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# The RT Review

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## WHAT IS ASBESTOS?

Asbestos is the name given to a group of naturally occurring minerals that are resistant to heat and corrosion. Asbestos has been used in products, such as insulation for pipes, floor tiles, building materials, and in vehicle brakes and clutches. Asbestos includes the mineral fibers chrysotile, amosite, crocidolite, tremolite, anthophyllite, actinolite and any of these materials that have been chemically treated or altered. Heavy exposures tend to occur in the construction industry and in ship repair, particularly during the removal of asbestos materials due to renovation, repairs, or demolition. Workers are also likely to be exposed during the manufacture of asbestos products (such as textiles, friction products, insulation, and other building materials) and during automotive brake and clutch repair work.

### What are the hazards of asbestos?

Asbestos is well recognized as a health hazard and its use is now highly regulated by both OSHA and EPA. Asbestos fibers associated with these health risks are too small to be seen with the naked eye. Breathing asbestos fibers can cause a buildup of scar-like tissue in the lungs called asbestosis and result in loss of lung function that often progresses to disability and death. Asbestos also causes cancer of the lung and other diseases such as mesothelioma of the pleura which is a fatal malignant tumor of the membrane lining the cavity of the lung or stomach. Epidemiologic evidence has increasingly shown that all asbestos fiber types, including the most commonly used form of asbestos, chrysotile, causes mesothelioma in humans.

### What can be done to reduce the hazards of asbestos?

Worker exposures to asbestos hazards are addressed in specific OSHA standards for the construction industry, general industry and shipyard employment sectors. These standards reduce the risk to workers by requiring that employers provide personal exposure

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*An RT Philadelphia Brownfields Project*

## A FACTORY SITE CLEANED UP NICELY

New Kensington Community Development Corp. wasn't sure that "Awesometown" was the right name for its 14-home, mixed-income development lying between Moyer and East Thompson Streets in Fishtown.

But Postgreen Homes, which had been "doing interesting things in the neighborhood," in the words of New Kensington executive director Sandy Saltzman, was the partner in the project, and the name "fit into its brand of marketing."

Not surprisingly, "people gravitated to it," Saltzman said, adding that "every time we talk about it, they say that it is 'awesome.'"

It is awesome, in many respects, not the least of which is that all 14 homes - 10 market-rate and four affordable - have been sold, even as the four East Thompson Street houses and the driveways for the project are in the final weeks of construction.

"The driveways - parking - are a key part of Awesometown," Saltzman said, since it is a problem mentioned by just about everyone in the neighborhood, whether lifelong or newcomer.

Eight of the single-family townhouses are in the 400 block of Moyer Street, while two are in the middle of the oddly shaped, 40,000-square-foot lot.

The income-eligible buyers of the four subsidized townhouses were chosen through a lottery, said Kevin Gray, New Kensington's real estate director.

The project, Gray said, was one of the first in the city in which a local, sustainable for-profit developer has partnered with a nonprofit community development corporation to develop "eco-friendly," affordable housing.

Awesometown, designed by Interface Studio Architects and built by Hybrid Construction, was financed by a combina-

tion of private financing and a property tax abatement from the city in place of federal funding, Gray said.

The subsidy for the four affordable townhouses, structured through a mortgage program sponsored by the Pennsylvania Housing Finance Agency, was capped at \$200,000 and was provided to buyers earning at or below 100 percent of area median income, he said.

Applicants had to attend a housing counseling session with New Kensington to qualify for the subsidy.

The market-rate townhouses, which were sold by Postgreen, commanded about \$429,000, Saltzman and Gray said - slightly lower than what new construction is going for in Fishtown and East and South Kensington.

The recent housing boom in these former industrial neighborhoods still fascinates both Saltzman and Gray.

"I live a block from Awesometown in a house I bought for \$7,500 in the late 1970s," Saltzman said.

The site of Awesometown was far from awesome for many years.

Originally a textile mill, it was purchased in 1972 and became Pathan Chemical, which processed detergents and fabric softener. EPA began evaluating the site in 1996

The business closed in 1997, and in March 1999, youths broke into the factory and, to keep warm, started a fire on the wooden floor, Saltzman said, adding that many old factories in the neighborhood

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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. 215  
*Hydrogeology Group Manager*  
E-mail: CHERR@RTENV.COM

Walter Hungarter, P.E., Vice President  
Phone: (610) 265-1510 Ext. 238

*General Manager*

E-mail: WHUNGARTER@RTENV.COM

**New Jersey**

Chris Ward

Phone: (856) 467-2276 Ext. 122  
E-mail: CWARD@RTENV.COM

Suite 306, Pureland Complex  
510 Heron Drive, P.O. Box 521  
Bridgeport, NJ 08014  
Phone: (856) 467-2276  
FAX: (856) 467-3476

**Southwest Pennsylvania**

Justin Lauterbach, Q.E.P., Vice President  
E-mail: JLAUTERBACH@RTENV.COM

591 East Maiden Street  
Washington, PA 15301  
Phone: (724) 206-0348  
FAX: (724) 206-0380

**Regional Partners**

**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

**A FACTORY SITE CLEANED UP NICELY** *(continued from page 1)*

have met their end in this manner.

New Kensington received the site from the Redevelopment Authority, and stepped in to remediate the site - required by the state Department of Environmental Protection (DEP) to replace contaminated soil with clean fill before building could begin, Saltzman said.

The other delay - the economic collapse in 2008 after which "lenders were not willing to provide financing," she said.

The project has been awarded LEED Platinum Version 4 certification for energy efficiency - the first in the state to receive it, Gray and Saltzman said.

Magrann Associates of Mount Laurel, the LEED for Home provider, worked with all parties to make sure it happened, Gray said.

"It can be more expensive to do it this way," he said, "but one result is that energy bills will be nonexistent."

By Alan J. Heavens  
Real Estate Writer  
Philadelphia Inquirer - 8/7/16

*RT appreciated the opportunity to work with Kevin Gray and the New Kensington Community Development Corporation on this project. Craig Herr, P.G. worked with DEP to address soil and groundwater issues. Gary R. Brown, P.E. designed and certified engineering controls at the site. Walter Payne, P.G., Andy Hartzell, Esquire, Tim Cherry and Mike Penzone, P.G. played key roles at DEP to help facilitate environmentally appropriate residential redevelopment. Post Green Homes is already continuing its redevelopment activities at more sites, building a better future for Philadelphia!*

- Gary Brown, P.E.  
- Craig Herr, P.G.



Awesometown on the 400 block on Moyer Street in Fishtown.

**WHAT IS ASBESTOS?**

*(continued from page 2)*

monitoring to assess the risk and hazard awareness training for operations where there is any potential exposure to asbestos. Airborne levels of asbestos are never to exceed legal worker exposure limits. There is no "safe" level of asbestos exposure for any type of asbestos fiber. Asbestos exposures as short in duration as a few days have caused mesothelioma in humans. Every occupational exposure to asbestos can cause injury of disease; every occupational exposure to asbestos contributes to the risk of getting an asbestos related disease. Where there is

exposure, employers are required to further protect workers by establishing regulated areas, controlling certain work practices and instituting engineering controls to reduce the airborne levels. The employer is required to ensure exposure is reduced by using administrative controls and provide for the wearing of personal protective equipment. Medical monitoring of workers is also required when legal limits and exposure times are exceeded. For further information in regards to asbestos hazards in your workplace or home, you can contact Mr. Tony Alessandrini at [talessandrini@rtenv.com](mailto:talessandrini@rtenv.com).

## RT STAFF AND PROJECT NEWS

John Rigolizzo is completing soil sampling work at a large construction site in Southern New Jersey, on a college campus. Work includes testing materials to see if there are any impacted soils being excavated during installation of utility trenches, foundations, etc. New Jersey has stringent Site Remediation standards, and although there is perceived to be a "clean fill" exemption for materials passed through Solid Waste Permitted Class B recycling centers, New Jersey's Clean Fill System really does not work, as most owners want to know if materials meet the Site Remediation Program "Clean Fill" Definition, should the property ever be sold. This is an important statewide issue, causing significant problems on many construction sites as the reality of the situation according to Gary Brown, RT's lead LSRP, is that the Solid Waste Clean Fill exemption does not work, because most properties

will be sold sooner or later. So, only the stringent Site Remediation Program Clean Fill criteria are reliable.

Chris Blosenski continues work on a mold project, where a house was not able to continue to be occupied for a number of reasons, some of which related to site work improvement construction.

Ben Bailey recently joined RT in our King of Prussia office. Ben is working on a car dealership upgrade/transaction project, where floor drain systems are being modified to meet current regulatory requirements.

Walter Hungarter continues to work on a number of large Act 2 projects, wherein future residential development is planned in southeast Pennsylvania.

Maria Scudder is completing work on a number of Preliminary Assessments, which are documents which constitute "due diligence" work

in New Jersey, in lieu of Phase I Environmental Site Assessments. Smart real estate agents in New Jersey are recommending that owners of properties for sale, as well as potential buyers, complete a combined Preliminary Assessment, meeting state requirements, and Phase I Environmental Site Assessment protocol meeting both bank and New Jersey DEP due diligence requirements.

RT also welcomes Breanna Morris, who is working with Justin Lauterbach in RT's Southwest Pennsylvania regional office. Breanna is already working on several Phase I Environmental Site Assessments and a Remedial Action Work Plan for a large industrial redevelopment project.

RT appreciates the opportunity to be of continued service and we look forward to the continued opportunities you give us.

- Gary Brown

## TECHNOLOGY UPDATES

### GEOPHYSICAL CLASSIFICATION FOR MUNITIONS RESPONSE

For decades, the U.S. Department of Defense (DOD) has produced and used military munitions for live-fire testing and training to prepare the U.S. military for combat operations; as a result, unexploded ordnance (UXO) and discarded military munitions may be present at over 5,200 former ranges and former munitions operating facilities throughout the United States. Nearly half of these sites require a munitions response, at an estimated cost to complete of \$14 billion and with a completion date of 2100.

To improve the efficiency of munitions response, DOD's Environmental Security Technology Certification Program and its research partners in academia and industry have developed a new, advanced approach: geophysical classification. Geophysical classification is the process of using advanced sensor data to make principled decisions about whether buried metal objects are potentially hazardous munitions that should be excavated (that is, targets of interest) or items such as metal clutter and debris that can be left in the ground (non-targets of interest).

This document clearly explains the process of geophysical classification; describes its benefits and limitations, including site-specific characteristics that can impose limitations on its use; and most importantly discusses the information and data needed by regulators to monitor and evaluate the use of the technology. This document also emphasizes the use of a systematic planning process to develop data acquisition and decision strategies at the outset of a munitions response effort. Systematic approaches include the U. S. Environmental Protection Agency's Data Quality Objectives process and the Uniform Federal Policy for Quality Assurance Project Plans guidance.

Stakeholder issues that are unique to munitions response are also discussed.

### INTEGRATED DNAPL SITE CHARACTERIZATION

Integrated site characterization is a process for improving the efficiency and effectiveness of characterization efforts at DNAPL sites. It encourages characterization at a sufficient resolution to capture the effects of the heterogeneities that direct contaminant distribution, fate, and transport, and remediation effectiveness, so that an integrated three-dimensional CSM can be developed and refined. The CSM should distinguish among transport and storage zones and identify relevant mass.

DNAPL sites have too often been characterized at a resolution insufficient for this understanding, and it is therefore reasonable to equate ISC with high(er) resolution site characterization; however, ISC should focus on whatever resolution is needed to adequately determine contaminant distribution, fate, and transport, and thereby define and effectively remediate (if necessary) any site risk.

New Concepts for the Evaluation of Fate and Transport

- Heterogeneity replaces homogeneity.
- Anisotropy replaces isotropy.
- Diffusion replaces dispersion.
- Back-diffusion is a significant source of contamination and plume growth.
- Non-Gaussian distribution replaces Gaussian.
- Transient replaces steady-state conditions.
- Nonlinear replaces linear sorption.
- Nonideal replaces ideal sorption.

ISC supports iterative refinement of the CSM over the project life cycle with information obtained during site investigation, remedy design, and remedy optimization. Similar to the USEPA's data quality objectives

### TECHNOLOGY UPDATES

- Munitions Response, pg. 3
- DNAPL, pg. 3
- Contaminated Sites Decision, pg. 3

(DQOs), it relies on a systematic objectives-based site characterization process that includes defining the uncertainties and CSM deficiencies; determining the data needs and resolution appropriate for site conditions; establishing clear, effective data collection objectives; and designing a data collection and analysis plan (Figure 4.1 and Section 4.1). Through ISC, the most appropriate and up-to-date site characterization tools are selected to effectively characterize site stratigraphy, permeability, and contaminant distribution. Once the data are collected, the process includes evaluating and interpreting the data and updating the CSM.

For more information go to: [http://www.itrcweb.org/DNAPL-ISC\\_tools-selection/Content/4%20Integrated%20DNAPL%20Site%20Characterization.htm](http://www.itrcweb.org/DNAPL-ISC_tools-selection/Content/4%20Integrated%20DNAPL%20Site%20Characterization.htm)

### DECISION MAKING AT CONTAMINATED SITES GUIDANCE

This guidance document provides resources to help project managers and decision makers to achieve effective risk assessment decisions when site-specific approaches, scenarios, and parameters are used for risk assessment. Community members and other stakeholders may also find this document helpful in understanding and using risk assessment information to make better environmental decisions.

Risk assessment is an ever-evolving, iterative process that affects human health, economic, ecological, and social decision mak-

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## FEDERAL REGULATORY UPDATES

### EPA WATER QUALITY METALS MODEL QUESTIONED BY OREGON ASSOCIATION OF CLEAN WATER AGENCIES

On April 18th, the Oregon Association of Clean Water Agencies submitted comments to EPA, questioning the stringency of EPA's default approach to implemented EPA's biotic ligand model. The model is an ecological risk model designed to calculate site – specific copper water quality criteria.

It is alleged that EPA, in proposing its own copper and cadmium criteria for Oregon is inappropriate and the Oregon Department of Environmental Quality is pressing the EPA for clarification that the document is not a “requirement”, and, that the agency is allowed to accept other scientifically valid approaches, and, other national groups representing clean water act permitted dischargers are criticizing the stringency of the approach, stating that EPA's recommended use of the 10th percentile of data sets for certain parameters is “far too conservative”.

The National Association of Clean Water Agency suggests that EPA defaults be used as a “screen” to determine where data collection is needed. One industry group, however, thinks that the document will make it easier for states to craft criteria where they lack in-state data.

### REPUBLICAN SENATORS SEEK INVESTIGATION OF GOLD KING SPILL

In a May 3rd letter, several Republican Senators asked the Department of Justice to investigate EPA for possible criminal charges, including Clean Water Act violations associated with the 2015 spill of 3 million gallons of waste water from the former Gold King Mine Site in Colorado.

Unfortunately, a peer reviewer within the Army Corp of Engineers expressed reservations regarding the chronology events that occurred within the EPA, at the time of the spill. Also, he questioned why the pressure of the mine could not be measured before excavation activities at the mine started.

Senator John McCain is calling for the Department of the Defense and Army Engineers to review EPA's conduct, as he believes that the proper expertise for conducting investigations rest with the Army Corp of Engineers as they have significant technical expertise in mine cleanups.

### EPA VAPOR INTRUSION SUPERFUND SCORING PROPOSAL COMMENTED ON

EPA proposed earlier this year to add

vapor or water intrusion as a contaminant pathway to be considered for placing a site on the Superfund National Priorities list. On April 29th the American Chemistry Council commented on the proposed rule, which would involve adding a subsurface component to the hazard ranking system. In addition, the Defense Department is critical of the rule, according to April 25th comments. Essentially, EPA could list sites on the NPL solely due to vapor or water intrusion into occupied structures. Although EPA thinks that this will not result in an increase in the number of sites to be added for potential future Superfund Clean-up, commenters question that EPA statement. Concern is also expressed by some parties that EPA's proposal is inconsistent until EPA develops guidance on how it plans to implement the proposed rule. Specifically, it has also commented that the rule is inconsistent with a number of other EPA guidance's, including those for existing EPA VI Petroleum Hydrocarbon Guidance Documents.

*The proposed addition of subsurface intrusion, which is the unsaturated zone and/or the shallow, unconfined groundwater, pathway evaluation into the Hazard Ranking System does not change the scoring procedure. Sites being evaluated and have a 28.5 score will qualify for the NPL listing.*

*Vapor intrusion (VI) is the most common form of subsurface intrusion and generally occurs when there are volatile organics in the soil or groundwater beneath structures. VI can be exacerbated when a basement flooded due to high groundwater tables.*

- Craig Herr, P.G.  
cherr@rtenv.com

### EPA FINALIZES NATIONAL WETLANDS ASSESSMENTS

EPA recently issued its 2011 National Wetland Condition Assessment, which is the 5th in the series of National Aquatic Resource Surveys. 48% of the wetlands in the United States were found to be in good condition, 20% in fair condition, and 32% in poor condition. Although there is typically much focus on contaminants as causing problems, a key finding is that wetlands with high levels of compacted soil are about twice as likely to have poor plant communities, than those with soil which is not compacted. Also, non-native plants are a problem across the country particularly in the interior plains and the West. You can access a copy of the National Wetlands Assessment by clicking below:

<https://www.epa.gov/sites/production/files/2>

### FEDERAL UPDATES

- EPA - Vapor Intrusion, pg. 4
- EPA - TCE Evaluation, pg. 4
- CWA - Permits for Groundwater, pg. 5

01605/documents/nwca\_2011\_public\_report\_20160510.pdf

### EPA TO TIGHTEN CWA PERMIT OVERSIGHT

States do not always keep up with renewing NPDES permits, and, all too often, permits continue past their expiration dates, with an administrative extension. EPA is now proposing to tighten oversight of “continued” permits, and, in a May 18th Federal Register Notice, to allow EPA Regions to block ongoing use of continued permits. States (and permittees) would have 90 days to file the revised Permit application to remedy whatever EPA is concerned about.

*This is an important issue, as permit extensions under the Clean Water Act for direct discharge and for Stormwater Permits have clearly continued on an upward trend, due to lack of state resources to issue timely permit renewals.*

### EPA EVALUATING SOLVENT TCE

EPA is proposing a Significant New Use Rule (SNUR) for trichloroethylene (TCE), under the Toxic Substances Control Act (TSCA). TCE is a commonly used dry cleaning solvent, and is also used in certain polishers, degreasers, solvents, lubricants, and sealants. Once EPA determines that the use of a chemical substance is a significant new use, TSCA allows the EPA to require a person to notify them through submission of a SNUR notice, at least 90 days before they manufacture or process the chemical for that new use. The required notification affords EPA the opportunity to evaluate the intended use and protect the public against unreasonable risks before that activity occurs.

The EPA has been conducted a toxicological review of the effects of TCE for over 20 years. There is also evidence that TCE can cause kidney cancer in humans and may be linked to liver cancer and non-Hodgkin lymphoma. Evidence from human and animal studies also points to the involvement of TCE exposure in auto-immune disease and hypersensitivity. There are mixed results from rodent and epidemiologic studies, however recent avian and in-vitro mechanistic studies have provided biological plausibility that TCE plays a role in developmental cardiac toxicity. The Agency believes that

## FEDERAL REGULATORY UPDATES *(Continued)*

cardiac birth defects may be linked to exposure to TCE and other volatile organic compounds (VOCs).

*RT has completed numerous studies and remediation projects at sites impacted by TCE as a result of its use at dry cleaning sites and at those facilities where industrial solvents are present. RT views the SNUR proposed by EPA as a positive step toward protecting public health and identifying manufacturing processes where the use of potential carcinogens are involved.*

A copy of the April 8th Federal Register Notice for the SNUR can be accessed by clicking below:

<https://www.epa.gov/sites/production/files/2016-05/documents/ail-epa-march-2016-04262016.pdf>

-Justin Lauterbach, QEP  
Vice President  
jlauterbach@rtenv.com

### NEW TEST PROPOSED RESTRICTING PESTICIDES RISKS TO BEES

EPA has identified tests that it plans to codify by 2017, to support methods to reduce risks to bees, whose population is significantly declining. Two moves are underway, a federal strategy, and proposed outlined new testing requirements, which can be accessed by clicking below:

[https://www.epa.gov/sites/production/files/2016-05/documents/session-4-pollinator-protection-activities-part\\_i.pdf](https://www.epa.gov/sites/production/files/2016-05/documents/session-4-pollinator-protection-activities-part_i.pdf)

### CAN CLEAN WATER ACT PERMITS APPLY TO GROUNDWATER DISCHARGES

The Clean Water Act (CWA) prohibits the discharge of pollutants into “waters of the United States” without a National Pollutant Discharge Elimination System (NPDES) permit. It has long been contested as to what qualifies as a “water of the United States”, and the issue has been the subject of many court cases. Environmentalists have been arguing that the CWA applies in those situations where pollutants are present in groundwater discharges which eventually connect or migrate into “waters of the United States.”

Three Federal District Courts have recently considered the issue as to whether the CWA applies to groundwater discharges. Two courts within the fourth circuit have decided that the Act does apply to groundwater discharges in those situations where they are hydrologically connected to other jurisdictional waters of the U.S. The third court, in Pennsylvania, had determined that the CWA applies in far more limited circum-

stances. Despite these recent decisions, there have been other district courts across the country who have viewed the CWA as not being applicable to groundwater discharges. The issue is currently before the Ninth Circuit Court, and they are examining whether groundwater discharges that are hydrologically connected to jurisdictional waters are covered under the CWA. It has been previously determined, and there is no question, that the CWA does not apply to isolated groundwater which does not connect to a larger water body, but if groundwater can be viewed as a conduit to other jurisdictional waters, the issue has been, and continues to be, contested.

The issue regarding whether the CWA applies to groundwater discharges which are connected to other jurisdictional waters is extremely controversial, and the outcome could have far-reaching consequences to many different industries and government regulatory agencies. A decision confirming that the CWA does apply to groundwater discharges would result in many facilities immediately becoming subject to CWA violations. Wastewater ponds, retention ponds, quarries, slurry pits, etc. could all be deemed to be in violation of the CWA if their pollutants are found to discharge into groundwater. The Environmental Protection Agency (EPA) and the Army Corps of Engineers established the Clean Water Rule in 2015, which clearly indicates that they never “interpreted groundwater” to be covered under the CWA.

*RT believes that the historical court decisions and interpretations which have decided that groundwater discharges are not covered under the CWA is the correct decision. If the courts accept what is referred to as the “conduit theory”, there will be major conflicts with the notion of a “point-source” discharge. A “point-source” discharge is a discharge that comes from a “discernable, discrete, and confined conveyance.” If the “conduit theory” is accepted, the notion of a point-source discharge then becomes meaningless. Additionally, regulatory agencies currently experience a large backlog of CWA permits, and adding the requirement for groundwater discharges to become permitted would only exacerbate the permit review situation.*

-Justin Lauterbach, QEP  
Vice President  
jlauterbach@rtenv.com

Source:D. Buente – American College of Environmental Lawyers

Z. Kearns – Marten Law

### JUNE SUPREME COURT ACTIVITY MAKES KEY DECISION ON CLEAN WATER ACT DETERMINATIONS

Decisions in June, brought to a head the issue of whether wetlands permitting actions can be challenged, or whether, decisions have to wait, causing questions on the fairness of wetlands permitting processes. A dispute in the Hawkes Company case was sparked when the Army Corps of Engineers issued a final approval jurisdictional determination stating, the property owned by the company contained wetlands that were regulated by the Army Corp of Engineers under Section 404 of the Clean Water Act.

Although the Federal Government tried to argue that the permittee could not make an immediate challenge, the Supreme Court found that a permittee need not wait until after the Corp of Engineers brings some enforcement action, and that the courts Corps determination could be contested immediately. The decision enables individuals and companies to more easily challenge the Federal Government’s ability to regulate development of their property. This is the latest challenge to the jurisdictional scope of the Clean Water Act, which is receiving much national attention.

*(E2 Law Blog, Greenberg Traurig, LLP – 6/1/16)*

### HEAVY DUTY GREENHOUSE GAS RULE AND NO<sub>x</sub> LIMIT

State and local air quality agencies are petitioning EPA to cut nitrogen oxides emissions from heavy duty vehicles by 90%, and align new nitrogen Oxide Standards with a pending rule to cut greenhouse gas emissions from the heavy duty vehicle fleet. A June 3rd Petition was filed and the Petition was led by California’s South Coast Air Quality Management District.

The path to resolve this is not clear because some regulators have long been concerned that some greenhouse gas reduction technologies and processes required to comply with the EPA’s Greenhouse Gas Rule will increase combustion chamber temperatures, with a side effect being to raise engine’s emissions of nitrogen oxides.

### WATER UTILITIES QUESTION EPA CLEAN WATER ACT “BLENDING” POSITION

In a June 15 Brief filed with the US Court of Appeals for the District of Columbia Circuit, EPA’s position, influenced by quick proceedings regarding “blending”, has reached a level of controversy because EPA

## FEDERAL REGULATORY UPDATES *(Continued)*

only plans to follow the ruling in certain states. The suit involves a Petition from the Center for Regulatory Reasonableness, on behalf of wastewater utilities. Some of the issues are unclear because EPA has apparently issued “an EPA Headquarters Desk Statement”, and a new appendix of documents found, appears to undermine what EPA has been stating to the Court.

*We at RT think this is an issue of “regulatory basics” importance which needs to be organized and focused by EPA. Uniform standards for how blending of wastewater is or is not allowed to occur, is or is not permitted, and how it should be monitored, is something that should have been resolved long ago on a nationwide basis.*

*Let’s hope that EPA gives this attention this year. It is hard for cities in the US to budget for wastewater treatment when there is no firm answer on “blending”. – Gary Brown*

### LANDFILL METHANE AIR RULES STILL GOING FORWARD, WHILE USE OF LANDFILL GAS FOR ENERGY SLOWS

Comments submitted by the Utility Regulatory Group, are focused on opponents of EPA’s proposal to update landfill emission guidelines, which go back to the year 2000. Different states handle landfill gas regulations in different ways, but capturing and reusing gas has been one of the key alternatives considered appropriate to manage landfill gas going forward. Landfill gas is considered to be a key factor in causing greenhouse gas impacts. It has been proposed to lower thresholds at which landfill facilities must capture methane emissions.

There is concern that economic factors could make the capture of lower thresholds of methane gas from landfills less practical. Because of reduced reimbursement from sending methane gas to market, energy prices are falling. The new methane air rules from EPA were Finalized and posted on the Agency’s webpage on July 15, 2016:

<https://www3.epa.gov/airtoxics/landfill/landflpg.html>

The cost of natural gas since in the early 90’s has been between \$1 and \$2 per USD/MMBtu and increased from 2000 through 2009 to ~\$8 USD/MMBtu. Since 2009 and the increased production of domestically produced Shale Gas, the cost of natural gas as seen dramatic decreases returning to ~\$2 per USD/MMBtu (source [www.tradingeconomics.com/commodity/natural-gas](http://www.tradingeconomics.com/commodity/natural-gas)). EPA proposed rulemaking dates

back to 2000 when market driven natural gas prices were primed for increases. As the cost of natural gas has returned to pre-2009 levels, many are questioning if the Agency’s cost benefit analysis still holds muster as it may not be cost effective for many landfills to install collection and control systems which are used to generate electricity. Further the Agency’s cost benefit analysis reflected revenues derived from selling electricity generated by the landfill facility; and landfill gas revenues may not be able to compete the domestically produced Shale Gas. Look for changes once EPA finalizes the guidelines and regulations.

– **Walter H. Hungarter, III**  
Vice President  
whungarter@rtenv.com

### INCINERATOR AIR RULE REVISIONS FINALIZED BY EPA

In the June 23rd *Federal Register*, a Final Rule was issued revising parts of Incinerator New Source Performance Standards. Revised are Emissions Guidelines for existing sources, which are commercial and industrial solid waste incinerator units. Revisions included weakening some emission limits and revisions also taking into account the variability of toxics content in fuels.

Also finalized were definitions of Continuous Emissions Monitoring System Data during start up and shut down periods. Incinerators have different sub-categories.

### EPA MAY CHARGE FOR HAZARDOUS WASTE E-MANIFEST USAGE

EPA posted a proposed User Fees Rule on June 27th for the Hazardous Waste Electronic Manifest Program. The Rule would require that hazardous waste treatment, storage and disposal facilities pay user fees for using the system. It is believed that the proposal to have the facilities managing hazardous waste pay for manifest usage, is considered to be less burdensome administratively than charging generators.

### FILINGS ON CLEAN WATER ACT VIOLATIONS

There is a recent filing in California related to Clean Water Act permitting, which could receive early review because of the Supreme Court’s recent unanimous decision allowing pre-enforcement review of Clean Water Act jurisdictional determinations.

A case in California is very interesting because Duarte, who holds itself out as an agricultural firm, is saying that the Corps of

Engineers is improperly identifying farming activities on properties containing protected wetlands as simple plowing, an agricultural practice, causes a “discharge” of fill material. Duarte is very concerned that simple plowing activities, long known to be of an agricultural nature, may have to be permitted in the future if the Corps of Engineers activities are upheld.

*We will keep you informed on this in the RT Review.*

– Gary Brown

### EPA CONCERNED ABOUT LEAD DRINKING WATER PIPES AND STATE PROGRAMS

EPA is saying that some states do not inventory the location of drinking water lines made from lead, which EPA considers of concern. Specifically, states responded to EPA February 29th letters and some states may not have adequate sampling and reporting programs. Under the Lead and Copper Rule, EPA expects states to be “tiering” sites based on whether service lines were installed before or after 1982 and/or whether there are buildings and multifamily residences, or just single family residences involved in receiving water supply through lead pipe service lines.

EPA indicates many states are posting compliance sampling results in a more in depth manner. EPA hopes to keep working with states where there are lead action level exceedances, and Lead and Copper Rule violations.

### ALPHA NATURAL RESOURCES BANKRUPTCY REORGANIZATION PLAN OPPOSED BY FEDERAL GOVERNMENT

Alpha Natural Resources filed Chapter 11 Bankruptcy last year, and has proposed a Bankruptcy Plan which could remove \$300 million cash from Alpha, as well as its more valuable mines. The Justice Department is opposed to the Bankruptcy Reorganization Plan, as it believes that the company may not be able to maintain regulatory compliance and if that is an issue, the company should not be discharged from bankruptcy. EPA and the Corps of Engineers are involved, and there are questions regarding Section 404 Permits and mining restoration measures.

### EPA LANDFILL METHANE RULES MAY CAPTURE MORE STRINGENT

EPA recently issued rules for municipal solid waste landfills requiring higher capture rates for methane in the landfill gas. EPA’s

## FEDERAL REGULATORY UPDATES *(Continued)*

proposed higher capture rates would yield a combined 487,000 metric tons in annual methane emissions by 2025. EPA used an 85% “gas collection efficiency assumption” as part of proposed rulemaking. It is generally agreed, however, that there is uncertainty in that collection performance of control systems is assumed, but not measured in a reliable way. Tightened rules would apply to landfills built, modified or reconstructed after July 17, 2014.

### TSCA PROGRAM REVISIONS

There are provisions in the newly enacted revisions to the Toxic Substance Control Act which will help regulatory agencies at the state and/or federal level address specific chemicals. It is considered by one Senator that such substances as Perfluorooctanoic Acid (PFOA), can be appropriately regulated. Going forward, agencies are allowed to target specific chemicals or a group of chemicals, and EPA would be required to prioritize taking actions to those substances that are persistent and bio-accumulative.

The recent updates to TSCA reform were meant to address shortcomings in the 1976 Toxic Substance Control Act.

### GLYPHOSATE UNDER REVIEW BY EPA

In a July 26th *Federal Register* Notice, EPA is seeking scientists who will sit on a Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) Science Advisory Panel, to evaluate whether Glyphosate, the

nation’s most commonly used herbicide, causes human cancers to appear. EPA has been criticized for handling the evaluation of Glyphosate in the past, and setting up a new panel is expected to help address past problems.

### COURT FAULTS BOILER STANDARDS, BUT IS OKAY WITH PARTICULATE MATTER POLICY

The US Court of Appeals for the District of Columbia Circuit faulted EPA’s Maximum Achievable Control Technology (MACT) Boiler Standards because in some instances, carbon monoxide was used as a surrogate for establishing needed cuts in other pollutants to achieve cuts in certain nar-CO compounds, including non-dioxin or furan organic hazardous air pollutants. Use of chemical compound surrogates has always been questionable, so it will likely be necessary that more work be undertaken by EPA before the Boiler Standards involved can go forward. The Court did however, concur that the particulate PM 2.5 NAAQS work was appropriate and can stand as is.

The MACT ruling is a significant setback for EPA, as the Boiler Rules have involved a yearlong effort which has hit a significant number of bumps in the road.

### EPA CONSIDERING NEW MODEL TO DEVELOP AQUATIC CRITERIA FOR COPPER

In the July 29th *Federal Register* it was

indicated that EPA is receiving public comment on a revised model to be used to set Clean Water Act criteria for Copper goes forward. The model which has been used, the Salt Water Biotic Ligand Model (BLM), has been considered too stringent and a number of state agencies specifically called out EPA’s BLM approach as more stringent than necessary to protect aquatic life.

### AIR EMISSIONS ARE NOT “DISPOSAL”

The US Court of Appeals for the 9th Circuit ruled that air emissions and diffuse anthropogenic pollution resulting on the land, is not “disposal” under the United States Superfund Law. In a widely watched case, a smelter in Canada owned by Teck had been under the gun because native Indian tribes believed that land was contaminated from the emissions fallout. In a related case involving BNSF Railway Company, it was alleged that particulate emissions from train engines caused contamination of the land.

The Court made reference to the ruling on the BNSF case and another case called Parson Harbor. Distinctions were made between “deposit” and “disposal.” The Court found that the term “deposit” seems to be inconsistent with the rest of CERCLA, and that if atmospheric depositions were accepted as “disposals”, disposal would be a never-ending process, eliminating the CERCLA “innocent landowner” defense.

## TECHNOLOGY UPDATES *(continued from page 3)*

ing. As an integral component of many local and state regulations and policies governing the cleanup of contaminated sites, risk assessment provides a scientific and defensible rationale to support cleanup decisions. Regulations, guidance, and policies often define default parameters and processes as a starting point for risk assessment, but rely on the professional judgment of the project manager to address site-specific modifications to these parameters and processes. Consequently, project managers and decision makers face the challenge of having sufficient background, knowledge, and resources to evaluate these site-specific modifications and make informed decisions concerning the risk assessment (see Executive Summary).

In this guidance, key issues commonly encountered when performing human health risk assessment are identified, and potential options are offered for addressing each issue. The Introduction offers a brief overview of

risk assessment and related areas such as risk management, risk communication, and stakeholder engagement. Chapter 2 provides a discussion of the use of risk assessment in site cleanup.

For more information on this Guidance please go to: <http://www.itrcweb.org/risk-3/>

### PETROLEUM VAPOR INTRUSION GUIDANCE

Volatile chemicals released from contaminated soil and groundwater can accumulate in soil gas and migrate through unsaturated soils of the vadose zone. This process is known as vapor intrusion (VI). Petroleum vapor intrusion (PVI) is a subset of VI and describes the process by which volatilized hydrocarbons from petroleum-contaminated soils, groundwater, and light nonaqueous phase liquids (LNAPL) diffuse through the vadose zone and into overlying buildings. Fortunately, in the case of petroleum vapors, this migration is typically restricted by

biodegradation, which is the breakdown of these chemicals to nontoxic compounds by microorganisms that are ubiquitous in soils. The extent to which this natural biodegradation process restricts PVI, however, is not fully addressed in current guidance documents. Thus, regulatory agencies, consultants, and industry are wasting both money and time on PVI evaluations using traditional VI approaches that in most cases are not necessary and rarely lead to vapor control.

This ITRC guidance document uses a scientifically-based approach to support improved decision making at potential PVI sites by employing an eight-step process. By applying this approach, decision makers can confidently screen out sites, and therefore focus limited resources on the small fraction of petroleum-contaminated sites that warrant vapor control or additional site management.

For more information on this Guidance go to: <http://itrcweb.org/PetroleumVI-Guidance/>

# PA UPDATES

## **PENNSYLVANIA URGES MILITARY TO PAY FOR CITIZEN'S HEALTH TESTS NEAR PFC SITES**

Pennsylvania Governor Tom Wolf has requested the Military to pay for citizen's health tests in three communities near the Horsham Air Guard station, the Naval Air Warfare Center in Warminster, where drinking water health advisories have been issued. EPA set lifetime exposure limits and studies now need to be completed to determine what exposures have occurred or may occur. The contaminants of concern include perflourooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS). The letter was issued in mid-June, and Pennsylvania's two Senators and three Congressmen also wrote to the Navy, indicating that they believe the Navy has an obligation to take further steps to address ongoing health and safety concerns.

*The contaminants of concern, PFOA and PFOS, are found in firefighting foam. The firefighting foam, used in military training operations, has contaminated groundwater aquifers, which are utilized for drinking water purposes across the county. The drinking water health advisors mentioned above were issued due to these chemicals having been recently detected in several public and private wells surrounding the Horsham Air Guard Station and the Naval Air Warfare Center. The health tests were recommended since research has indicated these firefighting chemicals are known to cause cancer as well as adverse developmental and reproductive affects.*

*The chemicals found in firefighting foam are categorized as perfluorinated compounds (PFCs), which according the EPA are resistant to typical in-situ groundwater treatment technologies (direct oxidation).*

### **PA UPDATES**

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*Other types of groundwater treatment, including carbon filters and reverse osmosis have shown to remove PFCs from water. According to the EPA, though incineration of any concentrated waste would be needed for complete destruction of the PFCs. Information obtained from a Water Online article:*

*<http://www.wateronline.com/doc/military-testing-hundreds-of-sites-for-water-contamination-0001>*

*-Ken S. Eden, QEP, CHMM  
keden@rtenv.com  
610-265-1510*

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## **CRUSHCRETE – BETHLEHEM**

Crushcrete, Inc. is a full service concrete and asphalt recycling center, with two locations in Pennsylvania. We are pleased to feature Crushcrete's Bethlehem facility, located just off of 412 in Bethlehem at the Exit 67/I-78 Interchange. Crushcrete is a concrete recycling center accepting block, brick, rock, granite, marble and stone. Aggregate is produced for resale in the form of #57 (Clean 2B) screening, and 2A modified. Since 2009, Crushcrete has also been a DEP-approved asphalt shingle recycler, and they take in clean tear-off roofing shingles and process them to a usable material for use in the manufacturing of hot and warm mix asphalt paving. Crushcrete considers itself to be an environmentally friendly company, and you can find out more about Crushcrete by contacting:

Lisa Snyder  
Ph: 610-217-3447  
Email: [lisa@crushcrete.com](mailto:lisa@crushcrete.com)



*From this:*



*To this:*



Lisa can also tell you about Crushcrete's other facility in East Stroudsburg.

## NJ UPDATES

### NEW RULE FOR LSRP TIMEFRAME COMMUNICATION REQUIREMENTS

On January 4, 2016, the New Jersey Site Remediation Professional Licensing Board adopted a new rule governing the licensed site remediation professional (LSRP) program, codified at N.J.A.C. 7:26I ("Regulations of the New Jersey Site Remediation Professional Licensing Board," "Board rule"). The Board rule addresses LSRPs' professional conduct and includes requirements at N.J.A.C. 7:26I-6.8(b) and (c) and N.J.A.C. 7:26I-6.18(b) concerning the LSRP's duty to communicate with clients regarding applicable remediation timeframes, notify clients if those timeframes are unlikely to be met, and the consequences of missing those timeframes. Additionally, the rule requires that the LSRP notify the Department when he or she believes that applicable mandatory or expedited site-specific timeframes will likely be missed.

In order to assist LSRPs in communicating with their clients, the Department has posted the "Licensed Site Remediation Professional (LSRP) Timeframe Communication Requirements" as an administrative guidance document at [www.nj.gov/dep/srp/guidance/](http://www.nj.gov/dep/srp/guidance/). This administrative guidance includes additional details regarding remediation timeframes and the consequences of non-compliance.

In addition, and in order to simplify the process for LSRPs for notifying the Department that an applicable mandatory or expedited site-specific timeframe is unlikely to be met, a form has been created that can be emailed to the Department. The form, titled "Notice of Failure to Comply with a Mandatory or Expedited Site-Specific Remediation Timeframe," is available at: [www.nj.gov/dep/srp/srra/forms/](http://www.nj.gov/dep/srp/srra/forms/). This form should be completed electronically and emailed to [srpnotifications@dep.nj.gov](mailto:srpnotifications@dep.nj.gov). When sending this form, the LSRP should make sure to include the Program Interest (PI) Number in the subject line of the email. Using this notification process will insure that the notification is promptly and properly recorded with the site record.

### NEW TECHNICAL GUIDANCE: PLANNING FOR AND RESPONSE TO CATASTROPHIC EVENTS AT CONTAMINATED SITES

The New Jersey Department of Environmental Protection (NJDEP) has announced the availability of new Technical Guidance: "Planning for and Response to Catastrophic Events at Contaminated Sites" (June 2016).

In the wake of Superstorm Sandy, representatives from NJDEP along with LSRPs and persons responsible for conduct-

ing remediation (PRCRs) participated in a post-storm exercise to review, analyze and learn from the experience. The "Planning for and Response to Catastrophic Events at Contaminated Sites" Technical Guidance presents lessons learned from this exercise and identifies improvements that can be made to enhance remedial system resiliency and prepare for future catastrophic events. Topics covered in the Guidance related to catastrophic events, include:

- factors to consider in planning for and responding to catastrophic events;
- incorporating resiliency into the design and implementation of site remedies;
- retro-fitting vulnerable sites to decrease disruption to existing systems;
- establishing communication networks, chain-of-command structures, and procedures to be used during catastrophic events; and
- how to re-assess systems and review lessons learned to better prepare for future catastrophic events.

A Case Study will also be presented to help illustrate these concepts.

### NJDEP LANDFILLS INVESTIGATION TECHNICAL GUIDANCE

NJDEP has announced that the Landfills Investigation Technical Guidance has been revised from version 1.2 to version 1.3. Revisions include correction of grammatical errors, updating of website links and references, revised contact information for committee members, and updating references for guidance documents and regulations. Minor wording changes were also made to increase clarity, and two sections in the SI and RI chapters regarding geophysical surveys were merged to reduce redundancy.

### NJDEP ANNOUNCES REVISED TECHNICAL GUIDANCE ON HISTORICALLY APPLIED PESTICIDES

The Historically Applied Pesticides Site Technical Guidance has been revised from Version 1.0 to Version 2.0. Revisions to the document included a revised definition for Historically Applied Pesticides (HAP) and added definitions for the terms "agriculture" and "golf course." A section was also added to allow the deferral of HAP remediation at active agricultural sites and active golf courses where sampling results indicate HAP are present at levels exceeding applicable standards. At these sites, remediation of the HAP-related contaminants can be deferred until the property is no longer used for agricultural purposes or as an active golf course. Remediation of all other contamination is still required in accordance with established regulatory and mandatory timeframes. As part of this technical guidance update, the

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Department is also making available a new Historically Applied Pesticides (HAP) Deferral Request Form.

### NJDEP ANNOUNCES REVISED VAPOR INTRUSION TECHNICAL GUIDANCE

NJDEP has announced the availability of revised Vapor Intrusion Technical Guidance:

The Vapor Intrusion Technical (VIT) Guidance has been revised from Version 3.1 (March 2013) to Version 4.0 (August 2016). Revisions to the document include a more streamlined presentation that focuses on the most relevant VI issues. Portions of the main text and several appendices have been moved to the NJDEP VI website at :

[www.nj.gov/dep/srp/guidance/vaporintrusion/](http://www.nj.gov/dep/srp/guidance/vaporintrusion/). New sections have been added on Access, Field Analysis, and Proactive Mitigation. Two new checklists were added to assist Investigators during the design of a mitigation system and monitoring/maintenance inspections. The most significant change in the VIT Guidance involves a new science-based approach to handling VI investigations at petroleum contaminated sites. This new paradigm shift in screening petroleum vapor intrusion (PVI) sites using vertical screening distance is based on the USEPA PVI empirical database and the Interstate Technology and Regulatory Council (ITRC) PVI Guidance.

Technical Guidance Documents can be accessed on the Site Remediation webpage in the Guidance Library:

([www.nj.gov/dep/srp/guidance/](http://www.nj.gov/dep/srp/guidance/)).

Note: Technical guidance may be used immediately upon issuance. However, the Department recognizes the challenge of using newly issued or revised technical guidance when a remediation affected by the guidance may have already been conducted or is currently in progress. To provide for the reasonable implementation of new or revised technical guidance, the Department will allow a 6-month "phase-in" period between the date the technical guidance is issued and the time it should be used.

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# 2016 Fall Environmental Conference Series

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**Wednesday, Oct. 26, 2016**

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**Tuesday, Nov. 1, 2016**

Sheraton Harrisburg-Hershey, Harrisburg, PA

**RACT II Implementation Date: Jan. 1, 2017**

**Industrial Stormwater General Permit  
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**FEDERAL REGISTER NOTICES**

<http://www.federalregister.gov>

Notice – Notice of Availability: Draft Protective Action Guide (PAG) for Drinking Water After a Radiological Incident (Federal Register – 6-10-16)

Rule – Effluent Limitations Guidelines and Standards for the Oil and Gas Extraction Point Source Category (Federal Register – 6-28-16)

Notice – Environmental Protection Agency – Request for Scientific Views: Draft Aquatic Life Ambient Estuarine/Marine Water Quality Criteria for Copper - 2016 (Federal Register – 7/29/16)

Proposed Rule - Prohibition of Children’s Toys and Child Care Articles Containing Specified Phthalates: Determinations Regarding Certain Plastics (Federal Register – 8-17-16)

**PENNSYLVANIA BULLETIN NOTICES**

5/21/16 – DEP ID: 563-2000-203 Title: Noncoal Underground Mine Permit Applications. Description: The current technical guidance document is outdated and will be replaced with a new application.

5/28/16 – Proposed Conditional State Water Quality Certification for the Army Corps of Engineers Pennsylvania State Programmatic General Permit (PASPGP-5)

On September 29, 2015, the Baltimore, Philadelphia and Pittsburgh Districts of the Army Corps of Engineers (Corps), under the authority of section 404(e) of the Clean Water Act (act) (33 U.S.C.A. §?1344(e)), proposed by its Special Public Notice 15-60 to issue Pennsylvania State Programmatic General Permit-5 (PASPGP-5) for a 5-year period. Section 401(a) of the act (33 U.S.C.A. §?1341(a)) requires an applicant seeking coverage under PASPGP-5 to provide the Corps with certification from the Commonwealth that its discharge will comply with the applicable provisions of the act (33 U.S.C.A. §§?1251–1388). The Department of Environmental Protection (Department) has established water quality standards for this Commonwealth and programs to achieve those standards consistent with the applicable provisions of the act, which have been approved by the United States Environmental Protection Agency. On April 19, 2016, the Corps furnished the Department with a final copy of PASPGP-5 with a planned effective date of July 1, 2016. The Department is providing notice of its proposed conditional State Water Quality Certification for use by applicants seeking coverage under PASPGP-5 for projects that do not require any Federal permit or license other than a section 404 permit under the act.

6/13/16 – The Department of Environmental Protection published notice in the June 11 PA Bulletin of proposed technical guidance on the Beneficial Use of General Permit Materials at Active Coal Mines and Government-Financed Construction (Mine Reclamation) Contracts for comment.

7/16/16 – DEP published notice in the July 16 PA Bulletin it has revised the process for reviewing the Bureau of Air Quality Asbestos Abatement and Demolition/Renovation Notification Forms sent (2700-FN-AQ0021) and now requires the forms to be sent to the appropriate DEP Regional Office.

8/1/16 – The Department of Environmental Protection published notice in the July 30 PA Bulletin it is making available a copy of the draft 2016 Integrated Water Quality Monitoring and Assessment Report for public comment.

8/8/16 – DEP ID: 563-2100-216. Title: Coal Mine Activity Permit Renewals. Description: This guidance establishes the administrative procedures and guidelines for coal mine permittees’ submittal of permit renewal applications.

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- Lead-Based Paint Testing & Abatement
- Feasibility Studies
- Storm Water Management

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- PCB Remediation
- Risk Assessment
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- Bioremediation
- Natural Attenuation

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- Spill Prevention Control and Counter Measure Plans
- Release Response Act 2 Cleanups
- Permits
- Erosion and Sediment Control Plan

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- Mold Investigations
- IAQ Management Programs
- Mold Remediation

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- Bioremediation
- Liquid and Vapor Phase Carbon Treatment
- Thermal Oxidation
- Thermal Desorption
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- Leachate Collection/Treatment
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- Emissions Testing
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**CONCEPT THROUGH START-UP:**

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- Construction and Construction QA/QC
- Start-up Operations Services
- Operations and Maintenance





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**RT E-MAIL DIRECTORY**

TONY ALESSANDRINI	TALESSANDRINI@RTENV.COM
BENJAMIN BAILEY	BBAILEY@RTENV.COM
LARRY BILY	LBILY@RTENV.COM
JENNIFER BERG	JBERG@RTENV.COM
CHRISTOPHER BLOSENSKI	CBLOSENSKI@RTENV.COM
GARY BROWN	GBROWN@RTENV.COM
LORELEI CARR	LCARR@RTENV.COM
CHRISTINE CONFER	CCONFER@RTENV.COM
KEN EDEN	KEDEN@RTENV.COM
CRAIG HERR	CHERR@RTENV.COM
WALTER HUNGARTER	WHUNGARTER@RTENV.COM

VICTORIA JONES	VJONES@RTENV.COM
JUSTIN LAUTERBACH	JLAUTERBACH@RTENV.COM
JOHN LYDZINSKI	JLYDZINSKI@RTENV.COM
CHRISTINE MILLER	CMILLER@RTENV.COM
BREANNA MORRIS	BMORRIS@RTENV.COM
SEJAL PATEL	SPATEL@RTENV.COM
JULIAN POZZI	JPOZZI@RTENV.COM
MARIA SCUDDER	MSCUDDER@RTENV.COM
JAMES SIERACKI	JSIERACKI@RTENV.COM
CHRIS WARD	CWARD@RTENV.COM
LOUISE MANCUSO WOLF	LWOLF@RTENV.COM

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