

The RT Review

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FEDERAL MOLD BILL TO BE REINTRODUCED

A federal bill seeking to protect the public from mold-infested homes is intended to be reintroduced by its original sponsor, John Conyers (D-Mich.) "probably in late January," according to Conyers staff member Mustafa Ali.

The United States Toxic Mold Safety and Protection Act, named the Melina Act after the daughter of a Conyers staffer who first brought the issue to the representative's attention has been introduced in each Congressional session since first submitted June 27, 2002, but has yet to meet a vote before the House. The bill is technically a series of amendments to the Toxic Substances Control Act, the Internal Revenue Code of 1986 and the Public Buildings Act of 1959.

According to Rep. Conyers' Web site, the bill's Title I will "[direct] the Environmental Protection Agency and Centers for Disease Control to examine the effects of different molds on human health and develop accurate scientific information on the hazards presented by indoor mold." It also directs the EPA and the Department of Housing and Urban Development to "establish guidelines that identify conditions that facilitate mold growth" and also address assessment, testing and remediation, "and measures that can be implemented to prevent such growth." The EPA and HUD will also be charged with establishing certification guidelines for mold inspectors and remediators, including hazard identification and health risks.

Title I also "authorizes programs to educate the public about the dangers of indoor mold." Inspections of multi-unit housing and all property purchased by federally guaranteed funds are required in Title II. The modification of building codes "to minimize mold hazards in new constructions" completes the second section.

Title III requires the development of industry standards. Grants for mold removal in public buildings and tax credits for inspection and/or remediation are

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GEOCHEMISTS CHART CARBON-DIOXIDE LEVELS AT 650,000-YEAR HIGH

More than two miles above the Pacific surf, at the summit of the world's largest volcano, the evidence of human influence of global warming is in the air. For a half century, sensors atop Mauna Loa on the island of Hawaii have captured the world-wide signature of increasing carbon dioxide in the atmosphere, due largely to burning coal, oil and natural gas. The carbon dioxide traps heat. For 50 years, these CO₂ readings, known as the Keeling Curve, have been climbing steadily, setting and then breaking a new record every 12 months or so.

Global concentrations of CO₂ in 2006, not surprisingly then, reached the highest level since the record-keeping began in 1958, the World Meteorological Organization recently announced in its annual greenhouse-gas bulletin. Based on samples from 40 countries, the level of carbon dioxide in the air reached 381.2 parts per million, up fractionally from 2005 – concentrations not seen in 650,000 years, scientists said.

While diplomats from 180 countries argued in December over the cost of staving off predicted climate changes, the Mauna Loa readings started to approach even higher levels. These annual measurements are the world's longest continuous record of CO₂ concentrations and, plotted as data points in a rising arc, form one of the most important graphs in science.

Climate scientists call the graph the Keeling Curve in tribute to a skeptical atmospheric chemist named Charles D. Keeling, who first began monitoring the pure air at two of Earth's most remote locations – Mauna Loa and the South Pole – in 1958.

Greenhouse gases drive temperatures. Over the duration of Keeling's rising curve, average temperatures in the Northern Hemisphere were "very likely" higher than during any other 50-year period in the past 500 years, the U.N.

Intergovernmental Panel on Climate Change reported in November. Fifteen of the past 20 years rank among the warmest years on record.

Since 2000, CO₂ emissions world-wide – as measured by hundreds of sensors in dozens of countries accelerated, growing at three times the rate observed during the 1990s, an international research team led by the Global Carbon Project reported in May in the Proceedings of the National Academy of Sciences.

Usually, plants, soil and seawater absorb much of those emissions, threatening the ecosystem. Between 1990 and 2005, for example, new forest growth in the 27 countries of the European Union annually absorbed 126 million tons of carbon – equal to about 11% of the region's yearly emissions, University of Helsinki researchers reported in November in Energy Policy.

But such natural sponges may no longer be able to blot up atmospheric spills of CO₂ so easily, the carbon project scientists reported in October. In the 50 years marked by Keeling's Curve, the researchers said, the planet's capacity to absorb the gas through soil and sea chemistry has steadily declined.

(Wall Street Journal 12/14/07)

PA'S UNIFORM ENVIRONMENTAL COVENANTS ACT

This Act became final in December and provides uniformity for deed notices and engineering controls in the commonwealth. Existing covenants are to be upgraded within 5 years.

Go to www.rtenv.com for more info.

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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

Craig Herr, P.G.

Phone: (610) 265-1510 Ext. 15

Hydrogeology Group Manager

E-mail: CHERR@RTENV.COM

Walter Hungarter

Phone: (610) 265-5599

Engineering Group Manager

E-mail: WHUNGARTER@RTENV.COM

Glennon C. Graham, Jr., P.G.

Phone: (610) 265-1510 Ext. 13

Remediation Group Manager

E-mail: GGRAHAM@RTENV.COM

New Jersey

Justin Lauterbach

Phone: (856) 467-2276 Ext. 119

E-mail: JLAUTERBACH@RTENV.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

FEDERAL MOLD BILL TO BE REINTRODUCED

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covered respectively in Titles IV and V. Title VI “creates a National Toxic Mold Insurance Program administered by the Federal Emergency Management Agency to protect homeowners from catastrophic losses” to supplement lacking insurance coverage and Title VII “enables states to provide Medicaid coverage to mold victims who are unable to secure adequate health care.”

Conyers staffer Karen Morgan told IE Connections that the only significant change to the bill for this introduction is that it would allow cities to apply directly to the federal government for funds for mold-remediation projects.

(*Indoor Environment Connections – 1/08*)

RT BEGINS WORK ON BUDD REMEDIATION PROJECT

RT Environmental Services began work during winter on the key remaining aspects of the Budd Commerce Center Remediation Project, in North Philadelphia. Located on Hunting Park Avenue, the facility produced automotive parts by industrial stamping for several generations. Products such as car doors, trunks and hoods, were shipped historically to assembly plants throughout the United States over the Pennsylvania Railroad. After the Pennsylvania Railroad

ceased operations, increases in shipping rates caused the facility to be non-competitive, and operations were eventually scaled back, until the facility closed several years ago. Budd was PECO’s largest customer.

A number of buildings at the site have already been successfully remediated and redeveloped, although a significant amount of work remains. There are PCB impacted floor surfaces in a number of buildings at the site, which will be addressed under EPA’s Toxic Substance Control Act Program. EPA’s Kelly Bunker is providing regulatory oversight. Large industrial buildings will be appropriately remediated for future use, with potential residential development being considered in several buildings, located near Hunting Park Avenue.

Assisting RT in the remediation effort which is expected to last through August, are Associated Specialty Contractors, and B. Pietrini & Sons. B. Pietrini & Sons is completing concrete work.

The site was the subject of an exhibit at last Fall’s Pennsylvania Brownfields Conference, and, there have been a number of inquiries regarding future use of the buildings at the site. For more information on site redevelopment opportunities call Preferred Unlimited at (610) 834-1969.

A NEW RT SERVICE-CERTIFIED SEWAGE ENFORCEMENT OFFICE ASSISTANCE

Mark Cefalo is an RT environmental professional who is also a Sewage Enforcement Officer (SEO). SEO’s administer parts of the Pennsylvania Sewage Facilities Act, but their role is to help ensure the health and safety of the public relating to the proper construction and operation of individual sewage disposal systems.

Currently, planning modules are required for newer substantially modified waste water systems, and, the modules must be prepared by the SEO. SEO’s can be directly employed by governments, or can work as consultants, to meet Act 537 requirements (under the Sewage Facilities Act).

SEO’s must approve individual on lot septic systems, which are common throughout Pennsylvania, in areas not served by municipal sewage disposal systems. SEO’s are involved in both the design and installation of on lot septic systems. Commonly, contractors and individual property owners hire consultant SEO’s when on lot septic systems need to be replaced. Typically, testing of the site is required to determine how the system can be designed, and in particular, whether soils can accept septic treated effluent. When the design of the on lot septic system is completed, it is submitted to the local government agency for approval.

It is also common for property owners to hire SEO’s, when a property is being subdivided. Any subdivisions in Pennsylvania involve adding a separate lot or two, and, then, one or two additional on lot septic systems are typically needed.

You can reach Mark Cefalo by contacting him at our King of Prussia office. He can be reached at (610) 265-1510, or by E-mail at mcefalo@rtenv.com

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STATE BROWNFIELDS PRACTICES CHALLENGED IN NEW YORK

Four environmental groups seeking stronger cleanup standards for Brownfield properties are suing the state of New York. Their lawsuit challenges the state's Brownfields Cleanup Program that is intended to encourage the cleanup and redevelopment of the thousands of boarded-up gas stations, decaying factories and other abandoned Brownfield sites across the state.

Brownfields sites are those that cannot be developed because of toxic contamination. The contamination is typically not severe enough to warrant a more robust cleanup under the Superfund Law, but poses health and environmental risks if development occurs without some remediation. A state

Supreme Court judge heard oral arguments December 21 by the public interest law firm Earthjustice challenging the state's Brownfields Cleanup Program. Earthjustice is representing Sierra Club, New York Public Interest Research Group, Environmental Advocates of New York and Citizen's Environmental Coalition in the case.

"Before we give out tax credits and liability exemptions to developers, before we allow homes and daycare centers and nursing homes to be built on these sites, we must make sure they are cleaned up to a level that protects human health," said Earthjustice attorney Keri Powell. "That's what we're

asking for in this lawsuit."

Under Governor [George] Pataki's administration, New York established unsafe, second-rate soil cleanup standards that are not protective of children and drinking water," said Anne Rabe, board member of Citizen's Environmental Coalition.

After 12 years in office Governor George Pataki was replaced in January by Governor Eliot Spitzer, the former attorney general of New York. At this time, NYSDEC is not evaluating applications for Brownfields sites, until a ruling on the program is forthcoming.

(ENS - 12/31/07)

RT STAFF AND PROJECT NEWS

Following a lull over the holidays, RT staff in Pennsylvania and New Jersey are moving ahead full steam on a large number of projects, including major projects in Bellmawr NJ, and, at the Budd Site in Philadelphia. The Bellmawr project involves three former landfills, with redevelopment being undertaken by Bellmawr Waterfront Development. A public announcement is expected shortly regarding a major innovative retail operation planned for the site, which is expected to be a regional draw for customers. Four hotels potentially will be built at the site as well. RT completed preparation of the Remedial Action Work Plan and Closure Plan for the landfills at the site, which is now under NJDEP review. A final public hearing was being held in late February, to gain public input on the remedial phase of the project.

Samantha Linton and Joe Lang are busy on a number of Phase I Environmental Site Assessments and preliminary assessments at sites in Central New Jersey. On a number of these sites in Central New Jersey the very popular CLEANUP STAR program, has been used to address environmental issues, even with Industrial Site Recovery Act applicability. Gary Brown is principal in charge and completes RT's CLEANUP STAR work, which enjoys the opportunity of very prompt NJ DEP approvals (30 days or less).

Dominick Marino and Robert McKenzie are working on rehabilitation of several buildings at the Philadelphia Navy Yard, which are planned for future office use. The structures involved are former officer's "Quarters" and enjoy a beautiful riverfront view, of the Delaware

River. Leo Garonski is the project redeveloper.

Justin Lauterbach is busy moving forward on the next phase of retail pharmacy redevelopment sites, in both Wilmington and Cumberland County, New Jersey. The Wilmington site is a Brownfields site, and the Delaware's Brownfields and Voluntary Cleanup Programs will help facilitate redevelopment.

Adam Meurer is at work on an increased number of wetlands study assignments, throughout the State of New Jersey. One project involves a North Jersey site, in Morris County, where sensitive remediation of a wetlands area was completed, and, future area development with potential wetlands impacts has caused RT to be awarded extra work, assisting the site owner with public meeting comments on planned nearby development.

Walter Hungarter and Josh Hagadorn are busy on a number of assignments, for a major RT redevelopment client with industrial facilities being redeveloped throughout the United States. Work involves former owner remediation coordination for redevelopment, and preparation of contingency plans, as well as assuring that proper remediation at the sites takes place, while redevelopment occurs.

RT appreciates the opportunity to be of continued service to our clients. We look forward to receiving future opportunities you give us and the trust you place in our firm.

- Gary R. Brown, P.E.
President

ACTIVISTS URGE HIGH COURT TO SOLIDIFY COMMON LAW DAMAGES UNDER CWA

Environmentalists are urging the Supreme Court to preserve common law punitive damages in environmental litigation as the high court prepares to hear oral arguments in a case scheduled to be heard in late February involving punitive damages awarded as a result of the infamous 1989 Exxon Valdez oil tanker spill.

The January 28 amicus brief from a coalition of 16 environmental and conservation groups in *Exxon Shipping Co. and Exxon Mobil Corp. v. Grant Baker*, et al. comes as Baker and the Alaska Legislative Council (ALC), another amicus, are also arguing federal common law allows punitive damages. But Baker and ALC additionally are providing the court with options to rule without answering the punitive allowances of the Clean Water Act (CWA). *Relevant documents are available on InsideEPA.com. See page 2 for details.*

The case raises questions on whether courts may impose punitive damages beyond the scope of the CWA and resource damages (NRD), something the Supreme Court has never addressed. The NRD provisions in the CWA are similar to those in the Superfund law.

The case stems from the crash of the Exxon Valdez oil tanker on the Bligh Reef in Prince William Sound, AK, on March 24, 1989, which spilled 11 million gallons of oil in the nation's largest-ever accident of its kind. Litigation over punitive damages is still ongoing because Exxon has repeatedly asked the U.S. Court of Appeals for the 9th Circuit to reexamine its rulings in light of several Supreme Court decisions in other punitive damages cases.

The high court was to hear arguments February 27. Justice Samuel Alito Jr.

recused himself from the decision to grant cert and will not be participating in the merits phase. The justice owns between \$100,000 and \$250,000 of common stock in Exxon Mobil, a 2006 financial disclosure statement from the court says.

Exxon argues that it has paid well beyond what was intended under the CWA. The case at hand involves punitive damages-those awarded in a lawsuit as a punishment for malicious or grossly negligent actions, and meant to act as an example to others, whereas the company has already paid statutory compensatory damages to resource trustees, as payments for actual injury or economic loss.

The company, under other arrangements, has already spent \$2.1 billion on environmental cleanup and \$300 million to compensate those whose businesses were disrupted by the spill, Exxon's Supreme Court filing says. Exxon has also paid \$150 million in fines to the federal government and \$100 million in fines to Alaska, after pleading guilty to negligent discharge of oil under the CWA.

Exxon argues that the extensive "scheme of penalties and remedies for oil spills in the CWA" specifically does not authorize punitive damages, and therefore the 9th Circuit ruling is outside the scope of the law. "In the CWA, Congress specifically addressed the punishment and deterrence of maritime oil spills by enacting both criminal and civil penalties," Exxon's cert position says, noting that "the penalties are substantial."

The CWA no longer applies to oil spills, due to the 1990 Oil Pollution Act (OPA), but it was the controlling statute at the time of the spill.

(Superfund Report-2/11/08)

CHESTER'S NEW RIVERWALK - IT'S WORTH A STROLL

A key new public access area is now open in Chester, Pennsylvania. RT's principals recently attended a late afternoon stroll along the Delaware River with David Sciochetti, Executive Director of the Chester Economic Development Authority. A new 4,000 foot long riverwalk was a delight to enjoy, and, as sunset approached and, we then drove up river to enjoy some more river views as the sun set from Harrah's Casino, just a 5 minute ride away.

During Chester's darkest days, as recently as 5 to 10 years ago, most people would have thought that simple pleasures like a riverwalk, a thousand jobs in the former PECO generating station, and a first class casino resort entertainment would be pipe dreams in Chester. Now, all three have come to pass. Better yet, work is scheduled to begin this year on improved riverfront access from I-95 and US-322, when new ramps are scheduled to be built by PENNDOT over a several year period.

The riverwalk is a key part of Chester's future. It connects the Barry Bridge Park, at ground level right near the bridge with the redeveloped Chester generating station where about a thousand workers are employed by computer, software, and financial firms. The park provides a beautiful view of the bridge (see photo).

At one time, the area between the bridge, and the generating system was the home of one of the nation's worst hazardous waste sites, former chemical tar disposal areas, knitting mills, and other factories. Following the successful completion of short-term and long-term cleanup activities by PECO, and oversight by the USEPA and the PA Department of Environmental Protection, you can conveniently park your vehicle at the Barry Park, where attractive river view sitting areas and a boat ramp mark the start of the riverwalk. Moving south, a pedestrian bridge crosses an historical small stream, and the riverwalk meanders around former boat slip areas, and even in an area once used by a yacht club, attractively finished with PA quarried rock, following landscape architect recommendations by Hank Bishop of WRT, a leading Philadelphia planning and architecture firm.

As you approach the generating station, the riverwalk goes around a very large slip, where for generations, barges of coal were received and unloaded to provide electricity throughout Delaware County. The walk continues along the river in front of the generating station, which has been fully redeveloped, and is beautifully restored.

The generating station, when it was built, is anything but a typical historical industrial facility. At the time of construction of the generating station, electricity was "something new", and a beautiful edifice and interior viewing area was created to get customers to "sign up", as, at the time, electricity was something intangible, and was not well understood by potential customers. Both the interior and exterior of the generating station have architectural features that are more in line with banks and government edifices built in the early part of the 20th century. The generator units in the facility were so large, that they were not practical to disassemble, and at the time of redevelopment, they were loaded onto a barge, and were used for reef/marine life enhancement, with concurrence by environmental agencies.

The 4,000 foot public access riverwalk is believed to be one of the largest single distance public access areas, from the Pennsylvania line, to north of Morrisville, near Trenton. RT was proud to assist during several phases of the project-environmental engineering for addressing issues at the Barry Bridge

Park site, for environmental due diligence reviews related to financing after generating station redevelopment, and, for Act 2 work for potential residential development for the area between the Barry Bridge Park and the generating station. Recent announcements include that residential redevelopment is planned, along with a soccer stadium. At this point, with the new access ramps, the future for this area of Chester looks very bright.

Harrah's new casino, is also worth a visit. Even if you are not a gambler, Harrah's offers late afternoon river views from a number of venues, which include fine dining, a buffet restaurant, and even a New Jersey style diner, all within the casino. These are located on upper levels, affording a beautiful view of a relatively pristine Delaware River waterfront. Be sure to look at the race-track, where you can see that one of the turns goes out over a former ship building boat slip, where a bridge actually supports the racetrack. In racetrack circles this is referred to "the most expensive racetrack turn ever built".

RT has greatly appreciated the opportunity to be a part of City of Chester projects over the last decade. If you want to see and experience Brownfields and river access progress, we would encourage you to take a trip to Chester, and experience the riverwalk and maybe stop by Harrah's, on a nice weekend afternoon. As we have said many times over the last decade in the RT Review-Chester's on the rise!

(Excerpts from Gloucester County Times/Associated Press Article - 2/1/08)

RT REVIEW UPDATE - CHESTER AS A SOCCER MECCA

At RT Review Press time, after PA Governor Rendell announced that a \$47 million state funding package was made available to help Chester redevelopment, Chester was selected for the next U.S. soccer team. An overall \$414 million package will include mixed use/residential redevelopment including a potential 18,500 seat soccer stadium on the banks of the Delaware River and between the Barry Bridge Park and former PECO Generation Station site. A Major League Soccer official said "the historic Chester Waterfront remains extremely appealing to us." Becoming a regional sports soccer center will put Chester back on the map as a key Delaware Valley destination. A convention center, townhouses and retail space are expected to round out the exciting Chester redevelopment project.



PA UPDATES

UPDATE OF STORAGE TANK RULES UNDER CHAPTER 245

Changes to the Pennsylvania storage tank regulations were published in the Pennsylvania Bulletin on November 10, 2007. Key highlights of the changes in the regulations, which are now in effect include:

- Large above-ground heating oil tanks, with greater than 30,000 gallons of capacity where the product is consumed on the premises were stored are now reregulated. Tanks in this category were required to be registered with DEP by January 9, 2008.

- There are new specific requirements for having secondary containment, in place, by 2010. Where secondary containment is not present, and the tank is taken out of service for any reason, it will not be allowed to be placed back in service until the secondary containment is installed.

- For underground storage tank systems, where more than 50% of existing product piping is replaced, the entire length of underground storage tank piping must be replaced with double wall piping and sumps installed as well.

- The regulations clarify that where industry standards are referenced in regulations, the industry standards take precedence over the regulatory language.

- There are new requirements for above-ground storage tanks in underground vaults.

- There are a substantial number of modifications to the installer, inspector, and company certification program.

For more information, visit the DEP storage tanks website at www.depweb.state.pa.us, and enter the Key Words "storage tanks" for more information. At RT Review presstime, in addition to updated forms and applications, a copy of a Power Point presentation of the regulatory changes as well as links to the regulations themselves can be found on the storage tank program website.

Those owning and/or operating above-ground storage tanks in Pennsylvania should also be aware that DEP interprets Clean Streams Law Chapter 91.34, as requiring secondary containment at this time. This applies to all tanks regardless of site, whether they are regulated or not. Section 91.34 states that "persons engaged in activity which includes the impoundment, production, processing, transportation, storage, use, application or disposal of pollutants should take necessary measures to prevent the substances from directly or indirectly reaching the waters of this Commonwealth, through accident, carelessness, maliciousness, hazards of weather, or from another cause." According to a key DEP Tanks Program

official, the Section of Clean Streams law regulations is used to cite those who do not have secondary containment, after a release occurs.

RT recommends above-ground storage tank owners and operators in the Commonwealth, plan to add secondary containment in the near future if it is not already present.

PENNSYLVANIA LIMITS BIG RIGS TO FIVE MINUTES IDLING PER HOUR

Pennsylvania's extensive interstate highway system invites a heavy volume of truck travel through the state. With 260 truck stops, 47 public rest areas, and more than 13,000 truck parking spaces, there are many convenient areas for heavy-duty diesel vehicles to idle.

In October, Pennsylvania introduced a new regulation to limit the amount of time a diesel-powered commercial vehicle can idle its engine. No more than five minutes will be allowed in any 60-minute period.

The rule is aimed primarily at the 13,000 long-haul trucks that sit idling in Pennsylvania each day. Many drivers idle their vehicles during federally mandated rest periods to provide heating, cooling and power to their bunks and cabs.

It also will affect other vehicles, such as delivery trucks, school buses, transit buses and motor coaches.

Several exemptions are included in the proposed anti-idling measure, such as allowing a vehicle with a sleeper compartment to idle when the outside temperature is below 40 degrees or above 75 degrees Fahrenheit when stationary idle reduction technology is not available. This exemption expires May 1, 2010.

Other exemptions include idling for active loading or unloading of passengers or property, operating work-related mechanical or electrical operations, and maintenance, repairs, or inspections for safety-related purposes.

Passenger and school buses may idle for up to 15 minutes during a 60-minute period to provide heating or cooling when passengers are on board.

The regulation, developed by the Department of Environmental Protection after it was petitioned by the Clean Air Board of Central Pennsylvania must now be opened to public comment and be discussed in a public hearing before final consideration by the Environmental Quality Board.

It then must be approved by the Independent Regulatory Review

PA UPDATES

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Commission, which reviews all proposed state regulations and, finally, the state attorney general.

A study by Pennsylvania highway emissions consultant, Michael Baker Jr. Inc, estimated total statewide idling related to truck travel rest at more than 21 million annual hours.

(ENS-10/17/07)

FAILURE TO INCLUDE DEED NOTICE INVALIDATES LEASE FOR BROWNFIELD SITE

In Massachusetts, a judge declared a lease for a Brownfield site invalid because the landlord failed to include the proper notice of the relevant land use restrictions required by that state's Brownfields Act. According to Joel Bolstein, Esq. there hasn't been a similar case in Pennsylvania, but the same logic couldn't be applied to an Act 2 site in which the seller failed to provide proper notice of the required deed restriction. Here's a summary of the case.

The case is Cummings Properties, LLC v. Massachusetts General Physicians Organization, and the decision was issued by the Massachusetts Superior Court on October 2, 2007. A copy can be found on Westlaw at 2007 WL 3261299. In this case, the owner of a property at 10-P Commerce Way in Woburn, Massachusetts executed a Notice of Activity and Use Limitation (referred to as an AUL) on the property in 1996, as required under Massachusetts Chapter 21E. The AUL was prepared and recorded in lieu of removing certain hazardous substances found in the soil and the groundwater. The AUL recorded in 1996 expressly permitted the property to be used for "office, industrial, commercial, retail, hotel/lodging, warehouse, healthcare, and research and development." In 2002, the Massachusetts DEP audited the property under the State's Brownfields Act and required that the owner amend the AUL to expressly prohibit "child care, day care and residential purposes."

Several years later, in June of 2005, the (MGPO) Massachusetts General Physicians Organization contacted the property owner with a request for proposal to lease space to house its LADDERS program, which provides medical and therapeutic care for children with autism and related disorders.

PA UPDATES (Continued)

The property owner owned several properties in the area under consideration by MGPO. A lease was prepared for one of those properties, 10 Gill Street in Woburn, Massachusetts. The lease included a rider which contained the AUL deed restrictions that were applicable to 10-P Commerce Way. The lawyer for MGPO deleted the AUL language from the lease, because it didn't apply to the property at 10 Gill Street. There was a delay in negotiations between the property owner and MGPO, and the property owner decided to lease the property to another party. The property owner then suggested that MGPO could lease a different property that it owned, 10-P Commerce Way, on the same economic terms as previously provided for 10 Gill Street, and MGPO agreed to that. A new lease was presented, and for some unknown reason, most likely mistake, the AUL applicable to 10-P Commerce Way, was not included in the lease presented to MGPO. The parties went on to execute the lease without the required AUL.

There was a build-out required to get the property ready for MGPO. Sometime after the lease was signed before MGPO was scheduled to take occupancy, the property owner realized that the reference to the AUL (which had been deleted from the draft lease for 10 Gill Street), should have been reinserted in the lease for 10-P Commerce Way. The attorney for the property owner then notified the attorney for MGPO of the oversight. While MGPO was considering the implications of the AUL, the owner continued the build-out of the property. The MGPO retained an environmental consulting firm, including placing a geotextile barrier fabric and three feet of clean fill on all existing landscaped areas of the property. The property owner rejected that demand and offered reassurances that the building had been in existence for 20 years with no problems, that DEP itself had been a prior tenant, and it made a wager that the soil at the site was "cleaner than that in front of Massachusetts General Hospital itself." At that point, the MGPO decided the 10-P Commerce Way site was a no-go. The property owner notified MGPO that it had spent almost \$600,000 building out the site to MGPO's specifications and that it expected to be reimbursed. MGPO refused to make payment, saying that it never would have signed the lease had it known of the AUL. At that point, the property owner sued and MGPO countered by saying the lease should be declared void for the owner's failure to incorporate the AUL as required by Massachusetts law.

(By Joel Bolstein, Esq.-Fox Rothschild, LLP-11/13/07)

Have you seen Joel's blog? Joel provides continuing updates on PA Act 2 Land Recycling activities. Go to: <http://pabrownfields-environmental@foxrothschild.com> for the latest blog entries!

UNDERGROUND STORAGE TANK (UST) FUNDING PROGRAMS EXTENDED

Recently, the Commonwealth of Pennsylvania's Legislature approved an extension of the UST Environmental Cleanup and Pollution Prevention programs for another five years. These programs help with economic development by providing funds to the small business community for actual and possible oil releases from USTs. Here are the details of these important programs:

The UST Environmental Cleanup Program provides for reimbursement of up to \$5,000 for corrective action taken by owners of heating oil USTs having capacities of 3,000-gallons or less. With the right guidance, the money can be obtained quickly if a release is discovered during removal of a heating oil UST and it eases the financial burden associated with environmental remediation of these spills.

The UST Pollution Prevention Program is geared more toward helping tank owners to take measures aimed at preventing releases from tanks. Grants of up to \$2,500 are available to owners with six or fewer regulated USTs for pumping out and disposing of regulated product and then cleaning the insides of the USTs. These measures are designed to prevent releases from unused or unsafe (i.e., older, non-corrosion resistant USTs) tanks that have not been updated to regulatory standards.

Visit this link and enter keyword "Storage Tanks" for more information:

www.depweb.state.pa.us/dep/site/default.asp

(By Brian J. Beahan, P.G.-Alternative Environmental Solutions-11/16/07)

PILOT PROJECT ENCOURAGES PRIVATE FIRMS TO TREAT ACID MINE DRAINAGE

The cost of treating the acid mine drainage that has damaged more than 6,000 miles of Pennsylvania streams has kept many companies from getting into the cleanup business, but that may change with the state's support of innovative technology now being used in Cambria County.

Environmental Protection Secretary Kathleen A. McGinty in November visited a pilot project where a portion of the polluted St. Michael's mine shaft discharge is being treated and materials are being extracted so

they can be used in other products. If successful, Secretary McGinty said, more companies will pursue stream restoration work because of the financial incentive, which would relieve the demand on limited state and federal government resources.

"Historically, treating acid mine drainage has been an expensive proposition that produced the environmental benefit of cleaner water," said Secretary McGinty, "There was little incentive for private companies to engage in this kind of work, so state and federal governments had to pick up the tab. The technology demonstrated by this pilot project could change all of that."

The project, which is a joint effort of the Winner Technology and Research Institute – part of Winner International – and the Battelle Memorial Institute, benefited from a \$1.5 million state investment through Growing Greener II.

Scientists from the two groups are adapting a process used in the heavy metals industry to extract materials from the acid mine water discharge that are common in many abandoned Pennsylvania mines.

At the St. Michael's site, workers are extracting potassium sulfate for use as commercial fertilizer and ferrous sulfate to treat wastewater. The process also eliminates the sludge that is typically created when iron and other minerals are removed from the acid mine drainage.

Traditionally, this sludge must be pumped into an underground mine pool or disposed of in a landfill.

NewsClip: [Pilot Project Encourage Private Firms to Treat Mine Acid](#)

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See Page 4

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TECHNOLOGY UPDATES

GE – AHEAD OF THE CURVE WITH BIOFUELS – GE'S CHIEF MAY WIND UP AS AN INVESTOR FAVORITE AMID TUMULTUOUS MARKETS

Forecasts of 10% earnings growth normally aren't cause for celebration. So some investors were disappointed with General Electric boss Jeff Immelt's outlook for 2008. But in the face of a shaky economy, the double-digit earnings growth he promised may turn out to be enviable.

Most conglomerates have gone the way of the diplodocus. But GE has long preached the advantages of its grab bag of business, ranging from making dishwashers to managing mutual funds. Like a portfolio of stocks, GE's diversified structure can allow weakness in one area to be offset by strength elsewhere. And a smoother stream of earnings helps GE maintain its triple-A credit rating, which is a huge advantage in a crunch.

Investors remain skeptical, however. In December, GE shares were down about 6.9% from the day Mr. Immelt took the helm in September 2001. The market may not be giving Mr. Immelt sufficient credit. GE shares currently sell for 15 times 2008 estimated per-share earnings – a slight discount to the Standard & Poor's 500, according to FactSet data. But Mr. Immelt's forecast growth in 2008 would be substantially better than the 6% earnings increase that analysts are expecting for the market in 2008.

GE's portfolio is far from perfect. Further trimmings, such as a spinoff of media unit NBC Universal and a reduction in exposure to real estate and financial services, might help unlock additional value. But GE is well-positioned to weather the storm. With half its revenue coming from abroad, many of GE's businesses, notably infrastructure, are still going full steam.

The stock historically commanded 20 times earnings. Assuming GE hits its earnings-per-share target of \$2.42 next year, that implies a stock price of about \$46. Throw in its 3% dividend yield, and the potential upside looks to be nearly 30% – all on fairly conservative assumptions. GE obviously has little reason to hope for turmoil in either the global economy or financial markets. Yet, in a strange way, a little uncertainty might just be what is needed to vindicate Mr. Immelt's strategy.

GE is not looking at turning food into fuel. It takes a lot of hard work, fertilizer, subsidies and land to make not much energy. The entire landmass of the U.S. would barely produce enough corn for ethanol to power its automobiles. Most studies show ethanol produces less harmful emissions than gas, hence its prominence in the energy bill working its way through Congress. But the benefit probably doesn't outweigh higher prices for items from bacon to burritos.

This explains why energy giant BP and a

host of start-ups are looking at turning green gunk into fuel. Algae may be ickier than corn, but it has a number of advantages. It grows much faster, multiplying its weight several-fold in the course of a day. Theoretically, one acre of algae can produce 40 times the energy produced by an acre of corn. And it doesn't need prime farmland – a brackish pool of water in a sunny area suits it just fine.

For all these benefits, algae isn't ready to take over the world. It can be fickle to grow. Useless strains of algae can infect the rest of the crop. Separating the fuel from the water is difficult. And nobody in the field can agree whether it is better to grow larger amounts of algae in cheap open ponds or in concentrated amounts in expensive, closed areas.

But one advantage may eventually tip the scales: Algae needs lots of carbon dioxide to grow fast. Start-up Greenfuel Technologies, for example, uses power-plant emissions to boost the production of algae. The company says this can cut carbon-dioxide emissions from a gas or coal plant by 80%. Turning food into fuel doesn't make much sense, but turning waste and even pollution into fuel does.

(By – John Christy and Robert Cyran, Wall Street Journal)

STATE OF THE ART PRODUCT REMOVAL DEVICE SPEEDS UP REMEDIATION

RT has had substantial success in sites in Jersey City and Vineland, using a simple product removal device which recovers oil product from wells. The devices are called "Passive Skimmers". In the past, expensive systems involving pipes and, product recovery systems including oil water separators and use of pumps and power was necessary to clean up spilled oil and gasoline where serious releases occurred at service stations and petroleum product distribution facilities. At sites where minimal product was present, absorbent "socks" were used, but, the absorbent socks were somewhat messy, required frequent changeout, and are somewhat expensive to dispose of.

The recent state of the art advancement involves placement of mechanical product recovery devices in wells, which uses no power. Only the oil or gasoline gets collected in the product recovery device. Then, when the product recovery device is removed, it can simply be emptied, and the product itself (without any large absorbent device), and no water, can simply be dumped into an accumulation drum. In addition, where there are high volumes of product in wells, more than one passive product recovery device can be placed in a well.

Thin product layers at remediation sites are nothing unusual, but the most expensive part of remediation at petroleum release sites

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frequently happens when the majority of the petroleum which has been spilled is cleaned up, but remaining thin layers of product can't be reduced to a level that regulatory agencies are comfortable with leaving behind. The new devices provide a better remediation answer for many sites, and allow the remaining final phase of remediation to be conducted more scientifically and cost-effectively than has been possible in the past.

Using the new devices, RT has found it possible to predict with more certainty, (as only the product itself is collected) when the site should be visited by our field professionals to change the product out. Without using any power, the devices work automatically 24/7, speeding cleanups at petroleum release sites by weeks or months; we think going forward-even years at some sites.

Best yet, as the devices are very simple and make technical sense, they typically require no approval from regulatory case managers to install, and the most common response we get from regulatory officials upon discussing the merits of the new devices is "of course, just go do it; no, you don't have to submit a Cleanup Plan revision".

At one site, RT has noted a geometric increase in the speed of product removal cleanup, and where product is present, particularly in medium to small quantities, we are recommending to clients immediate implementation of passive product recovery to expedite the cleanup, which will save substantial remediation costs.

For more information on the new state of the art product removal equipment call Justin Lauterbach or Adam Meurer in our New Jersey office at (856) 467-2276, or Craig Herr in our King of Prussia office at (610) 265-1510.

SEARS AND KMART JOIN TREND AWAY FROM PVC PLASTICS

In the future, Sears and Kmart shoppers will not find toys and other products made of polyvinyl chloride, PVC, plastic on the shelves.

Sears Holdings, the publicly traded parent of Kmart and Sears, Roebuck and Co., said in December that the company is working to reduce and phase out PVC in its packaging and merchandise and encouraging vendors to label their PVC-free merchandise.

PVC contains lead, which can damage the brain and nervous system and cause behavior, learning and developmental disabilities. Testing has detected lead in a broad range of

TECHNOLOGY UPDATES *(Continued)*

PVC consumer products including toys, lunchboxes, baby bibs, jewelry, garden hoses, mini blinds, Christmas trees, and electronics.

Some PVC contains phthalates, a family of chemicals used as softeners. Exposure to phthalates has been linked with premature births, early puberty in girls, impaired sperm quality and sperm damage in men, genital defects, and reduced testosterone production in boys.

Sears Holdings' policy shift was prompted by a national campaign led by the Center for Health, Environment and Justice, CHEJ, and a coalition of health and environmental organizations.

Sears and Kmart join a growing list of companies including some of the nation's largest - Target, Wal-Mart, Microsoft, Johnson & Johnson, Nike, and Apple - that are eliminating or reducing their PVC products and packaging as a result of the CHEJ campaign.

(ENS - 12/14/07)

CONNECTICUT YANKEE NUKE SITE OPEN FOR PUBLIC USE

Most of the land around the old Connecticut Yankee nuclear power plant in Haddam Neck, Connecticut was released Monday by the federal government for "unrestricted public use."

The federal Nuclear Regulatory Commission, NRC, announced approval of Connecticut Yankee Atomic Power Company's request to release a majority of the Haddam Neck site for public access.

In a statement, the NRC said, "Release of this land for unrestricted use poses no threat to public health and safety."

Located in the hills of the Lower Connecticut River valley, about 30 minutes drive from Hartford and New Haven, the site is in Haddam Neck, a part of the town of Haddam that is separated from the rest by the Connecticut River. It is the only town in the United States without a bridge to connect the separated parts.

All major plant structures at Connecticut Yankee were demolished by August 2006. Demolition of the few remaining ancillary buildings and structures was completed last fall. The NRC says dismantlement and decommissioning were completed in July. RT assisted with site demolition consulting to help manage mixed PCBs and nuclear waste which were present at the site.

Connecticut Yankee's nuclear operating license from the NRC will still apply to the site's dry cask storage facility, where the radioactive spent nuclear fuel from the plant's 28 years of operation is stored, plus a five acre parcel of land surrounding this facility.

The federal agency says Connecticut Yankee remains responsible for the security and protection of this land and the dry cask storage facility, and is required to maintain

\$100 million in nuclear liability insurance coverage for the facility until the spent fuel has been removed.

Haddam Neck began commercial operations on January 1, 1968, and ceased production on December 5, 1996, producing more than 110 billion kilowatt-hours of electricity during its 28 year operating history. Residual radioactive contamination on the land - approximately 210 acres - is below NRC regulatory requirements.

(ENS - 11/27/07)

PRENATAL ARSENIC EXPOSURE MAY CAUSE CANCER LATER

Children of mothers whose water supplies were contaminated with arsenic during their pregnancies harbored gene expression changes that may lead to cancer and other diseases later in life, researchers at the Massachusetts Institute of Technology have found.

This is the first time evidence of such genome-wide changes resulting from prenatal exposure has ever been documented from any environmental contaminant, say the MIT scientists.

Even when water supplies are cleaned up and the children never experience any direct exposure to the pollutant, they may still suffer lasting damage, the findings suggest.

The evidence comes from studies of 32 mothers and their children in a province of Thailand that experienced heavy arsenic contamination from tin mining.

Similar levels of arsenic are also found in many other regions, including the U.S. Southwest, the researchers say. Exposure to higher than average levels of arsenic occur mostly in the workplace, near hazardous waste sites, or in areas with high natural levels, according to the U.S. Agency for Toxic Substances and Disease Registry. At high levels, the agency says, inorganic arsenic can cause death. Exposure to lower levels for a long time can cause a discoloration of the skin and the appearance of small corns or warts.

The research was led by Mathuros Ruchirawat, director of the Laboratory of Environmental Toxicology of the Chulabhorn Research Institute in Thailand, working with Leona Samson, director of MIT's Center for Environmental Health Sciences and the American Cancer Society professor in the departments of Biological Engineering and Biology.

The team found a collection of about 450 genes whose expression had been turned on or turned off in babies who had been exposed to arsenic while in the womb.

That is, these genes had either become significantly more active, as occurred in most cases, or less active, than in unexposed babies.

This is the first time such a response to prenatal arsenic exposure has been found in

humans. But it is not entirely unexpected, Samson explains, because "in mice, when mothers are transiently exposed to arsenic in the drinking water, their progeny, in their adult life, are much more cancer-prone."

Recognizing the damaging effects of the arsenic exposure, "the government has provided alternative water sources" to the affected villages, "although many people are still using the local water for cooking", says co-author Rebecca Fry, a research scientist at the MIT environmental health sciences center.

She intends to follow these toddlers as they grow older to show how long-lasting the effects of the prenatal arsenic exposure may be.

Fry suggests that studies of possible ways of reversing or mitigating the damage, perhaps through dietary changes, nutritional supplements, or drug treatments might show how to counteract the dangerous changes in genetic expression.

(ENS - 11/23/07)

LOW LEAD LEVELS LINKED TO ATTENTION DEFICIT DISORDER

Very low levels of lead in the blood, levels previously believed to be safe, could be contributing to attention deficit disorder, according to a new Michigan State University study of 150 children in the Lansing area.

The study examined children with and without attention deficit hyperactivity disorder, ADHD and found that all 150 children had at least some lead in their blood.

None had levels higher than the 10 micrograms per deciliter (mcg/dl) level currently considered unsafe by the federal Centers for Disease Control and Prevention.

Children with ADHD had higher levels of lead in the blood than those without the disorder, according to the study, which was conducted with help from the Michigan Department of Community Health.

The research findings support a growing body of national evidence indicating there is no safe level of lead in the blood, said study director Joel Nigg, MSU professor of psychology.

Nigg's study is the first to examine such low blood levels in children diagnosed with ADHD under formal clinical criteria. Earlier studies used out-of-date criteria or children with much higher levels of blood lead.

The average blood lead level of children with ADHD in the Michigan State study was less than 1.3 mcg/dl.

Nigg said the findings demonstrate the need for tougher regulations on items that contain lead and other harmful elements that can get into the food supply or local environment of children - from cosmetics to cleaning supplies to electronic goods.

The neurotoxic effects of lead in the blood can interfere with stages of brain growth, such

TECHNOLOGY UPDATES (Continued)

as synapse formation – a critical element in the development of appropriate self-regulatory control, according to Nigg's 2006 book, "What Causes ADHD?" Children aged two and younger are especially vulnerable, he said.

While the "safe" level for lead in the blood was lowered from 25 mcg/dl to 10 mcg/dl in 1991, some scientists are now calling for the level to be dropped to five mcg/dl or even lower.

(ENS – 12/6/07)

CHESAPEAKE BAY HEALTH SLIPPING YEAR BY YEAR

The health of the Chesapeake Bay is deteriorating, according to a new report from the nonprofit Chesapeake Bay Foundation.

Meanwhile, the governors of states bordering the Bay say they are doing their best to improve the health of the nation's largest estuary and claim they are making progress.

With three years to go before the court-ordered deadline to remove the Chesapeake Bay from the federal list of impaired waters, the foundation's annual State of the Bay report shows that a health index of 13 factors slipped one point from 2006 to 2007.

"Time is running out, and the Chesapeake Bay, a national treasure, remains in critical condition," said foundation President William C. Baker. "Restoring the Bay is not rocket science. What does it say about a society when we can put a man on the moon but not be able to save the Chesapeake Bay?"

The foundation says the 2007 decline was the result of increased amounts of the nutrient phosphorus running off the surrounding lands into the Bay, decreased water clarity, and habitat and harvest pressures on the Bay's blue crab population.

= Virginia Governor Timothy Kaine, Pennsylvania Governor Ed Rendell, Washington, DC Mayor Adrian Fenty, U.S. Environmental Protection Agency Administrator Stephen Johnson and Chesapeake Bay Commission Chair James Hubbard participated in a December 5th meeting, along with representatives from Delaware, West Virginia, and the U.S. Department of Agriculture.

In his status report on bay restoration efforts, Johnson told the Council members that at the current pace, the 2010 goals for nutrient reduction set in the Chesapeake 2000 agreement cannot be met.

In an effort to increase accountability of restoration programs, each member of the Executive Council agreed to champion specific actions on behalf of the partnership.

The Executive Council signed a new Forest Conservation Implementation Plan to permanently protect an additional 695,000 acres of forest in the Bay watershed and to increase the acreage of riparian buffers and urban free canopies.

Maryland will work on behalf of the Chesapeake Bay Partnership to hold a "local leadership summit" that focuses on developing a better model for delivering services and results at the local level – making local governments, communities and citizens true partners.

Maryland will work with Virginia, the Chesapeake Bay Commission, and other traditional stakeholders to develop actions to enhance stock abundance of the Bay's blue crab.

Governor Edward Rendell outlined how Pennsylvania's combination of mandatory requirements and environmental stewardship has led to sizeable reductions in nutrient and sediment pollution to the Chesapeake Bay since 2004.

The progress has been achieved through a combination of tough new measures designed to reduce point and nonpoint source pollution.

Municipal wastewater treatment plants are now operating under mandatory nutrient limits in order to meet federal Clean Water Act requirements, and any new residential and commercial developments projects in Pennsylvania must eliminate or offset all nutrient and phosphorous discharges.

Developers can apply wastewater effluent to crops, recycle or reuse the effluent, create on-lot systems, or purchase nutrient credits, among other techniques.

Nutrient trading programs in Pennsylvania and Virginia allow for the transfer of credits among existing facilities to meet their nutrient limits.

Virginia Governor Timothy Kaine announced in December that his state's largest wastewater treatment facilities and industries within the Chesapeake Bay watershed expect to meet their nutrient reduction goals by the end of 2010.

Facilities will reduce the amount of nutrients in wastewater by participating in Virginia's nutrient trading program and installing pollution control technology.

Nutrient trading is anticipated to save Virginia and the participating localities up to \$200 million. Trading will also reduce the costs of upgrading pollution control technology, which are estimated at about \$1.4 billion to install by the end of 2010.

Wastewater treatment plant improvements installed before 2011 are expected to reduce the annual amount of nutrients discharged by about eight million pounds of nitrogen and 1 million pounds of phosphorus, as compared with 1998.

In addition to nutrient trading, facilities will reduce the amount of nutrients in wastewater by installing pollution control technology. The Virginia Water Quality Improvement Fund's point source program has received a total of \$380 million for grants since its inception in 1997.

About 200 miles long from the Susquehanna River in the north to the Atlantic Ocean in the south, the Chesapeake Bay watershed covers 64,299 square miles in the District of Columbia and parts of six states – New York, Pennsylvania, Delaware, Maryland, Virginia, and West Virginia. More than 150 rivers and streams drain into the Bay.

(ENS – 12/13/07)

NEW YORK STATE IMPLEMENTS MOLD TASK FORCE

The State of New York has implemented a task force created specifically to find regulatory consensus on state mold standards.

The New York State Toxic Mold Task Force was activated Nov. 27 by Governor Elliott Spitzer, following through on the initiative signed by former governor George Pataki in 2005.

A press release from the office of state senator Liz Krueger at the time of the original bill's passage notes the task force's mandates are "to assess the nature, scope and magnitude of the adverse environmental and health impacts caused by toxic mold."

Claire Pospisil of the state department of health told Newsday that "the task force was formed by legislative mandate to look into this issue and prepare a report for the governor."

Nancy Kim, interim director of the state Department of Health's Center for Environmental Health, and Thomas Mahar, assistant director of New York's department of state's Division of Code Enforcement and Administration, will lead the task force. According to the New York Times, "other members include environmental and public health officials from Broome, Erie and Madison Counties and New York City, as well as experts from Columbia, Cornell and Syracuse Universities."

Mold concerns are escalating in New York, particularly New York City, which has seen complaints to the city housing agency jump from 16,000 in the 2004 fiscal year to 21,000 in 2007.

(Indoor Environment Connections – 12/07)

UNDERSTANDING THE DIFFERENCE BETWEEN EROSION CONTROL AND SEDIMENT CONTROL

Confusion regarding the dividing line between erosion control and sediment control abounds in today's California construction industry. Training for storm water pollution prevention plan (SWPPP) developers has been mandatory since 1999 under the general National Pollutant Discharge Elimination System (NPDES) permit for storm water discharges from construction activities. It is not unusual, however, for a project's erosion control plan to consist entirely of sediment control best management practices (BMPs) –

TECHNOLOGY UPDATES (Continued)

typically a row or two of sand bags along a construction site's outer perimeter.

When it comes to planning storm water BMPs and implementing them on construction sites, erosion control measures could be classified as missing in action. Asked about the lack of erosion control on a given slope, a contractor is likely to express uncertainty as to the when, what and how of applying BMPs to an area that is actively under construction.

There is an attitude in the industry that controlling erosion in active areas is not possible if crews are to get any work done. Is this view valid, or is it possible to implement erosion control on active sites in a practical manner?

To address a key NPDES requirement, a project's contractor must identify the applicable BMPs to be used in the project's SWPPP erosion control (A.6) and sediment control (A.8) sections. It is at this crucial planning phase that the lack of understanding of the distinction between erosion control and sediment control becomes apparent. Here, the project begins sliding down a slippery slope. The difference between erosion control and sediment control can be clarified by defining the terms "erosion" and "sediment". Erosion is a process by which sediment particles are displaced. Sediment, as a result of erosion, consists of the soil particles that have been displaced.

Erosion control, then, is a practice that inhibits the erosion process. A sediment control method is used to capture sediment once it is displaced. These two types of controls, when used in effective combination, provide the greatest protection from the storm water runoff that leaves a construction site.

Erosion controls stabilize disturbed soil. If soil is not stabilized and a storm event takes place, erosion occurs unimpeded. Sand bags or silt fencing installed properly along the site perimeter will reduce the sediment that leaves the site, but these sediment controls are only 40 to 50 percent effective. Implementing erosion controls minimizes the volume of sediment produced so that sediment controls can be more effective in reducing the overall discharge to a storm water drainage system. Erosion control solutions for inactive areas are more straightforward than those for active areas. Effective measures include spraying slopes with hydromulch, soil binder or mulch and covering slopes with plastic, fabric or a blanket. These methods, however, are not feasible for active areas. It would not be reasonable in terms of budget or scheduling to spray active slopes at the end of the work day, only to disturb the application the next day when construction resumes. The question, then, is what should be done on active areas during the rainy season?

First, try to limit the active area so that the size is manageable for the application of protection in the event of forecasted storms.

The California Department of Transportation normally limits active areas to five acres during the rainy season. Are you prepared to implement an adequate combination of erosion and sediment controls on five acres before a predicted rain event? Make sure to have the necessary materials and personnel available to protect whatever active area is open.

If feasible, a sediment basin or trap should be installed at a gradient below that of the active part of the site. This way, if the area is hit by an unexpected storm, a second line of defense exists. It is becoming more common for project designers to incorporate permanent BMPs, such as sediment basins, to protect the site after construction is completed. Installing and using such BMPs during construction is desirable.

Sediment controls should at least be maintained in any places where they are not in the way of work. If they must be removed for work, they should be stockpiled where they are accessible for immediate implementation in the event of rain. All stockpiles should be covered with plastic or tarps at day's end in order to contribute to erosion control. When removing the covers becomes necessary for work, they should be stored nearby.

A few other erosion control and sediment control implementation tips:

- Plan ahead to make sure a vendor is available to respond to storm events, especially during the rainy season. Plastic sheets or similar materials should be kept on hand as backup.
- Cover the site's steepest areas first, but do not ignore flatter slopes. It may seem unlikely that erosion would affect a large, virtually level area, but do not be fooled. Runoff flows downhill no matter how gentle the slope, and these larger, flatter sections create sheet flow and large amounts of sediment.
- Do not jeopardize your project or risk paying storm water violation fines. Find a reasonable solution for employing an effective combination of erosion and sediment controls for your active areas.

By John Gleason. John Gleason is owner of JCG Consulting. Gleason can be reached at 949.981.3867 or by e-mail: jcgleason@ca.rr.com.

(Stormwater Solutions – 11/12/07)

ENVIRONMENTAL MONITORING AUTOMATION CUTS COSTS AT MINING SITES

Improvements in solar technology, environmental technology, and expansion of digital phone service provide new opportunities for cutting costs for environmental monitoring at mining sites. At many mining sites, a series of environmental sensors can be installed to reduce labor costs for environmental monitoring, including:

- Measuring water levels
- Measuring pH
- Obtaining measurements for discharge monitoring and reporting
- Completing other routing monitoring

Environmental sensors are connected to cellular based telemetry equipment, which is typically solar powered. Data can be collected at a desired frequency, 24 hours a day, 365 days a year, automatically. And, access can be achieved from anywhere, through internet connections. The presence of digital cellular coverage provides an opportunity for very reliable low cost data transmission, from the monitoring point, to a webpage, which can be accessed from any PC.

For more information on environmental monitoring automation for use at mining sites contact KCS Groundwater at (717) 691-8025, or by e-mail at: jll@kcsgroundwater.com.

MOISTURE CONTROL: ENVELOPE STRATEGIES AND TECHNIQUES FOR PROTECTING BUILDING VALUE

Among all the challenges plaguing buildings in the U.S., moisture-regulated problems are at the top of the list, according to the authoritative Whole Building Design Guide. About 80% of all premature facility-wear expenditures stem from poor moisture control, note building scientists at Cleveland's C.L.I. Group.

"Water in liquid and vapor states and temperature changes have long been recognized as the most destructive weathering elements affecting the entire building envelope, especially exterior walls," says Syracuse, N.Y.-based Peter J. Arsenault, AIA, LEED AP. "Accordingly, moisture management and thermal efficiency are critical keys to a successful exterior wall system."

A long list of problems relates to poorly designed envelope systems for moisture management, such as corrosion, mold growth, materials deterioration, and even excess draw on a building's HVAC systems. Building Teams that execute well-planned, well-designed, and properly installed moisture management systems will enjoy key benefits. "If we build structures that won't rot or support mold growth, we will both increase the longevity of those buildings and reduce the health risks of living in them," says Alex Wilson, executive editor of Environmental Building News.

To succeed at integrating effective moisture-control technologies into the building envelope, it's important to understand basic principles of how moisture makes its way into building walls, roofs, and foundations.

Building Teams should consider three basic forms of moisture: liquid, gas or vapor, and solid water (ice). A fourth "semi-state" is absorbed moisture, visualized as something

TECHNOLOGY UPDATES (Continued)

between liquid and vapor in characteristics.

The movement of moisture—that is, water or water vapor migrating into the building envelope from inside or outside a structure—occurs as a result of four main physical forces. As described by building researchers Anton Ten Wolde and William B. Rose, they are:

- Liquid flow by gravity or air-pressure differences.
- Capillary suction of liquid water in porous building materials.
- Water vapor by air movement, called convection.
- Water vapor diffusion.

Another important mechanism to consider is temperature differential, according to Wilson:

“When brick siding gets soaked from rain, for example, and then the sun heats the outside of the brick, moisture in the brick is driven through the wall to the interior.”

Wilson points out that a building’s moisture dynamics are also driven largely by relative humidity (RH) and the phase change from vapor to liquid. “As a mass of air and water vapor is cooled, the relative humidity increases, until the mass reaches 100% RH, when liquid water condenses out,” he explains. “This point is known as the dew point.”

Most building designers are familiar with the challenges of controlling the effects of dew point conditions, in particular condensation. When warm indoor air flows through cracks in

drywall into envelope cavities during cold weather, for example, that air mass may cool enough to reach the dew point—and liquid water appears, wetting the insulation or the inboard surface of sheathing, reducing insulation values, destabilizing materials, and causing corrosion.

In addition to these issues, important design considerations are covered in a new course for Architects and other. For more information, go to:

www.BDCnetwork.com/university/info/CA6516264.html.

(By C.C. Sullivan and Barbara Horwitz-Bennett, Building Design and Construction - 1/08)

NJDEP'S CLEANUP STAR AND NEW URHOT PROGRAM RECEIVING INCREASED ATTENTION

At December’s South Jersey Chamber of Commerce Environmental Committee meeting, NJDEP Commissioner Lisa Jackson stated that there has been increasing attention to NJDEP’s *CLEANUP STAR* and new *URHOT* Programs. Although it was felt that the *CLEANUP STAR* Program was slow to catch on, RT has seen an increasing number of *CLEANUP STAR* projects, throughout the state. The project profiles attached, and map, show the significant number of RT’s projects throughout the state.

The principle of the *CLEANUP STAR* Program is that certified professionals, who are personally involved in the cleanup activities, through their experience and/or professional licensing can assure that work is completed in full conformance with NJDEP Technical Requirements for Site Remediation, known as the “Tech Rules”, to those in the environmental industry. When a *CLEANUP STAR* Report is submitted to the NJDEP, the state works toward a thirty day approval. NJDEP has been religious in meeting this commitment.

CLEANUP STAR projects in the past have included:

- Surface releases to soils, where impacted soil is removed to the most stringent DEP Soil Cleanup Criteria (SCC).
- Herbicide/pesticide release sites, where all soils are excavated and removed to the lowest applicable SCC.
- Unregulated heating oil tanks, where a “clean closure” has been achieved, to the lowest applicable SCC.

Earlier this year, the DEP announced that the *CLEANUP STAR* Program was being expanded, to include certain groundwater releases. Only groundwater releases where there is impact on the property itself (but not off of the property), can qualify for *CLEANUP STAR* approval. Specifically, the groundwater flow direction must be determined, and a clear demonstration must be made that impacted groundwater does not leave the property.

In addition to the above types of projects, Preliminary Assessments can be submitted to and approved by the NJDEP under the *CLEANUP STAR* Program as well in order to receive a No Further Action Letter for the entire site. These have proven highly popular to many developers and redevelopers, including those at residential sites. New Jersey’s large number of release sites throughout the state (totaling more than 17,000) is of concern and the *CLEANUP STAR* Program affords an opportunity to get a formal “Covenant Not To Sue” before sites are developed or redeveloped, where a Preliminary Assessment, and perhaps even

a supplemental site investigation for particular areas of potential concern have been completed.

Under the new *URHOT* Program, New Jersey’s large number of Licensed Underground Storage Tank (UST) Subsurface Investigators are now permitted to complete *URHOT* projects, the same as were completed formally under the *CLEANUP STAR* Program. The majority of *CLEANUP STAR* projects had involved UST’s, and unregulated UST’s can now more easily qualify for a faster “No Further Action/Covenant Not To Sue” approval from DEP as compared to before. Recently, turnaround times in NJDEP’s field offices have run approximately six months or more, so a thirty day approval under either the *URHOT* or *CLEANUP STAR* program options, are highly attractive for those seeking to purchase or develop/redevelop properties in New Jersey.

In addition to the projects profiled in the Sidebar, here is short list of RT’s *CLEANUP STAR* or *URHOT* projects; they include those we have completed over the last eighteen months:

- Pennsauken, Camden County – Heating Oil Tank
- Evesham, Burlington County – Cranberry Bog Operation
- Elizabeth, Union County – AST/Department Store
- Hamilton Township, Mercer County – Industrial Park, 5 Projects – 3 Projects With Interior and Exterior Releases
- Washington Township (Sewell), Gloucester County – Heating Oil Tank
- Vineland, Cumberland County – Herbicide/Pesticide Release
- Mantua Township, Gloucester County – Preliminary Assessment
- Burlington, Burlington County – Herbicide/Pesticide – Agricultural Property

In addition to Mr. Gary Brown, RT’s President, who is a *CLEANUP STAR*, professionals approved under the *URHOT* Program, include Mr. Joe Lang and Mr. Chris Ward, in addition to Mr. Brown. In addition to being attractive to the development and redevelopment community, we also think the Program is highly beneficial to the NJDEP, whose experienced staff are freed up to focus on the more important cases needing their attention.

Should you have questions on the *CLEANUP STAR* or *URHOT* Program, please call Gary Brown at 1-800-725-0593, Ext. 34, or Justin Lauterbach, Joe Lang or Chris Ward at 1-800-214-5612.

FEDERAL REGULATORY UPDATES

EPA EXPECTED TO NARROW PROPOSAL EXEMPTING OIL WASTE FROM RCRA

EPA is poised to finalize a long-delayed rule exempting waste generated by the petroleum refining industry from regulation under the Resource Conservation & Recovery Act (RCRA) if it is used as fuel, a move that will narrow the agency's original proposed exemption because it will not extend to "other" hazardous wastes that critics charged could lead to dangerous air emissions, EPA and other sources say.

The White House Office of Management & Budget (OMB) on November 30 completed its review of the rule, which EPA initially proposed in 2002 under the title Regulation of Oil-bearing Hazardous Secondary Materials from the Petroleum Refining Industry and Other Hazardous Secondary Materials Processed in a Gasification System to Produce Synthesis Gas.

EPA has since dropped the phrase "and other hazardous secondary materials" from the title of the forthcoming rule, saying the final rule will focus narrowly on facilities that gasify petroleum refining waste for energy production. "This rule demonstrates EPA's commitment to promote the use of a technologically advanced method of fuel production and may help to achieve greater energy and manufacturing efficiencies in petroleum refining while reducing the amount of waste generated," an EPA spokeswoman tells Inside EPA in a prepared statement.

The rule is another agency effort to exempt waste materials from RCRA in order to enhance energy supplies. In addition to the pending exemption for refining wastes, the agency is also developing a rule that exempts industrial wastes from RCRA if they are burned for fuel. However, environmentalists are fighting that proposal (Superfund Report, September 24, p21.)

Action of the refining waste rule has been delayed for years amidst charges from environmentalists and the waste treatment sector that the proposal would lead to dangerous air emissions. Waste generators have also opposed a proposal for extensive testing of the materials intended to demonstrate environmental risks. EPA requested the testing in 2003, but industry groups refused, arguing the tests were too broad to be economically feasible. Additionally, there was disagreement within EPA's Office of Solid Waste and Emergency Response (OSWER) over whether to move forward with a RCRA exemption, one industry source claims.

But the EPA spokeswoman says in the prepared statement that "[a] significant amount of work goes into promulgating a final rule" and that "[i]n the case of this case rule, it has been important to closely monitor the

advancement of gasification both within the petroleum refining industry and in other industry and in other industrial sectors."

Interest in developing gasification systems at oil refineries "is on the rise," the EPA spokeswoman says, a phenomenon the agency believes is connected to "the increasing cost of natural gas, an increasing interest in maximizing manufacturing efficiencies, manufacturing cleaner fuels, and reducing the generation of waste." "While it has taken EPA several years to finalize this rule, EPA believes that the timing for it could not be better," the spokeswoman says.

(*Superfund Report* – 12/17/07)

THE U.S. EPA RELEASES 2006 MSW DATA

In 2006, Americans continued to recycle more municipal solid waste (MSW) despite generating more than ever. This trend, among others, was revealed in a 2006 MSW report by the U.S. Environmental Protection Agency (EPA). The report shows that Americans managed to recycle 82 million tons of MSW in 2006, an increase of approximately 3 million tons from the previous year. However, consumers produced 251 million tons of MSW, an increase of nearly 5 million tons from 2005.

The number of landfills has steadily declined over the years, from 6,326 in 1990 to 1,754 in 2006. This, in turn, has increased the average size of each landfill due to increases in population. At the national level, the report claims recycling efforts have reduced the amount of MSW sent to landfills by 4 million tons, from 142 million in 1990 to 138 million in 2006. In the same period, the net-per-capita discard rate also has decreased from 3.12 pounds each day to 2.53 pounds each day.

The EPA has tracked MSW generation and disposal data for more than 30 years. It defines MSW as anything consumers commonly use and throw away, but does not include industrial, hazardous or construction waste. For more of the report's findings, see p. 40.

(*Waste Age* – 12/07)

EPA FACES WAVE OF CHALLENGES TO CALIFORNIA WAIVER DENIAL

A powerful Congressional committee has launched an investigation into the U.S. Environmental Protection Agency's (US EPA) denial of California's request to impose limits on greenhouse gas emissions from motor vehicles and other tailpipe toxics. It is the first time a waiver request has been denied under the federal Clean Air Act.

The Committee on Oversight and Government Reform has ordered EPA Administrator Stephen Johnson to preserve all documents relating to the decision he issued in mid-December not to grant a waiver of less stringent federal rules so that California's

FEDERAL REGULATORY UPDATES

- Federal Mold Bill, pg. 1
- Will EPA Narrow Oil RCRA Exemption?, pg. 12
- SPCC Rules Revised, pg. 12
- CERCLA "Useful Product" Defense, pg. 14

clean car law could take effect.

Committee Chair Congressman Henry Waxman of California has requested that Johnson provide all the documents from his office relating to the California waiver request to the committee by January 10, 2008. Documents from all EPA offices relating to this decision were to be handed over to the committee by January 23.

"Prior to making this decision you assured the House Oversight and Government Reform Committee, as well as the state of California and many others, that you would make this decision on the merits. It does not appear that you fulfilled that commitment," Waxman wrote in a letter to the EPA administrator in December.

"Your decision appears to have ignored the evidence before the agency and the requirements of the Clean Air Act. In fact, reports indicate that you overwhelmed the unanimous recommendations of EPA's legal and technical staffs in rejecting California's petition," Waxman wrote.

"Your decision not only has important consequences to our nation, but it raises serious questions about the integrity of the decision-making process," wrote Waxman. "Accordingly, the Committee has begun an investigation into this matter."

Announcing the denial, EPA Administrator Johnson said the energy bill signed into law by the President in December would be sufficient to curb greenhouse gases from cars because it mandates a 35 mile per gallon fuel efficiency standard for cars and light trucks across the country by 2020.

Sixteen other states – Arizona, Colorado, Connecticut, Florida, Maine, Maryland, Massachusetts, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Utah, Vermont, Washington – have adopted, or are in the process of adopting California's emissions standard.

Pennsylvania Governor Ed Rendell said his state is committed to fighting the decision in consultation with California and other states.

(*ENS* – 12/21/07)

EPA PROPOSES TO REVISE SPCC RULES AGAIN

EPA has proposed amendments to the SPCC: www.epa.gov/oilspill/pdfs/SPCC10_1_07.pdf rule that it says will increase clarity and tailor certain requirements for easier and increased compliance. The regulated community is being given the opportunity to comment

FEDERAL REGULATORY UPDATES (Continued)

on these proposed changes during a 60-day comment period, following publication of the proposed rule in the Federal Register.

EPA is requesting comments on the following proposed changes to the Spill Prevention Control and Countermeasure (SPCC) regulations:

1. All SPCC-regulated facilities would be potentially required to provide:

- Clarity on the general secondary containment requirements
- Flexibility in the security requirements
- Flexibility in the use of industry standards to comply with integrity testing requirements
- Additional flexibility in meeting the facility diagram requirements
- Clarification on the flexibility provided by the definition of "facility"

2. In addition to the amendments listed above, EPA is proposing to:

- Hot-mix asphalt and hot-mix asphalt containers.
- Pesticide application equipment and related mix containers used at farms.
- Heating oil containers at single-family residences.
- Completely buried oil storage tanks at nuclear power generation facilities that meet the Nuclear Regulatory Commission design criteria and quality assurance criteria at 10 CFR Part 50, Appendices A and B.
- Differentiate integrity testing requirements for containers that store Animal Fates or Vegetable Oils (AFVO) and meet certain criteria and FDA regulatory requirements.
- Define "loading/unloading rack" in order to clarify the equipment subject to the provisions for facility tank car and tank truck loading/unloading racks and exclude farms and oil production facilities from the loading/unloading requirements.
- Streamline:
 - Requirements and allow the use of an SPCC plan template for a subset of qualified facilities known as "Tier 1" qualified facilities (i.e., with no individual oil storage container with a capacity greater than 5,000 U.S. gallons up to an aggregate of 10,000 gallons).
 - Several requirements for oil production facilities, including:
 - Modify the definition of "production facility," consistent with the proposed amendments to the definition of "facility".
 - Extend the timeframe by which a new oil production facility must prepare and implement an SPCC Plan.
 - Exempt flow-through process vessels at oil production facilities from the sized secondary containment requirements, while maintaining general secondary containment requirements and requiring additional oil spill prevention measures.
 - Exempt flow lines and intra-facility gathering lines at oil production facilities from all

secondary containment requirements, while establishing more specific oil spill prevention measures.

- Clarify the definition of "permanently closed" as it applies to an oil production facility.

- Clarify that nurse tanks used at farms are included in the December 2006 amendments related to mobile re-fuelers and therefore exempt from the specifically sized secondary containment requirement for bulk storage containers.

All SPCC-regulated facilities are still required to comply with the existing regulations while EPA considers these proposed amendments. For information about facilities required to comply with the SPCC and any compliance date extension, please visit www.epa.gov/emergencies.

(Env. Tip of the Week – 10/8/07)

COLORADO EYES RARE AIR QUALITY CLAIM FOR NRD AT FORMER ARMY ARSENAL

Natural resource trustees for the state of Colorado are considering the rare step of pursuing natural resource damage (NRD) claims against the Army and Shell Oil Company for air pollution stemming from the former Rocky Mountain Arsenal site, relying on Superfund law mechanisms that are usually used to recover damages for water, soil and other resource contamination.

The state's early effort to assess air quality damage under Superfund law raises the prospect that industry could be subject to similar claims in the future for other pollutants, such as acid rain, global warming or other harmful emissions. While industry sources have raised such fears about NRD claims related to air quality issues in the past, industry sources were largely not familiar with Colorado's claim in this case.

The state's three resource trustees – the Colorado Department of Public Health & Environment (CDPHE), the Division of Reclamation, Mining & Safety within the state's Department of Natural Resources, and the Colorado attorney general – released a natural resource damages assessment (NRDA) plan Oct. 29, opening it up to a 30-day public comment period.

The Army, starting in 1942, manufactured chemical warfare agents and incendiary munitions at the site, and later demilitarized chemical agent munitions, while Shell, which leased portions of the site, manufactured pesticides, insecticides, herbicides and other chemicals there between 1952 and 1982, the plan says. The waste basins and onsite trenches were used as disposal sites for millions of pounds of chemical weapon and pesticide manufacturing waste between 1942 and 1982, the trustees say in the plan.

The state is pursuing its claims under

Superfund Law, which allows trustees to pursue damages for harms to resources in addition to cleanup requirements imposed by EPA and state regulators. Liable parties vehemently oppose such claims, which sometimes run into the hundreds of millions of dollars, arguing that they are unfair because they have already conducted cleanups.

The high-profile case in Colorado may be the first NRDA regarding a federal facility in which the state "is going it alone," without sign-off from federal trustees, one source familiar with the case says. The Army and Shell are not funding the assessment, and it is not a joint cooperative assessment. However, according to the plan, the responsible parties and the state trustee have "shared information...in anticipation of a formal assessment," and the state plans to continue to work with the responsible parties and co-federal trustees in implementing the NRDA plan.

While the Army and Shell's cleanup actions at the arsenal are expected to be complete in 2010, the trustees say in the plan that the arsenal and surrounding area will be contaminated "for decades, at least." The assessment will follow Department of Interior (DOI) regulations, which provide trustees with a rebuttable presumption gives the trustees an advantage, requiring the opposing party to produce enough evidence to overcome the presumption that the trustees' assessment should be the basis for the damage award, the document says.

Although we applaud the cleanup work at Shell and the Army have completed on [the] Arsenal so far, that effort merely reduces additional harm to our environment, however, harm remains," CDPHE Executive Director Jim Martin says in an Oct. 29 press release from the CDPHE and Colorado attorney general's office.

In this case, the harmful emissions stem from cleanup actions that occurred at the site in 1999, when the parties excavated sludges that released "noxious odors" to surrounding communities. "Depending on the availability of data, the State Trustees plan to evaluate injuries to air resources incurred during the Basin F [interim response action] in 1988 and 1989. Attempts to excavate and air-dry Basin F sludges released noxious odors to surrounding communities," the plan says. It provides a qualitative assessment in terms of lost air services.

According to the plan, the state trustees may look to using a resource equivalency analysis (REA) to determine air resource damages. "Under the approach, the State would identify air restoration projects that could provide the equivalent of the air resource services lost as a result of the Basin F" interim response action, the plan says. Although the state's assessment plan says the trustees plan to assess NRD for harmful emissions, actually winning damages

FEDERAL REGULATORY UPDATES *(Continued)*

for emissions may be difficult because neither EPA nor states have set standards for hazardous substance emissions.

(Superfund Report – 11/5/07)

RULING MAY PROVIDE NEW TEST FOR SUPERFUND 'USEFUL PRODUCT' DEFENSE

A just-issued appellate court ruling may establish an important judicial test aiding industry litigants in avoiding Superfund liability for contamination cleanups linked to the sale of commercial products, a development that could spur industry efforts to win relief for pollutants not covered under an exemption for recyclers.

An informed industry source says the U.S. Court of Appeals for the 9th Circuit's ruling in California Department of Toxic Substances v. Alco Pacific Inc., et al., released Nov. 28, is significant because the test it creates for determining when the so-called "useful products doctrine" under Superfund Law applies could aid in industry's defense against liability claims in future suits.

The court's test may prove particularly important for businesses like metal smelters, the source adds, because the current exemption granted under Superfund Law to recyclers fails to provide relief for dross and slag, two byproducts of smelting at issue in the case. Furthermore, the test could be applied to other materials that meet its criteria.

The useful products doctrine stipulates that companies cannot be held liable when the commercial products they sell are later disposed of as waste and cause contamination of a site. The doctrine is not part of the Comprehensive Environmental Responsibility & Liability Act's (CERCLA) statutory language, but is found in case law. At issue in the suit is contamination at the site of a lead smelter operated between 1950 and 1990 by Alco Pacific, and California's assertion that the companies which supplied lead for it bear liability for cleaning up the surrounding property. The U.S. District Court for the Northern District of California had previously held the companies were free of liability, yet the appellate court reversed the decision.

While the case is a loss for industry defendants, the court's ruling synthesizes previous court precedents in the circuit into a test that employs three factors to determine whether the useful products doctrine applies, the source says.

In the opinion, Judge Jeremy Fogel "refrain[s] from expressly adopting a concrete test for this fact-intensive inquiry" but agrees with the factors the lower court and previous rulings have examined in deciding when materials meet the criteria to be useful products. "Because the doctrine has developed piecemeal, its contours are not entirely clear," he writes. The criteria include whether a materi-

al has commercial value; was part of a monetary transaction; and is the primary product of the seller or a byproduct. If materials meet these criteria, the companies that sold them as "useful products" cannot be held liable as an "arranger" under CERCLA. However, in the instant case, Judge Fogel held that the lower court had misapplied these standards in finding the companies free of liability.

On the commercial value of the product at issue, Fogel examined the price at which the lead was sold to the smelter and whether it reflects prices on the open market. The court then examined the details of the transaction to judge whether the materials meet the second factor. And to determine whether the lead was a product or a byproduct, Fogel looked to a standard in a prior 9th Circuit case, RSR Corp. v. Avanti Development, to distinguish between companies "that sell a used product in order to dispose of it and those whose dale is their main profit-making venture.

The industry source says the precedent set in the case is "helpful" to industry because it "gives greater certainty" on when the useful products doctrine applies. These criteria could aid industry's efforts to "fill in the gaps" in the liability exemption CERCLA grants for recycled materials, the source adds. The source notes that the recycling exemption is limited because it only applies to materials such as batteries and battery casings, which can contain lead. But "you sometimes get things that are not expressly covered by the exemption" such as lead slag and dross from refineries.

The appellate court "didn't necessarily adopt the three factor test," the source adds, but the ruling does affirm the criteria the lower court had used to judge whether the exemption applies. And these standards could "take on more weight" in future industry litigation as a result of the ruling.

(Superfund Report – 12/3/2007)

COAL WASTE RULE COULD EXPAND CONFUSION OVER CWA SCOPE, CRITICS SAY

States, industry groups and small business advocates are raising concerns about proposed changes to controversial coal mining regulations governing disposal activities near an in streams, arguing that plans to make the rule apply to "waters of the United States" would bring the current confusion over Clean Water Act (CWA) jurisdiction into a new regulatory area and result in additional litigation.

At issue is a proposed rule from the Interior Department's Office of Surface Mining Reclamation & Enforcement (OSM) on the disposal of coal mining waste in streams that would clearly exempt so-called valley fills and other mining waste disposal activities from requirements to protect stream buffer zones.

The proposal is a change from current regulations, issued in 1983, that generally limit dis-

posal of coal mining waste, such as broken rock fragments known as spoil, from being placed in perennial and intermittent stream unless the waste does not "adversely affect" water quality or other stream resources. The proposed rule would also replace references to perennial and intermittent streams with the phrase "waters of the United States" and require that mining companies analyze the environmental impacts of alternative disposal methods, including variations in the number, size, location and configuration of proposed fills.

"To the extent possible, the applicant must select the alternative with the least overall adverse environmental impact, including adverse impacts on water quality and aquatic ecosystems," the proposed rule says. However, in recent comments to OSM, states, industry groups and the Small Business Administration (SBA) Office of Advocacy say they support OSM's intent to clarify buffer zone requirements but argue including the term "waters of the United States" and alternatives analysis would expand the current confusion over the scope of the CWA.

The critics note that although the water law's jurisdiction extends generally to "waters in the United State," two recent Supreme Court rulings have created considerable uncertainty about what the term means in determining whether development activities that harm isolated wetlands and other marginal waters require CWA permits.

"Our analysis of the rule suggests that by expanding the scope of the rule to include all 'waters of the United States' instead of just perennial and intermittent streams, OSM is further complicating the situation," the Interstate Mining Compact Commission (IMCC) says in Nov. 19 comments. The IMCC a multi-state governmental organization that represents the natural resource interests of its 19 member states.

States are also concerned about the impact these analyses will have on their resources, with IMCC saying the time and effort to adequately review and rule on the analyses "will potentially be overwhelming." Given current fiscal constraints, "attempting to accommodate the requirements of the proposed rules could seriously jeopardize these primacy programs," IMCC says, adding that it is duplicative of CWA requirements.

(Superfund Report – 1/14/08)

EPA REQUIRES REFORMULATION OF SPRAY PAINT

A new national regulation will help further reduce smog-forming emissions from aerosol spray paints – such as clear coatings, nonflat coatings, and primers.

The regulation, the first nationwide rule for aerosol spray paints, limits emissions of volatile organic compounds (VOCs), which

FEDERAL REGULATORY UPDATES *(Continued)*

react with nitrogen oxides to form ground-level ozone, or smog. The new rule focuses on reducing the VOCs with the highest ozone-forming potential, which also is known as photochemical reactivity.

EPA modeled the rule on the California Air Resources Board's (CARB) reactivity-based regulation for aerosol coatings. Nearly 85% of the spray paints used in the United States are produced by three companies, which already meet the CARB requirements.

The new national regulation will provide flexibility for paint producers, especially smaller ones who may produce niche products, by allowing them to choose the VOCs they reduce, provided they meet emissions limits. Previous regulations focused on reducing the compounds by mass, without regard to their smog-forming potential.

The new requirements also apply to imported paint sold in the United States, which must meet the VOC limits by Jan. 1, 2009, the compliance date for the rule :

www.epa/ttn/oarpg/t1/fr_notices/ACRR-11-15-07.pdf. Manufacturers that can demonstrate they produce aerosol paints containing less than 7,500 kilograms (8.3 tons) of VOCs annually are not covered by this regulation. A factsheet is available at EPA's website www.epa.gov/ttn/oarpg/tlfs.html.

(Env. Tip of the Week – 11/19/08)

CALIFORNIA SUES EPA TO END DELAY OF GREENHOUSE GAS LIMITS

California Governor Arnold Schwarzenegger and Attorney General Edmund G. Brown, Jr. sued the U.S. EPA in November to force the Agency to take action on California's request to curb greenhouse gas emissions from motor vehicles. The lawsuit, filed in Washington, DC, charges the EPA with an unreasonable delay in reaching a decision on California's landmark law, known as the Pavley bill, which mandates a 30% reduction in motor vehicle emissions by 2016.

"Despite the mounting dangers of global warming, the EPA has delayed and ignored California's right to impose stricter environmental standards," Brown told a news conference at the state capitol with Governor Schwarzenegger and California Air Resources Board Chair Mary Nichols. "We have waited two years and the Supreme Court has ruled in our favor. What is the EPA waiting for?"

Under the Clean Air Act, passed in 1963, California can adopt environmental standards that are stricter than federal rules if the state obtains a waiver from the U.S. EPA. Congress allowed California to impose stricter law in recognition of the state's "compelling and extraordinary conditions." After a California waiver request is granted, other states are permitted to adopt the same rules.

In the Act's 40-year history, EPA has granted approximately 50 waivers for innovations

like catalytic converters, exhaust emission standards, and leaded gasoline regulations. In this lawsuit, California asserts that EPA has failed to act in a reasonable length of time.

In 2002, California passed AB 1493, which requires a 30% reduction in global warming emissions from vehicles by 2016, starting with model year 209. In December 2005, the California Air Resources Board applied for a waiver to implement the law. Governor Schwarzenegger wrote to the EPA in April 2006 and in October 2006, requesting action on California's application. Sixteen other states – Arizona, Colorado, Connecticut, Florida, Maine, Maryland, Massachusetts, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Utah, Vermont, and Washington have adopted, or are in the process of adopting, California's emissions standards.

The state asserts that EPA does not need any additional time to review the facts – the California Air Resources Board submitted a detailed 251-page assessment in 2005 and the U.S. Supreme Court already issued a decision that greenhouse gases are pollutants. In September, a Vermont District Court ruled in favor of the state regulations, rejecting a challenge from the automobile lobby. There are 32 million registered vehicles in California, twice the number of any other state.

(Env. Tip of the Week 11/13/07)

ACID RAIN EMISSIONS ARE DOWN, MONITORING STILL NEEDED

For the first time, emissions of a key component of acid rain and smog from power plants fell below 10 million tons in a year, the U.S. Environmental Protection Agency reports. In 2006, annual sulfur dioxide, SO₂, emissions from acid rain program electric power generation sources fell sharply. Sources emitted 9.4 million tons of SO₂ last year, below the emission cap of 9.5 million tons.

Reductions amounted to 830,000 tons from 2005 levels and an overall reduction of 40 percent from 1990 levels, according to the EPA. In the United States, the electric power industry accounts for 70 percent of total annual sulfur dioxide emissions.

In addition, emissions of nitrogen oxides, NO_x, are down by over three million tons since 1990 and had decreased to nearly half the level anticipated without the Acid Rain Program. Sulfur dioxide and nitrogen oxides are the key pollutants that form acid rain. Nitrogen oxides combine with volatile organic compounds to form smog and nitrates. These pollutants contribute to the formation of fine particles that are associated with human health effects and regional haze.

These pollutants, in their various forms, lead to the acidification of lakes and streams rendering some of them incapable of support-

ing aquatic life. They impair visibility in national parks, create respiratory and other health problems in people, weaken forests, and degrade monuments and buildings.

The reductions documented by the EPA have led to what the agency describes as "a significant decrease in acid deposition, resulting in improved water quality in U.S. lakes and streams. "Reduced formation of fine particles, improved air quality and human health related benefits are all results from the reduction of these emissions," the agency said.

Since 1995, the market-based cap and trade program has reduced acid deposition in the United States by decreasing sulfur dioxide and nitrogen oxide emissions. The EPA says, "The program's rigorous emissions monitoring and allowance tracking has resulted in nearly 100 percent compliance with the program."

(ENS – 11/9/07)

HUD PROPOSES FLOOD INSURANCE RULE UPDATES AND NEPA PROCESS

HUD proposes to amend 24 CFR 50.4 (b)(1) to clarify that flood insurance requirements generally must be met by purchasing insurance rather than self-insurance, except as authorized by law for state-owned projects in states approved by the Director of the Federal Emergency Management Agency.

HUD proposes to amend 24 CFR 50.10(b) to reflect the current allocation of responsibilities for environmental policies and procedures within the Department and to improve oversight as part of HUD's compliance with NEPA and related laws and authorities. Specifically, this proposed amendment to HUD's environmental regulations would require the oversight for environmental protection be performed consistently and collaboratively with quality management reviews of field offices and onsite monitoring of clients. The name "Office of Community Viability" cited in the current regulations would be corrected to "Office of Environment and Energy" to reflect the correct institutional name of that office. The proposed rule would thereby conform the title of the office to that contained in the HUD Organizational Handbook 1100.3 REV 5, par. 5-13.

The rule would add new provisions on waivers of environmental requirements. With the aim of making the compliance process more cross-reference to 24 CFR 5.110 and a new Sec. 50337 that states procedures for HUD approval of waivers from environmental regulations requested by a recipient.

The proposed rule would amend 24 CFR 50.16, "Decision points for policy actions." Specifically, a new decision point (the point at which an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) or Environmental Impact Statement (EIS) must be completed) would be added. The new decision point would be HUD's approval of a

FEDERAL REGULATORY UPDATES (Continued)

waiver of environmental regulations. For more information and additional provisions, see the September 12, 2007 Federal Register.

(Env. Protection – 10/6/07)

SAFETY REQUIREMENTS ESTABLISHED FOR ETHANOL-BLENDED FUEL PUMPS

Underwriters Laboratories announced the establishment of safety requirements for E85 fuel dispensing equipment. The potential issue UL identified should help promote the efficient, effective delivery of E85 as safely as possible, officials said.more
www.1105newsletters.com/frvmjf_hyeejjbs.html

(Env. Protection – 10/18/07)

COAST GUARD ISSUES RULE SETTING CRITERIA FOR LANDOWNERS' LIABILITY DEFENSE FOR SPILLS

Individual and companies seeking to buy property near navigable waters must follow certain assessment criteria established in a Coast Guard final rule to establish a liability defense for oil leaks.

Under the rule set for publication Jan. 14, landowners will have to conduct "all appropriate inquiries" to demonstrate they had no knowledge of the presence of oil at the time of the purchase.

By conducting all appropriate inquiries, prospective landowners can use that assessment to help establish an "innocent landowner" defense for contamination discovered after the purchase. Landowners must use environmental professionals to assess sites under the rule. These professionals must use criteria drafted by ASTM International, an organization that develops voluntary standards on a range of issues. The criteria are listed at 33 U.S.C. 2703(d)(4)(c). The final rule was effective Feb 13.

(By Patricia Ware – Environmental Practice Group Wolf Block, LLP)

GREENHOUSE GAS REPORTING TO BE MANDATORY NEXT YEAR

The \$500 billion omnibus spending bill signed into law by President George W. Bush last month includes a provision requiring EPA to establish a mandatory greenhouse gas (GHG) reporting program. The law directs the EPA to publish a draft GHG reporting regulations within 9 months and final regulations within 18 months, which would be June 2009. The law, which could cover all U.S. industries, does not appear to pre-empt state GHG reporting standards that are being adopted by many states. EPA will have discretion in determin-

ing program source categories, reporting thresholds, and frequencies.

(Env. Tip of the Week – 1/21/08)

OSHA PUBLISHES FINAL RULE ON EMPLOYER PPE PAYMENT

On November 14, Assistant Secretary of Labor Edwin Foulke announced the new rule on employer payment for personal protective equipment (PPE) in construction, general industry and maritime. The rule, which can be found in the November 15, 2007 Federal Register, becomes effective on February 13, 2008 and must be implemented by May 15, 2008. The final rule does not create new requirements regarding what an employer must provide in PPE; what it does do is clarify who is required to pay for what and under what circumstances. Employees may choose to use their own PPE and the employer does not need to reimburse the employees for it; however, the final rule makes it clear that the employer cannot require employees to provide for their own PPE and that use of the PPE that the employee owns must be completely voluntary and the PPE adequate to protect the employee from hazards. The employer is not required to pay for replacement PPE when it has been lost or intentionally damaged.

(NUCA Report – 11/21/07)

DEMOCRATS STUDY CALIFORNIA ASBESTOS RULE AMIDST FEDERAL DEBATE

House Democrats are studying a strict California regulation governing the use of asbestos in road construction as they grapple with whether to address concerns that a Senate bill intended to force EPA to ban the known carcinogen could allow industry to continue using materials capable of producing dangerous exposure levels, informed sources say.

The Senate unanimously approved the bill, S. 742, last year, but many of the activists and asbestos experts who initially supported it have since become critical of the legislation after noticing a significant change in the final legislative language.

As originally introduced by Sen. Patty Murray (D-WA), the bill would have required EPA to prohibit the manufacture, distribution and importation of all asbestos containing products (ACP) which it defined as "any product (including any part) to which asbestos is deliberately or knowingly added or in which asbestos is deliberately or knowingly used in any concentration."

However, the legislation the Senate eventually approved instead only requires EPA to ban asbestos containing materials, which the Toxic Substances Control Act defines as "any material which contains more than 1 percent asbestos by weight"—a concentration critics say can still produce dangerous exposure levels.

The change occurred following negotiations Senate Democrats held with Republicans and industry representatives who argue that naturally occurring background levels of asbestos in some substances would have made the total ACP prohibition in the original bill "unworkable."

Activists and asbestos experts have vowed to push for legislation stricter than the Senate approved bill in the House, however, and informed sources say House Democrats are in the process of studying the California regulation and deciding how to move forward.

Under the regulation, known as the asbestos Airborne Toxic Control Measure for surfacing applications, "no person shall use, apply, sell, supply or offer for sale or supply any restricted material for surfacing, unless it has been tested using an approved asbestos bulk test method and determined to have an asbestos content that is less than 0.25 percent."

According to state law, the California Air Resources Board has the authority to set the threshold contained in the regulation as low as zero percent, a state source says, but currently the board has established a threshold based on currently available testing technology. In addition, the regulation contains some exemptions for certain sand, gravel, and asphalt materials.

Nonetheless, an informed source says "the California precedent is one people are considering as something" that could be adopted in federal law. In addition, the informed source says House Democrats are studying what testing methods would be available to EPA to enforce whatever Congress ultimately adopted. The source expects the issue will come up during hearings expected to take place in the House within the next several weeks.

A House Democratic source declined to comment on what House Democrats were considering in relation to the pending asbestos legislation but called the California regulation "interesting" and noted that it sets an asbestos content threshold for road materials that is a "quarter of the Senate number."

In addition, Japan and Germany also have asbestos regulations that contain thresholds lower than what is established in the Senate bill, the House Democratic source points out. The House Democratic source has previously acknowledged that there is a "concern amongst the public house community" over whether the prohibition outlined in the Senate bill is adequate.

(By Douglas P. Guarino Superfund Report-2/11/08)

NJ REGULATORY UPDATES

NEW JERSEY FRESHWATER WETLAND PROTECTION ACT RULES AND REGULATIONS-PROPOSED REVISIONS

New Jersey has proposed to modify and expand Freshwater Protection Act rules and regulations. These are very significant changes which will result in a variety of activities being more regulated, including planned developments, continued use of properties, and agricultural and horticultural activities.

Highlights of the rule changes include:

- Municipalities would be given the right to require a Wetlands Letter of Interpretation, prior to approving site plans regardless of whether wetlands are believed to be an issue.

- On projects with small disturbances where mitigation is not possible developers will be required to make a monetary contribution for future state-sponsored wetland replacement/enhancement projects. Thus, the new mitigation requirements will increase both the time and cost for redevelopment projects that have wetland issues.

- General Permit applications will be required to contain a demonstration that shows site design was such to contain all impacts to upland or upland transition areas.

If the NJDEP determines that site conceptual design does not need to "...take place in the wetlands at all, regardless of whether the activity satisfies the limits of the general permit..." the permit application can be denied. As a result, development in New Jersey will become much more unpredictable, a trait which is needed to ensure project viability early on in the process.

- General Permit applications will also require completion and submittal of a title search which will increase processing time.

In some instances, wetland applications will be required to have historic, archeological and architectural surveys performed, where there is a high probability for historic and archeological resources to be present. Further, building structures 50 years old or more, will not be permitted to be demolished, prior to receiving a wetland permit.

For agricultural and horticultural properties, there are substantial changes in the works, including "grandfathering" of existing operations, restrictions on roads, and, in combination with the Flood Hazard Prevention Act, the use of such temporary structures such as hoop houses, in some instances will be limited to use for a period of 6 months. Many in the agricultural and horticultural community currently understand that their operations are "exempt" from certain DEP rules, but such will no

longer be the case now that the Flood Hazard rules are final, and, if the Freshwater Wetland Protection Act rules become final as well.

The more stringent regulations will increase costs, uncertainty, and time delays in the development process. RT Environmental is pleased to offer its clients assistance with any wetland issues encountered and recommends that such issues be addressed early in the planning phase to establish potential development hurdles and reveal possible unexpected costs.

The proposed amendments to the Freshwater Wetland Protection Act rules and regulations can be found at:

www.nj.gov/dep/rules/notices.html. If you have questions, call Gary Brown at (610) 265-1510 Ext. 34, or Adam Meurer at (856) 467-2276.

NEW JERSEY LAWMAKERS PASS COASTAL AND OCEAN PROTECTION BILL

The New Jersey Assembly passed a bill in early January that would establish a New Jersey Coastal and Ocean Protection Council to help safeguard the state's resources.

The state Senate passed the same bill on December 10, 2007 and environmental groups now are asking that Governor Jon Corzine sign the bill into law.

"The Jersey coast is central to the state's identity, and this new council will advance the state's ability to protect and restore the natural systems that we rely on for food, recreation and jobs," said Benson Chiles of the nonprofit Environmental Defense and the Coastal Ocean Coalition, a network of state and national environmental organizations working to revitalize the nation's most critical marine areas.

The nine-member New Jersey Coastal and Ocean Protection Council would consist of agency staff and members of the public working to prevent depletion of marine resources through adopting ecosystem based management approaches.

Ecosystem management moves beyond traditional species-by-species, problem-by-problem management to take account of factors that sustain healthy oceans such as food web interactions and the availability of suitable habitat.

The council would have the power to make recommendations to the New Jersey Commissioner for Environmental Protection that will protect, maintain and restore coastal and ocean resources, and

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- Wetlands Rule Changes, pgs. 17, 20
- More Coastal & Ocean Protection Next?, pg. 17
- NJ Enviro-Cops, pg. 18
- Mysterious Bat Illness, pg. 19

could study, consider and make plans for ocean and coastal protection.

(ENS-1/10/08)

NEW JERSEY BENEFITS FROM OYSTER CREEK NUCLEAR PLANT RELICENSING

The State of New Jersey has secured a habitat restoration and public access enhancement project for Barnegat Bay as a result of the federal government's process for the proposed re-licensing of the Oyster Creek nuclear generating station in Lacey Township.

"The mitigation efforts we are requiring will benefit the bay tremendously by restoring degraded tidal wetlands and resulting in significant improvements to claim and oyster beds," said Department of Environmental Protection, DEP, Commissioner Lisa Jackson.

"Equally important, this plan will dramatically improve public access to the bay through preservation of a large tract of bay front land that will be developed with a boat launch, nature center and walking trails," she said.

Plant owner AmerGen has agreed to preserve a 220 acre portion of the Finninger Farms site in Lacey. The company will enhance the land with construction of a boat launch, parking area for cars and boat trailers, construction of a nature center, and improvements to 5.4 miles of walking trails.

AmerGen will also restore 170 acres of tidal wetlands located near the Oyster Creek plant site.

In addition, the company will restore 50 acres of hard clam beds within the Sedge Islands Marine Conservation Zone adjacent to Island Beach State Park and five acres of oyster beds at a location to be determined by the DEP's Division of Fish and Wildlife.

(ENS-1/4/08)

DEP ANNOUNCES BROWNFIELD DEVELOPMENT AREAS IN BELLMAWR, GLOUCESTER CITY, CARTERET, PERTH AMBOY AND JERSEY CITY

The Department of Environmental Protection will coordinate the cleanup and revitalization of dozens of blighted properties encompassing nearly 500 acres in Camden, Middlesex and Hudson counties

NJ REGULATORY UPDATES *(Continued)*

through its Brownfield Development Area program, Commissioner Lisa P. Jackson announced in January.

“The critical first step in spurring redevelopment of old industrial areas is removing the threat of contamination,” Commissioner Jackson said. “The DEP’s Brownfield Development Area program provides the resources municipalities need to clear this hurdle and transform deteriorating factories and abandoned rail yards into catalysts for economic growth and healthier communities through urban renewal.”

The DEP has approved Brownfield Development Areas for a once-thriving industrial port along the Delaware River in Gloucester City and an area encompassing old landfills in Bellmawr, both Camden County; a former center of fertilizer production in Carteret and an area that was once the focal point for smelting and paint production in Perth Amboy, both Middlesex County, and a former hub of the metals processing industry in Jersey City, Hudson County.

“The redevelopment ideas local officials have been discussing for these sites demonstrate a great deal of progressive thinking and commitment to the state’s Smart Growth objectives,” Commissioner Jackson added. “They include a variety of plans for mass transit access, mixed-income housing, green building design, and enhancement of open space.”

The following locations have been named Brownfield Development Areas:

- Gloucester City’s Southport is the site of a 19th century ship yard that became a vibrant industrial area that included petroleum refining and titanium processing operations. Today it is a bleak and isolated collection of mostly abandoned buildings along a 120-acre swath of the Delaware River. The city plans to transform this area into a model waterfront community with residential, commercial, and retail properties looking across the river toward the Philadelphia skyline.

- The Brownfield Development Area for Bellmawr encompasses 70 acres of former municipal landfills along Big Timber Creek that were never properly closed under state requirements. The municipality envisions for this area a large commercial project that will include a hotel and conference center, marina, and boat ramp as well as a greenway along the creek. (RT is the Environmental Engineer for this project.)

- The 105-acre Chrome Waterfront Development Area along the Arthur Kill in Carteret once was an industrial center that included American Agricultural Chemical

Co., a fertilizer manufacturer that ceased operations in 1978. Borough officials want to revitalize this area as a transit village with high-density residential, commercial, office, and retail uses that will complement a marina and Staten Island ferry terminal.

- Located along the Arthur Kill in Perth Amboy, the 177-acre redevelopment area known as North of Outerbridge Crossing was once the site of an ore refining operation run by American Smelting and Refining Co. and a paint and pigment plant operated by National Lead. The Perth Amboy Redevelopment Agency has developed plans for a massive warehouse and office complex, known as the iPort 440 International Trade and Logistics Center that envision construction of buildings with eco-friendly designs. Redevelopment plans also call for restoration of open space and development of sports and entertainment venues.

- Revitalization of Jersey City’s Grand Jersey Redevelopment Area, bounded by Grand Avenue, Jersey Avenue, and the New Jersey Turnpike extension, has languished due to contamination of a 20-acre core area that was the site of a variety of metals processing and reclamation industries. The Jersey City Redevelopment Agency plans to redevelop this area, which has views of the Statue of Liberty and Manhattan skyline, with housing for people of varying incomes, retail and office space, access to light rail, and open space links to Liberty State Park and the Hudson River walkway.

The DEP has launched the Brownfield Development Area program in 2002. With the addition of the five new areas, the DEP now oversees 23 Brownfield Development Areas.

Municipalities that have been designed as Brownfield Development Areas are eligible for up to \$5 million each year from the DEP’s Hazardous Discharge Site Remediation Fund for site investigation and remediation. The DEP also assigns a case manager to assist the communities in obtaining financial assistance and to coordinate revitalization efforts with other state agencies.

This process brings together all stakeholders to participate in cleanup and revitalization efforts, including owners of contaminated properties, potentially responsible parties, developers, community groups, technical experts, and residents.

(DEP NEWS-1/23/08)

NEW JERSEY ENVIRO-COPS TRY TO CATCH COMPANIES DOING GOOD

A new initiative designed to motivate New Jersey businesses to do more than the

minimum required by environmental laws and regulations was unveiled in January by Department of Environmental Protection Commissioner Lisa Jackson.

The goal is to encourage all businesses to evaluate their current facility operations and integrate environmental stewardship initiatives into their operations.

The reward is public recognition for companies that go above and beyond the call of duty.

“The environmental cop always stands ready to catch people when they do something wrong,” Commissioner Jackson said. “But think of the potential rewards from catching someone when they do something right.”

The new Environmental Stewardship Program will offer acknowledgment to business that go beyond minimum environmental requirements.

Achievements will be noted by DEP inspectors during the routine course of their work, evaluated by DEP management, and posted on the DEP’s website.

(ENS-1/21/08)

NEW JERSEY RESERVOIRS TO LEAVE SPACE FOR STORMWATER

New York City has agreed to help regulate temperatures and water levels in the Delaware River by releasing up to a total of 35 million gallons a day from three of its reservoirs.

The Delaware River Basin Commission at its September 26 meeting directed commission staff to begin the public rulemaking process to implement an amended Flexible Flow Management Program for operation of the three New York City Delaware Basin reservoirs.

The intent of the agreement is to reduce flows and floods downriver from the Cannonsville, Pepacton and Neversink reservoirs during extreme conditions.

The agreement’s spill mitigation component is intended to reduce the likelihood that the three reservoirs, agreed to unanimously by New York State, New York City, New Jersey, Pennsylvania and Delaware, through the Delaware River Basin Commission.

The reservoirs not only feed the Delaware and other rivers but also supply drinking water to 17 million people.

“This is an innovative plan for dealing with a long-running issue,” Grannis said. “Flood control, the trout fishery, biodiversity and recreation opportunities all can be aided while assuring adequate quantities of drinking water to millions. This new water

NJ REGULATORY UPDATES *(Continued)*

release protocol could serve as a national model.”

(ENS-10/5/07)

NEW JERSEY BANS DISPOSAL OF ELECTRONIC WASTE

Televisions, computers, cellphones and other electronic devices will not be allowed in New Jersey garbage cans and landfills after January 1, 2009 under a new law signed by New Jersey Governor Jon Corzine in January because of the toxic materials they contain.

“The type of waste generated by televisions and computers, while relatively small in volume, accounts for a significant percentage of this nation’s toxic waste,” the governor said.

“The electronic waste stream that will be required to be recycled under this bill can contain significant and dangerous levels of a wide variety of materials, including lead, mercury, cadmium, and PCBs,” he said.

In addition to a disposal ban, Electronic Waste Recycling Act requires electronics producers to pay state registration fees from \$5,000 a year.

Governor Corzine said he would have placed a “conditional veto” on this bill “had that option been available” because of its impact on manufacturers, both in New Jersey and elsewhere.

To ensure fairness and equity in the application and administration of this law, Corzine says he has asked the Department of Environmental Protection to work with this bill’s sponsors in order “to further craft and refine this measure.”

The law will require every retailer to clearly post and provide information from the state’s Department of Environmental Protection, DEP, that will describe how to recycle the covered electronic device, in addition to the locations for the collection or return of the device.

The DEP will offer a website, a toll-free telephone number, information included in the packaging, or information with the sale of an electronic device covered under the law, such as a television or copier.

(ENS-11/16/08)

NEW JERSEY WINS STATE CONTROL OVER WASTE AT RAIL-SIDES

The right of states to regulate solid waste processing by users of federally regulated railroads has been upheld by a case in New Jersey.

The Board of the New Jersey Meadowlands Commission in October authorized an agreement requiring a rail-

side waste processor in North Bergen to come into full compliance with New Jersey’s laws, ending outstanding litigation against the processor.

This action follows the passage of the Federal Railroad Safety Improvement Act of 2007 by the House of Representatives on October 17, 2007, reaffirming the consistent role of state and local regulation over solid waste, despite recent claims by some waste processors to be exempt from oversight due to their utilization of federally regulated railroads.

“Our residents deserve to go to bed at night and send their children off to school the next morning without worrying that a solid waste company will start up a dump in their backyard with nobody watching,” said Joseph Doria, acting chairman of the Meadowlands Commission and acting commissioner of the New Jersey Department of Community Affairs.

“I am very pleased that all parties support this groundbreaking settlement which recognizes that the health and safety of our families must always come first,” said North Bergen Mayor and State Senator Nicholas Sacco, who brought this issue to the national stage through his defense of his community’s rights.

Under the proposed settlement, approved by the Board, Westside Transload LLC, of North Bergen would agree to follow all applicable regulations for solid waste processing sites.

This would apply to a facility Westside Transload is constructing on the property of the New York Susquehanna and Western Railroad, NYS&W, at 43rd Street in North Bergen.

The settlement will be concluded through the state Attorney General’s Office which has managed the suit of behalf of the Meadowlands Commission and the New Jersey Department of Environmental Protection.

(ENS-11/5/07)

DOD TAKING DISPUTE WITH EPA OVER ENFORCEMENT AUTHORITIES TO DOJ

The Office of the Secretary of Defense (OSD) at the behest of the Air Force, is asking the Justice Department (DOJ) to resolve a high-level dispute with EPA over the enforcement authorities EPA used to compel cleanup at two Air Force sites, an Air Force source says.

While the Air Force is complying with the cleanup requirements in the orders, it is disputing the legal authorities EPA is relying on to enforce the cleanups – an issue that

could set a precedent for all the military services.

The Air Force intends “to challenge and dispute both of the enforcement orders” at McGuire Air Force Base, NJ, and at Air Force Plant 44 in Arizona, according to the source, who says OSD will take that up with DOJ.

The Air Force is disputing this on an “administrative level, not on a work-requirement level,” and is proceeding with the cleanups, the Air Force source says. “What we’re disputing is the authority EPA chose to use,” the source says, referring to the fact that EPA issued the orders under the Resource Conservation & Recovery Act (RCRA) and Safe Drinking Water Act (SDWA) rather than Superfund law, also known as the Comprehensive Environmental Response, Compensation & Liability Act (CERCLA).

EPA resorted to the RCRA and SDWA orders at McGuire and Plant 44, respectively, after the Air Force refused to sign enforceable interagency agreements, known as Federal Facility Agreements (FFAs), for the sites – which is at the heart of the dispute.

Attempts to try to resolve the matter through talks between EPA and the Air Force at the highest levels have failed, demonstrated by EPA’s latest decision to assert the finality of its enforcement order at McGuire. In a letter to Air Force Secretary Michael Wynne, EPA Administrator Stephen Johnson November 13 finalized the cleanup order, first issued in July, dismissing the Air Force’s challenge of the order’s validity.

The Air Force source says the issue is important because if EPA had relied on CERCLA, that law would have required EPA to consult with DOJ first, prior to issuing an enforcement order, “and we think the orders wouldn’t have been issued.” Had that happened, this source says, the two sides would have gotten to resolving the dispute over the FFAs sooner. OSD is now “in the process” of getting DOJ involved in the matter, says the source, who does not believe anything has formally been considered yet.

(Superfund Report-11/19/07)

MYSTERIOUS ILLNESS KILLING BATS IN NORTHEAST PROMPTS PRECAUTIONS AS WILDLIFE RESEARCHERS SEARCH FOR ANSWERS

Amid mounting concern over the unexplained death of thousands of hibernating bats in New York and Vermont, Department of Environmental Protection Commissioner Lisa P. Jackson today advised the public to

NJ REGULATORY UPDATES (Continued)

avoid entering any caves and mines that might harbor the creatures until wildlife experts know more about the problem.

“We have not yet found any evidence of disease among New Jersey’s wintering bat populations,” Commissioner Jackson said. “But until experts fully understand how and why bats in other states are dying, and whether it’s possible for people to carry this mysterious illness from one cave to another, it is best to take precautions and keep out of places in which they hibernate.”

Hikers, photographers and spelunkers are among those who frequent abandoned mines, caves and other locations that likely shelter hibernating bats.

Wildlife officials are calling the illness “white nose syndrome” because the most obvious symptom is a white fungus that forms around the noses of some, but not all, of the afflicted bats. Researchers do not yet know if the fungus actually causes death, but they have observed the bats with white nose syndrome deplete their fat reserves months before they would normally emerge from hibernation, and die as a result.

In the coming weeks, New Jersey biologists will survey the state’s largest known hibernaculum to look for bats exhibiting symptoms of the disease. To date, there is no information showing people have been affected after exposure to the white fungus, so human-health implications remain unknown.

Hibernating bats are particularly vulnerable to disease or disturbance because they congregate in large numbers in caves and mines, forming tight clusters of 300 per square foot in some locations. Of the tens of thousands of bats known to hibernate in New Jersey, most occupy a handful of abandoned mines.

(NJDEP – 2/4/08)

NJDEP PROPOSES SIGNIFICANT AMENDMENTS TO FRESHWATER WETLAND PROTECTION ACT RULES

The NJDEP has announced a proposal to readopt the Freshwater Wetland Protection Act Rules (N.J.A.C. 7:7A) with substantive amendments. The proposed changes will make it more difficult, costly, and time consuming for development to occur at sites which contain wetlands and/or corresponding transition areas. The more stringent proposals were introduced due to an NJDEP evaluation that the current Rules are not adequately protecting the State’s freshwater wetland resources. As a result, the new proposals are geared toward limiting the future amount of wetland disturbance authorizations.

Another change in the proposed rules which will affect development is the stipulation authorizing municipalities to require a Letter of Interpretation (LOI) from the developer before site plan approval is granted to verify the presence and/or absence of wetlands at the site. If municipalities chose to exercise this right, significant delays in development will be likely given that the average turnaround time at the NJDEP for LOI applications is approximately 3-4 months. The influx of additional applications resulting from this new requirement may also increase this turnaround time even more.

Several other amendments are proposed in the current rule change that would affect the site development process. In all aspects the Freshwater Wetland Protection Act Rules are likely to become much more restrictive than their present form. The public comment period for these new amendments concluded on January 2, and it is unclear when the amendments will be adopted. For more information regarding the NJDEP’s wetlands program, please contact Adam Meurer in RT’s New Jersey office at (856) 467-2276.

(By – Adam Meurer)

CHILD CARE FACILITY ASSESSMENT GRANTS NOW AVAILABLE

The New Jersey Department of Environmental Protection (NJDEP) and the New Jersey Economic Development Authority (NJEDA) recently announced a grant reimbursement process to help offset the environmental assessment costs required under the “Kiddie College” regulations. The grants are available to child care facilities that have completed a Preliminary Assessment (PA) in order to obtain a No Further Action (NFA) letter from NJDEP, which is now required before the Department of Children and Families (DCF) will issue a child care facility license.

The grants are available under the Hazardous Discharge Site Remediation Fund (HDSRF) and the amount of the grant awarded will be based on the cost of the PA. The maximum grant amount is \$1,500. NJDEP fees and supplemental site investigation, remedial investigation, and/or remedial action costs, if needed, are not eligible for this grant.

For more information, please contact Joe Lang, Adam Meurer, or Chris Ward at (856) 467-2276 or visit the NJDEP’s grant information website at: www.nj.gov/dep/srp/finance/hdsrf/hdsrf_ccfg.htm

NJDEP ISSUES LIST OF BIENNIAL CERTIFICATION VIOLATORS

On January 18, 2007, the New Jersey Department of Environmental Protection (NJDEP) issued a list of properties with outstanding biennial certifications. Biennial certifications are required at properties with NJDEP approved engineering or institutional controls. Deed notices, soil or asphalt caps, and groundwater CEAs are all examples of engineering or institutional controls. Once these controls are established, biennial certifications are required to be submitted to the NJDEP every two years. Failure to submit a Biennial Certification is a violation, which is subject to monetary penalties.

RT has a significant amount of experience with implementing and maintaining engineering and institutional controls, including biennial certification preparation. If you would like to know if you are listed on the biennial certification violators list, please visit the NJDEP Site Remediation Program’s website:

www.datamine2.state.nj.us/dep/DEP_OPR A/Biennial%20Certifications%20Overdue.pdf

For more information on how RT can assist you with biennial certifications or other environmental investigation or remediation needs, please contact Joseph Lang at (856) 467-2276.

DEP POSTS GREENHOUSE GAS EMISSIONS INVENTORY ONLINE

The public can now access New Jersey’s greenhouse gas emissions by categories including industrial, residential and commercial. The draft inventory prepared by the Department of Environmental Protection includes historical estimates and projections to 2020.

The information comes from various sources including the U.S. Department of Energy, the New Jersey Board of Public Utilities, the New Jersey Department of Transportation, the U.S. Environmental Protection Agency and the DEP’s own data files.

The Global Warming Response Act, which was enacted last summer, requires the state to meet ambitious goals to reduce greenhouse gas emissions and curb global warming. The draft inventory released today is a key element of the new law, which directs the state to report the current level of greenhouse gas emissions and the progress made toward meeting the established limits.

To access the draft inventory and submit comments, go to New Jersey’s Global Warming Web site at:

www.state.nj.us/globalwarming. Comments will be accepted through March 20, 2008.

(NJDEP – 2/20/08)

NJ REGULATORY UPDATES *(Continued)*

N.J.A.C. 7:26E TECHNICAL REQUIREMENTS FOR SITE REMEDIATION ("TECH RULE")

Announcement: Notice of Extension of Chapter Expiration Date for the Technical Requirements for Site Remediation

The Department is currently working closely with a large stakeholder group and members of the Legislature concerning amendments to the statutes administered by the Department's Site Remediation

Program, including the Spill Compensation and Control Act and the Brownfield and Contaminated Site Remediation Act. The Department anticipates that these amendments will have a substantial and significant impact on the Site Remediation Program and will likely require significant amendments to the Technical Rules. The Department anticipates that legislative hearings on Site Remediation statutory reforms will begin in January 2008;

therefore, the Department is requesting a two-year extension of the expiration date of the Technical Rules, from December 17, 2007 to December 17, 2009.

By the authority vested in him, Governor Jon S. Corzine, on December 4, 2007, directed that the expiration date for N.J.A.C. 7:26E be extended from December 17, 2007 to December 17, 2009.

NJ ENVIRONMENTAL REGULATIONS - PROPOSED REVISIONS

Publication Date	Proposal Name	Close of Comment Period	Public Hearing Scheduled?	Document	Proposal Status
1/22/08	Shellfish Growing Water Classifications, Proposed Readoption with Amendments: N.J.A.C. 7:12	3/22/08	No	Notice Proposal	Open For Comment
1/22/08	Determination of Environmental Benefit of the Reuse of Further Treated Effluent in Industrial Facilities, N.J.A.C. 7:14D	3/22/08	No	Notice Proposal	Open For Comment
1/7/08	Recycling Rules; Solid Waste Management Rules; Proposed Readoption with Amendments: N.J.A.C. 7:27-17	3/7/08	Yes	Notice Proposal	Open For Comment
12/17/08	Control and Prohibition of Air Pollution by Toxic Substances for the regulation of Perchloroethylene Dry Cleaning Facilities, N.J.A.C. 7:27-17	2/15/08	Yes	Notice Proposal	Open For Comment
12/17/08	Coastal Zone Management rules, N.J.A.C. 7:7E-8.11 and 8A-Concurrent public access proposal	2/15/08	Yes	Notice Proposal	Open For Comment
12/3/08	Fish Code for 2008-2009 fishing season-Proposed amendments N.J.A.C. 7:25-6	2/1/08	Yes	Notice Proposal	Open For Comment
12/3/08	Division of Fish and Wildlife rules; Horseshoe crabs, N.J.A.C. 7:25-18	2/1/08	No	Notice Proposal	Open For Comment
12/3/08	Pesticide Control Code; readoption with amendments; N.J.A.C. 7:30	2/1/08	Yes	Notice Proposal	Pending Adoption

NEW GUIDEBOOK ON PA ENVIRONMENTAL LAWS AND REGULATIONS AVAILABLE

Susan E. Smith, Director of Customer Learning of the PA Chamber of Business and Industry recently announced the availability of the 2008-2009 Guidebook on PA Environmental Laws and Regulations.

Gary R. Brown, RT's President was Editor in Chief for this Guidebook, which contains important information on PA's environmental programs. To order a copy, visit the Chamber's webpage at:

www.pachamber.org
www.pachamber.org
or call (800) 225-7224.

FEDERAL REGISTER NOTICES<http://www.epagov/homepage/fedrgstr>

Environmental Protection Agency Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure Rule Requirements-Amendments; Proposed Rule. The Environmental Protection Agency (EPA or the Agency) is proposing to amend the Spill Prevention, Control, and Countermeasure (SPCC) rule in order to provide increased clarity, to tailor requirements to particular industry sectors, and to streamline certain requirements for a facility owner or operator subject to the rule.

(Federal Register -10/15/07)

Environmental Protection Agency Control of Emissions from New Marine Compression-Ignition Engines at or above 30 Liters per Cylinder; Proposed Rule.

(Federal Register-12/7/07)

Environmental Protection Agency National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins (Polysulfide Rubber Production, Ethylene Propylene Rubber Production, Butyl Rubber Production, Neoprene Production); National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production; National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards (Acetal Resins Production and Hydrogen Fluoride Production); Proposed Rule

(Federal Register -12/12/07)

Environmental Protection Agency National Ambient Air Quality Standards for Lead; Proposed Rule. EPA is issuing this ANPR to invite comment from all interested parties on policy options and other issues related to the Agency's ongoing review of the national ambient air quality standards (NAAQS) for lead (Pb).

(Federal Register -12/17/07)

Environmental Protection Agency CERCLA/EPCRA – Administrative Reporting Exemption for Air Releases of Hazardous Substances from Animal Waste; Proposed Rule.

(Federal Register -12/28/07)

Environmental Protection Agency Regulation of Oil-Bearing Hazardous Secondary Materials from the Petroleum Refining Industry Processed in a Gasification System to Produce Synthesis Gas; Final Rule.

(Federal Register -1/2/08)

Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources; Final Rule.

(Federal Register -1/10/08)

Nuclear Regulatory Commission Decommissioning Planning. The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to improve decommissioning planning, and thereby reduce the likelihood that any current operating facility will become a legacy site.

(Federal Register -1/22/08)

Environmental Protection Agency Emission Standards for Stationary Diesel Engines. With this advance notice of proposed rulemaking, the U.S. Environmental Protection Agency is soliciting comment on several issues concerning options the U.S. Environmental Protection Agency can pursue through Federal rulemaking under the Clean Air Act to regulate emissions of pollutants from existing stationary diesel engines, generally, and specifically from larger, older stationary diesel engines.

(Federal Register – 1/24/08)

Environmental Protection Agency Approval and Promulgation of Implementation Plans; New Jersey; Zero-Emission Vehicle Component of the Low Emission Vehicle Program; Final Rule.

(Federal Register – 2/13/08)

MIT AND TEXAS INSTRUMENTS ANNOUNCE THE DEVELOPMENT OF ENERGY-EFFICIENT MICROCHIP

Researchers at MIT and Texas Instruments (TI) have unveiled a new microchip design for portable electronics that can be up to ten times more energy-efficient than present technology. The design could lead to cell phones, implantable medical devices, and sensors that last far longer when running from a battery.

The innovative design was presented February 5 at the International Solid-State Circuits Conference (ISSCC) in San Francisco, CA. The development team demonstrated the ultra-low power design techniques on TI's MSP430, a widely used microcontroller.

The key to the improvement in energy efficiency was to find ways of making the circuits on the chip work at a voltage level much lower than usual, it was explained. While most current chips operate at around 1 volt, the new design works at just 0.3 volts.

Reducing the operating voltage, however, is not as simple as it might sound, because existing microchips have been optimized for many years to operate at the higher standard voltage level. For the new chip to function, memory and logic circuits have to be redesigned to operate at very low power supply voltage as well.

One key to the new design was to build a DC-to-DC converter – which reduces the voltage to the lower level-right into the same chip, which is more efficient than having the converter as a separate component. The redesigned memory and logic, along with the DC-to-DC converter, are all integrated to realize a complete system-on-a-chip solution.

So far, the new chip is a proof of concept. Commercial applications could become available in five years in a number of exciting areas. For example, portable and implantable medical devices, portable communications devices, and networking devices could be based on such chips, and thus have greatly increased operating times. There also may be a variety of military applications in the production of tiny self-contained sensor networks that could be dispersed in a battlefield. The research was funded in part by a grant from the U.S. Defense Advanced Research Project Agency.

(Env. Tip of the Week
2/12/08)

PENNSYLVANIA BULLETIN NOTICES

Notices – Proposed Revisions to General NPDES Permit for Petroleum Product Contaminated Groundwater Remediation Systems (PAG-05); Public Notice.	10/13/07
Idling Reduction Regulation Approved For Public Comments – A new regulation approved for public comment today by the Environmental Quality Board will help clean Pennsylvania's air. The regulation, developed by the Department of Environmental Protection after it was petitioned by the Clean Air Board of Central Pennsylvania, would limit the amount of time a diesel powered commercial motor vehicle can idle its engine to no more than five minutes in a 60-minute period. The rule is aimed, primarily, at long-haul truckers, many of whom idle their vehicles during federally mandated rest periods to provide heating, cooling and power to their bunks and cabs. It will also affect other vehicles, such as many delivery trucks, school buses, transit buses and motor coaches.	10/16/07
Technical Guidance & Permits – Beneficial Use of Waste Foundry Sand; Notice of Reissuance; General Permit WMGR019.	10/20/07
Notices – Proposed General Plan Approval for Pharmaceutical and Specialty Chemical Production (BAQ-GPA-24).	10/27/07
Technical Guidance & Permits – Beneficial Use of Alternative Fuels for Circulating and Bubbling Fluidized Bed Boilers and Pulverized Coal-Fired Boilers; Notice of Issuance; General Permit WMGR116.	10/27/07
Draft Technical Guidance – DEP ID: 257-4000-001. Title: Storage Tank Product Delivery Prohibition. Description: This guidance document describes the circumstances under which the Department may impose storage tank product delivery prohibitions in conjunction with the Department's authority to suspend, revoke or deny an operating permit.	11/10/07
Rules and Regulations – Revision: 25 PA. CODE CH. 245 Storage Tank and Spill Prevention Program	11/10/07
Technical Guidance & Permits – Department of Environmental Protection published a notice rescinding nine different policy statements related to the Storage Tank Program. Final Rulemaking: Chapter 245, Subchapters A and B. Summary for the Permitting of Underground and Aboveground Storage Tank Systems and Facilities; P.E. Certification for ASTs. Strategy for Addressing the 1998 Federal and State Deadline for Upgrading Existing USTs. ASNT Level II Certification. Summary of the Technical Standards for USTs. Summary of Technical Standards Requirements for ASTs. Summary of the Simplified Program for Small ASTs. Upgrade Requirements Triggered by Substantial Modification of USTs.	11/30/07
Draft Technical Guidance – Title: Financial Assurance and Bond Adjustments for Mine Sites with Postmining Discharges. Description: This document sets forth how the bond requirement provisions specified in the Surface Mining Conservation and Reclamation Act, The Clean Streams Law, the Coal Refuse Disposal Control Act and the Noncoal Surface Mining Conservation and Reclamation Act and their implementing regulations are to be implemented for sites with a postmining discharge. The document establishes guidelines for bond adjustment and for the establishment of a trust fund by the permittee to ensure the long-term treatment of postmining discharges. The guidance applies to all surface coal mining, underground coal mining and coal refuse disposal activities with postmining discharges.	12/14/07
Rules And Regulations – Final Radiological Health Rule Changes – Were adopted 25 Pa Code, Chapter 215 (General Provisions); Chapter 221 (X-rays in the Arts); Chapter 225 (Radiation Safety Requirements for Industrial Radiographic Operations); Chapter 230 (Packaging and Transportation of Radioactive Material) and Chapter 240 (Radon Certification). The amendments update references to guidance and standards for radon testing and mitigation, and restore a written reporting report concerning department notification of incidents involving the malfunction of shielded room radiography equipment among other items.	12/21/07
Rules And Regulations – Final Clean Air Interstate Rule – Was approved and adopts the rules necessary for the implementation and enforcement of the federal Clean Air Act Rule that requires 28 states, including Pennsylvania, and the District of Columbia to adopt control measures to reduce emissions of sulfur dioxide or nitrogen oxide or both, that significantly contribute to nonattainment of the PM2.5 and eight-hour ozone NAAQS in northeastern states. This final rulemaking establishes a program to limit NOx and SO2 emissions from electric generating units of 25 megawatts or more. The regulations extend existing NOx emission permit limits for certain boilers, stationary combustion turbines, combustion turbines, stationary internal combustion engines and Portland cement kilns. The rulemaking also establishes CAIR trading programs.	12/22/07
Rules And Regulations – Revised Radiological Health and Radon Certification Fees – Were adopted.	12/22/07
Rules and Regulations – Game Commission: Wildlife Classification; the northern flying squirrel has been added to Pennsylvania's endangered species list	12/22/07
Surface and Underground Coal Mining: General; Advance Notice of Final-Form Rulemaking – The Department of Environmental Protection (Department) is soliciting comments on changes it recommends to be made to the proposed Coal Mine Reclamation Fees and Reclamation of Bond Forfeiture Sites regulations, which were published as proposed rulemaking at 36 Pa.B.4200 (August 5, 2006). The regulations no longer eliminate the reclamation fee. The regulations retain the fee at the current level of \$100 until January 2010. Subsequently, a mechanism for adjusting the reclamation fee, to provide revenue sufficient to fund the perpetual operation and maintenance activities at primary Alternate Bond System (ABS) sites whose bonds were forfeited and have postmining discharges, will be used to determine the annual amount of the reclamation fee. The regulations also contain guidelines and a funding mechanism that provides for the annual review of revenues and treatment expenditures, and projections for these future costs and revenues. The revised regulations also provide for the establishment of a perpetual fund dedicated to these ABS legacy sites and will require the Department to dedicate certain identified funding sources to paying the reclamation costs for ABS legacy sites. When this funding mechanism is actuarially sound, collection of the reclamation fee will cease.	1/5/08
Final Technical Guidance - Laboratory Reporting Instructions for Disinfectant Residuals, Disinfection Byproducts and Precursors.	1/19/08
Draft Technical Guidance – Laboratory Reporting Instructions for Total and Fecal Coliform Bacteria in Public Drinking Water Distribution System.	1/19/08
Draft Technical Guidance – Substantive Revision: Laboratory Reporting Instructions for Radiological Contaminants in Drinking Water Systems.	1/26/08
Notices – Municipal and Residual Waste Composting; General Permit Number WMGR025; Notice of Issuance	2/9/08
Notices – Public Notice of Availability; Proposed Revisions to General NPDES Permit for Wet Weather Overflow Discharges from Combined Sewer Systems (PAG-06)	2/9/08
Notices – General NPDES Permit for Petroleum Product Contaminated Groundwater Remediation Systems (PAG-05); Public Notice of Availability.	2/9/08
Final Technical Guidance – Storage Tank Product Delivery Prohibition.	2/9/08
Notices – Calculating Long-Term Operation and Maintenance Cost Bonds for Water Supply Replacement – Mining Operations; Notice of Rates	2/23/08

KEY HIGHLIGHTS

PA UPDATES

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- Big Rig Idling Reduced, pg. 5
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TECHNOLOGY UPDATES

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FEDERAL UPDATES

- Federal Mold Bill, pg. 1
- Will EPA Narrow Oil RCRA Exemption, pg. 12
- SPCC Rules Revised, pg. 12
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NJ REGULATORY UPDATES

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RT E-MAIL DIRECTORY

LARRY BILY	LBILY@RTENV.COM
GARY BROWN	GBROWN@RTENV.COM
THOMAS DONOVAN	TDONOVAN@RTENV.COM
GLENNON GRAHAM	GGRAHAM@RTENV.COM
CRAIG HERR	CHERR@RTENV.COM
WALTER HUNGARTER	WHUNGARTER@RTENV.COM

JOE LANG	JLANG@RTENV.COM
JUSTIN LAUTERBACH	JLAUTERBACH@RTENV.COM
ROB MCKENZIE	RMCKENZIE@RTENV.COM
ADAM MEURER	AMEURER@RTENV.COM
CHRIS WARD	CWARD@RTENV.COM

VISIT OUR WEBSITE WWW.RTENV.COM



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RT Environmental Services, Inc.
215 West Church Road
King of Prussia, Pennsylvania 19406

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