

The RT Review

The Latest on Environmental Issues From Your Solution-Oriented Environmental Services Firm

• Environmental Engineers & Scientists • Geologists • Remedial Contractors



ASBESTOS PLANT REDEVELOPMENT PROJECTS MOVE FORWARD IN MANHEIM AND AMBLER

The Commonwealth of Pennsylvania Department of Community and Economic Development officials announced the award of redevelopment grants and loans for the revitalization and redevelopment of former asbestos product manufacturing sites in Ambler and Manheim, PA. RT Environmental Services, Inc. is proud to be the Environmental Consultant for both projects.

The Ambler site involves rehabilitation of a former boiler house, for the Keasbey and Mattison Company, which left behind a legacy of asbestos waste piles in Ambler and nearby communities. A pile of fibrous asbestos waste, right next to the plant, received one of the first expenditures from CERCLA/Superfund in Region III, when it was discovered that children were playing on the pile, carrying great risk of exposure to asbestos fibers, which are carcinogenic (they can cause cancer). EPA had the pile capped, and the area fenced, although a few other asbestos disposal areas still remain to be addressed in and around Ambler.

Redevelopment is planned as a mixed use facility, and is anticipated to include offices and a restaurant, as well as other uses. A long disused boiler house, which fell into disrepair decades ago, was a visible sore spot as it sits immediately adjacent to Ambler's SEPTA Rail Station and is visible from its Butler Pike ("main street") area. Asbestos materials present in the basement area, present since boilers were removed, and a leaking underground storage tank will both be addressed as part of the redevelopment process. Work is scheduled to begin later this year, and continue into 2007.

In Manheim, Borough Council President Tom Showers and Rob Stoner of the Manheim Area Economic Development Commission are looking forward to redevelopment of the former Raymark Industries lower mill facilities which have a number of disused buildings with some building sections in danger of imminent collapse. RT Environmental Services, Inc. assisted with obtaining Act 2 Cleanup lia-

bility protection for the upper and lower mill facilities, and assisted with closure of the Upper Mill Landfill area as well. The Upper Mill, which contains newer buildings, is successfully being redeveloped, but the derelict condition of Lower Mill building required grant assistance before further work could proceed.

In its heyday, the Raymark Industries Manheim Facility manufactured asbestos brake products, clutch facings and a variety of rope and cloth insulation products. The Lower Mill saw decreased use after cloth and rope operations were moved to North Carolina, and with Raymark Industries going through two bankruptcies in the 1990s, the facility fell into serious disrepair. Under the redevelopment scheme, several buildings which have industrial heritage, including the art deco Lab Building will be saved. Old manufacturing buildings which still contain asbestos duct and filtration systems will be properly remediated prior to building demolition, as part of the redevelopment process. A Norfolk Southern Railroad "wye" is present in the middle of the mill, and a new future building with rail access is planned, for the Lower Mill area.

At RT Review press time, RT's Tony Alessandrini and Rob McKenzie had completed updated asbestos-containing material survey work, working closely with Herm Ramig, P.E. an on-site official familiar with the property history. The Act 2 Land Recycling process will be used to manage certain materials on site, which will help make the Lower Mill Redevelopment Project economically feasible. In addition to Mr. Ramig, RT will be working with Engineer Robert M. Michener, Jr. who will design and oversee non-environmental portions of the project.

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MANHEIM BEFORE



MANHEIM AFTER



AMBLER BOILER HOUSE BEFORE



AMBLER BOILER HOUSE AFTER

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Directory

Corporate Headquarters

215 West Church Road
King of Prussia, PA 19406
Phone: (610) 265-1510
FAX: (610) 265-0687

E-mail: RTENV@AOL.COM
World Wide Web: HTTP://RTENV.COM

24 HOUR

URGENT LINE SERVICE 800-725-0593

Gary Brown, P.E., President
Phone: (610) 768-0232
E-mail: GBROWN@RTENV.COM

Rich Johnson, P.G.

Phone: (610) 265-1510 Ext. 11

Hydrogeology Group Manager

E-mail: RJOHNSON@RTENV.COM

Walter Hungarter

Phone: (610) 265-5599

Engineering Group Manager

E-mail: WHUNGARTER@RTENV.COM

Rob Carey

Phone: (610) 265-1510 Ext. 31

Remediation Group Manager

E-mail: RCAREY@RTENV.COM

New Jersey

Justin Lauterbach

Phone: (856) 467-2276 Ext. 119

E-mail: JLAUTERBACH@RTENVNJ.COM

Suite 306, Pureland Complex

510 Heron Drive, P.O. Box 521

Bridgeport, NJ 08014

Phone: (856) 467-2276

FAX: (856) 467-3476

Regional Partners

California

Bob Smyth

Phone: (856) 234-1730

FAX: (856) 234-4387

Massachusetts

Andy Irwin

Phone: (508) 653-8007

FAX: (508) 653-8194

Michigan

Michael Carlson

Phone: (248) 585-3800

FAX: (248) 585-8404

North Carolina

Phil Rahn

Phone: (336) 852-5003

Ohio

Ron Clark

Phone: (330) 375-1390 Ext. 207

Virginia

Edward Berg

Phone: (757) 599-6985

FAX: (757) 599-3501

ASBESTOS PLANT REDEVELOPMENT PROJECTS MOVE FORWARD IN MANHEIM AND AMBLER *(continued from page 1)*

Pennsylvania towns with former asbestos manufacturing facilities, have always faced considerably more difficulties than other industrial communities. In the case of both Ambler and Manheim, the asbestos production operations dominated the towns economically, and formed the majority of the historic employment base. Several generations of employees were exposed to asbestos fibers, before it became realized in the 1950s and the 1960s how to properly manage the materials during the manufacturing process. With the arrival of the Pennsylvania Act 2 Land Recycling Process in 1995, redevelopment of the sites became possible, without federal Superfund involvement. Unfortunately, Raymark Industries' sister plant in Connecticut, went through a long protracted federally Superfund process and caused failure of the company in a second bankruptcy because of the nature of historic off-site disposal practices of asbestos-containing materials. Because of Pennsylvania's award winning Act 2 program, this situation was avoided in Manheim.

The Manheim and Ambler redevelopment projects are a testament to Pennsylvania's award-winning redevelop-

ment approaches and the Act 2 Land Recycling Process. Redevelopment projects in Pennsylvania move forward efficiently and economic growth has allowed projects such as these to receive funding from Harrisburg. The Manheim site is also a "Keystone Opportunity Zone" and significant portions of the former Raymark Upper Mill complex are now serving as warehouse and manufacturing space for national and international companies, providing new jobs for Manheim area residents.

RT Environmental Services appreciates the opportunity to be involved in both projects, which are considered key to continuing the revitalization of both communities. For more information on the award-winning Act 2 Pennsylvania Land Recycling process, call Gary Brown or Walter Hungarter, at our King of Prussia headquarters, at 610-265-1510. Based on the last Pennsylvania Department of Environmental Protection inventory, RT is Pennsylvania's leading land recycling consultant with more than twice as many land recycling projects as any other consultant in the state. As always, we appreciate the opportunity to be of service, particularly on Brownsfields projects.

STAFF AND PROJECT NEWS

Spring is one of RT's busiest seasons of the year and, spring 2006 is turning out to be no exception. Major Brownsfields redevelopment and investigation/cleanup projects are being planned, for implementation in 2006, in Ambler, and Manheim, PA. Work was also wrapping up on a large project near Trenton, NJ, including work where PCB impacted crushed concrete was found present at a site, unexpectedly. RT's King of Prussia, PA Engineering Group, as well as our NJ asbestos program consultants, were busy working on all of these projects.

Expanded work at Brownsfields sites was also underway in Massachusetts, and at two sites in Connecticut. An arsenic site in Shippensburg, PA, was also awarded to RT, which will be managed by Shane Dorward, in our King of Prussia Office. Work on arsenic impacted soil cleanup sites is an area where RT has a high degree of experience and expertise, which can help make residential development possible, and facilitate proper site cleanups.

Justin Lauterbach's New Jersey Engineering Group continued to be busy on the very large Bellmawr, NJ redevelopment project, which is receiving much attention, as the first phase of the project, landfill closure, is expected to go forward this year. The Bellmawr project is being managed by Joe Lang.

At New Jersey's largest building, in

Monmouth County, Rob Carey and Ernest Risha, were completing a comprehensive review of documents, and getting prepared to implement Phase 2 work, to identify current and historic areas of concern, which have not been addressed as part of previous ISRA work by others. New Jersey's Technical Requirements for Site Remediation are very comprehensive and have changed over time, so RT carefully reviews all current or former sites with releases, to identify any areas of concern that may have been overlooked. This is critically important at New Jersey Brownsfield projects, because where New Jersey's Tech Rules have changed over time, additional areas of concern are identified, if not properly managed, can delay redevelopment.

Expanded mid-west opportunities were also being evaluated for redevelopment, for sites in Michigan, and St. Louis, MO. A former asbestos pile site in suburban Montgomery County, is being evaluated as well. Finally, work is expected to be underway shortly, to further evaluate redevelopment and Act 2 Land Recycling options at several Philadelphia Riverfront sites, scheduled for future gaming industry development.

As always, we appreciate the opportunity to be of service, and look forward to working to develop vacant and under utilized Brownsfield sites, wherever they may be.

PENNSYLVANIA PROJECT WINS PHOENIX AWARD

Chester Station, a former Exelon power coal fired generating station, has been vital to the revitalization of Chester, Pennsylvania. Today, it is the centerpiece of a multi-tenant complex now known as the Wharf at Rivertown. The building houses nearly 1,500 people who are employed for companies like Synogy and Wells Fargo Financial Acceptance. Synogy has brought 700 jobs to Chester, the largest increase of employment in the city since World War II.

Moreover, the former power plant is anchoring additional waterfront development. Preferred Real Estate is planning new retail and residential units adjacent to the Wharf at Rivertown. RT is completing Act 2 Land Recycling work for the Act residential upgrade. Exelon's work in Chester has been highlighted in the New York Times and was the focus of Greater Philadelphia Regional Review.

The project received the EPA Region III 2005 Phoenix Award. Congratulations to NBA members who were a part of this successful brownfield revitalization.

RT has completed a number of Brownfields assignments at the site. Residential redevelopment is now being planned as the Region's attention returns to our rivers. The adjacent Barry Bridge Park has upgraded riverfront access for Delaware County and Chester residents. RT also served as environmental engineer to the City of Chester on the park redevelopment project. We at RT are very proud to be a part of this multi-faceted redevelopment project.

DRBC ISSUES TOXICS REDUCTION PROGRAM (DelTRiP) REPORT ON PCBs

The DelTRiP is a multi-step program to identify and track hazardous waste sites within the Delaware River Basin. DelTRiP will identify a subset of these sites that significantly contribute to the PCB water quality impairments within the basin. The first steps include the identification, location, and compilation of the sites within the Basin using information currently available in federal and state systems. Following these steps, the DelTRiP will determine those sites that have the potential to have significant impact on the waters of the Basin, especially with regard to impairment designation under Section 303(d) of the Clean Water Act. After prioritization, Federal and state agencies are expected to

initiate, revise, and/or continue actions taken at the prioritized sites to remediate the impacts from these sites. The final step is to track and report on the status of the sites identified in the prior year's annual report, emphasizing measurable reductions in loadings to the Basin from the prioritized sites. DelTRiP steps one through four are currently funded through a grant from the EPA.

DelTRiP, in its first stage, has focused on sites identified with PCBs. PCBs were chosen as the contaminant of interest because the DelTRiP is supporting the DELEP objective to implement a TMDL for PCBs in the Delaware Estuary. Site listings have been extracted from Federal and state databases (i.e. CERCLA, RCRA, TRI, state hazardous waste site databases) and incorporated into a geographical information system (GIS).

DNREC submitted approximately 570 potential sites to the DelTRiP, of which 8 were identified as having the presence of PCBs on site. The PADEP presented approximately 266 records of hazardous sites, with 217 distinct sites containing PCBs. The NJDEP submitted 156 records, of which 10 distinct sites were identified with PCBs. Data from the EPA identified approximately 28 sites with PCBs throughout the Basin. PADEP has identified a significantly greater number of sites containing PCBs than the other States and EPA Regions, as the PADEP listings include transformer locations. DelTRiP will continue to work with the PADEP to obtain coordinates for identified sites, as well as the New York State Department of Environmental Conservation to identify contributing sites within its jurisdiction, and include such information in the next annual report.

Many of the site histories submitted by the state agencies contain dated information. Likewise, significant information about each site also needs to be extracted from the files (for example, quantification of releases or potential releases and exact coordinates). DelTRiP will continue to work with the agencies to refine and clarify the data, as well as to obtain site listings for other contaminants of interest. As new site locations are identified they will be incorporated into a GIS system.

Currently, the DelTRiP has been engaged in implementing steps one through three; site listings have been extracted from state and Federal agencies and incorporated into GIS. Subsequent to prioritization of the sites, Federal and state agencies will initiate, revise, and/or continue actions taken at the prioritized sites to remediate

the impacts from these sites. DelTRiP will continue to advance through the steps of implementation outlined above and will indicate progress in future annual reports. The steps are as follows:

Step 1: DelTRiP will identify contaminated sites in each state within the Basin using USEPA and state listings, including but not limited to Superfund listings (NPL and CERCLIS) and state brownfield and hazardous waste sites. Other listings, such as those developed by fire departments or building inspectors, or through municipal wastewater treatment plant trackdown programs also may be used to identify sites.

Step 2: Sites identified from "other listings" will be referred to the appropriate Federal/state agencies for action.

Step 3: DRBC will incorporate identified sites into GIS.

Step 4: State and Federal agencies will quantify the PCB loads being released or that have the potential to be released from contaminated sites identified above.

Step 5: DelTRiP will develop criteria to rank each site to determine its significance and to decide if it is to be prioritized for tracking or reporting.

Step 6: DelTRiP will prioritize the contaminated sites that significantly contribute, or have the potential to significantly contribute to the PCB load to the Basin.

Step 7: DRBC will assemble status information for each prioritized site and track the remediation progress and other actions taken to reduce the releases to the Basin from the contaminated waste sites.

Step 8: DRBC will publish an annual report detailing measurable reductions reported by the lead agencies and the status of implementation activities at each prioritized contaminated site, highlighting key milestones and accomplishments.

Questions regarding the report or the DelTRiP can be addressed to Alysa Suero at (609) 883-9500 extension 264 or by email at alysa.suero@drbc.state.nj.us

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PA UPDATES

RECYCLING IN PENNSYLVANIA TOPS 4.8 MILLION TONS, SAVING MATERIALS VALUED AT \$113 MILLION

Pennsylvania recycled a record 4.8 million tons of municipal waste in 2004, the latest year for which statistics are available.

The economic benefits of recycling are estimated at more than \$113 million in materials collected and more than \$259 million of avoided disposal costs, in addition to the substantial environmental gains from recycling.

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

In addition, Pennsylvania's recycling and reuse industry has an indirect effect on the economy estimated at \$1.8 billion, and a direct impact on the tax base, contributing \$305 million each year.

According to reports filed by Pennsylvania counties for 2004, the state diverted 4.8 million tons of municipal waste from disposal at landfills and waste-to-energy facilities, continuing an upward trend that began with passage of the state's recycling law in 1988. Municipal waste includes typical refuse from households, businesses, schools and institutions as well as industry offices and lunchrooms.

The economic benefit of recycling in 2004 can be assessed in part by using published commodity prices for goods such as steel cans, glass, plastic bottles and corrugated paper. An analysis of 1.4 million tons of Pennsylvania's 2004 recycling reveals the materials were worth almost \$54 million. If the remaining 3.4 million tons of other materials were valued at even half this amount, the total would be more than \$113 million.

This does not include the estimated value of avoided disposal, which can be calculated as more than \$259 million at the estimated statewide average disposal cost of \$54 per ton.

"Across the Commonwealth, people are recycling more at home, at work and even in public places," Environmental Protection Secretary Kathleen A. McGinty said. "Our partners in municipal governments are using innovative collection programs not only to diversify what they collect, but also to make their programs more efficient. The recycling and reuse industries are creating new and valuable uses for recyclable materials. Together, we are saving millions of tons of materials and using them to grow our economy."

(Env. Tip of the Week – 1/3/06)

NEW FEDERAL ARSENIC STANDARDS EFFECTIVE JANUARY 23

New federal drinking water standards designed to lower the levels of arsenic in

drinking water took effect on January 23 for Pennsylvania's public water systems, Environmental Protection secretary Kathleen A. McGinty said.

The federal law lowers the maximum contaminant level (MCL) for arsenic from 0.050 milligrams per liter (mg/L), or 50 parts per billion, to 0.010 mg/L, or 10 parts per billion. DEP incorporates by reference federal MCLs as state MCLs, making them applicable in Pennsylvania.

The U.S. Environmental Protection Agency adopted the new standard for arsenic in drinking water January 22, 2001. The rule became effective February 22, 2002, and compliance became mandatory on January 23, 2006.

The Department sent letters to all public water system operators in July 2005 informing them of the change, and the systems were alerted again through a DEP media campaign in October.

Some studies have linked long-term exposure to high levels of arsenic in drinking water to cancer of the bladder and the lungs. Short-term exposure to high doses of arsenic can cause other adverse health effects, but such effects are unlikely to occur from Pennsylvania's public water supplies that are in compliance with the existing arsenic standard of 0.050 mg/L.

EPA set the former standard of 0.050 mg/L in 1975, based on a Public Health Service standard originally established in 1942. A March 1999 report by the National Academy of Sciences concluded standards should be strengthened to better protect public health.

Arsenic occurs naturally in rocks and soil, water, air, plants and animals. It can be released into the environment through natural activities such as volcanic action, erosion of rocks and forest fires, or through human activities.

Section 303(b)(3) of the Land Recycling Act (Act 2) establishes the federal maximum concentration level (MCL) as the standard for a regulated substance in groundwater. Therefore, whenever the US Environmental Protection Agency (EPA) modifies an MCL it immediately becomes effective as the new medium specific concentration (MSC) under Act 2. The EPA issued a new MCL of 10 μ g/l for arsenic that became effective January 23, 2006. Therefore, any Act 2 final report that is approved by the Department on or after January 23, 2006, must demonstrate attainment of the 10 μ g/l groundwater standard for arsenic.

This change affects only the MSC for arsenic in groundwater. Although the soil-to-groundwater and generic value components of the soil MSC are based on the groundwater MSC, these values must be promulgated as a regulation before they may be applied as an MSC under Act 2. The upcoming amendments to the Land Recycling regulations (Chapter 250) will include revised soil values

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for arsenic that will be based upon the 10 μ g/l groundwater MSC.

For more information on the new rule, visit DEP's Web site at www.depweb.state.pa.us, Keyword "Drinking Water."

(DEP Update – 1/23/06)

PROPOSED RENEWAL OF THE PA GENERAL PERMIT FOR WETLANDS AND WATERWAYS ENCRoACHMENT OF CONCERN TO PA CHAMBER OF BUSINESS AND INDUSTRY

The Army Corps of Engineers is proposing renewal of the PA General Permit for wetland and waterways encroachment. Known as PASPGP-3, it will replace PASPGP-2, which expires July 1, 2006. Most of the changes are not significant, and some are actually favorable to the industrial community. However, there is a new requirement in PASPGP-3 which may be very significant for industry. In accordance with Section III.C.8 of the new PASPGP, the following activity will require a Category III review by the ACOE:

"Activities related to Residential, Commercial and Institutional Developments: Any activity for the purpose of constructing or expanding a residential, commercial, or institutional subdivision or development where greater than 0.25 acres of wetlands (in addition to those being directly impacted by the proposed project) are located within the project boundary and that are not protected from activities such as filling, draining, mowing, placement of structures, cutting of vegetation, clearing or plowing of natural vegetation, through a deed restriction, conservation easement, or deed restricted open space area, that is duly recorded and runs in perpetuity with the land."

This is the highest level of Federal review, and requires advanced notification to ACOE prior to project implementation. This new requirement appears to say that if a company has greater than 0.25 acres of wetlands, a Federal review of the project is first required, unless there is some level of local restriction (deed restriction, open space restriction, etc.) that protects those wetlands.

This seems to be overly burdensome to both the Corps and to PA developers and industry, and raises the "local control" issue which is of concern to the Chamber. The Corps, in their public notice dated 12/27/2005, states that this condition is consistent with NWP-39, but from our research so far, however the Chamber disagrees. NWP-39 regulates ACTUAL impacts on regulated waters, not the mere existence of them, and the subdivision issue of NWP-39 is

PA UPDATES (Continued)

focused on residential subdivisions only (Federal Register response to comments, 1/15/2002, page 2053.

(Courtesy – PA Chamber of Business & Industry – 1/13/06)

PENNSYLVANIA GOVERNOR OPPOSES CURB ON ACCESS TO TOXIC RELEASE DATA

Governor Edward Rendell in January said Pennsylvania is opposing proposed federal regulations that would limit public access to information about the chemicals companies legally release into the air.

The U.S. Environmental Protection Agency (EPA) wants to raise the threshold for reporting the release of certain chemicals in the Toxic Release Inventory from 500 pounds to 5,000 pounds, and change the reporting requirements to every other year instead of yearly, weakening a tool that empowers residents to fully assess the health of their communities.

“The federal Toxic Release Inventory has been tremendously successful at using the influence of public information to encourage facilities to reduce their emissions,” said Governor Rendell, a Democrat.

“The inventory puts information about chemical releases in a community at the fingertips of residents and holds companies accountable to their neighbors. Rolling back reporting requirements and exempting more chemicals from the requirements is a mistake.”

The Toxic Release Inventory (TRI), created by Congress in 1986, is available on the EPA’s

website. With a few keystrokes, residents are able to gather information about the character of certain chemicals and dispersion of toxic substances from specific manufacturing plants both nationally and locally.

Companies currently report releases by July 1 each year, although there is a delay of about 18 months between the end of a reporting year and public availability of the data.

For several years, the EPA has solicited ideas from state and local air agencies on means to reduce that delay. But now the federal agency is proposing reporting biennially instead of annually, not only adding to delays but cutting in half the amount of new information available to the public each year.

In reality, Rendell said, the initiative will reduce the amount of important information available and double the amount of time between reports by reducing reporting frequency to every other year.

“As we move forward to address the serious health threat that mercury poses, it is critical that this information remain available,” said state Department of Environmental Protection Secretary Kathleen McGinty. “The proposed rule would clearly be a step in the wrong direction.”

Raising the threshold for reporting the release of certain chemicals would result in a loss of information, says McGinty. Only five of Pennsylvania’s coal-fired power plants would need to report their mercury and mercury compound emissions under the proposed changes. Thirty-four currently report those emissions.

For the 2003 calendar year, the owners and

operators of 109 facilities located in Pennsylvania reported TRI data on mercury and mercury compounds. If the final rule raises the eligibility threshold, TRI reporting may only apply to 10 of those facilities.

(ENS – 1/13/06)

PENNSYLVANIA LAND RECYCLING PROGRAM – NEW DIRECTOR

David Hess recently accepted the position of Director of the Land Recycling program, within the Community Revitalization and Local Government Support Deputate (Eugene DePasquale, Deputy Secretary). He has worked for the Department of Environmental Protection/Resources for 24 years, first as a field hydrogeologist. In 1987 he transferred to the central office to work on Federal Superfund projects, help develop and manage Pennsylvania Hazardous Sites Cleanup Program and work on developing and implementing the Land Recycling Program since the passage of Act 2 in 1995.

David will be working with Jill Gaito, Brownfield Action Team Director (jgaito@state.pa.us). A number of plans are in motion to improve the program and service, and over the coming months these will be announced.

RT is PA’s largest Land Recycling Program Consultant. We have found Dave Hess to be a consummate and solution oriented environmental professional. We are sure that PA’s Land Recycling Program will continue to stay ahead of all other State Brownfields Programs and be a National Model under his leadership. Congratulations, Dave!

SERVICES & PRODUCTS

PROCESSING FACILITIES

- Recycling Facilities
- Transfer Stations
- Industrial Metals Processing
- Residual & Hazardous Waste Facilities
- Landfills

ENVIRONMENTAL SURVEYS

- Phases 1 – 4 Environmental Surveys
- Field Investigations
- Computer Regulatory Database Checking
- Field Analytical Testing (Volatiles, Metals, PCB’s, Gasoline, and Oil Compounds)
- Remedial Action Plans
- Asbestos Testing & Abatement
- Lead-Based Paint Testing & Abatement
- Feasibility Studies
- Storm Water Management

INDOOR AIR QUALITY

- Microbial Investigations – Mold & Bacteria
- Remedial Evaluations
- Oversight
- Remediation Services
- Expert Witness

OTHER SERVICES

- Training Programs
- Contingency Plans
- Source Reduction
- Waste Minimization
- Superfund Project Management
- Expert Witness Testimony

SITE REUSE

- PA Land Recycling
- Brownfields
- NJ ISRA
- Site Redevelopment Plans

REMEDIATION

- Groundwater Recovery/Treatment
- Waste/Soil Excavation
- Soil Vapor Extraction
- Bioremediation
- Liquid and Vapor Phase Carbon Treatment
- In Situ Thermal Desorption
- Tank Upgrading and Removals

AIR EMISSIONS

- Emissions Permitting and Inventories
- Emissions Testing
- Odor Control Studies
- Dispersion Modeling

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TECHNOLOGY UPDATES

NEW YORK STATE OFFERS HUDSON RIVER RESTORATION PLAN

People would be able to fish and swim the entire 315 mile length of the Hudson River under the Hudson River Estuary Program's newly released final draft Action Agenda in honor of the exploration of the river by Henry Hudson nearly 400 years ago. By restoring and protecting the whole river, the plan aims to safeguard the Hudson River Estuary, where the river meets the Atlantic Ocean under the Verrezano Narrows bridge in New York Harbor.

The conservation blueprint was issued in the last week of December after a four year planning process organized by the Hudson River Estuary Program, which operates within the state Department of Environmental Conservation (DEC).

Scientists, businesses, sportsmen, commercial fishermen, local elected officials, environmental advocacy groups, academics, and educators served on an advisory committee and subcommittees that produced the final draft.

A goal for the Estuary Program is by 2016, to ensure the return of the first mature and fully protected female Atlantic sturgeon to the Hudson River Estuary, with a long term goal of establishing the Hudson River Atlantic sturgeon population at a fishable level that would encourage its re-emergence as a regional gourmet delicacy. The wildlife that live near seasonal woodland pools, wetland buffers, lowland forests, stream corridors, and grasslands are vanishing as these habitats are being replaced by invasive and over-abundant plants and animals which are homogenizing the Hudson Valley, degrading the region's distinctive character.

By 2009 the Estuary Program proposes to enlist 200 partners – 60 municipalities, 100 willing landowners and 40 businesses and nonprofits – in conserving 50,000 acres of six target habitats and representative species.

Hudson Valley streams are stressed by land use activities, such as increases in impervious surfaces, loss of vegetative cover, agricultural and lawn runoff, fish barriers, and water withdrawals, as well as atmospheric deposition of pollutants. These stresses can cause soil erosion and siltation, polluted stormwater runoff, streambank erosion, property loss from flooding, loss of groundwater recharge, nutrient enrichment, and unnaturally low stream flows.

Stressed streams may become degraded, no longer providing healthy drinking water, outdoor recreation, productive fish and wildlife habitat, and essential building blocks for the Hudson River Estuary food web.

Sediment and contaminants from the watershed can enter the estuary through its tributaries, causing impacts to the estuary and New York-New Jersey Harbor.

The Draft Action Agenda was released in April of this year and was subject to public review and comment through June 2005. The final Action Agenda includes responses to comments received and is subject to a public comment period, after which it will be finalized by the DEC.

The Action Agenda can be found at: www.dec.state.ny.us/website/hudson/agendacomment.html.

(ENS – 12/24/05)

PERMAFROST MELTDOWN ACROSS THE ARCTIC

Permafrost is losing its permanence across the Northern Hemisphere, altering ecosystems and damaging roads and buildings across Alaska, Canada, and Russia. Government scientists have warned that over half the area covered by this top-most layer of permafrost could thaw by 2050 and as much as 90 percent by 2100.

New climate simulations from the National Center for Atmospheric Research (NCAR) in Boulder, CO show that global warming may melt the top 10 feet (3 meters) or more of the frozen soil.

The scientists predict the thawing permafrost will increase runoff to the Arctic Ocean and release vast amounts of carbon dioxide into the atmosphere, increasing the greenhouse effect.

Permafrost occurs under about 85 percent of Alaska's surface area, and patches of permafrost occur under about 85 percent of Alaska's surface area, and patches of permafrost can be found as far south as Anchorage. Recent warming has degraded large sections of permafrost across central Alaska, with pockets of soil collapsing as the ice within it melts. The results include buckled highways, destabilized houses, and "drunken forests," trees that lean at wild angles, the authors say.

The study is the first to examine the state of permafrost in a global model that includes interactions among the atmosphere, ocean, land, and sea ice as well as a soil model that depicts freezing and thawing.

The scientists used the Community Climate System Model (CCSM) based at MCAR.

The CCSM simulations are based on high and low projections of greenhouse gas emissions for the 21st century, as constructed by the Intergovernmental Panel on Climate Change. In both cases, the CCSM determined which land areas would retain permafrost at each of 10 soil depths extending down to 11.2 feet (3.43 meters).

Results appear online in the December 17 issue of "Geophysical Research Letters." The study was funded by the National Science Foundation, which is NCAR's primary sponsor, and the U.S. Department of Energy.

About a quarter of the Northern Hemisphere's land contains permafrost, defined as soil that remains below 32 degrees F (0 degrees C) for at least two years.

The new study highlights concern about emissions of greenhouse gases from thawing soils. Permafrost may hold 30 percent or more of all the carbon stored in soils worldwide. As the permafrost thaws, it could lead to large-scale emissions of methane or carbon dioxide beyond those produced by fossil fuels.

If this widespread permafrost thaw comes about, "It will change the face of southern Alaska," says Tom Osterkamp. A professor of physics at the University of Alaska Fairbanks Geophysical Institute, Osterkamp has studied Alaska's permafrost for 25 years.

Osterkamp monitors the temperature of permafrost with a network of one-inch holes drilled in permafrost throughout the state. The holes, located near Fairbanks, Anchorage, Bethel, Glennallen, Eagle, and other towns and villages, have all been telling the same story. Since 1989, each time Osterkamp has checked the temperatures of permafrost at depths from 10 to 25 meters,

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the permafrost has crept closer to the melting point.

Osterkamp's recent measurements show that all permafrost south of the Yukon River is warming, and in most cases there isn't one degree left between ice and water.

In addition to creating roller coaster roads and tilting buildings, Osterkamp says, thawing permafrost often causes large sections of forest to collapse, killing trees and other vegetation that live on a foundation of permafrost.

(ENS – 12/23/05)

ONE HOUR LAB TEST FOR ANTHRAX APPROVED

A new test for anthrax has been approved that yields lab results in less than one hour. The current method of growing, isolating and identifying a culture can take as long as several days for results.

The U.S. Food and Drug Administration (FDA) has cleared Idaho Technology's Joint Biological Agent Identification and Diagnostic System (JBAIDS) for use as an aid in the laboratory diagnosis of anthrax.

The JBAIDS Anthrax Detection System can detect the gene components of the deadly organism *Bacillus anthracis* in a variety of environmental sample types, and also clinical blood samples as well as cultured organisms.

The JBAIDS was selected by the U.S. Department of Defense as the platform for use in rapid identification of over 10 deadly pathogens associated with bioterrorism and diseases of military interest.

The FDA clearance allows testing of blood and laboratory culture samples to aid in the laboratory identification of *B. anthracis*, with results in less than one hour.

Idaho Technology, Inc. is a privately held biotechnology company based in Salt Lake City, Utah.

Founded in 1990, Idaho Technology worked together with the University of Utah to develop rapid PCR, or polymerase chain reaction, technology and other innovative technologies for nucleic acid detection and analysis.

(ENS – 12/9/05)

2005 SECOND WARMEST YEAR ON RECORD

New data from meteorologists around the world shows that 2005 was the second warmest year on record and is likely to be among the warmest four years in the temperature record since 1861, but the World Meteorological Organization says official figures will not be released until February.

The global mean surface temperature in 2005 was estimated to be +0.48 degrees Celsius above the 1961-1990 annual average of 14 degrees C, according to the records maintained by members of the World Meteorological Organization (WMO).

TECHNOLOGY UPDATES (Continued)

The year 1998 remains the warmest year on record, with optimum averaged surface temperatures averaging +0.54 degrees C above the same 30 year mean.

Globally, October 2005 was the warmest October on record, surpassing that of last year and June 2005 was the warmest June, surpassing that of 1998.

Areas of significant warmth were widespread with large areas of Africa, Australia, Brazil, China and the United States showing significantly above-average temperatures.

(ENS – 12/24/05)

JUDGE CLEARS SETTLEMENT IN HOTEL MOLD LAWSUIT

A judge has approved a \$1.8 million class action settlement between Hilton Corp. and guests who stayed in a mold-infested Waikiki hotel tower, lawyers for the plaintiffs said. Experts said the mold was a variety that can trigger asthma and also irritate the eyes, nose and throat, but no serious health problems were reported.

Hilton denied liability but agreed to the settlement, said a statement from the law firm of Davis, Levin, Livingston and Grande. Calls seeking comment from Hilton representatives at corporate headquarters in Beverly Hills, Calif., were not returned.

Hawaii Circuit Court Judge Sabrina McKenna gave preliminary approval to the agreement Friday, the lawyers said. Mold overtook the 453-room Kalia Tower in the Hilton Hawaiian Village complex and forced its closure in 2002, about a year after it opened.

(Star-Ledger – 12/24/05)

INSURERS TO LIMIT POLLUTION COVERAGE FOLLOWING GULF STORMS

Insurers may limit environmental impairment liability (EIL) policies, which are written exclusively to cover pollution claims, following the barrage of filings due to damage caused by the Gulf Coast hurricanes last summer.

The full extent of coverage changes will not be seen for many months, or even years, as many policies are in the process of being renegotiated now, and may depend on the outcome of tort lawsuits already filed or planned based on industrial contamination caused by the storms.

One industry risk consultant says major commercial insurance carriers that offer EIL coverage, as well as EIL reinsurers – who provide coverage for insurance carriers – may add so-called “act of God” exclusions to EIL policies, which would exempt coverage of damage from catastrophic wind and flood events such as hurricanes Katrina, Rita and Wilma. Another option would be to raise rates and continued to include such coverage, the source says.

Should the industry add an act-of-God exclusion to EIL policies, it could offer such coverage as a supplemental policy similar to the way flood and earthquakes are currently insured, the source explains.

Officials with Swiss Re, a major reinsurer, say act-of-God exclusions may be added to certain EIL policies, which are negotiated contracts between industry and insurers. Unlike other types of insurance, EIL policies tend to vary greatly because they are highly specific. For example,

some current policies include coverage for specific types of tort claims, Swiss Re explains.

A Swiss Re environmental liability specialist says, “Katrina was a major incident in the industry” that will have significant implications for a host of coverage areas. Katrina alone caused an estimated \$50 billion in insured catastrophic losses.

A second Swiss Re source who is an expert on casualty underwriting adds, “Katrina and Rita brought a heightened awareness of the magnitude of storms, and this will enter into risk assessments.”

EIL coverage is granted based upon exposure and controls the client has put in place to manage the risk. “We expect increased scrutiny from [risk assessors] of the risk itself and if contingency plans are in place and suitable for the location,” the first Swiss Re source says. If reinsurers are satisfied, coverage will continue to be underwritten. “It’s all exposure based.”

But the industry consultant argues that there is no reason for underwriters to overreact to the damage caused by Katrina, which the source claims is a one-in-100-year storm. However, the source admits that argument is “a tough sell.”

(Inside EPA Outlook 2006 – 1/2006)

CURRIED CAULIFLOWER EFFECTIVE AGAINST PROSTATE CANCER

Turmeric, the mild spice that gives curry its deep yellow color, appears to have good potential for the treatment and prevention of prostate cancer, particularly when combined with certain vegetables, Rutgers University scientists have discovered.

The scientists tested turmeric, also known as curcumin, along with phenethyl isothiocyanate (PEITC), a naturally occurring substance particularly abundant in a group of vegetables including broccoli, Brussels sprouts, cabbage, cauliflower, kale, kohlrabi turnips and watercress.

“The bottom line is that PEITC and curcumin, alone or in combination, demonstrate significant cancer –preventive qualities in laboratory mice, and the combination of PEITC and curcumin could be effective in treating established prostate cancers,” said Ah-Ng Tony Kong, a professor of pharmaceuticals at Rutgers.

The discovery was announced in the January 15 issue of the journal “Cancer Research” by Kong and his colleagues at Rutgers’ Ernest Mario School of Pharmacy.

(ENS – 1/6/06)

ANCIENT GLOBAL WARMING FLIPPED OCEAN CIRCULATION, MAY DO SO AGAIN

For the first time, evidence that global warming triggered a reversal in the circulation of deep ocean patterns around the world has been uncovered by scientists affiliated with the Scripps Institution of Oceanography. While the changes they describe occurred 55 million years ago, the scientists say today’s conditions are similar and could have similar drastic effects on ocean circulation.

In the January 5th issue of the journal “Nature,” scientists Flávia Nunes and Richard Norris describe how they examined a four to seven degree warming period that occurred some 55 mil-

lion years ago during the closing stages of the Paleocene and the beginning of the Eocene eras.

“The Earth is a system that can change very rapidly,” said Nunes. “Fifty-five million years ago, when the Earth was in a period of global warmth, ocean currents rapidly changed direction and this change did not reverse to original conditions for about 20,000 years.”

The global warming of 55 million years ago, known as the Paleocene/Eocene Thermal Maximum (PETM), emerged in less than 5,000 years, an instant of geological time.

Modern carbon dioxide input to the Earth’s atmosphere from fossil fuel sources is approaching the same levels estimated for the PETM period, say the scientists, which raises concerns about future climate and changes in ocean circulation.

Fossil records show that the global warming at the time of the PETM created changes ranging from a mass extinction of deep sea bottom dwelling marine life to migrations of terrestrial mammal species, as warm conditions may have opened travel routes frozen over when climates were colder. This time period is when scientists find the earliest evidence of horses and primates in North America and Europe.

Nunes and Norris base their findings on the chemical makeup of microscopic sea creatures that lived 55 million years ago.

Nunes and Norris found that deep ocean circulation in the Southern Hemisphere abruptly stopped the conveyor belt-like process known as “overturning,” in which cold and salty water in the depths exchanges with warm water on the surface.

Even as it was shutting down in the south, overturning appears to have become active in the Northern Hemisphere.

The researchers believe this shift drove unusually warm water into the deep sea, likely releasing stores of methane gas that led to further global warming and a massive die-off of deep sea marine life.

“Overturning is very sensitive to surface ocean temperatures and surface ocean salinity,” said Norris, a professor of paleobiology in the Geosciences Research Division at Scripps. “The case described in this paper may be one of our best examples of global warming triggered by the massive release of greenhouse gases and therefore it gives us a perspective on what the long term impact is likely to be of today’s greenhouse warming that humans are causing.”

Overturning is a fundamental component of the global climate conditions we know today, said Bill Haq, program director in the National Science Foundation’s division of ocean sciences, which funded the research.

Haq says overturning in the modern North Atlantic Ocean is a primary means of drawing heat into the far north Atlantic and keeping temperatures in Europe relatively warmer than conditions in Canada.

Today, deep water generation does not occur in the Pacific Ocean because of the large amount of freshwater input from the polar regions, which prevents North Pacific waters from becoming dense enough to sink to more than intermediate depths.

But in the Paleocene/Eocene, deep-water formation was possible in the Pacific because of global warming, the researchers say, adding

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that the Atlantic Ocean also could have been a significant generator to deep waters during this period.

(ENS – 1/5/06)

THE FIRST OF 11 BIODIESEL PLANTS OPENS IN PENNSYLVANIA

A plan to build and operate 11 biodiesel production plants in Pennsylvania over the next five years was announced by Governor Edward Rendell and executives from AGRA Biofuels Inc.

Speaking at the state Farm Show, the state and company officials said the first biodiesel production facility in the state started operations January 1 at Middletown, south of Harrisburg, the capital.

The AGRA plant employs 20 permanent workers, and will produce two to three million gallons of biodiesel each year. The plant was built entirely through private equity and will serve as a prototype for the company's next 10 facilities, each 10 times larger than the current plant.

Rendell praised company officials for their leadership and entrepreneurial spirit in developing a viable alternative energy technology that will reduce dependence on foreign oil, and help grow Pennsylvania economy.

The company's 11 production facilities will produce more than 200 million gallons of biodiesel each year, and create as many as 3,000 new jobs in the next five years.

Biodiesel is a clean burning alternative fuel. Biodiesel contains no petroleum, but it can be blended at any level with petroleum diesel to create a biodiesel blend. It can be used in diesel engines with little or no modifications. Biodiesel is simple to use, biodegradable, nontoxic, and essentially free of sulfur and aromatics.

Each of the 11 facilities will use virgin soybean oil, primarily from Pennsylvania farmers, to create the renewable fuel. AGRA will also use feedstock from other states shipped to the facility via rail. Once all 11 plants are operational, the process will result in increased soybean demand for farmers, and higher prices per bushel.

(ENS – 1/9/06)

MULCH WALLS FOR GROUNDWATER REMEDIATION

During recent years there have been numerous installations of Wood Mulch Walls (Biowalls) used as Permeable Reactive Barriers at sites located across the country from Delaware to California. The Biowalls are used to treat dissolved chlorinated solvents in groundwater by enhancing the anaerobic degradation of these compounds. The anticipated long-term performance of the Biowalls varies considerably by site.

A full-scale installation was performed at Altus Air Force Base in the Midwest. Approximately one mile of Biowalls were installed 35-ft bgs. Biowalls are composed of mulch/sand/gravel mixture and are typically 2-ft wide. Each Biowall has 3-inch diameter SDR-11 HDPE screen installed horizontally at the bottom for potential injections of liquids in the future that will extend the useful life of the Biowalls. For more information, call (775) 853-9447 or contact by Email: danoakley@charter.net.

(Dewind One-Pass Trenching – Winter Issue 2006)

CALIFORNIA IDENTIFIES SECONDHAND SMOKE AS A TOXIC AIR CONTAMINANT

Secondhand tobacco smoke causes an average 68 percent increase in breast cancer risk for women younger than 50, concludes a report by California Environmental Protection Agency staff that the state Air Resources Board voted to approve. Some women who have not reached menopause have as much as a 120 percent higher breast cancer risk than women who are not exposed to secondhand smoke.

In January, the Air Resources Board identified environmental tobacco smoke (ETS), or secondhand smoke, as a toxic air contaminant. In a related action the Board began the formal rulemaking process to designate environmental tobacco smoke as a toxic air contaminant that may cause and/or contribute to death or serious illness.

The Board's action to list secondhand smoke as a toxic air contaminant is based on the report conducted by the state EPA's Office of Environmental Health Hazard Assessment (OEHHA).

"This new report reaffirms many of the adverse health effects associated with ETS, especially in children who live in homes where smoking occurs," said Air Resources Board (ARB) Chairman Dr. Robert Sawyer. "It also raises new concerns about its effects on women. All this strongly supported the need for the Air Board to identify ETS as a serious health threat."

In California each year, tobacco smoke is responsible for the release into the environment of 40 tons of nicotine, 365 tons of respirable particulate matter, and 1,900 tons of carbon monoxide, the ARB said. Secondhand smoke is also a source of other toxic air contaminants such as benzene, 1,3 butadiene, and arsenic.

For the report, the Air Resources Board evaluated exposures to secondhand smoke, while the Office of Environmental Health Hazard Assessment (OEHHA) assessed the health effects from these exposures.

The OEHHA evaluation clearly established links between exposure to secondhand smoke and adverse health effects, including some that affect children and infants such as premature births, low birth-weight babies, and Sudden Infant Death Syndrome (SIDS).

Other effects of secondhand smoke on children include the induction and exacerbation of asthma, and infections of the middle-ear and respiratory system.

The OEHHA evaluation also found links between secondhand smoke exposure and increased incidences of breast cancer in non-smoking, premenopausal women. The evidence to date for increased breast cancer in older postmenopausal women is considered inconclusive.

The report found epidemiological and biochemical evidence suggesting that exposure to secondhand smoke also may increase the risk of cervical cancer. Positive associations were observed in three of four case-control studies, the researchers said.

Now that environmental tobacco smoke is identified as a toxic air contaminant, the Air Resources Board must evaluate the need for action to reduce exposures. In this risk management step, the Board conducts an analysis that includes a review of measures already in place, available options and the costs for reducing the health risks from exposure to secondhand smoke.

(ENS – 1/27/06)

DELAWARE RIVER ATHOS I TANKER SPILL COST \$150 MILLION TO CLEAN

The U.S. Coast Guard has completed the investigation into the cause of the oil spill from the Greek tanker Athos I that occurred on the Delaware River on November 26, 2004.

Coast Guard investigators concluded that the vessel hit a submerged anchor while maneuvering through Anchorage #9 enroute to its berth at the Citgo Asphalt Refining Facility in Paulsboro, New Jersey.

The anchor punctured the vessel's bottom plating in a ballast tank and a cargo tank, resulting in the release of nearly 264,000 gallons of crude oil. The cleanup of nearly 57 miles of shoreline in Pennsylvania, New Jersey and Delaware was finished just last month. More than 18,000 tons of oily solids were removed at a cost of more than \$150 million.

Following the incident, surveys of the river bottom in the vicinity of the incident were conducted by the U.S. Army Corps of Engineers and commercial surveyors contracted by the vessel's owner. The surveys revealed numerous submerged objects in the area, including a large concrete block and a pump casing. The vessel actually struck all three of these objects, but analysis of paint chips and the unique shape and dimensions of the hull damage revealed the anchor as the source of the puncture.

Because bottom surveys conducted after the incident revealed numerous submerged objects in that area, the Coast Guard has recommended that navigation guidelines currently in effect for the Delaware River be reviewed.

"In addition, we've also recommended that legislation be adopted that requires immediate reporting to the Coast Guard of any objects that have been lost or discarded into a navigable channel or anchorage that can impede safe navigation," said Scott.

"We will continue to monitor the affected areas, and are prepared to take appropriate action in the event any residual Athos I related oil is detected in the future," Scott said.

(ENS – 1/25/06)

EPA STUDIES EQUATE HIGHER-DENSITY DEVELOPMENT WITH WATER PROTECTION

The U.S. Census Bureau projects that U.S. population will grow by 50 million people, or approximately 18 percent, between 2000 and 2020. To deal with the stormwater runoff resulting from this population growth, the U.S. Environmental Protection Agency (EPA) this week released four new smart growth publications:

1. Protecting Water Resources with Higher-Density Development
2. Using Smart Growth Techniques as Stormwater Best Management Practices
3. Growing Toward More Efficient Water Use: Linking Development, Infrastructure, and Drinking Water Policies
4. Parking Spaces / Community Places: Finding the Balance through Smart Growth Solutions

The study detailed in "Protecting Water Resources with Higher-Density Development" intends to help communities better understand the impacts of higher and lower density on water resources, the agency said in a statement.

The EPA modeled stormwater runoff from three different densities at three scales - one-acre level, lot level, and watershed level - and at three different

TECHNOLOGY UPDATES (Continued)

time series build-outs to examine the premise that lower-density development is always better for water quality.

The findings indicated that "low-density development may not always be the preferred strategy for protecting water resources. Higher densities may better protect water quality - especially at the lot level and watershed scale," the EPA said.

The study found that higher-density scenarios generate less storm water runoff per house at all scales - one acre, lot, and watershed - and time series build-out examples. For the same amount of development, the EPA says, higher-density development produces less runoff and less impervious cover than low-density development.

For a given amount of growth, the agency found, lower-density development impacts more of the watershed.

"Protecting Water Resources with Higher-Density Development" is found at:

http://www.epa.gov/smartgrowth/water_density.htm

(ENS - 1/24/06)

FIRST REPORT ON NORTH AMERICAN CHILDREN FINDS HIGH ASTHMA RATES

The first report on children's health and environment indicators in North America by a NAFTA Commission shows a rising number of childhood asthma cases across the region, but improvements in children's blood lead levels, and a decrease in deaths from waterborne diseases. It finds that North America's 123 million children remain at risk from environmental exposures.

The report, issued today by the Commission for Environmental Cooperation (CEC), in partnership with public health organizations and the governments of Canada, Mexico and the United States, presents 13 indicators under three thematic areas - asthma and respiratory disease, effects of exposure to lead and other toxic substances, and waterborne diseases.

"This first set of children's environmental health indicators will help improve public policy and promote the cause of improved air and water quality, pollution prevention and better management of toxic chemicals," says CEC Executive Director William Kennedy.

"Children's Health and the Environment in North America: A First Report on Available Indicators and Measures," is the first integrated, regional report providing indicators for a series of children's health and environment issues, says the CEC, created by the three countries under an environmental side agreement to the North American Free Trade Agreement (NAFTA).

In compiling the report, the CEC struggled with data gaps. Only one of the indicators, addressing asthma in children, was fully reported by all three countries, and the CEC said children's health reporting must be improved to address the data gaps identified in the report. The CEC found that outdoor air pollution such as ground-level ozone and particulate matter remains a problem for all three countries and is a "possible contributor" to rising incidences of asthma.

For lead exposure, case studies from all three countries demonstrate improvements in children's blood lead levels due to interventions such as the removal of lead from gasoline.

But the CEC said there is little biomonitoring data available in Canada since there has been no national blood level survey in the country since 1978. Other exposure pathways for lead remain a concern, such as older homes with lead paint.

Recently collected data in the United States showed that 25 percent of homes had a "significant lead based paint hazard, which could be from deteriorating paint, contaminated dust or contaminated soil outside the house."

Most children eat more food, drink more water and breathe more air relative to their size than adults do, and children's normal activities such as putting their hands in their mouths or playing outdoors can result in higher exposures to certain contaminants.

A copy of the report, along with the national reports compiled by each of the three governments as source material for the CEC's North American report, can be downloaded from www.cec.org.

(ENS - 1/26/06)

NEW WEB TOOL HELPS DETERMINE CAUSES OF WATERWAY IMPAIRMENT

The U.S. Environmental Protection Agency (EPA) has released a new online tool which simplifies determining the cause of contamination in impaired rivers, streams and estuaries. An impaired body of water does not meet the state or federal water quality standards for one or more pollutants.

More than 1,000 U.S. water bodies have been identified as impaired, and the EPA says in many cases, the cause of impairment is unknown. There are many possible sources of pollution such as non-point source pollution, industrial waste, municipal sewage, agricultural runoff, naturally occurring minerals in rock and sand, and biological materials.

Before restorative or remedial actions can be taken, the cause of impairment must be determined. By helping to find the source of contamination, state and local organizations will be better able to implement the Clean Water Act.

The new Causal Analysis/Diagnosis Decision Information System (CADDIS) provides a standardized and easily accessible system to help scientists find, use and share information to determine the causes of aquatic impairment.

"The development of CADDIS has been an impressive effort and a great example of customer focus by EPA's Office of Research and Development," said Michael Shapiro, deputy assistant administrator in EPA's Office of Water.

The version of CADDIS released January 25 is the first of three. Future versions will include modules to quantify stressor-response relationships, and databases and syntheses of relevant literature on sediments and toxic metals.

CADDIS is available on the EPA website at <http://www.epa.gov/caddis>

(ENS - 1/30/06)

WATER TRUCK ADDITIVES SAVES TIME, LABOR, MONEY AND . . . WATER AND HELP THE ENVIRONMENT

Keeping dust down at construction job sites and surface mines usually involves use of a water truck, which all too frequently can't keep soil moist during dry periods. Fugitive dust citations by environmental agencies all too frequently result. New products offer an attractive solution and save time and money. Best of all, laborers and operators can focus on the work at hand during the best weather because

labor needed to water roads and production areas is greatly reduced.

Road Master Plus dust treatment, is a concentrated blend of inorganic electrolytes and surfactants designed to stabilize the surface of unpaved roads. Road Master Plus will penetrate the road bed and bind particulates into a stable, dust free surface. The Product is both hygroscopic (draws moisture from the air) and deliquescent (resists evaporation). These properties insure that dust generation from treated roads is minimized or eliminated.

The specialty blend manufactured and distributed by Freedom Industries provides customers with the following benefits:

- A product made up of calcium chloride and surfactants to provide a quicker and deeper penetration into the roadbed.

- The treatment is safe for the environment and is non-water soluble upon drying. Road Master Plus is also biodegradable and does not emit any level of VOC's into the surrounding air.

- The product can be used on a variety of road types and materials, while providing a successful reduction of fugitive dust for the area.

A second product is RDC-600.

RDC-600 is a road dust palliative specially designed to perform on secondary and unimproved roadways. A concentrated organic emulsion designed to agglomerate aggregate fines into an asphalt like surface. The product has a history of applications in the coal and mining industry, where it has outperformed and proved to be a more environmentally friendly product than the current commercial dust control treatments. It is one of a slim number of performance proven dust products available that is environmentally safe, non-water soluble upon drying and biodegradable.

RDC-600 offers the following advantages:

- Maximum dust control when properly applied on roads and secondary pathways.
- Product that can also be used for erosion control or loose soil sediments.
- RDC-600 disperses readily in water without mechanical agitation.
- It is non-toxic to plants and animals surrounding the application areas.
- RDC-600 does not emit volatile organic compounds (VOC's).
- Traffic can resume travel of all treated areas shortly following an application.
- In most cases RDC-600 can be applied at a rate less than the leading commercial products.

RDC-600 has been tested and is not regulated by the U.S. Department of Transportation. It is considered a non-hazardous product and can be shipped through a variety of methods to any part of the country, in any quantity.

For more information, contact:

Jjherzing@aol.com

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FEDERAL REGULATORY UPDATES

ASTM TO DEVELOP STANDARD FOR DETERMINING VAPOR INTRUSION RISKS

A standards development organization has convened a group to develop voluntary measures for determining vapor intrusion risks for commercial real estate transactions, an effort that could help developers bypass controversial vapor intrusion guides developed by EPA and a number of states.

ASTM International, a technical standards organization, approved the new task group in October that will develop standards for assessing vapor intrusion I property transactions in response to growing concerns that property owners could be held liable for vapor intrusion, even if the original source is at a separate property.

"Before, contaminated groundwater from neighbors was not a big deal because the liability lies with the source," says one member of the task group. "However, now if contamination comes on the property ... there are concerns because of the building and vapor intrusion." The source points out that buyers are becoming increasingly cautious about buying properties near sites with volatile chemicals – such as dry cleaners – out of fear that the contaminants could eventually reach neighboring properties, causing vapor intrusion.

Vapor intrusion results when harmful chemicals are released into the air from polluted land or groundwater under buildings, EPA and numerous states, including New Jersey, New York, California and Minnesota, have drafted vapor intrusion guidances, but members of the new task group say one of the major goals is to develop a national real estate transaction standard to avoid a patchwork approach. "You can't have 15 different ways of dealing with this," says one task group source.

An EPA official says the agency is willing to adopt concepts that may come out of the task group into its own vapor intrusion guide, which has been strongly criticized by industry and is currently under revision. "Whatever new or good ideas develop from this, we'll adopt as many as we can," says the source. EPA will participate on the panel, an agency official says.

Also, at the end of October, New Jersey finalized its vapor intrusion guidance, which was heavily criticized by such groups as the Aerospace Industries Association (AIA), who raised concerns over an earlier draft, saying it may have been an unauthorized attempt at rule-making. AIA explained in written comments that the New Jersey environmental department's proposed screening levels for trichloroethylene "constitute a prohibited 'regulatory guess.'" An AIA analysis of New Jersey's final guidance is expected to be completed in the coming weeks.

(Superfund Report – 12/5/05)

PROPOSED WET WEATHER POLICY TO IMPROVE WASTEWATER TREATMENT

EPA proposed a new policy for addressing peak wet weather discharges at wastewater treatment plants. Across the country, many municipal wastewater treatment systems experience problems during heavy rain downpours (peak wet weather), when flows to the wastewater treat-

ment plants exceed the plant's biological treatment capacity. During peak wet weather, limited diversions around biological treatment units can help prevent raw sewage from being discharged into our nation's waters, backing up into homes and other buildings, or damaging biological treatment units.

EPA's goal in proposing this new policy is to ensure that all feasible solutions are used by local governments when addressing problems related to peak wet weather and to improve treatment of wastewater to protect human health and the environment.

"Our peak flow policy puts a premium on stopping leaks and spills, improving treatment, and increasing public oversight," said Benjamin Grumbles, EPA's assistant administrator for the Office of Water. "I commend environmentalists and utilities for working to find common ground on a clean water solution that doesn't rely on dilution."

The policy reflects the joint recommendations of the Natural Resources Defense Council (NRDC) and the National Association of Clean Water Agencies (NACWA). The policy encourages public participation via the National Pollutant Discharge Elimination System (NPDES) permit process, and provides for public notification in the event that a diversion does take place.

The policy states that in limited situations, a NPDES permit can approve anticipated diversions around biological treatment units, provided the facility demonstrates that there are no feasible alternatives and that diverted flows receive a minimum of primary treatment. The policy also confirms that end-of-pipe discharges must comply with Clean Water Act permits, including effluent limitations based on secondary treatment and any more stringent limitations for receiving waters.

With this proposal EPA anticipates that over time the need for wet weather flow diversions can be eliminated from most treatment plants serving sanitary sewer collection systems. That can happen through various approaches such as enhancing storage and treatment capacity and reducing sources of peak wet weather flow volume.

(Env. Tip of the Week – 12/27/05)

AFTER EXTENSIVE ANALYSIS, EPA REMOVES METHYL ETHYL KETONE FROM LIST OF TOXIC AIR POLLUTANTS

After an extensive, multi-year scientific and technical review, EPA has removed methyl ethyl ketone (MEK) from the Clean Air Act list of toxic air pollutants. Declassifying MEK will not compromise public health and may even pose a public health benefit as companies substitute MEK for more toxic or environmentally damaging chemicals. Although removed from the list of toxic air pollutants, MEK remains regulated as a volatile organic compound.

For more information on this action, visit: http://epa.gov/ttn/oarpg/t3/fact_sheets/mek_fs.html.

(EPA – 12/14/05)

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- Fine Particle Standards, Pg. 12
- Recouping Brownfields Site Cleanup Costs, Pg. 12
- Lead and Copper Rule Inadequate, Pg. 13

EPA EASES PERMITTING REQUIREMENTS FOR SMALL BUSINESSES

To avoid unnecessary costs and burdens, EPA will no longer require five types of small businesses to obtain federal operating permits. These businesses include: neighborhood perchloroethylene dry cleaners; small ethylene oxide sterilizers that clean laboratory equipment and other items; chromium electroplaters that make items such as chrome parts for cars and plumbing fixtures; secondary aluminum production sources like car salvage yards; and halogenated solvent cleaners that clean metal parts, electronics and other objects.

The operating permit, called a Title V permit, requires a facility to make regular reports on how it is tracking and controlling emissions and to certify each year whether it has met its air pollution requirements. The Clean Air Act states that a small business may be exempted from permits if it is "impracticable, infeasible, or unnecessarily burdensome" for the small facility to meet permit requirements.

This action does not change any requirements governing the control of emissions of toxic air pollutants that apply to these facilities – they are still required to limit their emissions of air toxics. In addition, the air toxics standards governing these businesses already require a detailed accounting of compliance. However, the additional requirements of a permit would be very costly for these small businesses and would not provide additional assurance of compliance.

For more information on this action, visit: http://www.epa.gov/ttn/oarpg/t5/fact_sheets/asourceexempt.html

(EPA – 12/14/05)

EPA ANNOUNCES NEW RULES THAT WILL FURTHER IMPROVE AND PROTECT DRINKING WATER

EPA finalized two related drinking water protection rules – one that reduces the risk of disease-causing microorganisms from entering water supplies and the other that requires water systems to limit the amount of potentially harmful "disinfection byproducts" (DBPs) that end up in our drinking water.

The rules are important public health measures that will decrease the incidence of gastrointestinal illnesses caused by microbial contaminants and reduce potential cancer risks associated with disinfectant byproducts in drinking water. Finalizing the two rules represents the last phase of a congressionally required rulemaking strategy under the 1996 Amendments to the Safe Drinking Water Act. The rules are as follows:

FEDERAL REGULATORY UPDATES (Continued)

LONG TERM 2 ENHANCED SURFACE WATER TREATMENT RULE (LT2)

The “Long Term 2 Enhanced Surface Water Treatment Rule” (LT2), increases monitoring and treatment requirements for water systems that are prone to outbreaks of *Cryptosporidium*, a water-borne pathogen. Consuming water with *Cryptosporidium* causes gastrointestinal illness which can be severe in people with weakened immune systems, such as infants or the elderly and could be fatal in people with severely compromised immune systems, such as cancer and AIDS patients. LT2 will improve public health by reducing illness due to *Cryptosporidium* and other harmful microorganisms in drinking water.

The rule requires that public water systems that are supplied by surface water sources monitor for *Cryptosporidium*. Those water systems that measure higher levels of *Cryptosporidium* or do not filter their water must provide additional protection by using options from a “microbial toolbox” of treatment and management processes, such as ultraviolet disinfection, and watershed control programs.

The rule also addresses risks of contamination in systems that store treated drinking water in open reservoirs, where water quality can be compromised by exposure to outdoor elements. The rule requires open reservoirs to either be covered or receive added treatment.

STAGE 2 DISINFECTION BYPRODUCTS RULE (STAGE 2 DBP)

The “Stage 2 Disinfection Byproducts Rule” (Stage 2 DBP), was developed to balance the benefits and risks posed by drinking water disinfection. While disinfection is commonly known as one of the major public health advances of the 20th century, it also creates harmful byproducts that are formed when disinfectants, such as chlorine, combine with naturally occurring materials in water.

The final rule targets water systems that have the greatest risk of high DBPs by using more stringent methods for determining compliance. Under the rule, water systems are required to find monitoring sites where higher levels of DBPs are likely to occur and use these new locations for compliance monitoring. If DBPs are found to exceed drinking water standards at any of these new monitoring locations, water systems must begin to take corrective action.

The final rules were to be published in the Federal Register in January. Copies and additional information can be found on the EPA web site at: <http://www.epa.gov/safewatr/disinfection/>

(EPA – 12/15/05)

DOT REVISES HAZARDOUS MATERIALS REGULATIONS

DOT issued a final rule on December 9 that revises terminology, definitions, and requirements for consistency with the Hazardous Materials Safety and Security Reauthorization Act of 2005. These amendments include revising the definitions of “hazmat employee” and “hazmat employer,” revision of shipping paper retention requirements; providing a security plan

exception for farmers; adding conditional applicability of postal laws and regulations; and replacement of “Exemption” with “Special Permit.”

These major revisions to the hazardous materials regulations, which will impact every hazardous material shipper, offerer, and carrier, became effective January 9, 2006.

(Env. Tip of the Week – 12/15/05)

EPA PROPOSING TO REDUCE AIR TOXICS RISKS FROM DRY CLEANERS

Based on recent analyses of health risks, the EPA is proposing a rule to reduce emissions of perchloroethylene (perc) from dry cleaners.

“Risks from most dry cleaners across the country generally are low, and our proposed requirements would make them even lower,” said Bill Wehrum, Acting Assistant Administrator for Air and Radiation. “But based on what we now know about the risks from perc dry cleaners, a small group of dry cleaners located in apartment buildings requires closer examination. We are asking the public for additional information that could help us develop strategies to reduce these risks more quickly.”

The proposal includes the following requirements:

Large Industrial and Commercial Dry Cleaners: There are 15 large dry cleaners in the United States. These dry cleaners are covered by EPA’s 1993 maximum achievable control technology standards. The proposed amendments would reduce risks by up to 90% by requiring that these dry cleaners meet equipment standards and conduct enhanced leak detection and repair on a monthly basis.

Freestanding Small Dry Cleaners: Freestanding small dry cleaners are the type of dry cleaner you might see in a strip shopping center or as a stand-alone building. Estimated risk to most people living near these dry cleaners generally is below 10 in 1 million. The proposed amendments would reduce these risks by about 20% by requiring that the approximately 27,000 freestanding dry cleaners meet equipment standards and conduct enhanced leak detection and repair. In addition, all existing small dry cleaners would have to eliminate machines that require clothing to be transferred from one machine to another for drying.

Small Dry Cleaners in Apartment Buildings: About 1,300 small dry cleaners using perc are located on the ground floor of residential buildings. Like freestanding small dry cleaners, these “co-residential” cleaners are covered by standards issued in 1993. Because apartments in these buildings are located very close to these dry cleaners, residents’ exposures and their estimated cancer risks can be much higher than for typical area source dry cleaners. Based on the data evaluated for this proposal, estimated maximum cancer risks for people living in some of these buildings might be in excess of 100 in 1 million. EPA is proposing two options for addressing co-residential dry cleaners. Under a risk-based option, no new perc machines

could be installed at these facilities. Dry cleaners eventually would have to phase out existing perc equipment as it wears out, eliminating risk from these facilities in about 15 years. Under a technology-based option, EPA would issue requirements based on the New York State Department of Environmental Conservation’s dry cleaning regulations. These requirements would include equipment to recover perc solvent from vapors and to trap perc emissions from dry cleaning equipment. For both options, EPA is requesting additional information to help reduce risks more quickly.

The proposed rule would not affect dry cleaners that do not use perc, or those that send clothes off-site to be cleaned.

For more information on the proposed rule, <http://www.epa.gov/air/drycleaningrule>.

(Env. Tip of the Week – 12/15/05)

EPA AMENDS SPCC RULE AGAIN

On December 2, 2005, EPA Administrator Stephen L. Johnson signed two proposed amendments to the Spill Prevention, Control, and Countermeasure (SPCC) Rule. The first streamlines the regulatory requirements for qualified facilities and equipment regulated under 40 CFR 112. The second extends the SPCC compliance dates for all facilities.

In order to allow facilities that may be affected by the final rule the necessary time to apply the provisions, EPA is proposing to extend the compliance deadline by which all facilities must prepare or amend and implement their SPCC Plan to Oct. 31, 2007. The agency also wants to provide members of the regulated community with sufficient time to understand the full impact offered in the proposal in light of the information contained in the forthcoming “SPCC Guidance for Regional Inspectors” document. Finally, the effects of the recent hurricanes on many industry sectors could have adversely impacted their ability to meet the upcoming compliance dates if no extension is provided.

The SPCC rule applies to non-transportation-related facilities that meet an oil storage capacity threshold and that could reasonably be expected to discharge oil into navigable U.S. waters. SPCC regulations require each owner or operator of such a facility to have a SPCC plan, certified by a professional engineer. The plan must address the facility’s design, operation and maintenance procedures for preventing discharges as well as countermeasures to mitigate effects in case of discharge.

On December 2, 2005, EPA released the SPCC Guidance for Regional Inspectors. The guidance document is intended to assist regional inspectors in reviewing a facility’s implementation of the Spill Prevention, Control, and Countermeasure (SPCC) rule at 40 CFR 112. With its publication, EPA seeks to establish a consistent understanding among regional EPA inspectors on how particular provisions of the rule may be applied. The guidance document covers topics such as applicability, environmental equivalence, secondary containment and impracticability determinations, and integrity testing, as well as the role of the inspector in the review of these provisions. The

FEDERAL REGULATORY UPDATES (Continued)

document is also available as a guide to owners and operators of facilities that may be subject to the requirements of the SPCC rule and the general public on how EPA intends the SPCC rule to be implemented. The SPCC Guidance for Regional Inspectors is available online.

(*Env. Tip of the Week* – 12/2/05)

U.S. FINE PARTICLE AIR EMISSION STANDARDS UP FOR REVISION

Revisions to the national air quality standards for fine particle pollution, and for some coarse particles, have been proposed by the U.S. Environmental Protection Agency (EPA).

The EPA defines particulate matter as a complex mixture of extremely small particles and liquid droplets. Particulate matter can be directly emitted, as in smoke from a fire, or it can form in the atmosphere from reactions of gases such as sulfur dioxide.

The revisions address two categories of particulate matter – fine particles which are particles 2.5 micrometers in diameter and smaller.

The proposed revisions would strengthen by nearly 50 percent the current standards for short-term exposure to high levels of fine particles, the EPA said.

Also regulated are “inhalable coarse” particles, between 2.5 and 10 micrometers (PM10-2.5), from such sources as high-density traffic on paved roads and industry.

The proposed standard would not apply to airborne mixes of coarse particles that “do not pose much risk to public health, such as windblown dust and soils and agricultural and mining sources,” the EPA said.

For fine particles, EPA is also taking comment on a range of annual and 24-hour standards, including strengthening these standards as well as retaining the standards at their present levels.

In addition, EPA is proposing a standard for reducing inhalable coarse particles, or PM10-2.5. For these particles, EPA is proposing a 24-hour standard of 70 micrograms per cubic meter.

The EPA has had national air quality standards for fine particles since 1997 and for coarse particles 10 micrometers and smaller (PM10) since 1987.

In a separate but related action, EPA is proposing amendments to its national air quality monitoring requirements, including those for monitoring particle pollution.

The Clean Air Act requires EPA to periodically review air quality standards to ensure they provide adequate health and environmental protection and to update those standards if necessary. EPA last updated the particle standards in 1997.

For additional information on the particle standards action, visit:

<http://222.epa.gov/air/particles/actions.html>

(*ENS* – 12/23/05)

ACCOUNTING FOR ASBESTOS

Just when you thought that you had your hands around compliance issues related to asbestos containing materials (ACM) FASB Interpretation No. 47 – “Accounting for Conditional Asset Retirement Obligations” has caused many entities to reexamine financial issues related to the

removal of ACM, even if the ACM exists in structures in compliance with all current laws and regulations. FIN 47 also applies to other similar materials, the eventual removal and disposal of which will create a future environmental liability. The interpretation is effective for fiscal years ending after December 15, 2005 (December 31, 2005, for calendar-year enterprises) and applies to any business or entity that uses generally accepted accounting principles.

Conditional asset retirement obligations or AROs are types of obligations that will occur at the time that long-lived assets (such as buildings) are retired or taken out of service. FIN 47 makes clear that even if the timing of asset retirement is unknown, the costs associated with asset retirement generally must be recognized on the theory that no asset lasts forever. If sufficient information is not available to reasonably estimate the fair value of the asset retirement obligation, disclosure of the obligation is still generally required.

Based upon examples provided in FIN 47, ACM which exists in structures, even though it may be in good condition and for which no planned abatement activities are envisioned, is considered a “conditional asset retirement obligation” that must be properly accounted for in the “fair value of the obligation.” Although seemingly simple to estimate, such “fair values” for asbestos removal can depend on a number of variables and assumptions (local environmental requirements, labor markets, building occupancy conditions surrounding the asbestos abatement activities) that can greatly impact (by factors of two or three) the value placed on the abatement activities. For building owners, information assembled to comply with asbestos survey and notification requirements under the Occupational Safety and Health Act may provide a useful point of departure in determining where and what types of ACM may be present in buildings.

If you have structures or equipment which were constructed or built prior to the early 1980’s, these accounting issues may apply to you. Please feel to contact Michael Meloy (484) 430-2303 (mmeloy@mgkflaw.com) or Darryl Borrelli (484) 430-2302 (dborelli@mgkflaw.com) at Manko, Gold, Katcher & Fox or by phone (484) 430-5711.

(*MGKF Special Alert* – 2/24/06)

EAB RULING MAY HELP RECOUP CLEANUP COSTS AT BROWNFIELD SITES

Redevelopers at brownfield sites may be forced to pay to clean up off-site contamination that is released through construction activity under a recent ruling by EPA’s Environmental Appeals Board (EAB).

An EPA official says the ruling will help the agency hold brownfields redevelopers responsible for contamination at adjacent off-site areas, such as sidewalks. “The EAB’s final determination will be helpful ... because it is now clear that owner/developers will be expected to address contamination associated with their development even if it is located in the adjacent sidewalk right-of-ways,” says the source.

In the case, *In re: Grand Pier Center, L.L.C.*, a Chicago redeveloper had sought reimbursement from EPA for cleanup costs it incurred to remediate radioactive thorium that was exposed on sidewalks adjacent to the contaminated property by construction activity.

EPA in 2000 had ordered the company, Grand Pier Center, to remediate the contamination in Chicago’s Streeterville neighborhood, which is contaminated with thorium from the manufacture of incandescent gas lights and mantles, a process which requires thorium nitrate, a radionuclide and hazardous substance.

The company later petitioned for reimbursement under Section 106 of CERCLA, which allows companies who receive unilateral administrative orders from EPA to seek reimbursement after remediation is complete. In its petition, the company argued to EAB that it was not liable for the costs because it did not own the contaminated property.

But EAB rejected the arguments last October, finding the company was responsible for \$200,000 in cleanup costs because the “facility” under CERCLA was demarcated by where the radioactive contamination was located – on both the property and adjacent sidewalk – rather than the property lines. “Grand Pier’s petition falls short of meeting its burden of proof that it should not be held jointly and severally liable for the response costs incurred cleaning up the CERCLA facility that consists of both the Grand Pier site and the off-site sidewalk area,” the decision states. The document further states that “Nothing in the statute or case law supports Grand Pier’s contention that the ‘facility’ must be defined by or be coextensive with an owner’s property lines.”

The source explains that cleaning up right-of-way area protects construction workers, utility workers and the public from exposure to contaminants. “In the long run it makes the redevelopment even more attractive because the community and its investors are assured that there is no lingering contamination,” explains the source. “When people build buildings ... we wanted to make it clear that developers have to clean up property and sidewalks, so construction workers aren’t exposed.”

(*Superfund Report* – 1/16/06)

RULING TO FORCE NEW LANGUAGE IN POST-AVIALL SUPERFUND SETTLEMENTS

A federal district court ruling will force polluters settling their cleanup liability with states to clarify that the pact refers to Superfund cleanup costs, rather than state cleanup law liability, if they want to sue other entities responsible for the pollution, given limits on cost contribution suits created by the landmark Aviall ruling, according to the ruling and industry sources.

One industry attorney says the ruling adds to the general confusion about what types of settlements satisfy the Superfund law in light of Aviall. “The case law is all over the map” on which settlements satisfy the Superfund law, the source says. “There’s still a lot of uncertainty out there.” The source says industry will have to be increas-

FEDERAL REGULATORY UPDATES *(Continued)*

ingly vigilant in ensuring any settlements have “all the belts and suspenders” so they meet the terms of the relevant Superfund provision, section 113(f)(3)(B), and any new case law on settlements.

The decision may also contribute to industry reluctance to enter into settlements to address cleanup liability given the uncertainty, with one industry source noting that a major industry group has stopped engaging in such settlements – which EPA, states and industry had relied on to minimize litigation and administrative burdens associated with their cleanup programs.

In a Jan. 24 ruling, the U.S. District Court for the District of Arizona ruled that a potentially responsible party (PRP) cannot sue other polluters that also may be liable for cleanup costs at a contaminated site under Superfund section 113(f)(3)(B) unless they have explicitly settled federal Superfund liability, not state cleanup law liability.

While it is only a single district court decision, if followed by other jurisdictions, the ruling could impose significant new burdens on PRPs that act within state programs to clean up contaminated sites. It also could impose new burdens on EPA to participate in such cleanups, since the agency has increasingly relied on the state programs to address smaller and less-complicated sites as the federal program faces increasingly tight budgets.

The decision could also create impediments to using one alternative avenue that many attorneys suggested would allow PRPs to sue one another after the Supreme Court’s landmark Aviall ruling, which said a PRP could not use Superfund section 113(f)(1) to sue another polluter at a contaminated site unless it had been sued by or settled with the government first. Industry attorneys had said one way to get around the ruling, without having to submit to expensive government litigation, was to settle with the government under section 113(f)(3)(B), which describes when PRPs can pursue contribution suits against other polluters after the PRP has settled its cleanup liability.

But in the case, *Asarco, Inc. v. Union Pacific Railroad Co.*, the court said 113(f)(3)(B) requires “any settlement between a ‘person’ and a ‘state’ must settle the person’s [Superfund] liability, not merely its liability under state law. Absent a settlement of [Superfund] liability, not merely its liability under state law. Absent a settlement of [Superfund] liability, the person may not proceed with an action under Section 113(f)(3)(B).”

According to the ruling, *Asarco’s* memorandum of agreement with Nebraska regarding the cleanup said the company was settling its claims pursuant to the state’s Remedial Action Plan Monitoring Act and other state authorities, not the federal Superfund law, also known as CERCLA. There was “no evidence in the record that Nebraska obtained the requisite authorization from the EPA to enter into a CERCLA settlement,” the court said. “To allow an agreement between a state and private entity that lacks EPA backing to serve as a basis for a CERCLA contribution claim would effectively circumvent the requirement that states need to seek authorization

from the EPA in order to participate in the CERCLA process.”

As a result, any party that settled under a state cleanup law, which many PRPs have done because states take the lead on a significant number of cleanups given federal Superfund program funding constraints, may run the risk of not being able to pursue contribution suits.

EPA had already modified its own model administrative settlement language to make clear that it intended such pacts to authorize PRP contribution suits for costs associated with short-term removals, site studies and cleanup plan designs, in light of industry concerns that the agency’s current model language would not satisfy requirements the Aviall ruling established. But the new language did not help PRPs seeking contribution for cleanup costs, because the Superfund law does not allow polluters to settle those claims administratively.

(Superfund Report – 2/13/06)

EPA FINALIZES SPCC EXTENSION – NOW OCT. 31, 2007

Oil storage facilities will have until October 31, 2007, to complete and implement their spill prevention, control and countermeasure (SPCC) plans, under a rule signed Feb. 10 by U.S. Environmental Protection Agency (EPA) Administrator Stephen Johnson. The agency is extending the compliance dates to give itself more time to take final action on proposed amendments to the July 17, 2002, version of the SPCC regulations.

The proposed amendments, published Dec. 12, 2005, relax requirements for smaller facilities and those with certain types of oil-filled operational equipment, as well as airport mobile refuelers and motive power containers. EPA also proposed Dec. 12 to eliminate certain SPCC requirements for facilities storing animal fats and vegetable oils, and to extend compliance dates for farms.

(Environmental Compliance Alert – 2/14/06)

EPA’S LEAD AND COPPER RULE FOUND TO BE INADEQUATE

A report issued by the U.S. Government Accountability Office (GAO) concludes the U.S. Environmental Protection Agency’s (EPA) lead and copper rule is inadequate and may be putting public health at risk. The GAO is the investigative branch of the U.S. Congress.

The 1991 rule aims to minimize lead and copper in drinking water by reducing water corrosivity. Lead and copper enter drinking water primarily through plumbing materials. Exposure to lead and copper may cause health problems ranging from stomach distress to brain damage.

After revelations about extremely high levels of lead in the drinking water in Washington, DC in 2004, the GAO report was asked to evaluate the effectiveness of federal regulations for lead and copper by Senator James Jeffords, a Vermont Independent, and Representatives John Dingell of Michigan and Hilda Solis of California, both Democrats.

The GAO report released in January found that, “EPA claims of widespread, national com-

pliance with the rule are not supported by data.”

The report identifies “...significant and longstanding gaps in the amount of information available...” that impair the agency’s ability to oversee implementation of the lead rule.

In 2000, the EPA rulemaking regarding data collection requirements stated that this data was the only means available for EPA to evaluate progress in removing lead in drinking water. GAO found that the EPA had not followed up on missing implementation data, and that it has been slow to act on potential underreporting of violations.

“Few schools and child care facilities have tested their water supplies for lead – or adopted other measures to protect users from lead contamination” and “no focal point exists at either the national or state level to collect and analyze test results,” the GAO said.

The GAO recommended that homes and other sites of highest risk for lead be used for sampling. Homeowners who participate in tap sampling should be notified of test results to protect their health.

GAO evaluated EPA’s compliance data and determined that 49 large and medium water systems were in violation of the action level and appeared to be on reduced monitoring schedules. A reduced monitoring schedule reduces the chance that high lead levels will be detected and that the public will be warned of a potential health risk.

Controls over when and how treatment changes are implemented should be adopted to avoid increases in lead levels, the GAO advised.

Plumbing standards should be updated, reflecting availability of low-lead fixtures and GAO’s finding that some products currently classified as “lead-free” leach high levels of lead into drinking water.

(ENS – 1/31/06)

EPA EYES ASBESTOS COMPENSATION SETTLEMENT AS MODEL FOR OTHER SITES

EPA attorneys say a recent settlement in which real estate developers are paying Oregon homeowners for exposing them to asbestos contamination may be a model for other communities seeking compensation for exposure to asbestos and other toxic contaminants.

Agency officials say similar situations exist elsewhere, including near Lowry, CO, where contamination has been found around polluted former military sites and other industrial facilities. “It is a novel settlement, but I fear that it is not a novel situation,” and EPA Region X attorney says. “It is unfortunate that people had to live there for a long time. The site owners will help pay the mortgages and let the residents move on with their lives.”

EPA and the Justice Department (DOJ) announced Jan. 20 that the federal agencies entered into a consent decree with the real estate developers to pay \$11 million to EPA and the homeowners in compensation and litigation costs. The majority of the money will go to the homeowners, with the rest going to EPA for the costs of the investigations.

FEDERAL REGULATORY UPDATES (Continued)

The EPA attorney says this may be the first case in which homeowners receive such a large compensation in exchange for agreeing not to sue the real estate developers, particularly under the cost recovery provisions of federal Superfund law, sections 107 and 113. Recent local press accounts say that residents will receive about 85 percent of the costs of leaving their homes to move elsewhere.

A number of local developers near Klamath Falls, OR, in 1977 purchased property and buildings on a former Marine medical recovery barracks to turn the site into a subdivision with more than 20 homes. The buildings at the barracks were constructed during World War II with asbestos throughout the structures, and over the following decades a number of buildings were demolished before the new houses were built, according to EPA and DOJ documents. The final demolition of the remaining buildings left tons of asbestos remaining, which the settlement says the developers then buried on the site.

In response to a 1979 administrative order issued by EPA, the real estate developers removed a portion of the asbestos, but buried significant quantities of the cancer-causing contaminant throughout the site. The property was subdivided for residential construction in 1993, and in early 2003, 13 local homeowners filed suit after the discovery of asbestos contamination on the properties, which raised the nearby health risks and reduced the values of the properties.

(Superfund Report – 1/30/06)

NEW WIND RESEARCH MAY FURTHER DELAY EPA'S VAPOR INTRUSION GUIDE

The upcoming release of new findings on how wind can affect indoor air pollution caused by groundwater and soil contaminants, a phenomenon known as vapor intrusion, may further complicate EPA efforts to develop guidance for determining public health risks.

Industry has long opposed efforts by EPA and states to provide guidance on vapor intrusion, and the new findings could further delay the agency's release of an updated guide. The research also comes as EPA scientists are raising new concerns over the agency document.

Henry Schuver of EPA's Office of Solid Waste told attendees Jan. 19 at an Air & Waste Management Association conference in Arlington, VA, that the results of research on wind and vapor intrusion would be presented in March at a conference in San Diego. Schuver, the author of EPA's draft vapor intrusion guidance and the agency official responsible for the upcoming revisions to the document, said at the meeting that the new research examines how wind can spread the effects of vapor intrusion.

The study examines the effect of chemical vapors rising from the ground near buildings and blowing in through windows or cracks in the structure, thereby sweeping into ventilation systems and contaminating indoor air. In the past, scientists have focused attention on the vapors rising directly upwards from ground-level contaminants and into buildings.

Schuver said Dr. Paul Johnson, a chemical engineer at Arizona State University and the co-designer of the model used for screening for vapor intrusion, will present findings from research conducted off the California coast and in Casper, WY, which examined how wind can contribute to vapor intrusion levels. A panel of experts at the San Diego conference will also present a review of EPA spreadsheets used to plug in data to calculate risks.

Johnson could not be reached for comment.

But one EPA source says the findings could further complicate efforts to release an updated version of the guide, saying wind factors are "definitely another variable."

Industry has long raised questions about whether EPA has the authority to regulate indoor air. A draft guidance was released in November 2002, but has been strongly criticized by industry as overly conservative. The agency has struggled with the scope of the guidelines and whether to consider the future use of contaminated properties when deciding cleanup requirements, among other issues. An updated guidance may be released by the end of the year, which will also likely include advice for detecting future contamination from vapor intrusion.

Most recently, EPA scientists at the National Exposure Research Laboratory (NERL) have raised concerns that the model designed by Johnson and engineer Robert Ettinger and used for determining risk – which is the basis for EPA's spreadsheets – does not take into account some uncertainties surrounding the risks posed by vapor intrusion. Because data entered into the model does not necessarily take into account site-specific details, such as indoor air concentrations, the NERL scientists argue that developers and others are not given an accurate portrayal of the potential risks posed by the vapors. The concerns were outlined in a paper released last fall by NERI.

In recent years, states – including New York, Minnesota, New Jersey, and California – have taken steps to issue guidance on how to limit risks from vapor intrusion.

(Superfund Report – 1/30/06)

THIRD CIRCUIT ALLOWS EPA TO RECOVER SUPERFUND OVERSIGHT COSTS

The recent ruling by the 3rd Circuit Court of Appeals forcing industry to pay the costs EPA incurs in overseeing polluter-led cleanups means companies are now liable for millions of dollars spent on oversight in the judicial circuit containing the state with the most Superfund sites.

In a Dec. 22 decision in *U.S. v. DuPont, et al.*, the 3rd Circuit overturned its previous ruling in *U.S. v. Rohm and Haas Co.*, which rejected awarding oversight costs to the federal government for Superfund removal actions, and instead ruled that the Department of Justice (DOJ) and EPA can recover funds spent in overseeing cleanups potentially responsible parties (PRPs) conduct themselves.

Industry had been especially concerned about the case because they believed DOJ was using it as a vehicle to overturn *Rohm and Haas*, the only

appellate decision rejecting the government's ability to recover oversight costs. Every other appellate circuit considering the issue has ruled that EPA can recoup the costs, the decision says. Moreover, the circuit contains states with numerous Superfund sites, including Pennsylvania and New Jersey, the state with the most National Priorities List sites. The decision is also noteworthy because Supreme Court nominee Samuel Alito, who was serving as a judge on the 3rd Circuit and heard the case, signed onto the majority ruling against industry.

In its 1993 decision in *Rohm and Haas*, the 3rd Circuit barred the government from using the Superfund statute to recover oversight costs at polluter-conducted Superfund removals since there is no explicit mention in the Superfund statute of government authority to recover the costs.

But DOJ argued that the *Rohm and Haas* decision did not explicitly consider whether the government could recover oversight costs at remedial action sites, and only addressed removal sites. It also argued that the court's previous decision rejecting oversight cost suits at removals should be overturned, noting it conflicts with the numerous appellate court rulings rejecting the 3rd Circuit's reasoning.

The circuit has now overturned that decision, as it applies to both remedial and removal costs, saying EPA is authorized to recover oversight costs at both types of Superfund sites.

According to the ruling, Superfund sections 104 and 111, which allow the government to recoup oversight costs, "reflect Congress's intent to authorize broadly the recovery of government oversight costs incurred in connection with a cleanup action. Rather than evidencing an intent to foreclose recovery of these costs [as PRPs argue] the [Superfund] statute appears designed to guarantee it."

The ruling also says section 107 authorizes oversight cost recovery. The section's "authorization to recover 'all' government costs of 'monitoring,' 'enforcement activities,' and any other action 'necessary to prevent, minimize, or mitigate damage to the public health or welfare or to environment,' demonstrates that Congress intended the government to recover costs incurred in overseeing and monitoring the cleanup actions of responsible private parties."

While the decision says the oversight costs EPA can recover must be necessary, one industry source says the language is "not something [industry] is holding out a lot of hope for," since it can be broadly interpreted. The decision gives the government a "blank check" to seek oversight costs from PRPs, the source says. That authority is especially problematic, the source says, because the oversight costs are typically high and because EPA hires expensive contractors to conduct the oversight. EPA spends "extravagant amounts of money...just checking up on us," the source says.

Industry is unsure whether it will try appealing the decision to the Supreme Court, the source says.

(Superfund Report – 1/2/06)

FEDERAL REGULATORY UPDATES (Continued)

CLEANER SCHOOL BUSES MEAN HEALTHIER KIDS

The U.S. Environmental Protection Agency will provide local communities around the country with more than \$7 million in grants to reduce kids' exposure to harmful exhaust from their school buses. The grants will help fund the cleanup of more than 500 tons of diesel emissions from 4000 school buses nationwide.

EPA awarded 37 grants totaling \$7.5 million as part of the Clean School Bus USA program, which reduces children's exposure to diesel exhaust. The initiative encourages policies and practices to eliminate unnecessary school bus idling, the installation of effective emission control systems on newer buses and the replacement of the oldest buses with cleaner diesel or compressed natural gas powered buses. The grant recipients are contributing an additional \$13 million in matching funds and in-kind services.

For more information about Clean School Bus USA visit: <http://www.epa.gov/cleanschoolbus>.
(EPA - 2/20/06)

COMPANIES PAY COMBINED \$247,770 TO SETTLE DUST VIOLATIONS

EPA recently settled with Edward Kraemer & Sons, Inc. for \$190,000 and Meritage Homes of Arizona for \$57,770 for alleged dust violations that occurred at construction sites in Maricopa County, Arizona.

U.S. Attorney Paul K. Charlton stated, "The resolution in this case is a step in the right direction in improving the air quality in Maricopa County and our quality of life."

From May 2003 to January 2005, Edward Kraemer & Sons, Inc. failed to comply with Maricopa County rules during earth moving and dust generating operations at construction projects in Phoenix. Maricopa County inspectors discovered the following violations:

- failure to use a suitable control device to remove dirt from vehicle tires exiting construction sites
- failure to immediately clean up dirt tracked out 50 feet beyond the site
- failure to water down disturbed surface areas while conducting earth moving operations
- failure to implement approved control measures while conducting a dust generating activity

Meritage Homes of Arizona failed to comply with dust rules at a residential construction projects in Phoenix and Surprise, Ariz. During three separate inspections in 2004, Maricopa County inspectors discovered that the company had:

- failed to apply water during earthmoving operations
- failed to install a suitable trackout control device
- failed to apply water during weed abatement

In May, the EPA also settled with Pulice Construction for \$53,000 for allegedly failing to use a suitable control device to remove dirt from vehicle tires exiting construction sites, and failing to immediately clean up dirt tracked out 50 feet beyond the site.

Maricopa County exceeds the national health standard for PM-10. The EPA has classified the county as a serious non-attainment area for

particulate matter. Under the federal Clean Air Act, areas failing to meet air quality standards must adopt control measures to reduce dust and soot in the air. The dust control measures are part of the state's clean air plan.

(Env. Tip of the Week - 2/20/06)

EPA EXEMPTS CERTAIN CHEMICALS FROM TSCA INVENTORY UPDATE RULE

In the February 17 Federal Register, EPA issued a direct final action to amend the Toxic Substances Control Act (TSCA) section 8(a) Inventory Update Reporting (IUR) regulations by adding the following four chemical substances to the list of chemical substances in 40 CFR 710.46(b)(2)(iv) which are exempt from reporting processing and use information required by 40 CFR 710.52(c)(4):

- Two vegetable-based oils [fats and glycericid oils, vegetable (CASRN 68956-68-3) and canola oil (CASRN 120962-03-0)]
- Soybean meal (CASRN 68308-36-1) and
- Xylitol (CASRN 87-99-0).

EPA determined that the IUR processing and use information for these chemicals is of low current interest. Manufacturers and importers of the chemicals listed in 40 CFR 710.46(b)(2)(iv) must continue to report manufacturing information.

(Env. Tip of the Week - 2/20/06)

NEW GUIDELINES TO ASSESS LOCAL TRANSPORTATION AIR QUALITY IMPACTS

EPA, in consultation with U.S. Department of Transportation, finalized procedures to help state and local transportation and air quality agencies ensure that future transportation projects support state and local efforts to meet and maintain federal air quality standards for fine (PM 2.5) and coarse (PM10) particles. The final rule provides criteria for determining which transportation project must be analyzed for local particle emissions impacts in PM2.5 and PM10 nonattainment and maintenance areas. This project-level analysis will allow transportation project sponsors to project future air quality impacts that will result from their transportation project. For additional information, go to:

<http://www.epa.gov/otaq/transp/traqconf.htm>.

(EPA - 3/3/06)

STALLED CDC STUDY SHOWS HUMAN PERCHLORATE LEVELS NEAR EPA LIMITS

White House officials are delaying the release of landmark biomonitoring research conducted by scientists at the Centers for Disease Control & Prevention (CDC) that shows most Americans carry perchlorate in their bodies at levels close to safety limits set by EPA, according to EPA and other government health officials.

If issued publicly, CDC's biomonitoring data could add to growing pressure on EPA to issue enforceable drinking water and cleanup standards for the ubiquitous chemical, which contaminates water supplies in as many as 35 states,

creating significant cleanup liability for chemical manufacturers and the military. The chemical could disrupt normal thyroid functioning, according to EPA.

The two CDC studies in question build on a previously published paper finding that 61 Atlanta residents had detectable levels of perchlorate in their urine despite no known perchlorate contamination in the city's drinking water. According to the 2005 study, which was published in the journal *Analytical Chemistry*, "The finding of perchlorate (even at trace levels) in all human urine samples tested indicates the likelihood of widespread trace level perchlorate exposures in the general population."

After publishing that paper, the CDC scientists examined perchlorate exposure data from the agency's National Health & Nutrition Examination Survey to evaluate nationwide exposures.

Officials from EPA, the Food & Drug Administration (FDA) and other agencies say the exposure survey is complete and CDC last fall briefed the Interagency Working Group on Perchlorate, which is coordinated by the White House Office of Science & Technology Policy (OSTP).

The CDC scientists are also preparing a second study on potential thyroid impacts associated with various levels of perchlorate exposure that they hope to publish in the journals *Environmental Health Perspectives* and *Thyroid*.

Last year, the National Academies recommended a risk level for perchlorate that EPA later adopted in its chemical risk database. Last month, EPA and the defense Department set a 24.5 ppb cleanup target for sites contaminated with the chemical.

But a growing chorus of critics say the cleanup target is inadequate because it does not account for food consumption levels and other factors that could increase the risks posed by perchlorate. Many of the critics - including House Resources Committee Chairman Richard Pombo (R-CA), who is normally a staunch opponent of strict EPA regulation - are calling on the agency to set enforceable drinking water standards, known as maximum contaminant levels, which also serve as cleanup targets.

EPA and other federal sources are now echoing the criticism, saying CDC's exposure data shows the inadequacy of EPA's safety levels and cleanup targets. The exposure data suggests that "EPA's current perchlorate policies leave no margin of safety" for the public, according to an EPA source.

An FDA official confirms that the exposure levels found in the study are close to EPA's current risk limit. The source notes that FDA officials have been intensifying their focus on the extent of perchlorate levels in food supplies. Last year, for example, FDA began a "high priority" national food sampling program that covers over 12 foodstuffs including oatmeal, orange juice and numerous fruits and vegetables to determine the extent of perchlorate contamination in food, the source says.

(Superfund Report - 2/27/06)

FEDERAL REGISTER NOTICES

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

<p>Environmental Protection Agency Air Emissions Reporting Requirements; Proposed Rule. <i>(Federal Register - 1/3/06)</i></p>
<p>Environmental Protection Agency National Primary Drinking Water Regulations: Stage 2 Disinfectants and Disinfection Byproducts Rule; Final Rule. <i>(Federal Register - 1/4/06)</i></p>
<p>Environmental Protection Agency National Primary Drinking Water Regulations: Long Term 2 Enhanced Surface Water Treatment Rule <i>(Federal Register - 1/5/06)</i></p>
<p>Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans; Final Rule and Proposed Rule. <i>(Federal Register - 1/6/06)</i></p>
<p>Environmental Protection Agency Lead; Renovation, Repair, and Painting Program; Proposed Rule. <i>(Federal Register - 1/10/06)</i></p>
<p>Environmental Protection Agency Emission Durability Procedures and Component Durability Procedures for New Light-Duty Vehicles, Light-Duty Trucks and Heavy-Duty Vehicles; Final Rule and Proposed Rule. <i>(Federal Register - 1/17/06)</i></p>
<p>Environmental Protection Agency Revisions to Ambient Air Monitoring Regulations; Proposed Rule. <i>(Federal Register - 1/17/06)</i></p>
<p>Environmental Protection Agency Approval and Promulgation of Implementation Plans; New Jersey Consumer Products Rule. <i>(Federal Register - 1/25/06)</i></p>
<p>Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products; List of Hazardous Air Pollutants, Lesser Quality Designations, Source Category List; Final Rule. <i>(Federal Register - 2/16/06)</i></p>
<p>Environmental Protection Agency Standards of Performance for Stationary Gas Turbines. Direct final rule; amendments. <i>(Federal Register - 2/24/06)</i></p>
<p>Environmental Protection Agency Lead Paint Test Kit Development; Request for Comments. Request for comments. <i>(Federal Register - 3/16/06)</i></p>

PENNSYLVANIA BULLETIN NOTICES

<p>TECHNICAL GUIDANCE: 2006 changes to the list of Class A Wild Trout Waters. 12/9/05</p>
<p>TECHNICAL GUIDANCE: Reuse of Treated Wastewater Guidance Manual. Draft: 12/16/05</p>
<p>TECHNICAL GUIDANCE: Development of a Replacement Source for a Community Water System. Final: 12/16/05</p>
<p>TECHNICAL GUIDANCE: Guidance on sinking shafts and slopes for underground mines. Final: 12/23/05</p>
<p>REGULATIONS: Proposed regulations for comment on New Source Review of air pollution sources and the Storage Tank Program. 12/23/05</p>
<p>TECHNICAL GUIDANCE: Construction and Operations Permits Guidance. Final: 1/13/06</p>
<p>TECHNICAL GUIDANCE: Pennsylvania Drinking Water Information System Inventory Users Manual. Final: 1/13/06</p>
<p>TECHNICAL GUIDANCE: Policy for Permit Coordination. Final: 1/13/06</p>
<p>TECHNICAL GUIDANCE: Medical X-ray Procedures Operator Training Guide. Draft: 1/13/06</p>

PENNSYLVANIA BULLETIN NOTICES *(Continued)*

TECHNICAL GUIDANCE:

Interim policy on the enforcement of the Commercial Manure Hauler and Broker requirements.
1/13/06

TECHNICAL GUIDANCE:

Standards and Guidelines for Identifying, Tracking and Resolving Violations for: Erosion and Sediment Control Program. Draft: 1/27/06

REGULATIONS:

New Environmental Laboratory Accreditation Regulations took effect on Jan. 28, 2006. All environmental laboratories performing testing or analysis of drinking water (potable water), non-potable water (wastewater) and/or solid and chemical material matrices for compliance with any of the 12 statutes listed in Chapter 252 must be performed by a laboratory accredited in accordance with Chapter 252.
1/27/06

REGULATIONS:

Issued proposed Net Metering rule Alternate Portfolio Standards for comment. 2/3/06

REGULATIONS:

Proposed regulations for comment California vehicle emissions standards exclusions from listings for certain hazardous wastes. 2/10/06

TECHNICAL GUIDANCE:

Guidelines for Identifying, Tracking and Resolving Violations for the Drinking Water Program.
Final: 2/10/06

TECHNICAL GUIDANCE:

Guidelines for Identifying, Tracking and Resolving Violations for the Land Application of Biosolids.
Final: 2/10/06

TECHNICAL GUIDANCE:

Aboveground Storage Tanks on Coal Mining Permits.
Draft: 2/17/06

TECHNICAL GUIDANCE:

Small Flow Treatment Facilities Manual.
Draft: 2/17/06

TECHNICAL GUIDANCE:

Small Flow Treatment Facilities Manual.
Draft: 2/17/06

TECHNICAL GUIDANCE:

Act 537 Program Guidance; Civil Penalty Assessment Processing.
Final: 2/17/06

TECHNICAL GUIDANCE:

Act 537 Program Guidance: Calculating Civil Penalty Assessment Amounts.
Final: 2/17/06

TECHNICAL GUIDANCE:

Act 537 Program Guidance: Enforcement-Identifying, Tracking and Resolving of Sewage Facility Violations.
Final: 2/17/06

TECHNICAL GUIDANCE:

Act 537 Program Guidance: Local Agency/Municipality Evaluation and Compliance Activity.
Final: 2/17/06

TECHNICAL GUIDANCE:

Technical guidance related to the sewage facilities program and guidance for comment on aboveground storage tanks and small flow treatment facilities.
Final: 2/17/06

TECHNICAL GUIDANCE:

Standards and Guidelines for Identifying, Tracking, and Resolving Violations for Operators of Municipal Separate Storm Sewer Systems (MS4s).
2/24/06

TECHNICAL GUIDANCE:

Standards and Guidelines for Identifying, Tracking, and Resolving Violations of the Stormwater Management Act. 2/24/06

TECHNICAL GUIDANCE:

Guidance on repairing potable water storage tanks.
Final: 3/6/06

PROPOSED RULEMAKING:

Proposed General Plan Approval and General Operating Permit for Dry Abrasive Blasting Operations.
3/13/06

TECHNICAL GUIDANCE:

General Permit for processing used restaurant oils, greases and other materials for biofuels/biodiesel.
Final: 3/18/06

PROPOSED GUIDANCE:

Use of Waste from Land Clearing, Grubbing and Excavation (LCGE) and the Use of Concrete or Other Clean Fill Materials Containing Protruding Rebar or Other Metal as Clean Fill. 3/18/06

NJ REGULATORY UPDATES

SEVEN NORTHEAST STATES LAUNCH REGIONAL GREENHOUSE GAS INITIATIVE

The Governors of seven Northeast states announced their agreement on the first mandatory cap-and-trade program to control carbon dioxide emissions in the United States. The regional climate change and energy program aims to reduce the heat-trapping greenhouse gas emissions responsible for global warming.

A memorandum of understanding detailing the program was released in late December and will be signed by Connecticut, Delaware, Maine, New Hampshire, New Jersey, New York, and Vermont.

Called the Regional Greenhouse Gas Initiative (RGGI), the program will reduce carbon dioxide pollution through a mandatory emissions cap on the electricity generating sector, coupled with a market-based trading program to achieve the lowest possible compliance costs.

Beginning in 2009, RGGI will stabilize carbon dioxide (CO₂) emissions from power plants in the region at current levels through 2015, and reduce emissions by 10 percent from current levels by 2019. RGGI also aims to achieve reductions through energy efficiency and through greenhouse gas emission reduction projects outside of the power sector.

New York Governor George Pataki, a Republican, originated the RGGI proposal. "My goal in proposing the Regional Greenhouse Gas Initiative in 2003 was to bring states together to tackle a significant environmental challenge that we all face, knowing that a collaborative effort is the most effective policy," Pataki said.

"Under this program, we will use a market-based system to curtail harmful CO₂ emissions and spur the development of innovative technologies that will reduce our dependence on foreign energy, strengthen our economy, and take meaningful steps in the fight against climate change," said Pataki.

Average household bills are expected to increase by about \$3 to \$24 annually once the RGGI begins operating. The Governors say they anticipate that RGGI will generate new investments in innovative and cleaner technologies and energy efficiency, which could lower electricity rates.

Delaware Governor Ruth Ann Minner, a Democrat, heads one of the seven states that will participate in the RGGI. "This historic agreement represents the first significant step toward reducing greenhouse gas emissions in this nation," she said. "I am proud that Delaware has been part of this very important effort which I believe will result in measurable reductions of greenhouse gas emissions in a manner that maintains reliability and economic certainty in our electrical generating sector. I also see the potential for this program serving as a national model."

The participating states plan to issue a draft model regulation for public review and comment in early 2006. Each individual state will then proceed with the required legislative or regulatory approvals to adopt the program. Pending the completion of this process, the RGGI cap-and-trade program is slated to begin on January 1, 2009.

Environmentalists, as expected, were pleased with the regional pact. Eileen Claussen, president of the Pew Center on Global Climate Change, said, "The Regional Greenhouse Gas Initiative unveiled today is a milestone, not only for the states involved, but also for how we in the United States will likely deal with climate change in the years ahead. As the world's leading producer of greenhouse gases, the U.S. urgently needs an effective

national climate strategy; RGGI starts us down the path that we hope will ultimately lead to an economy-wide cap-and-trade plan."

(ENS - 12/20/05)

NEW JERSEY ORDER COULD FORCE NATION'S LARGEST SEDIMENT CLEANUP

New Jersey's Department of Environmental Protection (DEP) is ordering liable parties in the state's Lower Passaic River to design a dredging plan for dioxin contamination despite concerns from EPA that the order could force the largest contamination dredging ever and could re-suspend dioxin and a slew of other contaminants.

EPA warned in a letter prior to the order's release that the state's plan to set a 17 parts per trillion (ppt) cleanup level for dioxin would force removal of enormous volumes of sediment, making the river the largest dredging site in the nation.

"[If the 17ppt] cleanup standard is used to dredge the six-mile stretch of the river, it could potentially result in the removal of 10 million cubic yards of sediment, an amount which exceeds the magnitude of final remedies such as those proposed or implemented at the Hudson River and Fox River," Region II Administrator Alan Steinberg states in a Nov. 14 letter.

However, some industry sources are warning that the state's order - issued under the authority of its spill prevention law - may be preempted by federal Superfund law because federal courts have generally found that Superfund preempts such state laws.

For now, EPA says it will not interfere with New Jersey's development of a dredging plan, but an EPA Region II spokesman says litigation is possible if the plan conflicts with an existing EPA study at the site. One industry source says the companies subject to the order may oppose the plan because they believe it is preempted by federal law.

At issue is the Lower Passaic River, which is heavily polluted with numerous contaminants - including dioxin - from decades of heavy industrial use. EPA in 1994 issued an administrative order under which Tierra Solutions, a responsible party, agreed to study a six-mile portion of the river to determine the extent of contamination. The study is still underway.

In order to hasten cleanup, New Jersey issued a directive Dec. 14 ordering three responsible parties - Occidental Chemical, Maxus Energy and Tierra Solutions - to pay the state's costs for development of a dioxin-dredging plan for a six-mile portion of the river, based on a cleanup level of 17 ppt for dioxin, "or to a level that permanently removes the main source of uncontrolled (dioxin) sediment contamination in the Passaic River," the directive states.

The state also filed suit in state court against the companies for cleanup costs the state has incurred and will incur in the future at the site.

The state's directive came despite criticism from EPA that it would be "premature" to pursue a plan while a multi-agency study by EPA, the Corps and New Jersey is ongoing at the site. The study is part of the Lower Passaic River Restoration Project (LPRRP).

EPA also raised concerns - voiced in the Nov. 14 letter to DEP Commissioner Bradley Campbell - that dredging only the six-mile portion could lead to additional contamination, and that the effort would only address a single contaminant. "In summary the directive is unacceptable and will not solve the environmental problems of the Passaic River since it does not address all of the contaminants that are causing the problems; does not con-

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sider all of the areas of the river where those problems might reside; and does not consider all appropriate remedial options as required by the law," the letter states.

The Corps also raised similar concerns with the state two weeks before the directive was issued, and urged the state to "reconsider" the plan. In a Dec. 1 letter to Campbell, the Corps says the state's sediment cleanup levels do not take into account human health and ecological risk assessments, "the usual basis for establishing contaminant action levels for remediation investigations."

Despite the criticisms, Campbell is defending the state's plan. In a Nov. 23 response to EPA, he says the state's efforts will complement the multi-agency project lead by EPA. "[W]e believe our approach works within the LPRRP framework to overcome an unacceptable history of public agencies in responding to Passaic River dioxin," the letter states, Campbell also says the focus on dioxin is justified by the greater risk the contaminant poses compared to others, and also says the scope of work was revised so that design of the plan will take into account other contaminants.

Campbell has long sought to speed cleanup at the site. In 2004, he threatened to order companies to dredge sediment in the river if they did not comply with an order requiring an assessment of natural resource damages.

While EPA says the agency will not interfere with DEP's actions, an industry source points out that EPA is in the "driver's seat" at Superfund sites. The source says it is likely that the companies targeted by New Jersey will argue that the directive could be blocked by Superfund's bar on judicial review of ongoing cleanups. If EPA wants to engage and say that New Jersey is "stepping on the toes of EPA, I think EPA would prevail," says the source.

The EPA spokesman says the agency will have to wait and see the New Jersey plan before deciding on an action. "We hope that their work complements what EPA and the Army Corps of Engineers is already doingIt depends on the plan they come up with as to whether EPA would see it as acceptable."

However, an environmentalist attorney says the state's directive may not be preempted by CERCLA if the state can prove it is acting in the best interest of its citizens. "It's an unsettled area of law," the source says. "You can't interfere with EPA's work. But does it apply when states bring a case on behalf of their citizens? The question is whether that is an exception." The source admits the case law is limited to support such an exemption.

CERCLA does not preempt their efforts with the directive and complaint, but declined to discuss the issue further.

(Superfund Report - 12/19/05)

NJDEP CHANGES ANTIDEGRADATION RULE TO INCREASE RIPARIAN BUFFERS

Seeking to curtail development-related water pollution, the New Jersey Department of Environmental Protection ("NJDEP") is proposing to amend its Surface Water Quality Standards ("SWQS") to establish larger riparian buffers. A riparian buffer is an area adjacent to a water body

NJ REGULATORY UPDATES (Continued)

in which development is prohibited to protect water quality, wildlife, and fish from degradation and anthropogenic activities. Comments on the proposed revisions were accepted until October 19.

The proposed buffers apply to development projects affecting one or more acres or increasing impervious surface by at least one quarter acre. Under the proposal, a 300-foot buffer would apply to streams classified as Category One and Pinelands Waters, fresh waters set aside for posterity due to their unique ecological value, and some Category Two tributaries upstream of Category One streams. Other Category Two streams are subject to economic development, in which case a 50-foot buffer applies.

(Manko Gold Katcher & Fox Client Alert – 12/05)

NJDEP ISSUES FINAL VAPOR INTRUSION GUIDANCE

In October 2005, NJDEP published its final Vapor Intrusion Guidance document, which is intended for use in evaluating the vapor intrusion pathway at sites contaminated by volatile organic compounds and determining whether vapor impacts require remediation. The final guidance replaces both the draft guidance published in June 2005 and NJDEP's Indoor Air Sampling Guide for Volatile Organic Compounds.

The document uses a multi-step, phased approach to investigate the vapor intrusion pathway that follows basic EPA protocols while incorporating New Jersey-specific factors and policies where necessary. The guidance includes a discussion of the vapor pathway, screening levels to be used in evaluating a site, sampling and analytical requirements, site-specific screening options, remedial options, monitoring and maintenance requirements, community outreach, and a methodology to evaluate background air levels. The document will be updated routinely based on changes to toxicological data.

(Manko Gold Katcher & Fox Client Alert – 12/05)

NJDEP: NO AMENDMENTS TO WASTEWATER RULES - REGULATIONS WOULD HAVE STOPPED DEVELOPMENT ACROSS STATE

The state Department of Environmental Protection will not enact two amendments to the state's wastewater quality rules that critics claimed would have stopped development across that state, revoking some existing sewer areas and restricting the use of septic systems.

In a February 3 letter to Leslie E. Smith, executive vice president of the Rockefeller Group, which runs Mount Olive's International Trade Zone complex, Lisa P. Jackson, DEP commissioner said, "We have decided not to proceed in adopting these two amendments in their present form and we expect that we propose a revised amendment or other enforcement mechanism informed based on comment received on these notices."

A third amendment to the state's water quality management rules, which called for converting the state's paper maps of the sewer areas to a digital form, is still being considered, Jackson wrote.

These amendments were published in the October 17 issues of the New Jersey Register and taken effect retroactive to that date after a public comment period that ended December 15. The amendments were greeted with a vocal protest led

by county and municipal officials, sewer plant operators, builders and environmentalists.

(by Michael Daigle – Daily Record – 2/11/06)

2005 A RECORD YEAR FOR NEW JERSEY'S GREEN ACRES

New Jersey's Green Acres Program preserved a record number of acres during 2005, making it the program's most successful year since its inception in 1961.

Last year, Green Acres funding was used to acquire more than 38,000 acres of land for recreation and conservation, surpassing by more than 2,000 acres the program's previously highest annual acquisition total. Green Acres funding also helped municipalities, counties and nonprofits to acquire land and develop park and recreation facilities in all of New Jersey's 21 counties.

In the Highlands, the Green Acres Program acquired more than 15,600 acres for permanent protection. Of that, more than 13,300 acres were preserved by the state; local governments and nonprofits used Green Acres funding to acquire nearly 2,300 acres of land. These acquisition projects will help protect critical drinking-water supplies for more than 5.4 million residents.

In New Jersey's urban areas, open space, parks and recreation projects are central to successful redevelopment initiatives. During 2005, the DEP dedicated additional funding to Urban Aid and densely populated municipalities and counties, making nearly \$17 million available for local urban acquisition and park development projects.

"There is no stronger testament to the success of the Green Acres Program than residents' consistent approval of open space and recreation referendums at both the state and local levels," said John S. Watson Jr., Assistant Commissioner for Natural and Historic Resources. "Since 1961, voters have approved nine Green Acres bond issues totaling \$1.6 billion."

In addition, the 1998 Garden State Preservation Trust provided nearly \$2 billion in additional funds for open space, farmland, and historic preservation, bringing the combined public investment to more than \$3.6 billion in state dollars.

Since 1961, the Green Acres Program, together with public and private partners, has acquired and protected more than 597,000 acres of open space. New Jersey has more than 1.3 million acres of protected open space, including restored and improved municipal, county and nonprofit parks.

In 2005, Green Acres directly acquired more than 31,000 acres for public use and enjoyment. The land will be managed by the DEP's Parks and Forestry or Fish and Wildlife Divisions, the Natural Lands Trust, or in cooperation with one of its many preservation partners. These lands are used for public recreation and enjoyment, and for preserving New Jersey's exceptional natural and historic resources.

In 2005, grant and loan payments to municipal and county governments and nonprofit organizations totaled nearly \$85 million for land acquisition and the development of outdoor recreational facilities in every county. These local governments and nonprofits preserved almost 7,000 acres of land and improved over 50 parks with Green Acres assistance.

Green Acres provides matching grants and low-interest loans to municipal and county governments to acquire open space and develop outdoor recreation facilities. The program also provides

matching grants to nonprofit organizations to acquire land for public recreation and conservation purposes.

(ENS – 1/16/06)

HONEYWELL TO APPEAL JUDGE'S RULING DISQUALIFYING EXPERT WITNESS

Honeywell International will ask the U.S. Court of Appeals for the 3rd Circuit to overturn a federal district judge's ruling disqualifying an expert witness and two attorneys representing the company in its 11th-hour attempt to scale back a precedent-setting chromium contamination cleanup along the New Jersey's Hackensack River.

Federal Judge Dennis Cavanaugh ruled Jan. 3 that scientist Kirk Brown and the attorneys – who had formerly sided with Honeywell's opponents over the scope of the cleanup of the known carcinogen – were "disqualified...as of this moment," according to a transcript of the hearing.

At issue is Honeywell's attempt to file a procedural motion, known as Rule 60(b) motion, that would allow it to cap the hexavalent chromium rather than completely excavate and remove it, saving the company an estimated \$200 million of the \$400 million cleanup order. As part of its appeal – filed 10 days before the massive cleanup was to begin – Honeywell hired Brown, who had originally argued that a 100 percent excavation was the only way to completely clean the site, and two attorneys who had been representing W.R. Grace, which also supports the complete excavation. (Superfund Report, Oct. 24, 2005, p7).

Judge Cavanaugh called Brown "probably the most significant of the witnesses that I had to listen to" during the original trial, according to the transcript. He also noted that the attorneys had been privy to confidential information when representing the other party, and their switch amounted to a conflict of interest.

An attorney for Honeywell asked the judge to certify his oral ruling so that the company could file its expedited appeal with the 3rd Circuit, and asked the judge to consider its original Rule 60(b) motion, which the judge refused. "I have before me a motion that's presented by attorneys who have been disqualified from the case, and supported by an expert who's been disqualified. So for me then to now look at the motion under those circumstances would take a lot of the argument out of the motion that we just had," Cavanaugh said.

An attorney representing the citizens group that originally won the cleanup order in *Interfaith Community Organization (ICO) et al v. Honeywell International Inc.* says ICO will oppose Honeywell's attempt to appeal the decision to the circuit.

In the meantime, Cavanaugh granted Honeywell 30 days to file an amended Rule 60(b) motion without representation by the lawyers or the testimony of the witness.

The judge also refused Honeywell's request to stay the cleanup during the court proceedings. "There will be no stay on the excavation," he said.

(Superfund Report – 1/16/06)

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RT E-MAIL DIRECTORY

LARRY BILY LBILY@RTENV.COM
 GARY BROWN GBROWN@RTENV.COM
 ROB CAREY RCAREY@RTENV.COM
 THOMAS DONOVAN TDONOVAN@RTENV.COM
 WALTER HUNGARTER WHUNGARTER@RTENV.COM
 RICH JOHNSON RJOHNSON@RTENV.COM

JOE LANG JLANG@RTENVNJ.COM
 JUSTIN LAUTERBACH JLAUTERBACH@RTENVNJ.COM
 ERNIE RISHA ERISHA@RTENVNJ.COM
 RAFAEL TORRES RTORRES@RTENVNJ.COM
 CHRIS WARD CWARD@RTENV.COM

VISIT OUR WEBSITE WWW.RTENV.COM

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