

The RT Review

The Latest on Environmental Issues From Your
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• Environmental Engineers & Scientists • Geologists • Remedial Contractors



ARE YOUR BUILDING HVAC SYSTEMS SECURE?

Since the tragic events of September 11, building security awareness has risen at many of today's large industrial and commercial properties. However, an often overlooked aspect of building security is the protection of the HVAC system. Many buildings, especially single story facilities, are attempting to secure access to air intakes and assure that control to HVAC rooms throughout the building are properly secured. In addition to the air quality issues that arose following the World Trade Center destruction, the introduction and subsequent contamination when anthrax was introduced to buildings has also opened building and property managers eyes to the fact that indoor contaminants do not need to be dumped into a closed system building environment to effect the entire building.

Small amounts of contaminants such as anthrax, phosgene and sarin gases, and bacteria such as Legionella can disrupt and harm building occupants throughout a facility. Property and building managers can take simple, yet effective steps to ensure security of HVAC systems:

First, restrict access to HVAC rooms by securing them with locked doors and limiting personnel with clearance for entrance.

Second, make sure that air intakes are not in easily accessible areas (ie: street level). The random introduction of contaminants is more likely with intakes in easily visible and accessible locations.

Third, utilize charcoal filters, which remove many chemicals from the air, in the fresh air intakes.

Simple steps such as these can assist in the protection of building HVAC systems and ensure occupant safety. For questions on this or any Indoor Air Quality (IAQ) issue, please feel free to contact Jade Simmers at (610) 927-3300 or rtrdg@aol.com.

TOXIC MOLD BILL WOULD GIVE EPA FIRST-TIME INDOOR AIR AUTHORITY

A leading Democratic lawmaker is planning to introduce legislation that would force EPA to issue first-time regulations on indoor toxic mold. The bill proposes to dramatically expand EPA's regulatory role in overseeing indoor air pollutants.

Rep. John Conyers (D-MI), the ranking member of the House Judiciary Committee, plans to introduce the measure, the United States Toxic Mold Safety & Protection Act, a congressional source says.

The legislation would call on EPA to set first-time guidelines that "specifically spell out what levels of toxic mold are acceptable, and what levels are dangerous," according to an outline. Additionally, the measure would direct EPA to establish standards regulating the mold remediation industry and mandate that states license and monitor mold inspectors and remediators.

The agency has issued guidance on building remediation and a lengthy fact sheet on indoor mold, but has yet to issue any enforceable regulations or standards. The Conyers bill would include enforceable standards with penalties, the congressional source says. "If you violate [the standards] you're going to be liable...but there has to be negligence," the sources says.

Toxic mold has become a high-profile issue, sparking a flood of multi-million dollar lawsuits as homeowners have sued contractors, builders, previous owners and others to recover costs of mold remediation and damages for

health impacts. Exposure to some strains of mold has been linked to a wide variety of illnesses, from respiratory problems and allergic reaction to brain damage and cancer.

The congressional source says that the legislation will likely be referred to the House Energy & Commerce Committee. Conyers' office has not yet approached other lawmakers about co-sponsoring the legislation and is still working with industry groups and other interested parties to hammer out the details of the bill, the source says.

Last year, California became the first state to pass a bill directing state health agencies to look at developing regulations on mold. Other states, including Michigan, are now working on mold legislation.

(Defense Environment Alert - 5/21/02)

Many clients are turning to RT to help them manage mold and indoor air issues. Whenever leaks or interior floods occur, it's very important to test for mold as part of the cleanup. Landlords should not ignore repeated tenant complaints about indoor air, because insurance coverage for mold is frequently being removed at policy renewal time. Commercial landlords are advised to set up IAQ programs for their premises in the near future.

-Gary Brown

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STAFF AND PROJECT NEWS

As summer was winding toward a close, RT's staff continued to be exceptionally busy, as shown below:

- Jade Simmers and Gary Brown were formulating a remedial strategy for a commercial site in Philadelphia's northern suburbs, where toxic mold was found in carpeting materials, as a result of a former flooding event. Appropriate health and safety measures were being devised and implemented with careful checking of furnishing and HVAC systems, so that needed remediation was carefully implemented, and confirmed to be complete.
- Walter Hungarter's Engineering Group wrapped up the final design for a new residual waste facility building to be built outside Harrisburg to include capabilities for container storage and solidification/stabilization mixing to be built this year. The facility is one of central Pennsylvania's largest hazardous and residual waste management facilities.
- Tom Brady's New Jersey office was completing a review of South Jersey retail petroleum operations and their MTBE release history. Additional work includes investigation of soils at an upstate New York motel operation where tanks are present.
- Chris Orzechowski's King of Prussia Hydrogeology Group is continuing work on a series of Act 2 Land Recycling projects, including a former lead manu-

facturing site in Philadelphia slated for commercial redevelopment, a former metal products manufacturing facility, also in Philadelphia,, slated for drug retail store redevelopment, and a solvent-impacted groundwater site in Philadelphia's western suburbs, where attainment of a Site Specific Standard is being demonstrated.

- Peter Malik's King of Prussia Remedial group successfully completed work on an Act 2 Land Recycling program at a day camp facility where a petroleum release was found in a dispenser area at a former gasoline tank location. Extensive work was also underway at a New Jersey pottery products manufacturing facility where plumbing fixtures and appurtenances were manufactured for more than 80 years. In addition to having onsite disposal areas,, the site is going through the Industrial Site Recovery Act process, and is also being eyed for commercial, as well as residential, redevelopment.
- Paul Frederick's King of Prussia Accounting Group also was reporting that total sales for RT are running between 15% and 20% higher than any prior year. This year could prove to be a record year for RT. In anticipation of continued strong demand for services, RT is expanding its King of Prussia headquarters office space to provide more room for our Remedial Group.

We at RT continue to be appreciative of the level of trust that our clients place in us, by continuing to award more and more assignments. Our goal is to stay focused on each project, to make sure we meet every client's individual needs.

-Gary Brown

PA REGULATORY UPDATES

FINAL RULEMAKING - PORTABLE FUEL CONTAINERS

This final rulemaking is part of Pennsylvania's strategy to attain and maintain the one-hour National Ambient Air Quality Standard (NAAQS) for ozone. Based on the Ozone Transport Commission (OTC) model rule and the California Air Resources Board (CARB) program, the rulemaking will control volatile organic compound (VOC) emissions from portable fuel containers by establishing permeability requirements designed to reduce the loss of gasoline through the container walls. The rule also reduces gasoline loss due to spillage by adding "no-spill" fill spout requirements. Manufacturers will be responsible for developing and distributing compliant products for sale in Pennsylvania by January 1, 2003. The rule does not affect portable fuel containers currently in use.

(PADEP Update - 7/21/02)

FINAL RULEMAKING - CONSUMER PRODUCTS

This final rulemaking is also part of Pennsylvania's strategy to attain and maintain the NAAQS for ozone and is based on the OTC model rule and CARB program. The rulemaking will set specific VOC content limits for approximately 80 consumer product categories, and it will apply more stringent VOC content limits than the Federal rule. The compliance date for the limits would be January 1, 2005. Manufacturers would ensure compliance with the limits by reformulating products and substituting products with compliant products that are currently available. The rulemaking includes flexibility options, such as innovative product and other exemptions, variances, and alternative control plans.

(PADEP Update - 7/21/02)

DRY CLEANING ESTABLISHMENTS – AS BAD AS THEY SAY?

There is mounting evidence that some current dry cleaning establishments are a continuing source of releases of perchloroethylene, to sewer systems, soils, and groundwater, at locations where they operate. Although perchloroethylene typically stays in a dry cleaning machine, several specific operations techniques can result in expensive and costly releases, which have to be cleaned up. These include:

- Facilities are supposed to place dry cleaning machine filters in containers, for removal as hazardous waste. However, some establishments use practices such as washing lint from filters in sinks. This results in a significant release of perchloroethylene to the sewer system.

- Once in the sewer system, domestic sewers are not designed to be chemically “tight” to solvent chemicals. Typically, the solvents leak from the sewers within the first several hundred feet of the dry cleaning establishment, causing significant soil and groundwater contamination.

- Some older dry cleaning machines use water to concentrate the perchloroethylene, and when the water is discharged, it can contain low levels of perchloroethylene in it. However, few dry cleaning establishments with older machines have proper sewer discharge permits, and the resulting contamination can be costly to remediate.

- Some dry cleaning establishments, even in recent years, have been found to dump spent perchloroethylene directly in the sewer, or, to use small quantities of perchloroethylene as “spot cleaner”, which then finds its way into the sewer discharge either via sinks, or via other cleaning equipment.

- Some older dry cleaning equipment also has steam condensate discharge, which contains perchloroethylene and can result in discharges of perchloroethylene to soil and groundwater.

Lenders are becoming more reluctant to provide mortgages for commercial centers with dry cleaning establishments, and there have been instances of sites that were remediated at a cost of several hundreds of thousands of dollars, now being found to have new releases.

The dry cleaning industry, as well as EPA, are both moving to address this important issue. Specifically, a new “green machine,” to take the place of traditional perchloroethylene dry cleaning is now available, at a purchase cost of \$20,000 to \$30,000. Several are already in use in the greater Philadelphia area, with satisfactory cleaning results. In Region II, EPA has stepped up inspections, due to the level of non-compliance, and has conducted field visits to many dry cleaning facilities throughout New Jersey.

Although many dry cleaning establishments operate properly and with due care to minimize environmental releases, it has become clear that dry cleaning establishments using perchloroethylene are simply “high risk” tenants. Techniques landlords can use to check on dry cleaning establishments include:

- *Surprise inspections .*

- *Unannounced sewer system sampling.*

- *Conducting a regulatory database review to see if spent perchloroethylene and dry cleaner filters are being properly removed from the site as hazardous waste.*

The problem has reached such a level of concern among lenders that many sites, thought to be through the remedial process, may have to be reinvestigated at the time of subsequent transactions, if a dry cleaning establishment continued to operate there.

RT recommends that commercial center owners and dry cleaner establishment owners/operators move to agree to promptly convert equipment to the new “green machines”, as soon as practical, as the best approach to avoiding the significant liabilities associated with the continued use of perchloroethylene using outdated waste management practices, and in aging dry cleaning machines.

For more information call Gary Brown at 800-725-0593, ext. 34.

PA REGULATORY UPDATES

PA HIGH COURT PAVES WAY FOR STATES TO LIMIT TAKINGS SUITS

The Pennsylvania Supreme Court handed state governments a potentially major weapon in their defense against property owners’ takings claims when it ruled that any activity potentially causing water pollution constituted a public nuisance and did not qualify for a takings claim.

Environmental attorneys say the ruling may help other state governments make similar arguments in their courts and may also be broadened to include air emissions and waste discharges. “I think most states, in one form or another, could recognize that water pollution is a nuisance,” according to one attorney familiar with the case.

The court’s decision, which was based on an interpretation of the state’s common nuisance law, could have “broad application” for other takings claims involving water pollution, one attorney familiar with the case says, and the argument could be made for air and waste pollution as well.

(Superfund Report - 6/10/02)

FEDERAL REGULATORY UPDATES

EPA IS PROPOSING TRADING OF CREDITS FOR WATER POLLUTION

The Environmental Protection Agency, building on a market-based program aimed at curbing air pollution, is proposing a pollution-credits trading system to curb industrial, municipal and agricultural discharges into the nation's waterways.

The proposal, published in the Federal Register on May 15, is designed to help meet the standards required by the Clean Water Act by giving polluters the option to trade in what some experts call "water-quality reduction permits." Basically, they amount to swaps in limited rights to pollute.

According to an agency official, who asked not to be identified, the effort would be voluntary and wouldn't ease any existing regulations. It is intended to offer more and cheaper ways to meet water-quality standards.

Currently, there are fewer than a dozen experiments in such trading, and today's proposal aims for a major expansion of this effort. Current pilot projects include one by the state of Connecticut to reduce the level of nitrogen-laden pollutants being injected into Long Island Sound by 60 sewage-treatment plants and industries. The state projects the program could reduce the annual \$600 million cost of water pollution abatement efforts by as much as one-third.

Some environmental groups have criticized draft versions of rules for the new trading program. A letter sent to EPA by the Natural Defense Council, the Sierra Club and four other groups urged the agency "not to move forward" with the program until further safeguards were implemented to assure that trades made measurable improvements in water-quality standards.

Nevertheless, some state officials, as well as the American Farm Bureau, are enthusiastic because the new trading program would encourage industrial polluters to help farmers and others develop "best-practice methods" to help reduce polluting runoff.

(The Wall Street Journal - 5/15/02)

NEW ONSITE WASTEWATER TREATMENT MANUAL ONLINE AT EPA

EPA's new Onsite Wastewater Treatment Systems Manual, according to the agency, provides up-to-date information on cost-effective and environmentally protective onsite wastewater treatment system (OWTS) siting, design, installation, maintenance and replacement. The manual focuses particularly on advances that can help OWTSs in small suburban and rural areas. On the Web at:

<http://www.ProcessRequest.com/apps/redir.asp?ling=XbddjbgfCI,YjgfejffjFG&oid=UbiefBI>
(Water & Wastewater Products E-News - 5/13/02)

EPA PLANS ASBESTOS REMOVAL FROM HOMES IN LIBBY, MONTANA

In an unusual move, the Environmental Protection Agency says it will rip out asbestos-tainted insulation from hundreds of homes in Libby, Montana, because it poses a health hazard to residents.

The EPA is taking the position in Libby because asbestos contamination is spread widely throughout the town. Many towns people worked in the vermiculite mine there owned by W.R. Grace Co., and discards were used as a soil supplement in

residential gardens and schoolyard. With a high rate of asbestos-related illnesses in Libby, the EPA said it wants to eliminate as many sources of exposure as possible.

"These people have just had such a cumulative exposure that we're trying to reduce anything that will make things worse for them," said Jack McGraw, EPA deputy administrator of Region 8, which includes Montana.

Despite the Libby decision, the EPA said such a step isn't necessary for millions of homes around the country that contain similar insulation. Agency officials said the EPA is conducting new studies to determine whether the insulation poses a widespread hazard.

Until then, it is sticking to its long-held advice: "For homes outside of Libby, EPA continues to believe that the best strategy for asbestos-containing materials in buildings is to leave it in place, unless removal is necessary to prevent disturbance during renovations," it said in a statement.

Environmental experts say the hazardous-site cleanup law hasn't previously applied to consumer products in private homes.

(The Wall Street Journal - 5/13/02)

GUIDELINES TO PROTECT OFFICES, GOVERNMENT BUILDINGS FROM CHEMICAL ATTACKS

New guidelines for protecting ventilation systems in commercial and government buildings from chemical, biological, and radiological attacks have been issued by the Health and Human Services Department.

The guidance is intended for building owners, managers, and maintenance personnel of public, private, and governmental buildings, including offices, laboratories, hospitals, retail facilities, schools, transportation terminals, and public venues.

The guidance (DHHS-NIOSH Publication No. 2002-139) is available at:
<http://www.cdc.gov/niosh> on the World Wide Web.

(The Law Offices of William H. Cluck - 5/14/02)

COURT UPHOLDS EPA REGULATIONS ON DIESEL FUEL

The U.S. Court of Appeals unanimously upheld Environmental Protection Agency regulations that would sharply reduce pollution by heavy trucks and buses and remove 97% of the sulfur from diesel fuel by 2007.

Dismissing a variety of objections from oil refiners, auto makers and diesel-engine manufacturers, a three-judge panel said the EPA's rules were reasonable. The agency, the court said, didn't have to explore "every engineering problem" that might be created by the changes as long as it gave industry time to solve them.

The EPA had argued that the regulations will be cost-effective; the agency figures they will cost about \$4 billion a year, but the reduction of smog will provide \$70 billion a year in health and other benefits.

The regulations require diesel-engine manufacturers to reduce emissions by 95% over current levels by 2007. The removal of most of the sulfur from diesel fuel will allow them to use large cat-

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alytic converters to reduce pollutants in the vehicles' exhaust stream. Fuels containing sulfur tend to interfere with the catalytic reaction.

Bob Slaughter, president of the National Petrochemical & Refiners Association, called the ruling "disappointing" and said it could lead to future gasoline shortages because some refiners may not have the capital to upgrade their refineries. The EPA-ordered changes on diesel fuel, he noted, are being required at the same time refiners are overhauling their systems to remove most sulfur from gasoline to comply with another EPA requirement.

"We hope EPA will pay close attention to supply implications as implementation of this rule progresses," said Mr. Slaughter, whose organization had asked for more time to comply.

(The Wall Street Journal - 5/19/02)

EPA WEIGHS NEW TSCA RULES TO FORCE STRICT MERCURY USE LIMITS

EPA is considering writing new rules under the Toxic Substances Control Act (TSCA) to regulate the use of mercury in manufacturing and commerce, if industry fails to voluntarily halve its "intentional" use of mercury as part of a new voluntary mercury reduction initiative, according to a draft of the agency's national action plan for mercury.

In addition to new mercury use limits, EPA's draft also vows to limit the impact of mercury from abandoned mines and ongoing mining activity, reduce air emissions, limit use of mercury as a global commodity and develop water discharge limits that account for air depositions of mercury.

According to the draft, the Office of Pollution Prevention and Toxics (OPPT) will work with industry to voluntarily reduce mercury use by 50 percent by 2006 based on 1995 levels. But "OPPT will consider using its authority to develop a rule under TSCA to regulate the manufacture, processing, distribution in commerce, use, or disposal of mercury," according to the draft.

Industry sources, however, are strongly criticizing EPA plans to expand TSCA rules to include mercury, arguing that EPA's approach would require users to obtain TSCA permits. "That's a no go," the source says, accusing EPA of using "arbitrary" numbers for targeting reductions in the draft. "I'm personally skeptical of picking numbers out of hats."

EPA's draft action plan is part of a collaborative effort between EPA and a group of state officials concerned with mercury releases, known as the Quicksilver Caucus. After months of pressing EPA, Administrator Christine Todd Whitman agreed to allow caucus officials to join an EPA toxics workgroup to develop a coordinated, multi-media response to mercury, which state officials say is necessary because mercury releases often originates from outside state or national borders.

In addition to working jointly on the action plan, EPA and state officials are also developing methods for dealing with air depositions of mercury in impaired water bodies and long-term

FEDERAL REGULATORY UPDATES (CONTINUED)

stewardship for stockpiles of elemental mercury.

In addition to the new TSCA rules, the draft also proposes reducing mercury air emissions by 50 percent by 2006 based on 1990 levels by promulgating new standards under the Clean Air Act for electric utility plants, chloralkali plants and hazardous waste boilers.

It also calls for the development of water discharge limits, known as total maximum daily loads (TMDLs) that account for the air deposition of mercury. Industry officials say air deposition may be responsible for as much as 99 percent of mercury found in impaired water bodies. EPA and state officials are already considering a Region V plan for developing a regional approach for setting TMDLs.

The draft calls for EPA to develop a strategy to control mercury releases from abandoned mines and current mining operations as well.

(Superfund Report - 4/29/02)

NEW EPA PUBLICATIONS

Risk Assessment Guidance for Superfund Volume III Part A: Process for Conducting Probabilistic Risk Assessment (RAGS 3a)(OSWER 9285.7-45). This guidance document was issued by the U.S. EPA Office of Emergency and Remedial Response. It was created to establish national criteria to conduct, and review Superfund probabilistic risk assessments in response to the October 1995 Superfund Reform #6A. RAGS 3a was designed to address both human health and ecological probabilistic risk assessments (PRA). It provides flexibility and maintains national consistency in selecting the preliminary remediation goal, based on a recommended high-end range of risk values. It advocates using a tiered approach, from the traditional point estimates for screening purposes, to using PRA to assess more complex sites (April 2002). View or download at:

<http://clu-in.org/techpubs.htm>.

New EPA publications available:

MTBE Treatment Profiles Website. For more information, see <http://clu-in.org/products/mtbe>.

Technology Evaluation Report: Phytoremediation of Soil and Groundwater (TE-02-01). View or download at http://www.gwr-tac.org/pdf/phyto_e_2002.pdf.

Technology Status Report: A Catalogue of the Horizontal Environmental Wells in the United States (TS-02-01). View or download at: <http://www.gwr-tac.org/pdf/hor-wells.pdg>.

GROUPS TO SUE EPA OVER SMOG RULES

Environmental groups said that they will sue the U.S. Environmental Protection Agency for failing to take key steps to reduce smog.

The groups, including the Philadelphia-based Clean Air Council, said the EPA was 15 months late in designating which parts of the country have failed to meet new federal standards for ozone, or smog. High levels of ozone have been blamed for worsening respiratory ailments such as asthma.

Based on preliminary data, most of the Philadelphia region will not make the grade. The ozone designation is needed before states can enact rules to reduce pollution.

EPA officials have said they would not make the official designations of ozone "non-attainment" until 2004. The agency said it was moving as quickly as possible, blaming the delay on litigation in which industrial groups challenged the

ozone standards and other portions of the Clean Air Act. That litigation was resolved by a federal District Court in March.

Under the Clean Air Act, the EPA had until 2000 to designate the ozone problem areas; Congress pushed back that deadline. The new deadline was whichever came first of June 2001 or whenever the Supreme Court resolved industry's challenge to the ozone standard. The Supreme Court ruled on the case in February 2001, and certain final issues were resolved by a lower court two months ago.

EPA said it was moving forward this summer by proposing a plan for implementing the ozone standard.

Such a plan could include what deadlines will apply to the states, what types of antipollution programs they will consider, and whether there will be interim antipollution measures.

The EPA has already gathered data indicating many counties that do not meet the standard, but an official designation of non-attainment is required before pollution curbs can be put into place. It is that official designation that the environmentalists are seeking.

Ground-level ozone, also called smog, is formed when sunlight causes nitrogen oxides to react with volatile organic compounds. Nitrogen oxides are emitted by power plants and motor vehicles, among other sources. Volatile organic compounds come from a variety of sources, including dry cleaners and cars.

(The Philadelphia Inquirer - 5/31/02)

EPA SHIFTS EMISSIONS RULES FOR UTILITIES, FACTORIES

The Environmental Protection Agency announced two regulatory moves that officials said will help electric utilities, oil refineries, the pulp and paper industry and other manufacturers perform routine maintenance and install more energy-efficient equipment without triggering government investigations.

EPA Administrator Christine Whitman said the changes will encourage industry to reduce emissions of pollutants, but that the EPA will continue to press enforcement cases brought by the Clinton administration, including more than a dozen lawsuits. While she called the lawsuits ineffective and time-consuming "regulation by litigation," she said the EPA would pursue the cases, including charges against eight major utilities, because regulations were broken.

The issue, which has been simmering here since 1992, stems from the "New Source Review" section of the law, which was intended to keep power plant owners from overhauling older, coal-fired power plants. Facilities built before August 1974 were "grandfathered" or exempted from new emissions controls in the 1970s as part of the political compromise that helped pass the Clean Air Act. A complex series of regulations were put in place to require owners that upgraded the older plants - which lawmakers assumed would be phased out - to install state-of-the-art pollution controls.

Several industries complained the regulations were confusing and tended to deter regular maintenance, so the Clinton administration proposed a series of changes that would encourage upgrades that prevented pollution. Several of these will be implemented by the Bush administration, including "plant-wide accountability limits" that would allow oil refiners and other industries with com-

plex facilities as long as overall emissions from them don't increase.

Robert Slaughter, president of the National Petrochemical and Refiners Association, said it would help refiners plan maintenance outages. "In the late 1990s, no one understood what the rules were anymore," he said. "It hindered the use of new technology."

(Wall Street Journal - 6/14/02)

JUSTICE, EPA MOVE TO ADDRESS CHEMICAL-PLANT SAFETY CONCERNS

Officials from the Justice Department and the Environmental Protection Agency are moving on separate tracks to address concerns about risks to chemicals plants from terrorist attacks, with Justice officials arguing for secrecy and the EPA trying to win support for a broader plan to require such plants to consider safer technologies.

While the two approaches don't necessarily conflict, neither department is rushing to support the other, raising concerns about a potential political stalemate over the steps Washington should take to protect Americans from a terrorist act against an industrial facility.

Concern has grown in the nine months since Sept. 11 that terrorists might attack plants storing hazardous chemicals. Much of the debate has centered on whether the government should continue to make public companies' own assessments of what could happen in a worst-case disaster: Justice says, "No."

The EPA soon will propose requiring 15,000 industrial facilities using hazardous chemicals to submit detailed terrorism-vulnerability assessments. An EPA senior official says the proposal would give companies nine months to assess physical security at their plants, the feasibility of using alternative manufacturing methods with safer chemicals, and ways to reduce their inventory of volatile or toxic substances. Companies then would have another nine months to show that they implemented steps to improve security, although it is unclear whether the EPA or any government officials would be able to demand specific changes. The proposal is under review by an interagency task force that includes the Labor Department's Occupational Safety and Health Administration; the Office for Homeland Security; the Energy Department; and Justice.

The EPA proposal is similar to a voluntary one being implemented by the American Chemistry Council. Both the ACC and the EPA proposals contemplate audits by third parties, such as insurance companies or even state or federal regulators. But the EPA's proposal would cover 15 times as many facilities nationwide.

Although versions of the EPA proposal have been circulating for months, Justice says it has no comment on the plan. Instead, on May 30 it circulated a classified report to congress that, among other things, advocates limiting access to chemicals-plant disaster scenarios collected by the EPA, people familiar with the report say. The report points out security weaknesses at chemicals plants.

(The Wall Street Journal - 6/13/02)

DATA ON ABANDONED MINE RISKS MAY FORCE NEW SUPERFUND LISTINGS

An EPA team charged with finding alternatives to listing contaminated former mining sites on the

FEDERAL REGULATORY UPDATES (CONTINUED)

Superfund National Priorities List (NPL) has found that five to 10 percent of the 200,000 to 500,000 abandoned mines across the country may pose real environmental and health risks – raising the specter of a raft of new Superfund cleanup responsibilities, industry and environmental group sources say.

While it is unclear how many of the five to 10 percent are contaminated enough to require listing on the NPL, the extremely high number of potential sites nevertheless raises the prospect of significant additional cleanup responsibilities for the embattled Superfund program. The Bush administration has blamed a recent slowdown in completed Superfund cleanups on the fact that complex, highly contaminated mining site cleanups are requiring greater portions of the program's financial and technical resources.

(*Superfund Report - 6/10/02*)

EPA MAKES SIMPLIFIED RCRA NEW PART A FORM AVAILABLE

Applications that must be completed by owners or operators of a site where hazardous waste is generated, treated, stored, or disposed have been simplified by Environmental Protection Agency officials – the first major revisions to the forms in 20 years. In the past, facility owners and operators were required to complete three different application forms for hazardous waste management activities. A form that provided EPA with basic information on the name and location of any site regulated by the Resource Conservation and Recovery Act's hazardous waste rules had to be completed. Another form was required for individuals seeking a RCRA hazardous waste permit or permit renewal. A third form was required for large hazardous waste facilities to report information needed for the agency's hazardous waste report. The simplified form is included in two newly revised EPA booklets that help facility owners determine if they are subject to RCRA's rules. The booklets also tell the owners how to apply for a RCRA permit. The revised booklets can be viewed at www.epa.gov/epasower/hazwaste/data/form8700/forms.htm#links on the World Wide Web.

(*Law Office of William J. Cluck - 6/14/02*)

APPEALS COURT ORDERS DOJ TO TAKE STANCE IN SUPERFUND COST CASE

A federal appeals court has quietly taken the unprecedented step of ordering the Bush administration to file a brief in a controversial Superfund cost recovery case that has the potential to undermine an EPA policy aimed at encouraging private parties to voluntarily clean up contaminated sites – even after the Department of Justice (DOJ) had earlier declined to file the brief.

The United States Court of Appeals for the Fifth Circuit May 22 ordered DOJ to provide an *amicus* brief in the court's *en banc* rehearing of *Aviall Services Inc., v. Cooper Services, Inc.* The court is seeking the administration's stance in a case that could have major implications for EPA's ability to encourage voluntary cleanups. DOJ officials refused to comment on the court's decision.

At issue is a longstanding EPA policy of encouraging industry to come forward and clean up Superfund sites before the agency issues a cleanup order, in exchange for the right to seek contribution costs from other parties that may also have contaminated the site.

But, last summer, the court decided that parties that voluntarily agreed to clean up sites were not

entitled to recover costs from other parties because they said the Superfund law only permits recovery when a party conducts cleanup in response to an order from EPA to conduct remediation. The court said that Superfund section 113(F)(l) only allows actions for cost recovery from other liable parties during or following any civil action under the law. Following the decision, Aviall was granted a rehearing by the full Fifth Circuit panel.

Industry groups and EPA officials had urged DOJ to express support for the voluntary settlement program, but the department had refused to do so. Industry sources are extremely concerned that the ruling would gut similar voluntary cleanup initiatives in Louisiana, Mississippi and Texas – states where the Fifth Circuit ruling applies.

In the court's one-page order, it gave no explanation for its decision, but several attorneys involved with the case are speculating that the Fifth Circuit is divided on the issue and wants the government to provide guidance. "There is a deeply divided Fifth Circuit, if they are taking the extraordinary step" of requiring the government to file an *amicus* brief, one source familiar with the case says. The court must be "wrestling with the issue," the source says, adding that Fifth Circuit seems like it is "trying to press [the government] into service as their experts."

These sources say the likelihood that the dispute would be appealed to the U.S. Supreme Court is another reason the court is forcing the government to provide its position on Superfund contribution claims.

Another source involved in the case says that because the case would set a precedent for contribution claims, the need for the government's input is even greater. "The precedents are tangled on this issue," the source says, "the Fifth Circuit is searching for a clarifying answer." The court "values the input of the government on behalf of the agencies that will be applying these laws," the source adds.

(*Superfund Report - 6/10/02*)

MEASURING UP THE TMDL PROGRAM

EPA is currently accepting written comments on the total maximum daily load program, which has engendered much debate in recent months. A final release for the new rule is scheduled for March 2003. A study by the National Research Council examines the adequacy of the available data and models necessary to support the TMDL program. <http://www.ProcessRequest.com/apps/redir.asp?link=XbdegiccCG,YjgfejijjFG&oid=UbiefBI>

(*Water & WasteWater Products E-News - 6/3/02*)

EPA PROPOSES E-WASTE RECYCLING RULE

The U.S. Environmental Protection Agency (EPA) has proposed a rule designed to eliminate the barriers to recycling electronic waste, or e-waste, products such as computers and cathode ray tubes (CRTs).

Under the proposal, discarded electronic products designated for possible reuse would not be classified as waste and would not need managing according to Resource Conservation and

Recovery Act (RCRA) requirements. Additionally, discarded electronic products containing mercury would be classified as universal wastes instead of hazardous waste.

(*Waste Age Wire - 6/10/02*)

EPA TOXICS STUDY WILL REPLACE PCB CLEANUP GUIDE REPEALED BY COURT

EPA officials say they are unlikely to pursue a new rulemaking in the wake of a federal appeals court decision late last week vacating an agency cleanup guidance on the toxicity of polychlorinated biphenyls (PCBs), because the agency's Office of Research & Development is already working on new toxicity estimates for PCBs that would effectively replace the guidance struck down by the court.

The 1998 guidance, *PCB Risk Assessment Review Guidance*, served as a backup to a set of procedures companies could employ under 1989 amendments to EPA rules for conducting cleanups of PCB spills under the Toxic Substances Control Act (TSCA). The EPA rules detail self-implementing procedures for companies to conduct cleanups without EPA oversight in a host of different locations.

But, sources say industry challenged the guide, issued by the agency's toxics and pesticide office, because the toxicity estimates it contained were double the estimates that other EPA program offices use and had never been assessed by outside scientists. These toxicity estimates are important because program offices and regions use them to set cleanup standards for the chemical.

Led by General Electric (GE), industry officials challenged the guidance because the company was skeptical about the scientific basis of the PCB toxicity factors in the guide and feared that other EPA program offices and regions would adopt similar toxicity standards. "This case was about the toxicity number of 4 used for both cancer and non-cancer effects in the guide," according to one EPA source.

The U.S. Court of Appeals for the District of Columbia Circuit May 17 found in favor of a GE petition challenging the guidance, saying it should have been issued as a rule under the TSCA. "The document should not have been issued without prior notice and an opportunity for public comment," the court said.

An attorney familiar with the issue agrees, arguing, "The water, Superfund, and research offices at EPA all use a cancer [toxicity] factor of 2 and it's fundamentally inappropriate for the toxics office to use a different figure that has not been peer reviewed and subject to notice and comment."

But, an EPA scientist says that "GE wants to have input on everything EPA does relating to PCB risks" because of its use of the materials and the enormous liability it faces for cleaning up the substance at the Hudson River in New York and elsewhere.

A GE spokesman said the decision would have some impact on future remedial decisions because EPA will no longer be able to employ the stricter toxicity estimate. But the spokesman denied that it would have impact on the company's cleanup at the Hudson River site because "all assessments for major sites were completed prior to the court decision."

(*Superfund Report - 5/27/02*)

FEDERAL REGULATORY UPDATES (CONTINUED)

EPA SEEKS TO BOOST ENFORCEMENT OF LAND USE POLICIES IN CLEANUPS

EPA has quietly floated a landmark draft memorandum that seeks for the first time to require that institutional controls (ICs), which govern waste left on site after a cleanup is completed, are included in final cleanup decision documents for waste sites so that they are legally binding, according to a copy of the document obtained by *Superfund Report*.

The draft memo also requires that liable parties at waste sites be responsible for providing funds to cover the costs of implementing and monitoring the effectiveness of ICs over the duration of the cleanup. The memo also gives site managers the ability to update and revise ICs to ensure that they are as effective as possible.

Until now, EPA has only included ICs in cleanup remedies on an ad hoc basis after cleanup remedies were developed. This meant that such controls were not legally binding. Environmentalists and state officials have heavily criticized this policy, charging that the agency currently lack the legal and financial means to ensure that such remedies are protective over the long-term.

The changes outlined in a preliminary memo include inserting IC mandates into final Records of Decision (ROD) at Superfund sites, making them legally binding, and ensuring that the costs of maintaining them over the long-term are borne by the potentially responsible parties (PRPs). "We want people to be on the hook" to establish and maintain ICs, the source says.

(*Superfund Report* - 5/27/02)

SENATE COMMITTEE VOTES TO LIMIT CO₂ EMISSIONS BY POWER PLANTS

After a partisan and sometimes bitter debate, the Senate Environment and Public Works Committee by one vote approved a bill that would impose the nation's first controls on carbon dioxide emitted by power plants.

While most committee Democrats praised the measure – which also would curb three other pollutants – most Republican members and one powerful Democrat warned it faces certain defeat by a majority in the Senate after a late June 10-9 vote.

Calling the bill "extremely punitive to Montana and the West," Democratic Sen. Max Baucus of Montana predicted the tight caps imposed by the bill, especially on carbon dioxide, or CO₂, and mercury, would put many coal-fired power plants out of business by its intended deadline of 2008. Mr. Baucus blamed the bill's author, committee chairman Sen. James Jeffords, a Vermont independent, for rejecting compromises that would have attracted broader support from GOP moderates and Democrats from the West, where much of the nation's coal is mined.

The Jeffords measure would require power plants to reduce four pollutants: sulfur dioxide, which causes acid rain, by 95%; nitrogen oxides, which cause urban smog, by 85%; CO₂, which is believed to accelerate climate change by 25%; and mercury, which accumulates in fish and in other parts of the food chain, by 90%.

The Edison Electric Institute, which represents the nation's privately owned utilities, called the Jeffords bill "an unworkable regulatory blueprint with goals that simply cannot be achieved." Connie Holmes, senior economist for the National

Mining Association, noted that there is no current technology that can reduce CO₂ emissions, adding that pollution-control technology can reduce mercury emissions for some types of coal, but not down to the levels sought by Sen. Jeffords. Power plants currently emit about 41 tons of mercury a year; Mr. Jeffords's "Clean Power Act" aims to reduce that to five tons by 2008.

The Bush administration is still preparing legislation for its so-called Clear Skies initiative, which would impose less stringent cuts on three of these pollutants – sulfur dioxide, nitrogen oxides and mercury. While the Environmental Protection Agency recently sent a report to the United Nations acknowledging that man-made CO₂ emissions in the atmosphere could cause severe environmental damage in the future, the president has rejected mandatory controls on CO₂.

(*Wall Street Journal* - 6/28/02)

EPA SCALES BACK USE OF PURCHASER SHIELDS AT BROWNFIELDS SITES

EPA has decided to issue drastically fewer promises not to sue prospective purchasers of contaminated property because the Agency claims a new Brownfields redevelopment law provides sufficient assurances that the purchasers will not be subject to liability for contamination.

But, industry sources are raising concerns that the move away from the so-called prospective purchaser agreements (PPAs) will create uncertainty in property transactions and thereby undermine the Agency's popular brownfields redevelopment program.

As part of its implementation of the recently signed Brownfields liability relief law, EPA has determined that language in the law is sufficient to protect purchasers of contaminated property from liability, leading the Agency to curtail its issuance of PPAs. The legislation, which amends portions of the Superfund law, establishes liability exemptions for parties that purchase contaminated property they plan to remediate.

According to a recent memorandum the Agency released during a June 13 development conference, "EPA believes that, in most cases, the Brownfields Amendments make PPAs from the federal government unnecessary." The document adds that the amendments "represents a significant change" in Superfund law by providing parties that purchase contaminated properties with certainty regarding what they must do to avoid Superfund liability.

The Agency also argues that using the new language will save purchasers money and time. "Private parties will now be able to avoid the costs associated with negotiating PPAs, and the timing of the transactions will be within the control of the parties to the transaction and need not await federal government approval of the terms of a PPA," the document says.

But, industry attorneys and officials are concerned that the change in policy will create uncertainty in property transactions, undermining the Agency's Brownfields program. The linchpin for brownfields transaction is certainty and PPAs provide that clarity," and industry attorney says. The source says industry representatives are concerned that questions about the meaning of the new statutory language will make purchasers hesitant to buy contaminated properties.

The new policy does allow for instances where EPA will still issue PPAs. For instance, the Agency will issue the agreements when there is a lien on the property that needs to be released before the purchaser buys it.

The EPA will get involved when "a PPA is necessary to ensure that the transaction will be completed and the project will provide substantial public benefits," the document says. Those situations include those where there is ongoing Superfund litigation and a third party may sue the purchaser.

One informed source is surprised by the industry concerns, saying industry has long lobbied for legislative changes to provide certainty about liability protections.

(*Superfund Report* - July 8, 2002)

DRAFT EPA STORMWATER GUIDE MAY BOOST NEW PERMIT REQUIREMENTS

EPA is developing a guidance that may lead to more stringent stormwater controls in impaired waters, even as Agency officials acknowledge that states are struggling to put in place stormwater regulations that will take effect early next year.

EPA sources say the draft guidance is still being developed by the Agency, which has not yet consulted with states or other stakeholders over the guidance's content. EPA sources explain that the guidance is designed to help regulatory authorities determine how stormwater discharges can be incorporated into discharge limits, or total maximum daily loads (TMDLs), and how TMDL allocations can be incorporated into stormwater permits. TMDLs set discharge limits for pollutants that prevent an impaired water body from meeting its water quality standards.

An EPA source says that the guidance will address stormwater permits under both Phase I and Phase II stormwater rules, and will discuss numeric limits in stormwater permits. However, the source declined to say whether EPA is in favor of using numeric limits in stormwater permits – an issue that has been a subject of contention between stormwater utilities and environmentalists for years. Currently, stormwater permit requirements consist of best management practices designed to minimize the impact of stormwater discharges.

Phase I stormwater discharge permits regulate most industrial facilities, large city storm sewers and construction sites that are five acres or more. Phase II of the stormwater rule, which will take effect next March, regulates runoff from construction sites between one and five acres in size and storm sewers of cities with a population below 100,000.

Stormwater discharges are a unique challenge for agencies developing TMDLs because, unlike many other effluents, stormwater is difficult to measure and does not occur with sufficient consistency to allow for the imposition of inflexible numeric limits, according to municipal sources. These sources add that it is also extremely difficult to isolate the source of pollution since stormwater runoff can empty into any body of water.

EPA's decision to move forward with development of stormwater/TMDL guidance that may include more stringent stormwater permit requirements could create an increased burden on state and regional permitting authorities, as well as

FEDERAL REGULATORY UPDATES (CONTINUED)

stormwater permit holders. This move comes even as states are trying to figure out how they will be able to implement the Phase II stormwater program when it takes effect next year.

"States are somewhat panicked over [the Phase II rule], says one state source. State sources say that decreasing resources and increased regulatory requirements make the implementation of new rules difficult. The sources point to the Phase II stormwater rule as a particularly burdensome one that has some state sources asking whether they will even be able to make a real effort to try and implement portions of their Clean Water Act programs.

One EPA source agrees with states, saying that the Phase II rule will be an overwhelming burden. The source says that the "backbreaker" for states will be the construction category of the rule, which will leave states facing two questions: "How do you cope with the volume of permit applications? And, how can you ensure permit compliance?"

(*Defense Environmental Alert - July 16, 2002*)

HOUSING INDUSTRY TO CONTINUE CHALLENGE TO EPA LEAD RULE CASE

Apartment industry officials will likely appeal a federal appeal's court's rejection of their challenge to an EPA rule requiring property owners to disclose high-levels of lead contamination to tenants, arguing that the judges failed to address one of their key arguments in the case.

At issue is an EPA rule issued in December 2000 under the Toxic Substances and Control Act (TSCA) that requires property owners to inform prospective tenants and/or buyers when lead levels in a property occupied by children exceed limits established by EPA.

A trio of housing associations, led by the National Multi-Housing Council (NMHC), asked the U.S. Court of Appeals for the District of Columbia Circuit in March to overturn the rule, arguing that EPA had exceeded the authority granted to it by Congress under the Residential Lead-based Paint Hazard Reduction Act of 1992, also known as Title X. That law, according to NMHC's complaint, incorrectly defines a "lead-based paint hazard" as including lead in dust and residential soils "regardless of the source."

That interpretation, according to a NMHC source, makes the association's members responsible for lead contamination from other sources of lead, including decades-long uses of leaded gasoline in the United States. In a June 7 decision, the judges declined to review the case.

But, a source with NMHC says the court failed to address its arguments that the rule violates the Fourteenth Amendment to the U.S. Constitution because it only applies to housing built before 1978, when lead-based paint was outlawed. The Fourteenth Amendment guarantees equal protection under the law.

The housing associations are currently considering their options, which could include petitioning the judges to address the equal protection issue, requesting an *en banc* review by all the judges on the court, or appealing directly to the U.S. Supreme Court.

(*Superfund Report - June 24, 2002*)

EPA EYES NARROW REFORM TO EMBATTLED RCRA SOLID WASTE DEFINITION

EPA is pursuing a narrow change to its definition of "solid waste" as the Agency develops a rule to implement a two-year-old court decision that said the Agency impermissibly regulated materials that were reused, rather than discarded, according to agency sources.

According to EPA officials, the Office of Solid Waste (OSW) will develop a proposed rule to exempt from the Resource Conservation & Recovery Act (RCRA) materials that are reused as part of a "continuous process within the same industry itself." As a result, EPA would likely exempt from RCRA only those byproduct materials that are stored on site briefly and reused within the same industrial facility.

However, industry sources are warning the EPA's interpretation is too narrow and may violate language in the court decision and prior legal rulings that have said EPA cannot regulate materials that are not discarded.

The new rulemaking under RCRA comes at the behest of EPA waste chief Marianne Lamont Horinko, who has said she considers increased recycling, including the reuse of waste materials, to be one of her top goals. Horinko has directed OSW to prepare a proposed rule by the end of this year to implement the court ruling. EPA over the past year has claimed it would soon reform the definition, which industry says is long overdue after the critical court ruling.

After a federal court ruled in *Association of Battery Recyclers, Inc. et al. v. EPA* that the Agency was impermissibly regulating materials that were temporarily stored at an industrial facility, the Agency vowed to reexamine its solid waste definition. In that April 2000 decision, the U.S. Court of Appeals for the District of Columbia Circuit said, "by regulating in-process secondary materials, EPA has acted in contravention of Congress' intent" that the Agency regulate under RCRA discarded, but not recycled materials."

One EPA official says the agency has been evaluating the Battery Recyclers decision and had decided the "key phrase" refers to byproduct materials that are eventually reused by the industry producing them. The phrase EPA is focusing on says, "at least some of the secondary material EPA seeks to regulate as solid waste is destined reuse as part of a continuous industrial process and thus is not abandoned or thrown away." While "there are as many interpretations [of the decision] as leaves on the trees," the source says, the Agency will focus on this phrase to develop the rule proposal.

Industry sources, however, are questioning EPA's decision to narrowly redefine the term solid waste. EPA's reliance on the continuous industrial process language "is an artificial constraint not warranted by the law or environmental protection," one industry source says.

The source also questions EPA's focus on a continuous process within the same industry. "What is the magic thing about staying within the same industry? As long as it's used for a legitimate product," EPA should exempt recycled material from RCRA.

(*Superfund Report - June 24, 2002*)

CEDED TO CONGRESSIONAL, INDUSTRY DEMANDS EPA WILL GRANT CONDITIONAL RCRA EXCLUSION FOR WIPES, TOWELS

EPA has decided to grant a conditional exclusion from the Resource Conservation & Recovery Act (RCRA) for contaminated industrial shop towels and wipes after persistent lobbying by industrial laundries and numerous members of Congress, agency officials say.

The decision comes after EPA's Office of Solid Waste (OSW) and its Office of General Counsel (OGC) were reported sparring over whether the Agency could grant an exclusion from RCRA's solid waste provisions. While OSW supported the exclusion, OGC was reportedly struggling with how to craft the appropriate regulatory language. EPA and industry sources say that in the past EPA has granted similar exemptions from its hazardous waste rules.

The decision also follows years of lobbying by the industrial laundries, which have argued that regulating the contaminated wipes and towels as waste under RCRA would discourage recycling. Instead, the laundries urged EPA to exclude them from RCRA provided the industry handles the wipes and towels pursuant to certain waste management practices, which the industry says it is already implementing.

An EPA official says the Agency has decided to move ahead with a conditional exemption, granting the industry request. The source says the Agency will exclude recycled shop towels and wipes from RCRA solid waste provisions provided they meet certain handling and treatment requirements, which have not yet been developed. For wipes and towels that are discarded, EPA is developing a conditional exemption from its hazardous waste rules, provided certain disposal requirements are met.

The proposal will likely be issued next year.

(*Superfund Report - June 24, 2002*)

REPORT FAULTS EPA'S SUPERFUND WORK

Congressional Democrats blamed the Bush administration for a "dramatic" slowdown in cleaning up Superfund toxic-waste sites, releasing a report that shows the Environmental Protection Agency denied requests from its own regional offices to continue cleanup actions at 33 sites in 19 states.

But, the EPA said some of those sites would indeed get funding and others didn't need it. Meanwhile, others contended the EPA's chief funding problem was a tax on polluters that Congress let lapse in 1995 and hasn't been able to agree on reviving.

The report by the Agency's inspector general said the rejected requests would cost \$225 million. The report's figures were reported in the New York Times.

Joe Martyak, spokesman for the EPA, said the list provided by his agency's inspector general was a "snapshot in time and the numbers are not correct." Among the 33 sites that were supposedly denied funding, he said three may not need more funds and 11 will be getting funds from the EPA later during the year. A lot of the agency's decisions aren't made until the final quarter of the fiscal year, he said. "That's the way the process works."

FEDERAL REGULATORY UPDATES (CONTINUED)

Rep. John D. Dingell (D., Mich), the ranking minority member of the House Committee on Energy and Commerce, said the Bush administration has decreased cleanups, "opposed efforts to renew the polluter taxes and resisted congressional oversight efforts." One bill would restore the tax to clean up so-called orphan sites, where there is no prior owner who can be held legally responsible.

Industry has successfully opposed the tax, however. "You can use the phrase 'Reinstate the tax' all you want," said John Arlington, an assistant vice president for the American Insurance Association. "But it died seven years ago. Nobody wants new taxes right now." His group, he says, is "totally opposed" to reviving it.

The tax fed a trust fund that will decline to about \$24 million next year from \$1.3 billion in 2000, according to the EPA. In the meantime, most of the costs of cleanup projects have been

shifted from the fund to the agency's annual budget, which comes from general tax revenue.

Katherine Probst, a senior fellow at Resources for the Future, a Washington group that has explored the future of Superfund in a recent report requested by Congress, says the agency will be short about \$300 million for cleanup projects this year and \$400 million next year.

It will take congressional action to resolve the problem, she said, "but until this year there appeared to be very little interest."

(Wall Street Journal - July 2, 2002)

EPA REPORT LOOKS AT IMPACT OF NEW SOURCE REVIEW

EPA submitted a report to President Bush on New Source Review (NSR) reforms to encourage pollution prevention projects, energy efficiency improvements and investments in new technolo-

gies and modernization of facilities. NSR requires newly built or modified facilities to install modern pollution control equipment to reduce air emissions.

In May 2001, President Bush directed EPA to study the impact of NSR on power plants and refineries. In July 2001, EPA conducted four meetings to solicit public comments on the NSR study report. EPA received approximately 130,000 comments. EPA's review found that the NSR program has impeded or resulted in the cancellation of projects that would maintain or improve reliability, efficiency or safety of existing power plants and refineries. The NSR reforms report will be implemented as two rulemaking procedures - a final rule based on unchanged 1996 proposals and a proposed rule for three revisions that will go through the standard rulemaking procedure.

(PADEP Update - 7/21/02)

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PA BULLETIN NOTICES**PROPOSED RULEMAKING - COAL MINING**

This proposal was adopted by the Board at its meeting of March 19, 2002.

The rulemaking proposes to add section § 86.6 (relating to extraction of coal incidental to government-financed highway construction or reclamation projects) to exclude the extraction of coal incidental to government-financed highway construction or government-financed reclamation projects from the requirements of this chapter and Chapters 87 and 88.

PROPOSED REAUTHORIZATION OF AND REVISIONS TO THE GENERAL NPDES PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES (PAG-2)

The Department of Environmental Protection by this notice is proposing to renew the General NPDES Permit for Stormwater Discharges Associated with Construction Activities (PAG-2) issued on October 10, 1997, involving 5 acres or more of earth disturbance, which shall expire on October 9, 2002, unless extended by the Department.

(May 10, 2002)

PROPOSED REVISIONS TO PENNSYLVANIA GENERAL NPDES PERMIT FOR DISCHARGES FROM GASOLINE CONTAMINATED GROUNDWATER REMEDIATION SYSTEMS (PAG-5)

The Department of Environmental Protection is proposing to revise its General NPDES Permit for Discharges from Gasoline Contaminated Groundwater Remediation Systems (PAG-5) for reissuance of the general Permit for another 5 years. The current General Permit was scheduled to expire on June 12, 2002; however, by notice published at 32 Pa.B. 2947 (June 15, 2002), the expiration date was extended to December 12, 2002.

The notice provides the public and all affected parties with a summary of changes being proposed to the general permit and seeks public comments on several program areas and/or issues.

PUBLIC NOTICE OF PROPOSED PENNSYLVANIA NPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM MUNICIPAL SEPARATE STORM SEWER SYSTEMS (PAG-13) (MS4s)

The Department of Environmental Protection seeks public comments on the

Commonwealth's proposed NPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (PAG-13) (MS4s). The proposed general permit will not be applicable to municipalities that discharge stormwater to waters designated as "special protection" waters.

The general permit requires regulated MS4s to develop a stormwater management plan that meets the six minimum control measures: (1) public education and outreach; (2) public participation and involvement; (3) illicit discharge detection and elimination; (4) construction site stormwater runoff control; (5) post-construction stormwater management in new development and redevelopment; and (6) pollution prevention and good housekeeping for municipal operations and maintenance. In developing the documents, the Department's strategy is to streamline the permit process and use a more practical approach that minimizes impacts on the regulated MS4s as well as the Department.

The proposed permit document package is available from the Department's website at www.dep.state.pa.usdirectLINK"participate"; scroll down to "Proposals Open for Comment"; then choose "Other Proposals."

(July 12, 2002)

— NJ REGULATORY UPDATES —

N.J. WATER-TESTING LAW

To address growing worry over contamination in private drinking wells – which serve about one million New Jersey residents – the Private Well Testing Act will go into effect statewide Sept. 14. The law will be enforced through regulations proposed May 6 by the state Department of Environmental Protection.

“Everybody wants a safe drinking-water supply,” said Fred Mumford, a DEP spokesman. “And when you move into a house, these regulations are going to give you some assurance about the safety of the water you will drink.”

Under the rules, drinking wells must be tested for bacteria, nitrates, lead, volatile organic compounds, and other contaminants whenever a property is sold or leased.

In addition, analysis for arsenic contamination will be required in Bergen, Essex, Hudson, Hunterdon, Mercer, Middlesex, Morris, Passaic, Somerset, Sussex, Union and Warren Counties. Testing for mercury is called for in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Monmouth, Ocean and Salem Counties. Tests for radium will be phased in across the state during an 18-month period after the law takes effect.

Officials estimate 20,000 to 30,000 real estate transactions a year will be subject to the rules. Compliance is expected to cost between \$450 to \$650 per drinking-water system.

Landlords will have to test their rental properties by March 2004 and once every five years after that.

The rules require the buyer and seller to certify in writing that they have reviewed the test results, which state officials must keep confidential.

(The Philadelphia Inquirer - 6/5/02)

STATE LIMITS PHOSPHOROUS IN WATERWAYS

In a move expected to cost local governments millions of dollars, the state is requiring municipal sewerage authorities and private companies to reduce the amount of pollution-causing phosphorous they dump into New Jersey waterways.

State Department of Environmental Protection Commissioner Bradley Campbell said the new limit was imposed in May because of concerns about high phosphorous levels in rivers and streams, where it has been linked to fish kills. Local officials say the move could force higher property taxes because sewerage authorities will have to upgrade their treatment plants.

In all, about 60 percent of the Garden State’s waterways will be affected by the new rule, including the Delaware river. They are among the freshwater lakes, streams and rivers deemed by the state to be “impaired” by high levels of phosphorous.

In large amounts, phosphorous causes algae blooms that can deprive a waterway of oxygen, lead to fish kills and force water treatment companies to spend more money to treat water before it is sent to customers. Phosphorous comes from lawn fertilizers, laundry detergents and human and animal waste.

Under the state’s new policy, whenever a sewerage authority or private company seeks to build a new plant, expand, or renew a sewage permit, it will be required to prove that it will not discharge treated waste water with a phosphorous level that exceeds 0.1 milligrams per liter.

(Star Ledger - 5/31/02)

LEGISLATORS DEBATE MERIT OF WATER LAW

Assembly Democrats, in late June, narrowly passed a controversial water protection law

NJ REGULATORY UPDATES - Page 10

- NJ Water-Testing Law
- State Limits Phosphorous in Waterways
- Legislators Debate Merit of Water Law

granting the department of Environmental Protection more control over protected open space.

Under the law – passed 43-19 with 18 members not casting votes – land in watersheds and other wetlands would be given the highest priority for preservation. The law also grants the DEP power to regulate use of the land.

While suburban and urban lawmakers maintain the bill is an important way to protect fragile water supplies, many Republicans contend it will stifle agriculture.

Proponents contend, while imperfect, the bill is an important step toward protecting one of the state’s most important commodities, drinking water.

In the farmland preservation scheme, farmers sell development rights over their farms to the government. In return, a deed clause placed on the land permanently restricts farmers from selling to developers.

The initiative gained strength in 1998 when Garden state voters approved a referendum dedicating tax money to preserving 1 million acres of land by 2008.

Areas deemed to be fragile aquifers, flood-prone areas and stream corridors would receive the highest priority, according to the law.

Under the new law, the DEP would have control over the amount of covered surfaces and other agricultural mainstays such as building barns and greenhouses.

The law also requires the State Planning Commission and DEP to draft a list each year ranking the state’s aquifers and determining where preserving land is needed.

(Gloucester County Times - 6/28/02)

IAQ Update

— DUCT CLEANING – DOES IT WORK? —

For many years, IAQ professionals have debated whether duct cleaning really works. The U.S. Environmental Protection Agency (EPA) has completed a two-year pilot study which indicates proper, professional duct cleaning can improve indoor air quality.

Russell Kulp of the EPA’s Risk Management Research Laboratory stated to *IAQ Update Publication* that in a limited study of residential air conditioning systems, an improvement was shown in indoor air quality cases where the ductwork was thoroughly cleaned by properly trained IAQ technicians. The EPA is greatly concerned with the fact that most companies on the

low end of the duct-cleaning market charge low fees to do a less-than-thorough job; i.e., those offering “the \$99.00 special” and/or “\$9.00 per register.” The EPA estimates an average house (1,500 - 2000 sq. ft.) with a single air handling unit should take two (2) workers one (1) full day at a cost of between \$500 and \$1,000.

Duct cleaning, if performed correctly, can ease and often correct existing health problems caused by living or working in an environment with poor air quality. Conversely, improper duct cleaning could create lifelong health problems.

(Article from Seminars a Success)

If you have or suspect IAQ problems, RT recommends a proper evaluation before deciding what to do. For more information, call Gary Brown at (800) 725-0593.

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TECHNOLOGY UPDATES

FLAME-RETARDANT CHEMICAL COULD PROVE AS TROUBLESOME A POLLUTANT AS PCBs OR DDT

A chemical flame retardant commonly used in foam furniture padding is accumulating so rapidly in the breast milk of nursing mothers that environmentalists and some scientists are calling for a ban on it.

Little is known about the toxic nature of polybrominated diphenyl ether (PBDE). Early studies show it poses some of the same dangers as PCBs and DDT. Those two chemicals were banned in the United States decades ago for their myriad detrimental effects on animal and human health.

Environmentalists advocate a ban on PBDE as well. One form of the chemical will be banned next year in Europe, where the law requires proof of safety before a new agent can be used in the environment. U.S. law requires proof of harm or risk before a chemical is banned.

But the chemical industry argues that more research is needed before banning something that protects lives. Producers of PBDE say there is no evidence that it will ever reach harmful levels, while its benefits as a flame retardant are well known.

Adding PBDE to foam furniture padding, television casings, and other plastics reduces by 45 percent the risk of death and injury due to fire, the chemical manufacturers say. "We're not talking about aesthetics. People use brominated flame retardants because they save lives," said Robert Campbell, a spokesman for great Lakes Chemical Corp. in West Lafayette, Ind.

Like PCBs and DDT, PBDE is a persistent organic pollutant (POP). POPs can remain in the environment for years without breaking down. Some of these pollutants have such an affinity for fat that they build up in the bodies of both animals and humans from before birth until death. "It seems that PBDEs are an important - but generally unrecognized - persistent organic pollutant in the United States," Robert C. Hale, a professor at the Virginia Institute of Marine Sciences, and five colleagues wrote in the journal *Nature* a few months ago.

Hale has found PBDEs virtually everywhere he has looked: In a small river, he found fish with the highest levels of PBDE ever recorded in an animal. He has also collected sewage sludge samples from four states, all with high concentrations of PBDE.

Swedish scientists first documented the increase of PBDE in humans. For 30 years, Sweden has sampled the breast milk of nursing mothers to track exposure to dioxin, PCBs and other pollutants that accumulate in body fat. The United States has no similar program.

(Associated Press/Env. News Network - 2/8/02)

OIL POLLUTION PINNED ON LANDLUBBERS

Twenty-nine million gallons of petroleum escape into North American ocean waters each

year because of human activities or carelessness, yet only a tiny fraction of that environmentally devastating pollution is due to pipeline ruptures or massive oil tanker spills.

Instead, nearly 85 percent of those spills of gasoline and oil involve land-based runoffs from cars and trucks, fuel dumping by commercial airplane pilots, and emissions from small boats and jet skis, according to a study released by the National Academies' National Research Council.

Because the vast majority of petroleum consumption occurs on land, the study notes, rivers, wastewater and stormwater streams have become lethal conduits for the worst of the petroleum-related pollution of the marine environment caused by man. Environmentalists have long complained that noise and pollution from two-stroke engines in small craft and jet skis are harming fish species, fauna and wildlife.

By comparison, pipelines and oil tankers are the source of 2.7 million gallons in North American waters, or 8 percent of the man-made petroleum pollution. Oil exploration and extraction are responsible for only 3 percent of the petroleum that enters the sea.

Natural seepage of crude oil from geologic formations below the seafloor dwarfs that of human-related pollution. It is estimated to exceed 47 million gallons a year in North America and 180 million gallons a year worldwide.

Because of numerous regulations and technology advances in vessel construction, spills from tank vessels have been reduced significantly in 10 years, even as the tanker fleet increased by about 900 vessels to a total of 7,270 in 1999, according to the study.

(The Philadelphia Inquirer - 5/24/02)

NEW EPA HOME MOLD GUIDE GIVES TIPS FOR CLEANING, REDUCING EXPOSURE

Anyone concerned about their home's indoor air quality should take a look at a new publication from EPA, A Brief Guide to Mold, Moisture and Your Home. It covers the basics of mold, including why it grows in a person's home, how to get rid of it, who should do the cleanup and how to know when the remediation is finished. <http://WWW.PROCESSREQUEST.COM/apps/r/redir.asp?ling=XbdeicaCB.Yjgfejfg&oid-UbiefBI>

(Env. Protection E-News - 4/30/02)

LOWER ENERGY BILLS WITH WHITE ROOFS

Three men in polyethylene jumpsuits were atop Mary Owens' Southwest Philadelphia rowhouse, slathering her roof with a thick, white acrylic coating.

The gunk - part water, part polymer, part calcium carbonate (essence of Tums) - should lower the temperature indoors, greatly improving the odds that the 74-year-old woman will survive even the most searing days of this summer.

In the 1990s, more than 250 Philadelphians, most elderly, died of heat-related causes. The

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majority of victims were found in top-floor bedrooms, leading experts to suspect that a city hallmark - the flat blacktop roof - had played a lethal role.

Black soaks up the sun's energy; white repels it. Proceeding on that simple principle, a Center City nonprofit, Energy Coordinating Agency Inc., began two years ago coating roofs of older residents in low-income neighborhoods in South and Southwest Philadelphia.

With 200 finished, the first analysis is in: The coatings are doing their job. On the hottest days - mid-and-upper 90s in August last year - room directly under the white roofs were about 3 degrees cooler than those beneath black roofs, according to a study by the Boston energy-consulting firm Martin Blasnik Associates. Given a body temperature of 98.6, a drop in a room temperature from 95.6 to 92.6 actually doubles the degree difference between the room and the body.

A blacktop roof might rocket to 170 degrees on a 95-degree afternoon, and still be at 150 after dark. On the same day, a roof covered with the hard, white membrane would not exceed 120 degrees, and would cool to near air temperature with sundown. That has an impact not only inside the house - but, as researchers found, throughout the entire neighborhood.

A study has shown that heating costs in white-roofed houses are about 3 percent higher, but that cooling costs are 22 percent lower - making them particularly attractive for commercial buildings, especially in energy-conscious California.

Unlike black asphalt, the white coatings are not cheap - about \$1,200 per roof - but they can extend roof life by 10 years. The Philadelphia program has used foundation grants and U.S. Department of Health and Human Services funds to work on the 200 houses, with enough money left to do about 300 more.

(The Philadelphia Inquirer - 5/5/02)

EPA TO ADDRESS C&D WASTE MANAGEMENT ISSUES

Speaking at the U.S. EPA's recent RCRA National meeting in January, Ken Sandler from the agency's Office of Solid Waste said, "For the past 25 years, hazardous waste had been the major focus of the agency's Office of Solid Waste. We will continue to focus on hazardous waste, but construction and demolition debris is the next place we will be going."

Estimates are that the demolition industry generates anywhere from 135 to 165 million tons of debris annually. The National Association of Demolition Contractors (NADC) believes that the industry currently recycles close to 40% of this debris. The opportunities for recycling continue to grow and new technology is developed every year to deal with the industry's heterogeneous waste stream.

TECHNOLOGY UPDATES (CONTINUED)

The biggest problem most demolition contractors face when attempting to recycle parts of their debris is identifying viable markets for their recyclables. In some aggregate poor areas of the country, the demand for concrete is so strong that recycling companies are waiting at the jobsite gate to gain access to the concrete. In other stone-rich states, where the material could easily be used as a supplement to virgin material, its use is often prohibited thereby requiring unnecessary disposal of a valuable resource.

The reuse of wood products from demolition jobsites continues to grow. In the Los Angeles area, jobbers from Mexico will often come across the border and reclaim wood for resale in Mexico. Wood burning power plants are also a good market for separated wood waste from demolition jobsites. Recently, after almost ten years of negotiation, the local utility that provides power for the Twin Cities steam loop in downtown Minneapolis and St. Paul has agreed to begin to take wood waste from demolition jobsites as a fuel supplement to their coal-fired power plants.

Other opportunities for the reuse of wood waste include particleboard manufacturing, landscaping, and as a drying agent for municipal sewage sludge.

There are some institutional barriers to reuse of C&D debris. Estimates are that the demolition and construction industries recycle over 100 million tons of concrete annually. This number could easily grow if state departments of transportation would promote a wider array of uses for recycled concrete. If DOT specifications could be adjusted to include wording about the use of recycled concrete in base course, as riprap for drainage and on secondary roads, the volume of material recycled would increase dramatically.

The same is true for asphalt. While the National Asphalt Pavement Association has done a terrific job promoting the highly successful reuse of asphalt paving material, some states continue to prohibit the reuse of asphalt material from parking lots and secondary roads on their primary of Federal-Aid highways.

The U.S. EPA has established a new C&D website which provides the latest information on C&D waste management. The site has a wealth of information on generation rates, technology and pollution control issues confronted when recycling C&D debris. You can reach it at www.epa.gov/epaoswer/non-hr/debris.

The agency is also beginning a new program, its WasteWise Building Challenge, where it will present C&D debris recycling successes to the general public and the construction community.

(Demolition - May/June 2002)

UTILITY MERCURY EMISSIONS CONTROL TECHNOLOGY MAY LIMIT WASTE SALES

Utility industry officials are questioning one of the leading technologies under development for reducing mercury emissions from coal-fired power plants because of concerns the process may leave coal-combustion wastes, which the

industry currently sells for significant profit as a cement substitute, unfit for sale.

If widely adopted, the new technology would not only force the industry to face new landfill disposal costs, but those disposal costs could be raised even higher because EPA is also drafting a proposed rule to tighten landfill disposal rules for coal combustion wastes under Subtitle D of the Resource Conservation & Recovery Act (RCRA). EPA is planning on issuing a proposed RCRA rule for these wastes in March 2003.

At issue is a technique known as activated carbon injection (ACI), which involves injecting carbon into the hot gas flue that results from burning coal. The mercury is absorbed into the carbon, which can then be recovered using particulate control technology. ACI is widely considered the leading technology for reducing mercury emissions, with EPA considering its use to implement calls in the Bush administration's Clear Skies plan to develop strategies for reducing emissions of sulfur dioxide, nitrogen oxides and mercury from power plants, according to agency and industry sources.

The process has been tested at power plants in Alabama and Wisconsin in the past year with promising results, according to a source with the Electric Power Research Institute (EPRI), a non-profit utility industry research group. At those sites, ACI recovered about 70 percent of mercury emissions, the EPRI source says.

But, ACI can leave the coal-combustion wastes – also known as fly ash – unfit for resale as a cement mix because the ash is too dark, sources say. “It turns the ash black,” says one industry source. “The concrete industry wants a nice pale ash.”

Instead of selling the ash for profit, the utilities instead face the likelihood of landfilling large amounts of the waste. As a result, utilities that sell the waste are questioning the practicality of the process. “We don't want to trade one benefit for another,” the source says.

Meanwhile, EPA says the new landfill rules are necessary even though the industry has made “significant improvements” in its waste management practices in recent years, and most state regulatory programs have also improved. Nevertheless, EPA documents released earlier this month indicate that as much as 62 percent of existing utility surface impoundments do not have groundwater monitoring. “In the Agency's view, this justifies the development of national regulations,” the documents say.

In addition to the darkening of the ash, the carbon used in the process interferes with chemicals added to the ash in mixing cement because it absorbs them, according to a source with ADA Environmental Solutions (ADA), a Colorado firm that is developing the technology.

An EPA source says the salability of the waste is not the agency's concern because industry will ultimately have to decide what percentage of carbon in the waste is acceptable. “It depends on what the material will be used for,” the source says, pointing out that fly ash can also be used as road filler and in gypsum board, and acceptable

levels of carbon vary in those products. “It's not a health-based issue,” the source says.

(Superfund Report - 6/10/02)

STATE FARM WON'T ISSUE NEW POLICIES, IN PART, DUE TO MOLD

State Farm, the largest insurer in California representing 22 percent of the market, decided that it would no longer write new homeowner policies in the state as of May 1. While that's partly due to past losses, it's also in large part due to the rising cost of mold-related claims.

Across the country mold has become a toxic problem, with homeowners, renters and building tenants alleging that a severe form of the fungus in their homes or offices is causing symptoms from allergies to lung bleeding.

For insurers, the issue threatens to become their next asbestos: a health hazard they'd never anticipated that could potentially cost billions of dollars in both claims and lawsuits.

For consumers, the issue is likely to increase the cost of homeowners insurance, already poised to go up as much as 25 percent for reasons related to past underpricing and rising construction costs. In Texas, which has had the most claims increases in the nation, rates have already nearly doubled for many homeowners.

(San Jose Mercury News - 4/24/02)

CHECKLIST: BMPs FOR PROTECTING WATER QUALITY FROM NON-POINT SOURCE POLLUTION

An ongoing project by the British Columbia Lake Stewardship Society is attempting to compile best management practices for protecting water quality from non-point source pollution. The project uses a variety of resources, including published documents, Internet sites and less-readily available “grey literature.” <http://www.PROCESSREQUEST.com/apps/redir.asp?link=XbdebhfeCF,YjgfejfgFG&oid=UbiefBI>

(Water & Waste Water Products E-News - 5/20/02)

NEW DOCUMENTS

Workshop on Monitoring Oxidation-Reduction Processes for Ground-water Restoration (EPA 600-R-02-002). Download at: http://www.epa.gov/ada/download/reports/epa_600_r02_002.pdf

DNAPL Source Reduction: Facing the Challenge (DNAPL-2).

Download at: <http://www.itweb.org/user/DNAPL-2.pdf>

Identifying Critical Parameters for the J&E Vapor Pathway

Download at: <http://www.api.org/bulletins>

Technology Evaluation Report: Fracturing Technologies to Enhance Site Remediation (TE-02-02).

Download at: http://www.gwrtac.org/pdf/frac_e_2002.pdf

TECHNOLOGY UPDATES (CONTINUED)

The Superfund Public Information System (SPIS) Compact Disc contains abstracts for and the full texts of Records of Decision (RODs), ROD Amendments, and Explanations of Significant Differences (ESDs) issued from 1982 through 2001.

To order the free CD, see:
<http://www.epa.gov/superfund/sites/phonefax/desktop/spiscd.htm>

TRADABLE CREDITS: TOOLS FOR MANAGING ENVIRONMENTAL RISK

The concept of tradable emissions credits was developed by EPA in the 1970s in its effort to implement federal air quality standards in a more flexible and less-costly manner.

Researchers in NRMRL's Sustainable Technology Division (STD) are demonstrating how tradable discharge credits can be applied to another environmental challenge: the management of excess stormwater runoff from impervious (paved) surfaces. Problems of excess stormwater runoff have followed the rapid spread of urban development in the U.S., but they are also a perennial challenge in older cities with combined sanitary and storm sewers where heavy rains can cause overflows of raw sewage into open waterways.

A growing number of remedies ("Best Management Practices") have been developed to help builders and local governments control stormwater runoff. These include large-scale detention ponds, infiltration trenches, porous pavement, and strategic plantings and ground covers.

STD researchers have developed a pilot study using Shepherd Creek, a 500-acre sub-watershed of Cincinnati's Mill Creek, that includes diverse land use in an area with well-documented stormwater runoff problems. Coupling economic analysis with high-quality spatial data, the study uses information on soil type, land use, slope and impervious surface proportion for individual land parcels, plus a mathematical representation of property owners' cost-minimizing decisions. The data are used to estimate equilibrium credit price and total costs incurred under the credit-trading system. Total costs are compared to the expected cost of an alternative engineering solution proposed for the area (a large-scale centralized storage tunnel) and also to a "command and control" scenario of mandatory abatement levels for each parcel. Results of the analysis show that a tradable credit system for the Shepherd Creek sub-watershed compares favorably to both the engineering solution and the command and control concept. Research is continuing to refine the model, but current findings support the concept that, either on its own, or in conjunction with a centralized storage system, a tradable credit system can promote a significant amount of dispersed abatement, and contribute to effective management of excess stormwater in a way that approximates an unaltered (natural) watershed.

(Contact: Beth Lemberg, lemberg.beth@epa.gov)
 (NRMRL "What's New" - 5/28/02)

CALIFORNIA LAW WILL LIMIT CO2 EMISSIONS FROM CARS

California became the first state in the nation to regulate emissions of the greenhouse gas carbon dioxide from motor vehicles. Governor Gray Davis signed legislation ordering the state's air quality board to develop statewide standards for tailpipe emissions of carbon dioxide, beginning in model year 2009.

(*Environmental News Service* - 7/22/02)

FOUNDATION RECOGNIZES DAIMLERCHRYSLER

The Environmental Research and Education Foundation recognized DaimlerChrysler Corp. for its role in turning waste into car parts through its Chrysler CARE (Concepts for Advanced Recycling and Environmental) Car II program.

The company was saluted with the foundation's Environmentalist of the Year award gala.

The project used a process developed by Recovery Plastics International, Salt Lake City, Utah, to sort and separate different types of plastic, with the resulting recovered plastic being recycled and reused.

(*Recycling Today News* - 7/21/02)

BEAUTY PRODUCTS MAY CONTAIN CONTROVERSIAL CHEMICALS

Hair sprays, perfumes and other brand name cosmetics contain toxic chemicals that may be absorbed into the human body, warns a report recently released. The report includes the first ever independent tests for phthalates in over the counter products, say the three environmental and public health groups who sponsored the testing.

The groups contracted with a major national laboratory to test 72 name brand, off the shelf beauty products for the presence of phthalates, a large family of industrial chemicals linked to birth defects in the male reproductive system. The lab found phthalate 52 of the 72 or 72 percent, of the products tested. Only one of the products listed phthalates on the label.

Phthalates are used as plastic softeners and solvents in many different consumer products. In cosmetics and other beauty products, phthalates help make nail polish chip resistant and keep perfumes fragrant longer.

One Centers for Disease control (CDC) study found that five percent of women of reproductive age - an estimated two million women - may be getting up to 20 times more of the phthalate DBP than the average person in the population. The highest exposures for women of childbearing age were above the federal safety standard, which may create a risk of reproductive birth defects, based on animal studies considered relevant to humans.

The Cosmetic, Toiletry and Fragrance Association (CTFA), an industry group, said today that the use of phthalates in cosmetics and personal care products is supported by "an exten-

sive body of scientific research and data that confirms safety."

The products were chosen after reviewing a Food and Drug Administration (FDA) database of cosmetics that listed the phthalate DBP (dibutyl phthalate) as an ingredient. The products were tested for the presence of six other common phthalates as well.

(*Environment News Service* - 7/21/02)

NEW REPORT RELEASED ON BIOSOLIDS STANDARDS AND PRACTICES

The National Research Council (NRC), a branch of the National academy of Science, released a report recommending that EPA conduct further studies to assess the impact of biosolids on human health and the environment.

The report, *Biosolids Applied to Land: Advancing Standards and Practices*, also found no documented scientific evidence that the current federal Part 503 rule that regulates biosolids has failed to protect public health. However, it recommended that additional scientific work is needed to reduce persistent uncertainty about the potential for adverse human health effects from exposure to biosolids.

To assure the public and to protect public health, the report identified the need for EPA to update the scientific basis of the Part 503 rule to (1) ensure that the chemical and pathogen standards are supported by current scientific data and risk-assessment methods, (2) demonstrate effective enforcement of the Part 503 rule, and (3) validate the effectiveness of biosolids-management practices.

EPA plans to use the information from the report to update and modernize the 1993 federal Part 503 rule that regulates biosolids.

EPA officials said their goal is to publish the agency's plan of action and response to the report in the April 2003 Federal Register. Public comments on EPA's response and proposed actions on biosolids regulations will be sought at that time.

(*Environmental Protection Update* - 7/21/02)

REPORT: CORPS PROJECTS NEED EXTERNAL REVIEW

The U.S. Army Corps of Engineers should seek external scientific reviews of its most costly, complex and controversial planning studies, concludes a new report from the National Research Council. The reviews should be made public, and the Corps should respond in writing to each key element, added the committee that wrote the report.

The report, "Review Procedures for Water Resources Planning," comes as the Corps faces heavy criticism from members of Congress and environmental groups for its handling of several massive projects, including a \$1 billion plan to enlarge locks on the Upper Mississippi River-Illinois Waterway.

(*Environmental News Service* - 7/27/02)

TECHNOLOGY UPDATES (CONTINUED)

PANEL URGES PUBLIC WARNINGS ABOUT MERCURY IN TUNA

An independent food safety committee has recommended that the Food and Drug Administration (FDA) warn pregnant women and children to limit their consumption of canned tuna.

Last year, the FDA advised pregnant women

and those who could become pregnant not to eat shark, swordfish, king mackerel and tilefish. After a three day meeting the FDA panel recommended that the FDA add other seafood to its off limits list for sensitive populations if they contain over FDA's action level of one part per million of methylmercury - including canned tuna.

According to government agencies, seafood

can harm the nervous system of an unborn child if its mother regularly eats mercury contaminated tuna or other fish. Infants and young children may also be more at risk from mercury exposure because they eat more fish relative to their body size in comparison with adults, health agencies warn.

(Environment News Service - 7/27/02)

RT ENVIRONMENTAL SERVICES, INC. PRESIDENT TO PROVIDE COMPLIANCE TIPS AT UPCOMING PA CHAMBER RESIDUAL & HAZARDOUS WASTE CONFERENCES:

*Get The Latest Information On PA's Most Complex Environmental Regulations...
From Those In The Know*

TUESDAY

OCTOBER 8, 2002

**Radisson of Pittsburgh,
Monroeville, PA**

TUESDAY

OCTOBER 22, 2002

**Wildwood Conference Center,
Harrisburg Area Community
College, Harrisburg, PA**

Pennsylvania's residual and hazardous waste regulations are some of the toughest to comply with, some of the hardest to understand and some of the most expensive on the books with over \$3.4 million in waste penalties handed out last year.

That's why the **Pennsylvania Chamber of Business and Industry** is working together with the **DEP** to present an in-depth seminar—to explain what the rules are all about, put into simple terms what is complex and provide several opportunities to get answers to your toughest waste-related questions from top ranking **DEP** officials and expert consultants, including **RT Environmental Services, Inc., President Gary R. Brown, P.E.**

With over 27 years of diversified engineering and consulting experience, Mr. Brown's topic for discussion will focus on **Practical Tips for Compliance**. Offered at two convenient locations, this all-new workshop will provide all the up-to-the-moment information waste management profes-

sionals need to ensure their company remains in compliance with minimal confusion and the lowest possible investment in time, money and resources, including:

- Complying with the Solid Waste Management Act & PA's unique residual waste requirements
- Understanding what materials and activities are regulated, which permits you will need and how to complete the permitting process
- Reducing confusion over complex hazardous and residual waste definitions to ensure you are properly managing your materials.
- Creating a comprehensive compliance checklist for your business
- Understanding the significant changes to the Safe Fill & and the regulation of your waste oil
- Properly characterizing, storing, labeling, and shipping your waste
- Knowing exactly when to recycle
- Properly preparing for **DEP** inspections and much more.

“Over the years the Pennsylvania Chamber has played an instrumental role in working together with the **DEP** to develop and implement regulations that maximize environmental protection and are less burdensome on the over 10,000 businesses we serve,” said **Sue Smith, PA Chamber Director of Customer Learning**. “Our ongoing partnership with the **DEP** is one of the major reasons why we are one of the

few organizations that constantly delivers the top regulators as presenters, those who oversee the inspectors making company visits and whose signature are on the correspondence companies receive. Most importantly, environmental professionals who take advantage of these learning opportunities often end up saving thousands of dollars by avoiding the exponential costs of non-compliance thanks to the expert information that is presented by highly knowledgeable speakers such as Gary Brown.”

In addition, on **November 21, 2002** at the **Wildwood Conference Center, Harrisburg Area Community College, Harrisburg**, and **December 11, 2002, Radisson of Pittsburgh, Monroeville, PA**, the **PA Chamber** will be hosting a similar educational conference focusing on Clean Air and Water compliance issues.

Given the current regulatory landscape, these are two conferences employers and environmental professionals at all levels of compliance expertise cannot afford to miss.

In fact, you may wish to bring others from your staff, so be sure to ask about the **PA Chamber's** special team discounts for three or more attendees.

Register for both events and save over \$50 per person! For complete workshop agendas or to sign up online visit www.pachamber.org/cp. For instant registration or more information call the **PA Chamber's** conference hotline **TOLL FREE at 877 866-8965**.

FEDERAL REGISTER UPDATES - KEY HIGHLIGHTS

– **April 9, 2002** *National Pollutant Discharge Elimination system – Proposed Regulations to Establish Requirements for Cooling Water intake structures at Phase II Existing Facilities: Proposed Rule*

– **May 9, 2002** *U.S. Army Corps of Engineers Final Revisions to Clean Water Act Regulatory Definitions of “Fill Material” and “Discharge of Fill Material.”*

– **May 29, 2002** *Control of Emissions of Air Pollution From New Marine Compression-Ignition Engines at or Above 30 Liters/Cylinder; Proposed Rule*

– **June 10, 2002** *Research, Development, and Demonstration Permits for Municipal Solid Waste Landfills*

– **June 12, 2002** *Standards for the Use or Disposal of Sewage Sludge; Notice. The Environmental Protection Agency (EPA) proposed to amend the Standards for the Use or Disposal of Sewage Sludge to limit dioxin and dioxin-like compounds.*

– **June 12, 2002** *Hazardous Waste Management System; Modification of the Hazardous Waste Program; Cathode Ray Tubes and Mercury-Containing Equipment.*

– **June 21, 2002** *Hazard Communication (HazCom); Final rule and Withdrawal of Interim Final Rule. We are establishing this final rule on “Hazard Communication” to reduce injuries and illnesses related to chemicals in the mining industry.*

– **July 17, 2002** *Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities; Final Rule. EPA is amending the Oil Pollution Prevention regulation promulgated under the authority of the Clean Water Act.*

– **July 24, 2002** *Zinc Fertilizers Made From Recycled Hazardous Secondary Materials*

To Access These Fed Register Listings, Access <http://www.epa.gov/fedrgstr/EPA> on the web

RT IMPLEMENTING SECOND GENERATION ACT 2 LAND RECYCLING PROJECTS

Peter Malik's King of Prussia Remediation Group is wrapping up a “second generation” land recycling project, involving a downtown Philadelphia Vine Street facility. The facility, formerly used for manufacturing purposes, was studied for future commercial reuse, and went through a major upgrading in the early 1990's. Following cleanup of industrial operations, tank closure, and after addressing metal impacted soils, facility reconstruction converted the facility to a gourmet food products, including caviar, wholesale distribution facility, supplying Philadelphia's leading restaurants.

Due to rising popularity of the area, which is adjacent to the Olde City section of Philadelphia, RT began a “second generation” Land Recycling project, which involves conversion of the property for future residential use. As residential use is more sensitive, RT conducted further characterization near a tank release and more in-depth characterization of soils and historic fill, in particular, focusing on an area where a parking lot ramp and future residential townhouse foundation construction is expected to take place. The Site Specific Standard with appropriate Deed Notice provisions was used to address metals impacted historical fill, present at the site through at least several historical generations of repetitive vertical building construction in the Olde City area.

RT is seeing more and more “second generation” land recycling projects, as owners and redevelopers seek the “highest and best use” of the land. The flexible nature of Pennsylvania's Act 2 Land Recycling Program makes the land recycling upgrade projects straight forward. For more information, call Peter Malik at (610) 265-1510 ext. 31.

RT's SCOPE OF SERVICES

- REAL ESTATE ENVIRONMENTAL SITE ASSESSMENTS
- UNDERGROUND & ABOVE GROUND TANKS
- REMEDIAL ACTION
- RISK BASED CORRECTIVE ACTION
- BROWNFIELDS SITES
- ENVIRONMENTAL ENGINEERING
- EXPERT WITNESS SERVICES
- HEALTH & SAFETY SERVICES
- ASBESTOS & LEAD BASED PAINT
- RISK ASSESSMENTS
- AIR AND WASTEWATER
- HYDROGEOLOGICAL STUDIES
- PA SAFE FILL
- ANTHRAX & EMERGENCY RESPONSE
- NJ ISRA: PA LAND RECYCLING
- INDOOR AIR 7 MOLD
- CONTINGENCY PLANS

PADEP UPDATES LAND RECYCLING GUIDANCE

- **Policy on Free Product Remediation**
- **Revised Procedures - Non-used Aquifers**
- **Integration with Storage Tank Act**
- **New Vapor Guidance and Distance Criteria**

VISIT OUR WEB PAGE FOR DETAILS!

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