New Jersey LSRP program are put forward. There a number of significant benefits to the way NJDEP, through its Site Remediation Program regulates discharges during remediation of soil while groundwater, and, there are other advantages to the way the rules are written in Ohio, Connecticut, and Massachusetts. RT has commented to Irene Kropp, Assistant DEP Commissioner, that "the devil will be in to details", but New Jersey's ability to place Classification Exception Areas, and to restrict installation of wells through its licensed driller/groundwater program regulations, could turn out to be a plus. Assistant Commissioner Kropp indicated that she looks forward to RT's input.

As NJDEP reviews will no longer be conducted on most site remediation projects, attention will now turn to different level and type of report for

remediation site projects. Licensed Site Remediation Professional cleanup oversight does not mean that private companies can do as they please during the investigation remediation project, up until when the Response Action Outcome statement is submitted to NJDEP by the Licensed Site Remediation Professional. What the program actually means is that full conformance with NJDEP regulations and guidances needs to occur, unless there is clear evidence, as to why a particular Tech Rule provision does not have to be followed. The second critical element is that at each step in a site remediation project, a peer review needs to be conducted, the same way that the DEP would conduct a regulatory review. RT is implementing such a program, as it is only this type of program that will assure that should a Response Action Outcome statement be audited, that the audit findings will not be of significant concern.

The key benefit of the Licensed Site Remediation Professional program will be the ability to move projects forward, without inordinate delays. We at RT welcome the challenge, with a solid backing of more than a decade of experience working internally, and with our extended project team, in states where such privatized programs have been underway for a long time, even including sites with large, complicated projects.

For any questions on the New Jersey Licensed Site Remediation Professional program, and future steps expected, call Gary Brown at 800-725-0593, Ext. 234, or contact him by email at gbrown@rtenv.com.

## RT STAFF AND PROJECT NEWS

Activities were picking up during late summer, at RT's Southwest Pennsylvania office in Washington, PA outside Pittsburgh. A meeting was held with senior Allegheny Department of Public Works officials, to discuss the attributes of porous pavement. RT has been assisting the Pennsylvania Asphalt Pavement Association in presenting and preparing technical materials on porous pavement, which is considered a key part of stormwater Best Management Practices, for many projects in the Commonwealth.

RT was also awarded an audit project for a number of community college locations, for a southwestern Pennsylvania county community college system. RT was also preparing for the Pennsylvania Brownfields Conference in September, by identifying candidate, county development and redevelopment officials, who wish to attend the conference in Harrisburg.

Glenn Graham and Gary Brown were preparing their Licensed Site Remediation Professional applications, as New Jersey's Site Remediation Program shifts by the end of the year, to the Licensed Site Professional oversight of remediation projects.

Craig Herr, Adam Messner, Larry Bily, and Walter Hungarter were hard at work evaluating groundwater quality data and

geology for a Superfund pump and treat site, in Montgomery County, Pennsylvania.

In late spring, Gary Brown made presentations at Stormwater Management seminars in Maryland, New York, and Pennsylvania, focusing on special sites, such as Karst sites, Brownfields sites, and mining sites, where implementation of Best Management Practices plan per state and county requirements is not always feasible.

Tom Donovan was completing Phase I and Phase II Environmental Site Assessment activities, at auto parts, and commercial retail strip centers/dry cleaning sites.

Chris Ward is completing site investigation work, including groundwater monitoring and shore line monitoring activities at a Salem County glass manufacturing plant.

The late summer / early fall period, shows RT's sales and revenues rising to a typical fall pattern. As interest rates begin to rise, Environmental Site Assessment activities have clearly picked up, and, the firm will expand to meet our clients needs, as business becomes stronger, following the recent recession.

-Gary Brown

## PA UPDATES

### PADEP PROPOSES TO ADOPT NEW TDS REGULATIONS

Spawned in part to address the potential impacts from the development of the Marcellus Shale reserves, the Pennsylvania Department of Environmental Protection ("PADEP") has announced its intention to adopt new treatment requirements and water quality standards to control total dissolved solids, sulfates and chlorides. In its Permitting Strategy for High Total Dissolved Solids Wastewater Discharges (April 11, 2009), PADEP describes a program that requires new high-total dissolved solids ("TDS") dischargers to install adequate treatment to meet requirements based on the receiving stream's assimilative capacity, and dischargers to publicly owned treatment works must meet local limits. For existing dischargers, any increase in TDS loads before January 1, 2011, will be subject to the requirements for new sources and increases that occur after January 1, 2011 will be subject to the new regulations that PADEP plans to incorporate into Chapters 93 and 95 of its regulations. PADEP expects to have those regulatory provisions in place by January, 2011. These new regulations, which are to be proposed for comment within the next few months, have the potential to significantly effect discharge requirements for most major NPDES permit holders.

*(-by Mark Gold – Manko, Gold, Katcher & Fox Client Alert, 5/09)*

*Of particular concern are long standing historic surface mine discharges. Many of these cause little or no environmental impact and RT is concerned that PADEP may be rushing into a program that is too broad.*

*(Gary Brown)*

### BOILER MACT UPDATE: PADEP TO IMPLEMENT "MACT HAMMER" FOR INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL BOILERS AND PROCESS HEATERS

On June 8, 2007, the United States Court of Appeals for the District of Columbia Circuit vacated the National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial and Institutional Boilers and Process Heaters, 40 CFR Part 63, Subpart DDDDD ("Boiler MACT"), and remanded the rule to the U.S. Environmental Protection Agency ("EPA"). The Boiler MACT, which set a September 13, 2007 compliance deadline for existing sources, established hydrogen chloride, particulate matter, mercury, and carbon monoxide emission limits for various new and existing affected units located at major sources of hazardous air pollutants ("HAPs"). EPA has not yet promulgated a revised version of the Boiler MACT.

Section 112(j) of the Clean Air Act, also known as the "MACT Hammer," establishes a mechanism for states and local agencies to regulate emissions of HAPs, through the development of source-specific MACT standards, in the event EPA fails to promulgate MACT standards for regulated source categories by the applicable deadlines. This mechanism is implemented through the submission by affected facilities of two separate permit applications: a Part 1 MACT application, which is a simple notification providing basic information about the affected source, and a Part 2 MACT application, which requires more detailed, comprehensive source-specific information. The permitting authority has up to 18 months after the submittal of a com-

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plete Part 2 application to develop specific MACT standards for the affected source and incorporate such standards into the source's Title V permit.

The Pennsylvania Department of Environmental Protection ("PADEP") previously stated that it, like many other state agencies, intended to delay implementation of the MACT Hammer for Boiler MACT sources until EPA releases guidance for developing standards for this source category. However, a representative from PADEP recently made an informal announcement that PADEP plans to begin implementation of the MACT Hammer for Boiler MACT sources shortly. Part 1 applications will be due within 30 days following notification by PADEP. Part 2 applications will be due within 60 days following the Part 1 application deadline. Although PADEP has not yet issued a formal notification addressing the submission of Part 1 applications, we are continuing to track available information on this issue. Separately, EPA has reported that it will propose a revised Boiler MACT by August 2009; however, it is presently unclear how this rulemaking process will affect PADEP's current plan to initiate implementation of the MACT Hammer for Boiler MACT sources.

*(by Kate Vaccaro – Manko, Gold, Katcher & Fox Client Alert, 5/09)*

## FEDERAL REGULATORY UPDATES

### EPA PROPOSES NESHAP FOR CHEMICAL PREPARATIONS INDUSTRY

EPA is proposing national emissions standards for control of hazardous air pollutants (NESHAPs) from the chemical preparations area source category. These proposed emissions standards for new and existing sources reflect EPA's proposed determination regarding the generally available control technology or management practices for the source category.

This area source category comprises those establishments that conduct industrial operations that mix, mill, blend and/or extrude chemicals that contain the target hazardous air pollutants (HAP) in their manufacturing processes during the production of chemical preparations. These manufacturing processes turn various dry and/or wet ingredients into chemical preparations. Chemical preparations, which are defined in the subpart, are a wide variety of compounds that may often be used as an intermediate in the manufacture of other products, such as fluxes and rubber compounding chemicals, or sold as a product, such as water treatment chemicals and drilling fluids. Chemical reactions typically do not occur in the manufacturing of chemical preparations. Emission points associated with these types of operations include sources such as Banbury mixers, mixing or blending tanks, extruders, and roll mills.

The proposed subpart BBBBBBB standards would apply to all existing or new manufacturing operations located at an area source that produce chemical preparations by mixing, milling, blending and/or extruding chemical compounds containing target HAP. The standards do not apply to research and development facilities, as defined in section 112(c)(7) of the CAA.

The proposed standards for new and existing affected sources establish a particulate matter (PM) control device percent reduction efficiency requirement and require all process vent streams from mixing, blending, milling, and extruding equipment in target HAP service to be routed through a PM control device that meets the specified efficiency requirement. The proposed standards will be met through the use of a vent stream collection system and control device, such as a wet scrubber or fabric filter, meeting the specified percent reduction efficiency requirement. Sources must maintain and operate a control device which achieves the specified removal efficiency in accordance with the manufacturer's specifications and must maintain and inspect the vent collection system and control devices on a regular basis.

Under the proposal, new sources would be required to demonstrate compliance with the PM control device percent reduction efficiency requirement through control device performance testing, manufacturer's control device performance guarantee information, or engineering calculations. The proposed standards allow existing sources to use the same three methods to demonstrate compliance, but existing sources may use the results of performance tests previously conducted, provided that the performance test was conducted using the reference test method specified in the proposed rule, represents the control

device's normal operations (per manufacturer's recommendations) and was conducted within the last 5 years.

(*Env. Tip of the Week* – 8/10/09)

### SALAZAR SAYS EPA FINANCIAL RULES PROVIDE URGENCY TO MINING REFORM

Interior Secretary Ken Salazar says EPA's decision to subject the hardrock mining industry to new financial assurance rules should send a message to the Senate that it should quickly reform the federal hardrock mining law in order to reduce legal uncertainty surrounding mining issues.

EPA's decision -- which the agency announced July 13 over industry objections -- was in response to a court decision prompted by an environmentalist lawsuit and should "give the Senate a greater sense of urgency" as it considers legislation that would reform the federal hardrock mining law originally passed in 1872 as a means of promoting westward expansion, he told Inside EPA following a July 14 Senate hearing on the legislation.

Passing the legislation would create a "legal framework" for controversial mining issues and "provide certainty to communities" affected by mining," he said.

During the hearing Salazar said the Senate should act quickly to pass legislation, in part because "not knowing what [Congress] is going to do with 1872 mining law reform" is creating uncertainty for companies considering mining in the United States.

Salazar described the hardrock mining industry as part of the country's "economic engine" and said it was important that the legislation -- which would among other things establish first-time royalty fees on companies mining public lands in order to fund environmental cleanup -- "find the right balance" between not driving mining jobs overseas and providing "a fair return to taxpayers."

But Salazar suggested support for at least some legislative provisions to which industry is opposed, such as the creation of new environmental standards for hardrock mining.

"Some may say we already have enough environmental protections" from laws such as the National Environmental Policy Act, the Endangered Species Act and the Clean Air Act, Salazar said, echoing an industry argument against the creation of new environmental standards for hardrock mining. But in "reality, that is not always the case," Salazar said, adding that in the past bankrupt mining companies have left behind environmental contamination.

Concern over the bankruptcy issue was in large part what drove environmentalists to file the lawsuit that has now prompted EPA to develop financial assurance rules for the hardrock mining industry. Environmentalists filed the lawsuit, *Sierra Club, et al. v. Johnson*, last year while legislative efforts to address the issue -- which have been ongoing for several years -- continued to falter in the Senate.

The February 25 ruling in the case by the U.S. District Court for the District of Northern

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California did not require financial assurance rules but required EPA to publish a list of industrial sectors that could be subject to such rules.

Now, in response to the ruling, EPA is proposing to subject the hardrock mining industry to first-time Superfund financial assurance rules to prevent the creation of future abandoned waste sites despite industry claims that such rules are unnecessary, are based on inappropriate data, and overlap with existing requirements in other state and federal laws.

EPA in a July 13 statement says it chose the hardrock mining industry as the first sector for developing financial assurance rules "based upon [mining] facilities' sheer size; the enormous quantities of waste and other materials exposed to the environment; the wide range of hazardous substances released to the environment; the number of active hardrock mining facilities; the extent of environmental contamination . . . and government expenditures, projected clean-up costs, and corporate structure and bankruptcy potential."

The agency says it will continue to examine other industries for possible assurance regulations, including hazardous waste recyclers, metal finishers, wood treaters, and chemical manufacturers. EPA will publish by December a notice of additional industries it may regulate, the notice says.

But the National Mining Association (NMA) opposes being subject to new financial assurance rules, arguing in part that it is already required to have financial assurances by other regulatory agencies and that EPA's selection of the industry is erroneously based on data from the agency's Toxic Release Inventory (TRI) program. TRI data does not capture the relative risk that toxic substances at various locations pose to human health and the environment, an NMA spokesman argues.

Nonetheless, EPA cites a review of TRI data showing that mining industry accounts for approximately 28 percent of toxic releases as one of several justifications for its decision to subject the hardrock mining industry to new financial assurance rules in the July 13 document.

(*SUPERFUND REPORT* – July 27, 2009)

### EPA PROPOSES STRONGER NITROGEN DIOXIDE STANDARDS

For the first time in over 35 years, EPA has proposed to strengthen the nation's nitrogen dioxide (NO<sub>2</sub>) air quality standard that protects public health. According to the agency, the proposed changes reflect the latest science on the health effects of exposure to NO<sub>2</sub>, which is formed by emissions from cars, trucks, buses, power plants, and industrial facilities and can lead to respiratory disease.

## FEDERAL REGULATORY UPDATES (Continued)

“We’re updating these standards to build on the latest scientific data and meet changing health protection needs,” said EPA Administrator Lisa P. Jackson. “In addition to limiting annual average concentrations, we’re preventing high NO<sub>2</sub> levels for shorter periods of time and adding stronger monitoring in areas near roadways, where the highest levels of NO<sub>2</sub> are often found. This will fill gaps in the current standard and provide important additional protections where they are needed most.”

EPA’s proposed revisions apply to the primary NO<sub>2</sub> standard and would:

- Establish, for the first time, a one-hour NO<sub>2</sub> standard at a level between 80 – 100 ppb
- Retain the current annual average NO<sub>2</sub> standard of 53 ppb,
- Add NO<sub>2</sub> monitoring within 50 meters of major roads in cities with at least 350,000 residents, and
- Continue monitoring “area-wide” NO<sub>2</sub> concentrations in cities with at least 1 million residents.

These proposed standards and additional monitoring requirements would protect public health by reducing people’s exposure to high, short-term concentrations of NO<sub>2</sub>, which generally occur near roadways. The proposal would also ensure that area-wide NO<sub>2</sub> concentrations remain below levels that can cause public health problems.

Current scientific evidence links short-term NO<sub>2</sub> exposures, ranging from 30 minutes to 24 hours, with increased respiratory effects, especially in people with asthma. These effects can lead to increased visits to emergency departments and hospital admissions for respiratory illnesses, particularly in at-risk populations such as children, the elderly, and asthmatics.

*(Env. Tip of the Week – 7/6/09)*

### EPA EYES ‘ESCALATION RESPONSES’ TO ADDRESS STATE ENFORCEMENT FLAWS

EPA is floating a number of possible solutions to problems it identified in a recent draft report that found significant flaws in scores of delegated state environmental programs, including revising agency enforcement policies, rewarding best-performing states with targeted grants, or “escalation responses” by regions that could ultimately include withdrawing state authority to implement federal programs.

The draft report, produced under the state review framework (SRF) EPA uses to assess state enforcement efforts, analyzed enforcement in all 50 states and four territories between 2004 and 2007 and found “repeated instances of enforcement not occurring at all when circumstances warranted.”

The report identified problems in four areas, including lack of timely and appropriate enforcement, insufficient calculation and documentation of penalties; inadequate identification and reporting of significant noncompliance/high priority violators; and inadequate data entry and reporting.

State officials have in the past downplayed the significance of the draft report, saying it does not distinguish between when a state agency or EPA enforces. In many instances what the report cites

as a problem for state enforcement agencies is really a misunderstanding by EPA of how states are enforcing the law, and the actual picture is far better, a state source has said.

At an EPA senior enforcement managers’ meeting earlier this month in Washington, DC, Lisa Lund, director of the Office of Compliance in EPA’s Office of Enforcement and Compliance Assurance, gave a presentation in which she outlined the agency’s draft findings and suggested options to address the four main flaws with state enforcement.

According to a draft of Lund’s presentation obtained by *Inside EPA*, the agency is aiming to get “general agreement” on proposed solutions before reengaging with states. EPA plans to then consult with the Environmental Council of the States (ECOS) to seek areas for collaboration and identify areas of concern.

EPA wants to identify which of the problems it identified in each of the four areas are the most important to address, which can be addressed at the regional level and which at the national level, the presentation says.

Common issues include differing interpretations or disagreements between states and EPA on policy matters, a lack of standard operating procedures governing data entry and reporting, a general lack of resources, and states lacking sufficient support to implement policies, her presentation says.

Common proposed responses to the issues identified in the SRF include training and education, revisions to policies and guidance, elevation of issues to senior management levels, and “escalation responses” by regions including more communication with the state, greater review of state actions, withholding grant money and withdrawing state program authority, the presentation says.

While the agency is considering the option of withdrawing states’ delegated authority, in practice it is rare for the agency to actually withdraw a state’s authority. Earlier this year, EPA Region V declined a request from environmentalists to withdraw Indiana’s delegated authority after the state amended its environmental enforcement programs, although the agency is currently considering overriding parts of Texas’ delegated authority on air permitting.

EPA’s draft SRF report found timely and appropriate enforcement is a problem in most states -- 40 states with delegated Clean Air Act (CAA) authority, 39 states with delegated Clean Water Act (CWA) authority and 36 with Resource, Conservation & Recovery Act (RCRA) authority. States failed to respond to violations in a timely manner or failed to respond with appropriate enforcement, which negatively impacts deterrence, a “credible enforcement presence,” national consistency, public confidence and public health, the presentation says.

Different interpretations of EPA guidance and inconsistent state policies are causes for the problem, as well as a lack of political will in some states to push for timely and appropriate enforcement, the report says. Other causes include structural issues such as a state lacking sufficient authority or a lack of clear guidance on initiating

enforcement, or capacity issues such as insufficient staffing, tools and resources, the agency says.

Recommended solutions include working through the EPA-state grant process to ensure states have adequate full-time employees, asking states to establish or modify their guidance and policies to align with the federal approach, and possibly establishing procedures in regions for continually monitoring or correcting state performance as a way to track case progress, the report says. Another solution could be having regions overfile when cases are not meeting timely or appropriate policies, or make EPA guidance more explicit, the agency says.

*(SUPERFUND REPORT – June 29, 2009)*

### EPA PUBLISHES NEW WATER QUALITY CRITERIA FOR ACROLEIN AND PHENOL

EPA’s national recommended water quality criteria provide guidance to states and authorized tribes in adopting water quality criteria that meet the requirements of the CWA. The criteria are not regulations themselves and do not impose legally binding requirements on EPA, states, territories, authorized tribes, or the public.

Human health water quality criteria are numeric values that protect human health from the harmful effects of pollutants in surface water. Under section 304(a) of the Clean Water Act, water quality criteria are based solely on data and scientific judgments about the relationship between pollutant concentrations and environmental and human health effects; economic or social impacts do not influence criteria recommendations.

The agency recently published final national recommended water quality criteria for the protection of human health for acrolein and phenol. These updated criteria are based on EPA’s Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health.

The final water quality criteria are:

#### Acrolein:

Water + Organisms	6 µg/l
Organisms Only	9 µg/l

#### Phenol

Water + Organisms	10,000 µg/l
Organisms Only	860,000 µg/l

*(Env. Tip of the Week – 6/15/09)*

### EPA PROPOSES TO CONTROL GREENHOUSE GAS EMISSIONS FROM LIGHT-DUTY VEHICLES

EPA plans to set national emissions standards under section 202(a) of the Clean Air Act to control emissions of greenhouse gases (GHGs) from passenger cars, light trucks, and medium-duty passenger vehicles, as part of a joint rulemaking with the National Highway Traffic and Safety Administration (NHTSA). This joint rulemaking effort was announced by President Obama on May 19th, 2009 with a notice of intent to conduct a joint rulemaking published in the Federal Register on May 22, 2009 ([74 FR 24007](#)). The GHG standards would significantly reduce the

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GHG emissions from these light-duty vehicles.

The standards would be phased-in beginning with the 2012 model year through model year 2016. EPA and NHTSA expect to propose the rules by late summer 2009. EPA's final action would only occur if EPA determines that emissions of greenhouse gases may reasonably be anticipated to endanger public health or welfare, and that emissions from new motor vehicles and motor vehicle engines contribute to the atmospheric concentrations of these greenhouse gases and hence to the threat of climate change. EPA has already proposed these findings (see 74 FR 18886; April 24, 2009).

A notice of proposed rulemaking is expected within the next 12 months.

*(Env. Tip of the Week – 6/8/09)*

### STRONG OPPOSITION TO EPA'S 'HYBRID' COAL WASTE REGULATIONS

States, industry and activists are all skeptical of the EPA's idea of regulating coal combustion waste (CCW) under a novel "hybrid" approach that would treat the waste as hazardous or solid waste depending on certain conditions, arguing that such rules would be legally dubious, difficult to implement and hard to enforce. Earthjustice and the Environmental Integrity Project (EIP) point to their recently released report showing increased cancer risk from CCW disposal as justification for regulating it as a hazardous substance. The industry argues that regulating CCW as hazardous or under a hybrid scheme would discourage beneficial reuse.

Matt Hale, director of EPA's Office of Resource Conservation and Recovery, told the Environmental Council of the States (ECOS) in March that EPA could issue hybrid CCW rules that may regulate it as a RCRA subtitle D solid waste with less stringent guidelines, but if those guidelines are not followed then stricter subtitle C hazardous waste rules would apply. A hybrid rule would likely be modeled after a Clinton-era rule that was crafted but never finalized or implemented for cement kiln dust. If the ash is disposed of improperly, it would revert to a hazardous listing and require a cleanup.

Both environmentalists and industry say they are skeptical of the hybrid approach. Environmentalists say the fact that a hybrid system has never been implemented could complicate the rule unnecessarily. For example, it is unclear whether the federal government, as in the case of subtitle C, or the states, in the case of subtitle D, would have responsibility for inspecting CCW disposal sites. Meanwhile, the waste industry is concerned that a hybrid approach would discourage beneficial reuses of coal waste. They point out that some 40 percent of all CCW is reused, mostly in the synthesis of Portland cement and concrete, and occasionally as gypsum for sheet rock or as a soil additive in landscaping or road construction.

States have long opposed any federal regulation of CCW and prefer instead to leave the states to establish disposal protocols for the waste as they see fit. Last year ECOS issued a resolution saying any federal regulation of CCW would be duplicative of existing state laws that manage the

waste.

Earthjustice and EIP officials point to their recently released study to show that only hazardous rules would be adequate. That study which relies on 2002 EPA data, indicate a higher cancer risk from heavy metals in groundwater around unlined coal ash ponds. A copy is available at:

[www.earthjustice.org/library/legal\\_docs/epa-cancer-riskassessment-for-coal-combustion-waste.pdf](http://www.earthjustice.org/library/legal_docs/epa-cancer-riskassessment-for-coal-combustion-waste.pdf).

*(Waste Business Update – 5/15/09)*

### EPA PROPOSES CHANGES TO TRANSPORTATION CONFORMITY RULE

EPA is proposing changes to the transportation conformity rule that primarily concern conformity's implementation in PM2.5 and PM10 nonattainment and maintenance areas.

- EPA is proposing to update the transportation conformity regulation in light of the October 17, 2006 final rule that strengthened the 24-hour PM2.5 standard and revoked the annual PM10 standard.

- EPA is also proposing to clarify the regulations concerning project-level air quality analyses to address a court's remand of the transportation conformity hot-spot requirements for further explanation.

This proposed rule would ensure that air quality is protected and would clarify requirements for implementers. It directly supports EPA's broader strategy for implementing the revised 2006 PM2.5 National Ambient Air Quality Standard (NAAQS). Providing clear guidance on how to implement transportation conformity under this NAAQS would ensure that transportation and air quality planning is coordinated and that clean air is achieved.

The proposed rule describes when conformity first applies in 2006 PM2.5 nonattainment areas. The Clean Air Act and transportation conformity rule allow a one-year grace period before conformity applies for the revised NAAQS. This grace period begins upon the effective date of EPA's nonattainment designation.

The proposed rule also describes the general requirements for demonstrating conformity for the 2006 PM2.5 NAAQS, including the regional emissions test(s) that would apply before and after state air quality implementation plan (SIP) motor vehicle emissions budgets are established for the revised NAAQS. A motor vehicle emissions budget (or "budget") is the level of emissions from cars and trucks that the state has determined to be consistent with local air quality goals. EPA is proposing that all 2006 PM2.5 nonattainment areas without SIP budgets would have a choice of conformity emissions tests for ensuring that transportation decisions are consistent with clean air. Under the proposal, SIP budgets for the existing 1997 PM2.5 NAAQS would be used for conformity prior to establishing 2006 PM2.5 SIPs. Using existing 1997 PM2.5 SIP budgets in the interim would ensure that progress continues towards achieving the 2006 PM2.5 NAAQS.

The proposed rule would update the baseline

year for the interim emissions test in 2006 PM2.5 nonattainment areas. EPA is seeking comment on several proposed options.

*(Env. Tip of the Week – 5/11/09)*

### INDUSTRY SCRAMBLES TO HALT EPA PLAN FOR STRICTER ARSENIC RISK LEVEL

Industry groups are launching a last-ditch effort to stop EPA from finalizing a draft study that would increase by more than 20-fold the agency's estimate of the cancer risks posed by arsenic, which the industry groups charge would drive unattainable cleanup and regulatory standards.

The dispute could revive the major controversy over the risks posed by arsenic and appropriate regulatory standards, an issue that dogged the Bush administration in its first few months in office after officials questioned a Clinton-era regulation that significantly strengthened drinking water cleanup standards for the substance.

A group of officials representing agriculture, energy, mining, metals and pesticide industry trade associations, as well as officials representing water and drinking water groups, are scheduled to hold separate meetings with acting EPA research chief Lek Kadeli in coming days to point out the overwhelming regulatory costs associated with the planned risk level and urge him to revise the study, taking into account concerns raised by the agency's Science Advisory Board (SAB) in 2005.

"Nearly all United States soils would exceed EPA's target risk range" and "for many Americans, normal intake of arsenic from diet and water likely would greatly exceed EPA's risk management range," the industry groups told Kadeli in an April 15 letter. According to the letter, the risk range could lead to advisories on many types of food, and the discontinuation of many "industrial materials, fertilizers or other routinely used commercial products."

"Discharges from sewage treatment plants or other facilities may no longer meet regulatory limits for arsenic if they are lowered as a result of the revised cancer [risk limit]," the letter says.

The industry officials are also concerned because EPA's recently unveiled process for reviewing risk assessments, which EPA Administrator Lisa Jackson unveiled May 21, may allow the agency to finalize the document without it undergoing another, final round of peer reviews from SAB. States have told stakeholders the arsenic assessment could be finalized as soon as one month, one source says.

EPA could not be reached for comment by press time.

According to industry and other sources, EPA's Office of Research & Development (ORD) has drafted a hazard assessment for inorganic arsenic that sets a cancer slope factor, a measure of a substance's cancer risk from lifetime exposure, at 30.5 milligrams per kilogram of bodyweight per day (mg/kg/day), a 20-fold increase over the current slope factor of 1.5 per mg/kg/day. The new standard would be a 10-fold increase from a 3.67 per mg/kg/day standard EPA's water office uses for developing drinking

## FEDERAL REGULATORY UPDATES (Continued)

water standards for arsenic.

The assessment is intended to update the assessment in EPA's Integrated Risk Information System database, which state and federal regulators use to set water quality limits, cleanup levels at hazardous waste sites, drinking water standards and pesticide and food safety requirements.

The White House Office of Management & Budget recently sent a draft of the assessment back to EPA with interagency comments. EPA can now choose whether to address the comments and could finalize the assessment within the next few weeks, an industry source says.

The industry source says that EPA regional offices leaked a draft of the assessment out of concern for its regulatory implications.

In their letter to EPA, industry officials listed many of those concerns, including the prospect that the revised slope factor would drive the current drinking water cleanup standard, known as the maximum containment level, from 10 parts per billion (ppb) to 0.1 ppb. "This may not be achievable except at enormous cost," the groups wrote in their April 15 letter.

(SUPERFUND REPORT – June 1, 2009)

### EPA DEVELOPING VOLUNTARY STANDARD TO CERTIFY 'GREEN REMEDIATION'

EPA is in the early stages of developing a voluntary "green remediation" standard as part of a broader ongoing effort to encourage the use of best management practices at cleanup sites to incorporate sustainability principles and reduce the overall impact of cleanups on the environment.

States and EPA regions are increasingly focusing on evaluating all environmental aspects of a cleanup, such as reducing air emissions from vehicles used at cleanup sites, but state and EPA officials say many barriers -- including lack of knowledge -- prevent the widespread use of green cleanup approaches.

EPA defines green remediation as "the practice of considering all environmental effects of remedy implementation and incorporating options to maximize the net environmental benefit of cleanup actions."

As part of the agency's focus on green remediation, Region III last month released a draft framework for developing a voluntary green cleanup standard. The framework encourages practices such as minimizing the use of energy; reducing the use and waste of water; reducing the cleanup's impact on surrounding natural resources; and encouraging the reuse, reduction and recycling of materials on-site.

EPA plans to finalize the framework by the end of June and begin collaborating with the American Society of Testing & Materials International (ASTM) to complete an actual standard by the end of 2011, according to EPA sources. ASTM has expressed interest in developing a green remediation standard, and EPA has begun preliminary discussions on developing a joint standard, the sources say.

The standard will be voluntary, developed through consensus with stakeholders and obtained through independent third-party verifi-

cation or self-certification, according to a presentation EPA Region III's Deborah Goldblum made April 15 to the Association of State & Territorial Solid Waste Management Officials (ASTSWMO). The standard will also be flexible -- allowing for program or state-specific recognition options -- and will promote technology innovations, the presentation says.

EPA last year released a technical primer, *Green Remediation: Incorporating Sustainable Environmental Practices into Remediation of Contaminated Sites*, which provides an introduction to green remediation best practices and includes examples of how and where they have been used.

And earlier this year, the agency's Superfund Green Remediation Work Group began developing a draft strategy that sets out the Superfund program's plans to promote green remediation practices during site cleanups. While green remediation is not limited to energy and climate impacts, the strategy currently focuses on reducing the carbon footprint of site cleanup by reducing energy usage and increasing use of renewable energies, according to a presentation Larry Zaragoza of EPA's Office of Superfund Remediation & Technology Innovation made at the ASTSWMO meeting.

Zaragoza noted that numerous federal and state statutes and executive orders require or recommend reductions in energy and water consumption as well as increased use of renewable energy.

Among the actions recommended in the agency's draft green remediation strategy are the development of policies that clarify the role of green remediation within the statutory frameworks of the Comprehensive Environmental Response, Compensation & Liability Act (CERCLA) and National Contingency Plan; incorporating green remediation into EPA enforcement agreements; developing tools like informational Web sites and training on green remediation; and incentivizing green remediation through awards and financing.

(SUPERFUND REPORT – May 4, 2009)

### NEW YORK DISPUTE HIGHLIGHTS CLASHES OVER EPA SUPERFUND LISTING

An ongoing battle between the New York City mayor's office and the state environment department over whether to place a contaminated site on EPA's Superfund National Priorities List (NPL) highlights a broader clash between those who favor listing to achieve a strict cleanup and others who want old sites redeveloped using brownfields funds that would avoid the stigma of being listed on the agency's NPL.

New York City Mayor Michael Bloomberg (I) is strongly objecting to the state Department of Environmental Conservation's (DEC) push to list the Gowanus Canal -- a 1.5-mile canal in Brooklyn contaminated with a number of persistent bioaccumulative toxins, coal sludge and sewage -- as a Superfund site on the NPL. Listing would spur EPA oversight of the cleanup and make the agency responsible for securing cleanup funding.

Bloomberg says the listing would ruin the city's plan to redevelop the area as residential and commercial properties because of the stigma associated with the Superfund program for cleaning up toxic waste sites. A number of potential developers have said they will pull out of the deal if the site is listed.

Bloomberg instead wants the site to be cleaned up under the city's own newly-minted brownfields program, the first municipal program to offer binding indemnity agreements to developers. Pending an agreement with the state and EPA Region II, the city program will have the same authority to absolve developers of liability as would be offered by the state or EPA.

Supporters of NPL listing say the dispute between Bloomberg and DEC highlights existing problems with the NPL process because critics say the process is dominated by political rather than scientific concerns. For example, in New York City, observers say Bloomberg wants to keep the site off the NPL for purely economic reasons even though contamination levels at the site may otherwise warrant a listing as a Superfund site.

Highlighting the fact that NPL sites are not necessarily listed for environmental reasons, an environmental attorney who specializes in brownfield cleanups says more states are recommending sites for listing on the NPL that might otherwise be undertaken by their state brownfields programs because many states are facing budget shortfalls. Last year, for example, Pennsylvania sent a letter to EPA asking them to list an asbestos pile in Ambler, PA on the NPL, which was finalized April 8. The DEC also recommended EPA list the Newtown Creek/Greenpoint site in Brooklyn on the NPL, the source says, and the city is resisting that listing as well.

The environmental attorney adds that the potential trend in favor of NPL listing is a return to the philosophy of the 1980's soon after CERCLA was passed. At that time, many states actively sought to have sites placed on the NPL in order to take them off their hands. By the late 1990s the trend had changed because real estate had risen in value and the Superfund program made such slow progress that private developers sought to pursue cleanups and redevelopments on a quicker pace under the brownfields programs.

A DEC spokeswoman said in a statement that the decision to list Gowanus "certainly included staff resources" but that the decision was mostly based on EPA's suitability given the widespread contamination at the site and their authority to seek compensation from responsible parties. "EPA has not only the resources but [also] the legal tools to bring potential contributors to the table," the spokeswoman says.

(SUPERFUND REPORT – May 4, 2009)

### EPA WARNS FACILITIES: FILE UPDATED RISK MANAGEMENT PLANS, OR FACE PENALTIES

EPA is working to ensure that facilities submit updated risk management plans (RMPs) and has announced that it is leveling fines against

## FEDERAL REGULATORY UPDATES (Continued)

companies that do not comply with the law. RMPs, required under the Clean Air Act, contain information assessing plans in place to prevent and respond to accidental releases of hazardous substances from facilities. The regulations included the requirement for the plans to be updated at least every five years. About 140 facilities in EPA's Region 2 jurisdiction, which includes New York, New Jersey, Puerto Rico, and the U.S. Virgin Islands, have plans due in 2009.

In a streamlined enforcement process, EPA's Region 2 office continually identifies facilities that currently have risk management plans in place to see which plans are overdue. Where the Agency finds facilities that have not updated their plans on time, EPA is giving that facility a chance to comply and pay a discounted penalty. This was the case recently for a company in South Kearny, New Jersey. As a result of EPA's enforcement efforts, the company updated its plan and paid a \$1,400 penalty for late filing. Additional enforcement actions are planned in the coming months.

EPA has developed a new method for preparing and submitting RMPs which became available on March 13, 2009. The new method is called RMP\*Submit and information about RMP\*Submit and how to set up an RMP\*Submit account can be found on the RMP website.

*(Env. Tip of the Week – 5/4/09)*

### SPILL PREVENTION, CONTROL, AND COUNTERMEASURE (SPCC) RULE COMPLIANCE DATE AMENDMENT

On June 19, 2009, EPA amended the dates by which facilities and farms must prepare or amend Spill Prevention, Control, and Countermeasure (SPCC) Plans, and implement those Plans (74 FR 29136). Facilities and farms must amend or prepare, and implement SPCC Plans by the compliance date in accordance with revisions to the SPCC rule promulgated since 2002.

#### What are the compliance dates for all facilities, including farms?

**A facility starting operation on or before August 16, 2002**

**Must:** Continue to maintain its existing SPCC Plan in accordance with the SPCC rule. Amend and implement that Plan no later than November 10, 2010

**After August 16, 2002, through November 10, 2010**

**Must:** Prepare and implement an SPCC Plan no later than November 10, 2010

**After November 10, 2010**

**Must:** Prepare and implement an SPCC Plan before beginning operations

#### What should I do now?

- Review the SPCC rule and amendments;
- If your facility began operating before August 16, 2002, then continue to maintain your SPCC Plan;
- Identify areas of your SPCC Plan that require amendment (if applicable);
- Make necessary facility modifications, if any, to comply with the SPCC rule revisions; and

- Be prepared to finalize amendments to your SPCC Plan and implement that Plan by November 10, 2010; or

- If your facility began operating after August 16, 2002, then prepare a Plan and implement it no later than November 10, 2010.

*(EPA – June, 2009)*

### EPA SIGNALS OPENNESS TO BANNING DRY CLEANING CHEMICAL PERCHLOROETHYLENE

In the latest sign from the Obama administration that it isn't interested in defending Bush-era environmental regulations, the government asked a federal appeals court to allow it to reconsider the Bush administration's legal and policy positions on cancer-causing pollution from dry cleaners.

Earthjustice, representing the Sierra Club, had challenged a 2006 refusal by the Bush administration to phase out the use of perchloroethylene (PCE, or perc). Although such a phase-out would, according to the organization, have eliminated the substantial cancer risks that PCE poses to millions of Americans—and done so at little or no cost to industry.

After years of delay by the last administration, the case was scheduled to be heard by a panel of judges next month. But rather than defend the bad regulations issued by the previous administration, EPA says it wants to go back and re-evaluate the rule.

EPA has acknowledged that the health risks from PCE dry cleaners are extremely high, and has classified PCE as a probable cancer-causing chemical that has been linked to liver, kidney, and central nervous system damage. Although some cleaners have successfully switched to non-toxic alternatives like wet cleaning, more than 27,000 dry cleaners across the country still use old machines that clean clothes with PCE.

Because PCE dry cleaners are located throughout neighborhoods in virtually every city and town in America, millions of Americans are exposed to their toxic emissions. In many cities, dry cleaners operate in the same buildings as apartments, schools, and day care centers. People are exposed to PCE when they breathe in the emissions from dry cleaning machines and when they breathe in emissions released over time from the clothes that are cleaned at dry cleaners. "EPA's action makes sense, given the viability of non-toxic alternatives to perc dry cleaning," said Peter Sinsheimer, Director of the Pollution Prevention Center at Occidental College. Since 1998, Sinsheimer has managed the Environmental Garment Care Demonstration Project which educates cleaners about two environmentally benign alternatives: professional wet cleaning—a less-expensive water-based technology and CO2 dry cleaning—a hi-tech solution which compresses recycled carbon dioxide into a liquid cleaning fluid.

In California there are more than 125 cleaners exclusively using professional wet cleaning and 10 cleaners using CO2. Research conducted by Sinsheimer has shown that PCE cleaners who switch to professional wet cleaning maintain their cleaning quality, and have significantly

lower operating costs and energy use. Sinsheimer is now working with a number of other states to develop similar demonstration programs, including Massachusetts, New Jersey, and New York.

In California, a number of municipal and investor-owned utilities provide financial incentives to dry cleaners switching to professional wet cleaning. In addition, California imposes a fee on the use of perc in dry cleaning which creates an incentive fund for cleaners switching to professional wet cleaning and CO2 dry cleaning.

*(Env. Tip of the Week – 4/14/09)*

### EPA TO INCREASE CLEAN WATER ENFORCEMENT

In a memorandum issued in early July, Administrator Jackson directed the EPA's Office of Enforcement and Compliance Assurance (OECA) to develop an action plan to enhance public transparency regarding clean water enforcement. In the memo, Jackson also called for stronger enforcement performance at federal and state levels, and a transformation of the agency's water quality and compliance information systems.

In keeping with the directive, the EPA has posted detailed information on the current state of clean water compliance and enforcement in each state, and copies of the latest clean water enforcement and compliance performance reports for each state, and copies of the latest clean water enforcement and compliance performance reports for each state to the agency's website. The agency also launched new Web-based tools to help the public search, assess and analyze the data the agency used to help prepare those reports.

Administrator Jackson directed OECA to work with the EPA's Office of Water, and to consult closely with the agency's 10 regional offices and the states on the action plan. After obtaining input from other stakeholders, the assistant administrator of OECA, Cynthia Giles, will report back to Jackson in 90 days with recommendations.

Visit:

[www.epa.gov/compliance/state/srf/index.html](http://www.epa.gov/compliance/state/srf/index.html) for state-by-state reports or [www.epa.gov/compliance/data/results/performance/cwa/index.html](http://www.epa.gov/compliance/data/results/performance/cwa/index.html) for more on EPA and state enforcement data.

*(Pollution Engineering – August 2009)*

### HOUSE PASSES MAJOR CLIMATE CHANGE LEGISLATION POSING ECONOMY-WIDE IMPACTS; SENATE CONSIDERATION

The American Clean Energy and Security Act of 2009 (ACESA), which passed the U.S. House of Representatives on June 26, 2009, would affect all sectors of the economy and create both opportunities and challenges. House Bill 2454 – popularly known as the Waxman-Markey bill – would require reductions of U.S. greenhouse gas emissions through a mix of regulatory and market-based initiatives and incentives. Senate passage remains uncertain, but President Obama is strongly committed to ACESA, and many regarded the House as the chamber less likely to



## FEDERAL REGULATORY UPDATES (Continued)

approve climate legislation. (It did so narrowly, 219-212.)

Companies and organizations that would be affected significantly by ACESA should not await Senate action to begin planning. Companies that emit significant amounts of greenhouse gases or use significant amounts of fossil fuels now know that they will face new costs and can begin identifying opportunities to reduce emissions and any engineering or permit modifications that will be required. Many organizations may benefit from the opportunity to create offsets or to participate in trading and can begin planning to take advantage of those opportunities.

The overview that follows is intended as a road map to some of ACESA's most important provisions. The bill, committee report, and amendments exceed 1,200 pages and include detail and programs that cannot be covered here. Ballard Spahr has prepared a detailed outline of the bill, which we intend to make available in a subsequent e-alert and to update as the bill moves through the Senate and conference committee. If you have questions about ACESA, how it may affect your operations, or how to prepare for it, please feel free to contact **Robert B. McKinstry, Jr.**, (215.864.8208).

mckinstry@ballardspahr.com) or any member of Ballard Spahr's Climate Change Group.

### Background

Greenhouse gas emissions affect the climate by accumulating and trapping heat within the earth's atmosphere. These emissions consist primarily of carbon dioxide. Carbon dioxide necessarily results when any carbon based material – particularly fossil fuel – burns. In addition, certain other gases have similar, indeed more potent, climate change effects, although they are emitted in much smaller quantities. For example, methane results from most forms of digestion (in cows, for example) or rotting of organic material (in a landfill, for example). ACESA follows most other programs by accounting for emissions of greenhouse gases in terms of carbon dioxide equivalents.

### Enforceable Emissions Goals and Regulatory Program

The bill would establish enforceable greenhouse gas emissions reduction goals for the U.S. economy. The goals are intended to reflect the minimum reductions the scientific community agrees are necessary to prevent dangerous climate changes. The bill would use 2005 as a benchmark year for greenhouse gas emissions, calling for reductions of 3 percent by 2012, 20 percent by 2020, 42 percent by 2030, and 83 percent by 2050 (which is the international standard of 80 percent below 1990 levels). The targets may be adjusted by the U.S. Environmental Protection Agency (EPA), up or down, to reflect changes in knowledge. The bill requires periodic scientific assessments and reports to ensure that the goals remain meaningful.

ACESA would impose a complex regulatory program to achieve the reductions. The program centers on a cap-and-trade system that would impose decreasing caps limiting the total annual

amounts of approximately 80 percent of U.S. greenhouse gas emissions, with the decreases roughly paralleling the bill's reduction goals. However, the bill is not simply a cap-and-trade measure. It also calls for state planning programs to reduce emissions from transportation and land use and state and federal plans to help us adapt to changes in climate that will occur. The bill would create incentives and regulatory measures to encourage development of alternative electric generation, conservation, and energy efficiency. ACESA would also impose new regulation on the now relatively unregulated markets for trading of newly created carbon and renewable energy credits, futures, and derivatives. The planning programs would not displace local land use regulation, but might well substantially influence it.

### Cap-and-Trade System Overview

In the cap-and-trade system, the government would create and distribute "allowances" equal to the number of tons of emissions of carbon dioxide equivalents allowed under the cap. Each allowance represents a ton of carbon dioxide equivalent emissions. Each regulated party would be required to obtain (either through government allocation, purchase at auction, or trades with other allowance holders) and surrender to the government a number of allowances equal to its emissions tonnage each year. If a party could not acquire sufficient allowances or reduce its emissions to the number of allowances it has acquired, the party would face regulatory penalties. This federal cap-and-trade scheme would temporarily preempt existing state and regional schemes.

ACESA's cap-and-trade provisions would take effect in three phases, covering electrical generation units in 2012, industrial sources in 2014, and natural gas and local fossil fuel distribution in 2016. The electric generation and industrial sources would be regulated at the point of emissions (smokestack); each regulated entity would be required to acquire and surrender to the government a number of allowances equal to its emissions for the accounting period. The third phase of regulation would apply "upstream" to the distributors of fossil fuel; distributors would have to obtain allowances equal to the carbon dioxide emissions that would be created by use of the fuel they sell to parties other than the utility and industrial sources already subject to the cap. For example, oil companies would have to obtain allowances to equal the calculated emissions from automobiles using the gasoline they sell.

### Regulatory Flexibility

ACESA includes numerous provisions that would offer some regulatory flexibility. For example, the bill would allow banking of allowances that are unused and limited borrowing of allowances from future periods. It would also allow averaging allowances over several years.

ACESA provides for the creation of some allowances through the creation of "offsets." Offsets are created either by reducing greenhouse gas emissions in areas that are unregulated or by "sequestering" carbon dioxide in relatively permanent form, as can occur in soils or forests. ACESA would allocate a limited number of

allowances to use for offsets, with accounts for agriculture, forestry, and international sources. Rules would be required for generating, measuring, and monitoring these offsets.

### Allocation of Allowances

All of this begs the question of who gets how many of the allowances in the first place. The bill would award most allowances for free initially and would distribute only a small percentage through an auction. ACESA would eventually increase the percentage distributed at auction to 85 percent.

Notably, however, under ACESA many of the allowances awarded for free would not be given to emitters, who would still need to purchase all or a significant number of allowances in the open market from those who are awarded the allowances. For example, allowances for fossil fuel-fired electric generators in states subject to traditional utility regulation of generation would be awarded to the distribution company for the benefit of the consumers; those allowances would be sold and the generation companies would likely need to purchase them where they utilize fossil fuel generation. The generation companies would certainly need to factor in the cost or value of necessary allowances in deciding what new sources of generation to build. Many allowances would be distributed to accounts to fund or encourage certain activities, including, among other things, offset creation, adaptation, international cooperation, prevention of economic dislocation, and land use and transportation planning for emissions reduction. These allowances, also would be sold, so the regulated generators would need to buy them or reduce emissions. Of course, under this scheme, states, foundations, and conservation groups could acquire and retire allowances, effectively lowering the cap.

### Role of the Clean Air Act

ACESA would alleviate some of the concern presented by efforts to regulate greenhouse gases under the more conventional provisions of the Clean Air Act employed to address other air pollutants. The cap-and-trade provisions would be enforced and implemented under the Clean Air Act by the EPA. ACESA also would require the EPA to use existing Clean Air Act authority to develop standards limiting emissions from certain regulated sources not covered by the cap-and-trade program. The bill would leave states as free to enact more stringent greenhouse gas emissions standards as does the current law. ACESA would provide that greenhouse gases should not be listed as criteria pollutants nor should they be subject to National Ambient Air Quality Standards. The legislation would exempt greenhouse gas sources that would not otherwise be major stationary sources of other pollutants from the requirements of the EPA's new source review program – that is, the bill would allay the fear that space heating boilers for modest buildings would be subject to regulatory controls as major stationary sources under the Clean Air Act. On the other hand, the bill would make clear that states may enact efficiency codes for whole buildings, notwithstanding the federal preemption of state appliance standards.

## FEDERAL REGULATORY UPDATES (Continued)

### Incentives and RPS

ACESA would also create a series of incentives for energy efficiency, smart grids, and alternative energy sources. It would create a new national renewable portfolio standard requiring covered utilities to generate 6 percent of their capacity from renewable sources or energy efficiency savings by 2012, increasing the percentage by roughly 3 percent a year until 2021, when utilities would be required to produce 20 percent of their electricity from renewables and demonstrated energy efficiency. This standard would not preempt more stringent state RPS standards, and states would be permitted to require utilities to retire federal renewable energy credits received in excess of the federal standard. The bill also includes a number of tax and funding incentives for renewable energy, energy

efficiency, smart grid improvements, transportation programs, and programs to capture and sequester greenhouse gas emissions.

### Credit Trading Markets, Regulation

Finally, ACESA would establish a new regulatory program for the carbon credit and renewable energy credit trading markets. The bill would vest power in the Federal Energy Regulatory Commission and the U.S. Commodity Futures Trading Commission to regulate carbon emissions allowances and offset credits and renewable energy credits created under ACESA. The program would leave states free to regulate more stringently.

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- by Robert B. McKinstry, Jr.

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### BANKS HIRING WORKOUT SPECIALISTS

According to a recent *Philadelphia Business Journal* article, larger community banks are hiring workout staff, to deal with the increasing number of nonperforming assets. Nonperforming assets are affecting banks in Pennsylvania and New Jersey, and, nonperforming assets in some banks, as of the first quarter of 2009, range from 120% more, to eight times more, than the percentage of nonperforming assets that they experienced in the second quarter of 2008. When one looks at the net charge off ratio across all reporting banks (13 banks were included in a recent survey), charge offs were also on the rise.

Although workout specialists were not in demand after the mid 1990s, the demand for them is strong now. Workout professionals try to maximize the value of a troubled asset, as quickly as possible. The current problem is that banks need to hold on to bad loans longer than in the past, which makes resolving troubled assets more difficult.

An aspect of workout of some troubled assets also relates to environmental issues, which may be of concern at a particular commercial or industrial site. Banks will not necessarily, when there are environmental issues to deal with, "clean up", an entire site for future use; the typical workout approach is to accurately define environmental liabilities, and, then, have a purchaser, fund needed remediation, deducting the cost from the sale price. Properties that have significant value, can be sold, so long as environmental issues, are adequately defined. The current state "Covenant Not to Sue Programs" available in all states the Greater Delaware Valley area, make workouts easier when there are environmental liabilities to deal with, easier, than was the case in the early 1990s economic down cycles, when these liability release programs were not available.

- Gary Brown (Excerpts from *Philadelphia Business Journal*  
- June 19-25, 2009)

### RT ENVIRONMENTAL SERVICES JOINS THE PENNSYLVANIA ENVIRONMENTAL COUNCIL'S GREATER PHILADELPHIA

Gary R. Brown, President, represented RT at the Charter Members presentation meeting for the PEC Greater Philadelphia Green Business Program in March of this year. RT joined several other businesses in the region in a commitment to initiating or maintaining company policies and procedures that will promote green business practices and environmental sustainability.

As a leading, regional environmental consulting firm, RT is pleased to announce that we completed our Commitment Checklist and are now listed as a Silver Member on the Green Business website ([www.phillygreenbiz.com](http://www.phillygreenbiz.com)). RT looks forward to fully implementing our sustainability goals and reducing the company's carbon footprint in the coming year.

## NJ REGULATORY UPDATES

### NEW JERSEY TO TAKE OVER PORTION OF CERTAIN NUCLEAR REGULATORY LICENSING

In June, New Jersey Department of Environmental Protection indicated its intent to take over regulation, of certain licenses for by product, source, and special nuclear materials. The agreement will become affective on September 30th of this year.

As of August, the NRC was no longer processing license amendment requests, as NJDEP will be taking over the licensing process. More information is available from the NJDEP radioactive materials section at 609-984-5462.

### COMMISSIONER MAURIELLO COMMITS TO SETTING CHROMIUM STANDARD BASED ON CAREFUL SCIENTIFIC REVIEW

Department of Environmental Protection Acting Commissioner Mark N. Mauriello in June said that the agency will develop final standards for the cleanup of chromium-contaminated soil, emphasizing that this will be done based on careful, scientific analysis and in accordance with state laws.

A petition for immediate rulemaking was filed by the Interfaith Community Organization; GRACO, a Jersey City community group; and the Natural Resources Defense Council.

Chromium is used in a variety of industrial applications, including metal plating, the manufacture of stainless steel and the production of colored glass. Hudson County was for many years the center of chromium production in the United States, with three of the nation's six chromium plants located in the county. Two were located in Jersey City, the other in Kearny.

Of 185 sites in Hudson County and adjacent Essex County that have been polluted by chromate ore wastes resulting from the production of chromium, 70 have been remediated to applicable standards and have received DEP No Further Action determinations.

In 2007, the DEP issued a chromium policy that calls for no more than 20 parts per million of chromium to a depth of 20 feet in order to receive a No Further Action determination from the DEP. The policy replaced a formal standard of 100 parts per million that had been in place for years. It was issued pending completion of ongoing federal toxicity studies for chromium.

The process for adopting a final standard takes a year from introduction, meaning a final DEP chromium standard could be in place by early 2011.

*(NJDEP – 6/12/09)*

### AMENDMENTS TO THE TECHNICAL REQUIREMENTS FOR SITE REMEDIATION

In the April 2008 Environmental Update, we reported upon the ambiguities contained in and challenges presented by the proposed amendments to the Oversight Rules and to the Technical Requirements for Site Remediation, and more specifically to the public notice requirements at N.J.A.C. 7:26E-1.4. Those amendments have

been adopted and were published in the New Jersey Register on September 2, 2008. This article highlights how the adopted revisions deviate from the proposed amendments and how the agency responded to the challenges presented by implementation.

First, NJDEP has provided a one-year "phase-in" for sites currently undergoing remediation to allow responsible parties to come into compliance with the new rules; that period expires in September 2009. Thus, responsible parties will be given a period in which to satisfy the new amendments.

Second, in response to the comments received, a few revisions to the proposed amendments relating to notification requirements were made. The Department amended its proposed requirements for mailings at N.J.A.C. 7:26E-1.4(i)3, (j)1, (k)3 and (l) to provide for notification by mailing of notices using the United States Postal Service's Certificate of Mailing addressed to "Current Occupant" or "Current Recipient," an option not available for "Certified Mail." This option alleviates the need for responsible parties to specifically identify all intended recipients located within 200 feet of the site. Similarly, N.J.A.C. 7:26E-1.4(i)3i was revised to incorporate the concept of using current municipal tax duplicates to identify current owners within a given area.

The non-English speakers notification requirements were also revised so that all a responsible party must do is determine "if a language other than English is predominantly spoken by owners and tenants in the area within 200 feet of the property boundary," N.J.A.C. 7:26E-1.4(f)3, and record the information on the Sensitive Population and Resource checklist. If a language other than English is predominantly spoken in an area, notice must be provided in that non-English language. See N.J.A.C. 1.4(g)1 and (k)4. This is a change to the proposed rule in that the proposed rule required the person responsible for conducting the remediation to determine whether non-English speaking persons reside in, attend or use items listed on the checklist.

While responsible parties were always intended to have the option of either signage or mailings, N.J.A.C. 7:26E-1.4(g)2 was revised to allow for persons responsible for remediation to switch between the notice methods without prior agency approval.

The Department also implemented other changes to the proposed amendments. For example, N.J.A.C. 7:26E-1.4(k), which addresses notification in the case of contamination that has migrated off-site, provides for distribution of a fact sheet in the case of off-site migration. Moreover, upon adoption, the term "discovery" was changed to "determined" in the section that addresses when that fact sheet must be distributed, N.J.A.C. 7:26E-1.4(k)1i, to reflect the fact that definitive action is necessary to learn if contamination has migrated outside the identified area of concern or the site.

Finally, NJDEP specifically acknowledged that the notification process set forth in the regulations is new and requires flexibility. The Department seems committed to working with

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parties to approve alternate notification plans that meet the objectives of the rules, as provided in N.J.A.C. 7:26E-1.4(n). NJDEP notes however that parties who implement alternative plans without agency approval run the risk of their plans not being deemed consistent with the objectives of the rules and subjecting themselves to a violation.

Most violations of the amended rules are minor, with a 30-day grace period; penalty assessments therefore are not anticipated. Penalties are only anticipated if violations are not corrected within the grace period provided and settlement of penalties will be possible if compliance is attained quickly. NJDEP also acknowledged the possibility of obtaining approval for consolidated notices when there is coincidental overlap with other rule provisions. Only time will tell how flexible NJDEP will ultimately be.

*(Riker, Danzig Environmental Update – May 2009)*

### NJPDES HOT MIX ASPHALT STORMWATER PERMIT RENEWAL AUTHORIZATION

NJDEP issued final a renewal of the Hot Mix Asphalt Producers Stormwater General Permit. Requirements of the permit include:

- Revise and update Stormwater Pollution Prevention Plan (SPPP) on or before November 1, 2009;
- Revise, submit, and implement updated Drainage Control Plan (DCP) (including narrative and map with discharge locations) on or before November 1, 2009;
- Begin quarterly monitoring of stormwater discharges on January 1, 2009 (first quarter is January 1, 2010-March 31, 2010). Discharge Monitoring Reports for first quarter are due April 25, 2010
- Submit Annual Report and Certification on or before May 1, 2010 and annually thereafter.

Important changes to the permit also include:

- SPPP requirements in Part IV, Section B.1;
- Drainage Control Plan requirements in Part IV, Section B.2-4;
- Design criteria for an infiltration basin revised to a 2 year, 24 hour storm. The infiltration basin must drain with 72 hours and be designed in accordance the Department's BMP Manual. Existing infiltration basins may continue to be used if the permittee can demonstrate that the infiltration basin meets the design criteria (see Part IV, Section D.);
- Addition of a Benchmark for Total Suspended Solids of 100 mg/L (monthly average) for discharges to surface water. Exceeding the benchmark may cause the benchmark to become an effluent limitation (see Part IV,

## NJ REGULATORY UPDATES (Continued)

Section C.3.)

- Addition of Mandatory Best Management Practices that every permittee must implement if applicable. These mandatory BMPs are located in Part IV, Section E.

(NJDEP – May, 2009)

### RAIN GARDENS RECEIVING MUCH ATTENTION IN NEW JERSEY TO MANAGE STORMWATER

Having a rain garden in your landscape will reap much more than what is easily visible. During a heavy rainstorm much of the water quickly washes into streets from sidewalks, parking lots, and lawns. It then goes down stormdrains and eventually ends up in local water bodies. What you don't see washing away with the rain water are pollutants such as pesticides, fertilizers, and petrochemicals, which may have

accumulated on lawns, driveways, and streets. A shallow depression in the lawn to capture stormwater allows this water to penetrate and move into the ground instead of running off and down into the stormdrain.

As the captured water slowly percolates into the ground, pollutants are filtered out, nutrients are used by the plants, or pesticides are broken down by microorganisms. Minimizing runoff into stormdrains also results in decreased sediment, flooding, and shoreline damage. Compared to a conventional lawn, rain gardens allow 30% more water to soak into the ground. Because rain gardens are landscaped, they add beauty to a lawn and create a habitat for birds, butterflies, and beneficial insects.

Rain gardens can be located near downspouts to intercept only roof runoff, placed to collect water from lawn and roof, or along driveways

and sidewalks. Large rain gardens can be designed to be contoured lowpoints. The topography of your property and where runoff flows will help determine the exact site. Locate an area without existing ponding with a slope between 1% and 10% that is at least 10 feet from the house foundation. Area should not be directly over a septic system. Good soil drainage is important.

In New Jersey, 90% of rainfall events are less than 1.25 inches, with approximately 44 total inches of rain per year. The rain garden will treat and recharge  $0.9 \times 44$  inches = 40 inches per year = 3.3 ft. per year. If the rain garden receives runoff from 1,000 sq. ft., total volume treated and recharged is  $1,000 \text{ sq. ft} \times 3.3 \text{ ft} = 3,300$  cubic feet, which is 25,000 gallons per year. Just building 40 small gardens in a neighborhood means that we have treated and recharged 1,000,000 gallons of water per year.

## TECHNOLOGY UPDATES

### TOP FIVE STORMWATER POLLUTION PREVENTION PLAN OMISSIONS

Writing plans to control erosion and sediment on construction sites started even before the National Pollutant Discharge Elimination System (NPDES) permits went into effect in 1992. So why is it that so many of the plans currently designed are not in compliance with the regulations?

Stormwater Pollution Prevention Plans (SWPPPs) are complex documents that are misunderstood by many. So here are the top five elements missing in most SWPPPs – and five more are listed with the online version of this article.

1) **Signature and certification statement** – Each SWPPP prepared must be signed and certified as described in the Construction General Permit (CGP). The certification statement for the SWPPP is usually the same as the certification statement signed on the Notice of Intent (NOI). Many states also require the SWPPP designer to certify the plan.

2) **Copies of the CGP and signed NOI** – The CGP is available on the agency's website and should be printed off and added as an appendix to the SWPPP along with the signed NOI.

3) **Copies of agency consultation letters** – Many CGP question whether the construction project will affect threatened or endangered species and their habitat or historic properties. This requires consultation with the federal or state fish and wildlife department and the state historic preservation office. Consultation letters should be sent to these agencies describing the location and activity that will take place and asking what, if any, effect there would be. The letter from the agency answering the question of how the project might affect threatened or endangered species or historic properties must be included in the SWPPP.

4) **Identification of contractors and signed contractor certification forms** – Most CGPs

require that any contractor responsible for installation or maintenance of any best management practice (BMP) referred to in the SWPPP must be identified in the SWPPP. In addition, many CGPs require that the contractors sign a certification statement. The designer of the SWPPP should provide these certification pages within the SWPPP and explain which contractors need to provide signatures.

5) **Noncompliance reports** – Most CGPs require that any noncompliance issues be reported to the proper agencies. This includes any anticipated noncompliance or any non-compliance that may endanger health or the environment. This also includes any discharges caused by a bypass or upset (definitions for these terms are found in the CGP). A form for noncompliance reporting should be included in the SWPPP along with an explanation as to when this should be provided.

There are many elements to include when producing a SWPPP that is compliant with federal, state, and local regulations. Addressing these Top Five commonly missing elements is a good start to accomplishing this. And if you want to learn more, the web version of this article contains five more essential elements.

(By Shirely D. Morrow, CPESC, CISEC, CE NEWS, 7/09)

### NEW FEDERAL DOCUMENTS AND WEB RESOURCES

**EPA Dataset/Databases for Ecological Risk Assessment of Contaminated Sites.** To assess the potential for risk from contaminated sediments and to help determine contamination levels for remedial designs, EPA's Land Research Program has developed several ecological risk assessment tools including: 1) Biota-Sediment Accumulation Factor Data Set, which can be used to evaluate the transfer of chemicals from sediments into the aquatic food chain; 2) PCB Residue Effects (PCBRes) Database, an abundance of information for risk

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assessors to use for correlating polychlorinated biphenyls (PCBs) and other dioxin-like compound residues with toxic effects and developing Toxicity Reference Values (TRVs); and 3) ECOTOX Database, for use when risk assessors and managers need to develop TRVs for sediment sites that have contaminants other than, or in addition to, PCBs and dioxins and provides ready access to single-chemical toxicity information for aquatic and terrestrial life. Each of these tools facilitate a scientifically defensible risk assessment, improve the decision-making ability of risk managers at Superfund and other contaminated sites, and facilitate successful remediation efforts. More information at

BSAF:

[www.epa.gov/med/Prods\\_Pubs/bsaf.htm](http://www.epa.gov/med/Prods_Pubs/bsaf.htm)

ECOTOX: <http://www.epa.gov/ecotox>

PCB Residue Effects:

[www.epa.gov/med/Prods\\_Pubs/pcbres.htm](http://www.epa.gov/med/Prods_Pubs/pcbres.htm)

**Site Characterization to Support Use of Monitored Natural Attenuation for Remediation of Inorganic Contaminants in Ground Water (EPA 600-R-08-114).** This Issue Paper highlights at what stage of the process solid-phase characterization techniques need to be implemented during site characterization and describes two case studies (one site affected by arsenic, lead, and chromium, and the other by uranium) where the results of these techniques were critical to evaluation of MNA as a potential component of ground-water cleanup (November 2008, 16 pages). View or download at:

## TECHNOLOGY UPDATES (Continued)

[www.epa.gov/nrmrl/pubs/600r08114/600r08114.pdf](http://www.epa.gov/nrmrl/pubs/600r08114/600r08114.pdf).

**Incentives for Greener Cleanups.** The mission of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) Greener Cleanups Task Force is to facilitate cleanup decisions that increase net environmental benefits of remediation and contribute to site sustainability. To achieve this mission the Task Force identified nine initiatives that it believes will incentivize entities to employ greener remediation approaches at underground storage tank, Brownfields, Federal Facility, RCRA, Superfund, and State site cleanups. Greener practices can be perceived as costly, time consuming, and less certain in their outcomes than conventional remediation. To overcome these perceptions, incentives are needed for parties who perform site cleanups and the regulatory oversight agencies that oversee these activities (June 2009, 17 pages). View or download at : [http://astswmo.org/files/resources/greener-cleanups/GCTF\\_Incentives\\_Paper\\_6-25-09.pdf](http://astswmo.org/files/resources/greener-cleanups/GCTF_Incentives_Paper_6-25-09.pdf).

### EPA HONORS RAYTHEON FOR REDUCING MERCURY BY 46%

EPA has honored El Segundo, California-based Raytheon Space and Airborne Systems for reducing mercury through the elimination of mercury-containing equipment and future purchasing of mercury-free products.

At a private ceremony held at Raytheon's El Segundo offices, the EPA honored Dennis Reed, Vice President of Operations for Raytheon Space and Airborne Systems, with

the EPA's National Partnership for Environmental Priorities (NPEP) Achievement Award in recognition of Raytheon's reduction of 8.41 lbs of mercury, which is the equivalent of the mercury in 400 household thermometers.

"By removing mercury-containing equipment, such as thermometers and blood pressure machines, and pledging to purchase mercury-free products, Raytheon has gone above and beyond environmental compliance to reduce toxic waste without affecting the bottom line," said Steven John, Director of the EPA's Southern California Field Office.

Raytheon is a member of the agency's NPEP program, which encourages public and private organizations to form voluntary partnerships with EPA to reduce the use or release of any of 31 priority chemicals. The program's goal is to work with industry and the public to reduce the use or release of four million pounds of priority chemicals by 2011.

Raytheon Space and Airborne Systems is a leading provider of sensor systems for military purposes. Raytheon is also a member of EPA's WasteWise and Climate Leaders programs, and initiated environmental projects with state and local agencies like the West Basin Water District for water reclamation. They are a recipient of the California Integrated Waste Management Board's Waste Reduction Award Program.

### INFRARED THERMOGRAPHY – NEW TECHNOLOGY TO FIND HIDDEN MOISTURE SOURCES

In a July/August 2009 Article in Restoration & Remediation, the use of infrared thermography is

featured, in an article by Rafael Royo and Carla Montagud.

IR thermography is a nondestructive investigative method, wherein a special camera is used to determine the temperature of building components. The technology can be used to determine whether a suspect moisture problem, or even a measured moisture problem in the building is "the tip of the iceberg", or "a localized condition".

Situations where thermography can be helpful include:

- Detection of air and water infiltration.
- Locating moisture due to leaking pipes.
- Detecting moisture due to condensation.
- Easy visualization of "thermal bridges" located in pillars, beams, windows, etc.
- Finding water pipes and electric lines inside walls.

Detection of different construction materials inside the walls or on their surface.

- Determination of external surface temperatures in the building, which will allow for the analysis of heat losses.

- Discovery of materials no longer firmly attached to the external surface of the building, such as ceramic or marble tiles.

RT has already used IR thermography successfully, to rule out potential moisture intrusion, in a building where such high moisture and mold growth was of concern. The technology can be used to locate leaking pipes, insulation deficiencies, and/or moisture or water intrusion from exterior building envelope and/or roof leakage, very efficiently.

For more information call Gary Brown at 800-725-0593, Ext. 234.



### STEEL CITY BIG POUR

Virtually no event in the Pittsburgh area has grown as quickly as Construction Junctions "Steel City Big Pour" and with good reason. It is the premier beer and craft festival in the area, and if you want to go, you may have to get creative to get a ticket. Tickets for the September 12th event sold out within a week – all 2000 of them. Ticket cost is \$30.00, unless you ride a bike or kayak to the event, then it is \$28.00.

It took only 48 hours for the evening session which runs from 5 pm to 8 pm and to sell out and one week for the afternoon session, which runs from 1 pm to 4 pm.

The event will include brews from 32 breweries, food from 20 local restaurants, organic offerings, live music and live artwork of all types.

Also featured will be a "kegerator" raffle, and if you don't know what that is, you may want to check out the website ([www.constructionjunction.com](http://www.constructionjunction.com)) for good look. They are former refrigerators painted by local artists and redesigned to dispense beer.

The event is sponsored by Construction Junction and monies raised will help to revitalize Millvale and to promote Construction Junctions mission to promote the conservation and reuse of construction materials.

**RT'S WEB PAGE  
WWW.RTENV.COM**

## PENNSYLVANIA BULLETIN NOTICES

## RULEMAKING IN PROCESS – 2009

Nutrient and Sediment Reduction Credit Trading Program; Nutrient Trading Program Activities and NPDES Permits	5/16/09
Triennial Review of Water Quality Standards	5/16/09
Safe Drinking Water – General Update – The Environmental Quality Board (Board) by this order amends Chapter 109 (relating to safe drinking water). The final-form rulemaking includes major revisions to the regulation of inorganic chemicals (IOCs), synthetic organic chemicals (SOCs) and volatile synthetic organic chemicals (VOCs); minor revisions to the Filter Backwash Recycling Rule (FBRR), Lead and Copper Rule (LCR) and Radionuclide (RAD) Rule requirements; and other minor revisions to Chapter 109 to retain primary enforcement authority (primacy) and to clarify existing requirements.	5/23/09
Ambient Air Monitoring Network Plan for the City of Philadelphia	5/23/09
Extension of Pennsylvania NPDES General Permit for Stormwater Discharges Associated With Construction (PAG-2)	5/23/09
Request for Scientific Information; Resorcinol and Sulfonates; Statement of Policy	5/23/09
Proposed Revision to the State Implementation Plan for the Pennsylvania Portion of the Philadelphia-Wilmington-Atlantic City 8-Hour Ozone Nonattainment Area; Public Hearing	5/30/09
Access to Odor Management Plans for Concentrated Animal Operations, Concentrated Animal Feeding Operations and Volunteers Complying with Pennsylvania's Facility Odor Management Program	6/6/09
Erosion and Sediment Control and Stormwater Management Amendment; Summary of Amendments: <ul style="list-style-type: none"> <li>• Enhanced Requirements Related to Agriculture;</li> <li>• Clarification of Existing Requirements for Accelerated E&amp;S Control;</li> <li>• Incorporation of Updated Federal Requirements;</li> <li>• Updated Permit Fees;</li> <li>• Codification of PCSM Requirements;</li> <li>• Addition of Requirements Related To Riparian Forest Buffers;</li> <li>• Introduction of a Permit-By-Rule Option;</li> <li>• Public Participation and Outreach.</li> </ul>	6/13/09
Lead and Copper Rule Short Term Revisions to Update Title 25, Pa. Code Chapter 109, Safe Drinking Water	6/13/09
Lake Erie Bluff Recession and Setback Rules and Regulations	6/13/09
Environmental Laboratory Accreditation	6/20/09
Measures Under Consideration by the Ozone Transport Commission	7/4/09
Beneficial Use of Coal Ash; Amendments being proposed to this rulemaking, are summarized as follow: <ul style="list-style-type: none"> <li>• Increased coal ash monitoring to ensure coal ash meets certification criteria;</li> <li>• Increased water quality monitoring for a longer duration to create a robust dataset to facilitate the evaluation and documentation of water quality at sites where coal ash is beneficially used;</li> <li>• Requirement for minimum number of monitoring wells to characterize the groundwater or other water quality points;</li> <li>• Requirement for recording a landowner consent for placement of coal ash for beneficial use;</li> <li>• Improved reporting requirements to track volumes and location of sites where coal ash is beneficially used;</li> <li>• Consistent operational and monitoring standards for all types of beneficial use;</li> <li>• A centralized process to certify coal ash for beneficial use at mine sites;</li> <li>• An annual fee payable to the Department to offset its costs for coal ash and water quality sampling and testing at mine sites where coal ash is beneficially used;</li> <li>• Requirements for the storage of coal ash including provisions for design and operations.</li> </ul>	6/21/09
General Permits for Beneficial Use of Exceptional Quality Biosolids by Land Application (PAG-07), Beneficial Use of Biosolids by land Application (PAG-08) and Beneficial Use of Residential Septage (PAG-09); Public Notice of Availability	7/11/09
Nutrient and Sediment Reduction Credit Trading Program	7/18/09
Public Transportation— Sustainable Mobility	7/18/09
Proposed Revision to Pennsylvania's State Implementation Plan Incorporating the Diesel-Powered Motor Vehicle Idling Act; Public Hearing	8/15/09
Proposed Amendments to the <i>Water Quality Regulations, Water Code and Comprehensive Plan</i> to Revise the Human Health Water Quality Criteria for PCBs in the Delaware Estuary, to Apply the PCB Human Health Water Quality Criterion to Delaware Bay, and to Provide for the Use of Compliance Schedules to Implement Stream Quality Objectives Established by the Commission	8/15/09
Announcement of Revised General Information Form	8/15/09
Proposed Revisions to General NPDES Permit for Stormwater Discharges Associated with Construction Activities (PAG-2); Public Notice of Availability	8/15/09
Notice of Availability of the Fiscal Year Report for the Reclamation Fee O & M Trust Account	8/15/09
Proposed Rulemaking – Total Dissolved Solids Wastewater Treatment Requirements	8/18/09
Proposed Rulemaking on the Administration of Water and Wastewater Systems Operator Certification Program	8/22/09

## PENNSYLVANIA BULLETIN NOTICES CONTINUED

TECHNICAL GUIDANCE DOCUMENTS	
Draft: Trading of Nutrient and Sediment Reduction Credits—Policy and Guidelines	5/30/09
Draft: Civil Penalty Calculation Procedure for Pollution Incidents	6/19/09
Draft: Civil Penalty Assessment Informal Hearing Procedure	6/19/09
Draft: Guidance for Civil Penalty Calculations for Effluent Violations	6/19/09
Final: Water Quality Toxic Management Strategy	6/19/09
Final: Best Available Technology and Other Permitting Criteria for Municipal Solid Waste Landfills	6/27/09
Final: Procedures for Establishing the Quantity of Water in Low-Yield Wells	6/27/09
Final: Radon Certification Policy	7/11/09
Final: Policy for Consideration of Local Comprehensive Plans and Zoning Ordinances in Department Review of Permits for Facilities and Infrastructure	8/15/09

## FEDERAL REGISTER NOTICES

<http://www.epagov/homepage/fedrgstr>

<b>Environmental Protection Agency</b> Primary National Ambient Air Quality Standard for Nitrogen Dioxide; Proposed Rule <i>(Federal Register – 7/15/09)</i>
<b>Environmental Protection Agency</b> Lead Wheel Balancing Weights; TSCA Section 21 Petition; Notice of Receipt and Request for Comment <i>(Federal Register – 7/15/09)</i>
<b>Department of Defense</b> Proposed Suspension and Modification of Nationwide Permit 21; The U.S. Army Corps of Engineers (Corps) is proposing to take actions concerning Nationwide Permit (NWP) 21, which authorizes discharges of dredged or fill material into waters of the United States for surface coal mining activities. <i>(Federal Register – 7/15/09)</i>
<b>Food and Drug Administration</b> Dental Devices: Classification of Dental Amalgam, Reclassification of Dental Mercury, Designation of Special Controls for Dental Amalgam, Mercury, Amalgam Alloy; Final Rule <i>(Federal Register – 8/4/09)</i>

## KEY HIGHLIGHTS

## PA UPDATES

- New TDS Regulations?, pg. 3
- Boiler MACT Rule, pg. 3
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## FEDERAL UPDATES

- Mining Reform/EPA Financial Rules, pg. 4
- Stronger NO2 Standards, pg. 4
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## NJ UPDATES

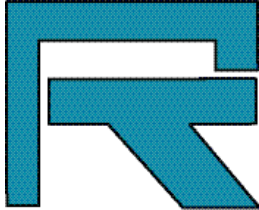
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**SEE PAGE 15 FOR KEY HIGHLIGHTS**



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**Join us at the  
Conshohocken  
Marriott on October  
7th to Get Prepared  
for What's Ahead.**

**Seminar Focus**

- Climate Change Legislation – How it Could Affect Energy Costs and Delaware Valley Businesses.
- The Federal Lead Paint / Repair and Renovation Rules Are Here – April 2010; Registration in October 2009
- Underutilized Commercial Properties – A Forecast and Mathballing as a Property Management Alternative
- The Expanded Regional Focus on Stormwater Management
- Financing for Commercial Developments and Redevelopments

**Added Feature**

**Update on Green Building Programs & Panel Discussion**

**Fall Business & Commercial Real Estate Environmental Seminar**

An important look at key issues likely to impact business in 2010

Will include **Commercial Real Estate Update and Climate Change/ Energy cost impact briefings; and The EPA April 2010 Lead Paint Renovation Rule**

**Wednesday, October 7, 2009**

**Time: 7:45 AM - 12:00 PM**

Philadelphia Marriott West  
111 Crawford Avenue  
West Conshohocken, PA 19428



**\* Continental Breakfast will be provided!**

To register by telephone call **Katarine Cristaudo at (856) 467-2276 x100** or go to [www.rtenv.com/events](http://www.rtenv.com/events) to download agenda & registration brochure



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