

The RT Review

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



MARCELLUS SHALE COMMISSION REPORT – KEY RECOMMENDATIONS

Pennsylvania's Governor Corbett created a Commission to look at issues surrounding Marcellus Shale development. The Commission's report (which can be viewed at:

http://files.dep.state.pa.us/PublicParticipation/MarcellusShaleAdvisoryCommission/MarcellusShaleAdvisoryPortalFiles/MSAC_Final_Report.pdf), issued July 22, 2011, includes a number of recommendations that could affect pipeline development, both intra-state and interstate, including:

1. A lead state agency should be designated to alleviate delays in linear pipeline project development and approval; to identify redundant natural and cultural resource reviews which should be eliminated; "to properly tailor scope of agency reviews"; and the PA Natural Resource Inventory on-line tool be expanded and used for projects greater than 15,000 feet.

2. State agencies should offer accelerated permit reviews with guaranteed time frames, with extra fees to be paid by applicant.

3. PennDOT should add language to Excess Maintenance Agreements directing industry to evaluate E&S controls already in place on affected roadways and to determine what should be in place before road reconstructed.

4. With regard to pipeline siting, a recommendation that legislative/regulatory changes be identified to:

- Effect sharing of pipeline capacity and reduce surface disturbance;
- Encourage the use of existing pipeline infrastructure and co-location with other rights of way;
- Achieve "coordination and consistency" of infrastructure planning and siting state/county/local governments (there is also recognition, though, in numerous places, that the local governments still have zoning authority over oil and gas activities, so no blanket preemption is recommended); and
- "provide sufficient authority and resources for appropriate government agencies to ensure that ecological and natural resource data are using in the review and siting of proposed pipelines, in order to avoid or minimize impacts to these resources."

5. Future leasing of state forest land should be limited to agreements which result in no

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RT ENVIRONMENTAL SERVICES, INC. IS PLEASED TO ANNOUNCE THE FIRST LARGE EAST COAST STORMWATER_x TREATMENT SYSTEM INSTALLATION IN LORTON, VIRGINIA

StormwaterRx LLC (pronounced storm water rx), manufactures stormwater treatment systems for industrial facilities throughout North America. StormwaterRx systems are stormwater



treatment best management practices (BMPs) that reduce pollutants in stormwater. The company was founded in 2006 building on decades of collective staff experience designing, manufacturing and consulting on stormwater and other water purification to meet the treatment needs of industry.

As of January 2011, RT agreed to represent StormwaterRx as their exclusive East Coast representative for sales and service of the company's state of the art stormwater treatment systems. RT completed our first sale of StormwaterRx technology to Davis Industries in Lorton, VA. This is the fourth StormwaterRx system to be installed on the East Coast. Davis Industries operates a 23 acre scrap metal recycling yard whose processing includes an auto shredder, shear, eddy/ISS systems, and non ferrous baling system. Their stormwater is recycled on-site and used for washing/cooling for their shredder. Currently operating under a NPDES Permit with the State of Virginia and a facility generated SWPPP plan, the facilities discharge parameters consist of total suspended solids as well as total and dissolved metals. Davis selected StormwaterRx technology to help meet discharge parameters.

In order to achieve these goals, Davis has augmented their setting pond with a three product, treatment train system from StormwaterRx consisting of the Retenu™ Basic Model Z01, the Aquip® Enhanced Organics Model 210SBEG, and the Purus™ Metals polishing Model 210FR.

The Retenu™ is a basic industrial stormwater roughing filter for high sediment loading applications and can be used stand-alone, or in the case for Davis Industries, as pretreatment to the Aquip Enhanced Stormwater Filtration System and

Purus Polishing System. Retenu's fully automated and chemical-free treatment process uses filtered stormwater for back-washing, flushing out accumulated dirt and concentrating the solids. This process reduces the concentration of particulates in the effluent by removing solid metals and other pollutants.

The Aquip®, installed at Davis as the secondary treatment component, is an innovative, enhanced media filtration system for industrial stormwater applications. This stormwater treatment BMP is a highly efficient system that provides the treatment needed to meet stormwater quality standards in a simple and easy-to-use configuration.

The Purus™ Stormwater Polishing System provides the most advanced level of stormwater treatment, and is designed for challenging stormwater conditions or targeted pollutant removal. In the case of Davis Industries, Purus is used for additional dissolved metals removal. With this level of stormwater pollutant removal possible, the Purus polishing system is ideal for facilities such as Davis where higher concentrations of total and dissolved metals are unavoidable or where more stringent or watershed specific water quality standards apply like those within the state of Virginia.

Construction and installation of the systems was underway in August. Project installation and oversight is being managed by Matt Martelli, Remediation Group Manager for RT, and Rocky Hall of StormwaterRx. With a completion date of September 2011, Davis will be the fourth of many facilities to come on the east coast to utilize the advanced stormwater treatment systems available on the market exclusively by StormwaterRx.

For more information on products and services available from StormwaterRx, please feel free to contact Justin Lauterbach, Associate with RT and manager of RT's Pittsburgh office. Justin can be reached at 724-206-0380. Also visit our website www.rtenv.com or www.stormwaterx.com.

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RT STAFF AND PROJECT NEWS

Through the summer, RT's staff was busy with property transaction work, as well as building issues related to water intrusion and mold. Wet conditions in August affected many buildings, with water intrusion and moisture uses occurring, in certain buildings, where it never had been of previous concern.

Glenn Graham and Jacci Evans continue to work on a Gloucester City redevelopment project, where a food waste to energy facility is expected to go forward in the coming months. Ahren Ricker continued work on an Atlantic City former service station release project, where In Situ remediation is being used to remediate groundwater.

RT is also seeing a large increase in New Jersey Licensed Site Remediation Professional projects, throughout the state. Recent projects have included a project with an historic petroleum release in Jersey City, where a site is being residentially redeveloped, a site where a Response Action Outcome statement has been issued for impacted groundwater in Scotch Plains, and an historic tank release project, in Patterson. Cortney Savidge and Chris Ward are working on these projects.

Justin Lauterbach is working on a number of projects involving colleges and universities in southwest Pennsylvania, and is undertaking work at a service station site, which had an historic petroleum release, but which will continue in operation as a regional supermarket/convenience store chain, is planning to purchase the property.

Chrisse Stritmatter joins RT, and was working with Kristin Foldes on researching documents related to a major litigation case. Chrisse recently joined RT in our southwest Pennsylvania office; she

has a degree in Environmental Studies; Fisheries and Wildlife Biology concentration from California University of Pennsylvania.

Walter Hungarter is busy on a project involving a portfolio of properties, including a headquarters/manufacturing facility in southeastern Pennsylvania, and with warehouse/service/distribution facilities, throughout the eastern United States. Walter is also working with Gary Brown on a Chester County project, to address water and moisture concerns in a large building, where temporary relocation was necessary, while moisture intrusion issues are addressed.

Josh Hagadorn and Larry Bily are working on a number of mold projects, which include the investigation, evaluation, and abatement stages. Work is being completed under the oversight of RT's President, Gary R. Brown, P.E., who is a Certified Microbial Consultant.

Walter Hungarter and Craig Herr are continuing work on a Superfund project, where rock geology and groundwater flow are being carefully examined downgradient from the site. Sandy Bradbury joins RT, as an Administrative Professional, reporting to Mara Tammaro, in our King of Prussia headquarters.

Lisa Mascara attended the Campus Safety Health and Environmental Management Association (CSHEMA) Annual Meeting, and we are following up with a number of colleges and universities interested in our services.

RT appreciates the continued strong interest in our services, and we look forward to the opportunities you give us to assist you on environmental assignments.

(Gary R. Brown, P.E., President)

REVOLUTION RECOVERY – EXPANDED RECYCLING IN PHILADELPHIA

CITYPAPER Philadelphia recently featured an article titled "Disposable Heroes", highlighting the success of this facility. Discarded construction materials are being used in fine arts projects. Find this article at:
www.citypaper.net/cover_story/2011-06-30-dufala-brothers-urbanism-remaging-the-lived-environment.html

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MARCELLUS SHALE COMMISSION REPORT (continued from page 1)

or minimal surface impact - this is directed more at drilling leases, but could result in more requests for drilling on state forest land for pipelines too.

6. "The Commonwealth should incentivize the development of intra-state natural gas pipelines to ensure the in-state use of Marcellus Shale and to lower costs to consumers through the avoidance of interstate pipeline transmission costs."

7. State should work with the federal Pipeline and Hazardous Materials Safety Administration to locate a safety inspector facility in PA.

8. A specific recommendation that the PUC be given "statutory gas safety oversight of non-jurisdictional intra-state gathering

systems, including mechanisms to establish safety standards regarding the design, construction and installation of such lines within Class 1 areas" but with language that the PUC's jurisdiction should not extend beyond safety.

9. PUC regulated pipelines should report the country of origin and manufacture of any steel products to the PUC, to ensure the safety, integrity and use of high quality steel, such as steel which meets API standards.

The Commission itself cannot effect change, but these recommendations will influence legislative and regulatory changes in the near term.

(By Elizabeth U. Witmer, Saul Ewing – 7/2011)

RT is tracking Marcellus Shale regulatory program updates. The recent regulatory

focus on Wetlands, Floodplain, and Stream Encroachment issues as well as Corps of Engineers involvement could delay construction of pipelines for getting natural gas to market. RT is expanding this service area as we have in-depth experience in permitting for sensitive area projects, including utility projects.

For more information, call Justin Lauterbach at 724-288-4895 or by email at jlauterbach@rtenv.com, or Gary Brown, P.E., at 610-265-1510 Ext. 234 or by email at gbrown@rtenv.com.

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WWW.RTENV.COM**

MATT MARTELLI JOINS RT AS REMEDIATION GROUP LEADER



Matt Martelli, an Environmental Engineer, has rejoined RT leading our Remediation Group. Due to increases in economic activity, RT has several large remediation projects starting. Matt's Remediation Group will be located in our Headquarters, in King of Prussia. Upcoming projects include a large scale demolition and capping project in New Jersey, and, a service station cleanup, where a substantial release of petroleum constituents requires In Situ biological treatment.

Matt has substantial experience in redeveloping buildings in Philadelphia, as well as prior experience on RT's projects involving remediation and redevelopment of a former asbestos mill in Lancaster County Pennsylvania.

STORMWATERx's AQUIP FILTRATION GETS CONDITIONAL USE APPROVAL

StormwaterRx LLC, recently announced that the Washington Department of Ecology decided that AQUIP Enhanced Stormwater Filtration System has been conditionally approved (CULD) for use for Basic, Enhanced and Phosphorus treatment. The CULD was granted based upon review by a Board of External Reviewers consisting of stormwater experts from across the United States. According to Ecology, "...several other states, counties, and cities use TAPE certification to determine whether a technology can be installed within their jurisdiction, including Sacramento CA, Denver CO, St. Louis MO, the State of New Hampshire, Portland OR, the Oregon Department of Transportation, and the State of Rhode Island."

AQUIP is arguably the first and only

industrial stormwater treatment BMP approved by Ecology for the treatment of solids, metals, and nutrients." The CULD approval means that AQUIP can be specified and is approved for use on new and redevelopment projects in Washington. The CULD approval brings added credibility and validation to our AQUIP performance claims and will provide specifying engineers with added confidence in our systems and our company.

See the full text of the CULD approval *here*:

http://www.ecy.wa.gov/programs/wq/stormwater/newtech/use_designations/ULDDesignationStormwaterRxAQUIP.pdf.

Here is what the AQUIP can do:

- **Basic** - Intended to achieve a goal of 80% removal of total suspended solids for an influent concentration range of 100 mg/L to 200

mg/L. For influent concentration less than 100 mg/L the effluent goal is 20 mg/L total suspended solids.

- **Enhanced** - Intended to achieve a higher level of treatment than basic treatment. Enhanced treatment is targeted at removing dissolved metals.

- **Phosphorus** - Intended to achieve a goal of 50% total phosphorus removal for an influent concentration range of 0.1 to 0.5 mg/L as well as achieving basic treatment.

RT represents StormwaterRx on the East Coast. For more information, contact Justin Lauterbach at jlauterbach@rtenv.com or by phone at 215-909-0056.

Each month, StormwaterRx modular units are being shipped to East Coast locations, with units already installed in Virginia and Pennsylvania.

RT'S 24-HOUR URGENT LINE (800) 725-0593

FEDERAL REGULATORY UPDATES

EPA ISSUES EXTENSION TO GREENHOUSE GAS REPORTING DEADLINE

The EPA has issued a final rule that extends the deadline for reporting 2010 data under the Greenhouse Gas (GHG) Reporting Program to September 30, 2011. The original deadline was March 31, 2011. EPA previously announced its intent to extend the deadline on March 1, 2011. Under the GHG Reporting Program, entities required to submit data must register with the electronic GHG reporting tool (e-GGRT) no later than 60 days before the reporting deadline. With this reporting deadline extension, the new deadline for registering with e-GGRT is August 1, 2011.

Following conversations with industry and others and in the interest of providing high quality data to the public this year, EPA is extending this year's reporting deadline to September 30, 2011. This extension will allow EPA to further test the system that facilities will use to submit data and give industry the opportunity to test the tool, provide feedback, and have sufficient time to become familiar with the tool prior to reporting.

(Environmental Resource Center – 3/21/2011)

EPA AUTHORIZES HAZARDOUS WASTE MANIFEST REVISIONS

The bulk of current EPA Uniform Hazardous Waste Manifest must be printed with black ink, with red ink being used for marginal text used to distinguish the various copies and their distribution. In the June 22, Federal Register, EPA published a direct final rule authorizing other methods of distinguishing the copy distribution notations, such as white text against a black background or black text against a grey background. The revised rule will facilitate manifest printing using laser printers or other methods.

(Environmental Resource Center – 7/4/2011)

ACTIVISTS PRESS STATES TO STRENGTHEN COAL ASH PERMITS AHEAD OF EPA RULES

Environmentalists have begun pressing states to implement EPA's stop-gap discharge measure for power plants' coal ash storage sites in the plants' renewed clean water permits -- even before EPA formally revises its technology-based effluent limitations guidelines (ELG) for the facilities in 2013 and issues a planned waste rule for coal ash.

In a pair of cases recently filed before the Tennessee Water Quality Control Board, Earthjustice, Tennessee Clean Water Network and the Environmental Integrity Project petitioned to challenge National Pollution Discharge Elimination System (NPDES) permits issued for two power plants operated by the Tennessee Valley Authority (TVA), arguing that the renewed permits fail to include technology-based effluent limitations (TBELs) for heavy metals and other pollutants as stipulated in EPA's stop-gap guidance issued last June.

An environmentalist familiar with the Tennessee cases says the clean water permit challenges are aimed at pushing states to require technology-based reductions of pollutants that

are not included in existing ELGs -- such as arsenic, mercury, hexavalent chromium, selenium and total dissolved solids (TDS) -- being discharged from coal ash settling ponds attached to coal-fired power plants.

The first such petition was brought against TVA's Bull Run Fossil Plant, located in Claxton, TN, late last year, and a second petition was filed against TVA's Johnsonville Fossil Plant near Waverly, TN, on March 10.

The source says they intend to continue to bring such challenges in Tennessee and elsewhere as power plant discharge permits come up for renewal, so long as TBELs are not included in the revised permits, and added that the focus is not limited to TVA permits though the entire TVA fleet will have their permits come up for review in the next few years.

But whether EPA steps in and requires the technologies to be included in the renewed NPDES permits remains unclear. EPA did not respond to comment by press time.

Environmentalists have long sought to strengthen clean water NPDES permits for coal waste storage sites as a way to limit releases prior to EPA issuing revised ELGs for the facilities as well as strict waste disposal requirements under Resource Conservation and Recovery Act (RCRA). Activists say, however, that they do not believe CWA limits alone are sufficient because they will not address transport, handling and storage requirements that can be regulated under the waste rules.

EPA last year agreed to issue the revised ELG by 2013 and also issued June 7 guidance instructing permit writers to include TBELs for "all pollutants" in NPDES permits for flue gas desulfurization (FGD) and coal combustion residual (CCR) impoundments -- which are key sources of wastewater discharges -- prior to the agency's issuance of a revised ELG. That guidance, which EPA said is an interim measure to address environmentalists' longstanding concerns that the permits need to be strengthened, also serves as the basis of the activists' current state permit challenges.

EPA also said around the time it issued the guidance that it would launch a focused review of at least 35 current NPDES permits for coal fired power plants by 2012.

(By John Haltman – SUPERFUND REPORT – 4/4/2011)

EPA TO REVISE EPCRA REQUIREMENTS FOR NON-REACTIVE SOLIDS IN SOLUTION

EPA is proposing to revise the manner by which the regulated community would apply the threshold planning quantities (TPQs) for those extremely hazardous substances (EHSs) that are non-reactive solid chemicals in solution form. Specifically, facilities with a solid EHS in solution would be subject to the Emergency Planning requirements under SARA Title III if the amount of the solid chemical on-site, when multiplied by 0.2, equaled or exceeded the lower published TPQ, based on data that shows less potential for the solid chemical in solution to remain airborne in the event of an accidental release. Previously, EPA assumed that 100% of the chemical could

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become airborne in the event of an accidental release.

(Environmental Resource Center – 5/2/2011)

EPA PROPOSAL NARROWS HAZARDOUS WASTE LOOPHOLE

EPA is proposing new safeguards for recycling hazardous materials to protect public health and the environment. The proposal modifies EPA's 2008 Definition of Solid Waste (DSW) rule, which exempted over 3 billion pounds of hazardous waste from RCRA. The proposal will improve accountability and oversight of hazardous materials recycling, while allowing for flexibilities that the agency says will promote its economic and environmental benefits. EPA is opening up this proposal for public comment.

EPA is also releasing for public comment its draft expanded environmental justice analysis of the 2008 DSW final rule, which evaluates the rule's potential impact on low-income and minority communities. EPA is also requesting public comment on the environmental justice analysis as well as on suggested changes received from peer review. The analysis and peer review comments will be available in the docket for this rulemaking once the proposal is published.

"Safe recycling of hazardous materials conserves vital resources while protecting the environmental and economic health of our communities," said Mathy Stanislaus, assistant administrator for EPA's Office of Solid Waste and Emergency Response. "Today's proposed enhancements show EPA's commitment to achieving sustainable materials management through increased recycling, while retaining safeguards to protect vulnerable communities and the environment."

The proposed rule, which was issued in response to a lawsuit brought by environmental groups, still exempts recyclers from hazardous waste handling requirements in many instances, but it promises to afford greater federal oversight and industry accountability. Facilities that recycle onsite or within the same company under the reduced regulatory requirements retained under the proposal would be subject to enhanced storage and recordkeeping requirements as compared to the 2008 rule. Companies that send their hazardous materials offsite for recycling would have tailored storage standards, while being required to send their materials to a permitted hazardous waste recycling facility. The proposed rule also creates a level playing field by requiring all forms of hazardous waste recycling to meet requirements designed to ensure materials are legitimately recycled and not being disposed of illegally.

EPA will accept comment on this proposal for 60 days after publication in the Federal Register. The docket for the rulemaking is EPA-HQ-

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RCRA-2010-0742 and can be accessed at <http://www.regulations.gov> once the proposal is published.

(Environmental Resource Center – 7/11/2011)

NEW EPA GUIDANCE ON DEFINITION OF WATERS OF THE UNITED STATES

EPA and the U.S. Army Corps of Engineers (the Corps) have published for public comment proposed guidance that describes how the agencies will identify waters protected by the Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act or CWA or Act) and implement the Supreme Court's decisions on this topic [i.e., *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (SWANCC) (531 U.S. 159 (2001)), and *Rapanos v. United States* (547 U.S. 715 (2006))—known as the Rapanos decision].

The agencies believe that under this proposed guidance the number of waters identified as protected by the CWA will increase compared to current practice and this improvement will aid in protecting the Nation's public health and aquatic resources. The proposed guidance is consistent with the principles established by the Supreme Court cases and is supported by the agencies' scientific understanding of how water bodies and watersheds function. In addition, the agencies believe that when the revised guidance is finalized and goes into effect, it will improve CWA program predictability and clarity regarding the scope of "waters of the United States" protected under the Act and that this improvement will have benefits for both the government and regulated parties.

When finalized, this guidance would supersede previously issued guidance on this matter. This guidance will apply to all CWA programs, including section 303 water quality standards, section 311 oil spill prevention and response, section 401 water quality certification, section 402 National Pollutant Discharge Elimination System permits, and section 404 permits for discharges of dredged or fill material. The agencies are seeking public comment on all aspects of the proposed guidance, including interpretations and scientific underpinnings. In addition to this guidance, the agencies expect to propose revisions of existing regulations to further clarify which waters are subject to CWA jurisdiction, consistent with the Supreme Court's decisions. Public comment on any such revisions will be requested at the time they are proposed.

(Environmental Resource Center – 5/9/2011)

CROSS-STATE AIR POLLUTION RULE (CSAPR)

On July 6, 2011, the US Environmental Protection Agency (EPA) finalized a rule that protects the health of millions of Americans by helping states reduce air pollution and attain clean air standards. This rule, known as the Cross-State Air Pollution Rule (CSAPR), requires 27 states to significantly improve air quality by reducing power plant emissions that contribute to ozone and/or fine particle pollution in other states.

This rule replaces EPA's 2005 Clean Air Interstate Rule (CAIR). A December 2008 court

decision kept the requirements of CAIR in place temporarily but directed EPA to issue a new rule to implement Clean Air Act requirements concerning the transport of air pollution across state boundaries. This action responds to the court's concerns.

In a separate but related regulatory action, EPA also issued a supplemental notice of proposed rulemaking (SNPR) to require six states - Iowa, Kansas, Michigan, Missouri, Oklahoma, and Wisconsin - to make summertime NOX reductions under the CSAPR ozone-season control program. Five of those states are already covered in the final rule for interstate fine particle pollution (PM_{2.5}). With the inclusion of these states, a total of 26 states would be required to reduce ozone-season NOX emissions to assist in attaining the 1997 8-Hour Ozone National Ambient Air Quality Standards (NAAQS). Finalizing this supplemental proposal would bring the total number of covered states under the CSAPR to 28. EPA issued a proposal instead of a final action for these states in order to provide additional opportunity for public comment on their linkages to downwind nonattainment and maintenance areas. EPA is proposing to finalize this proposal by late fall 2011.

(EPA – 7/8/2011)

MARKET VOLATILITY PROMPTS HILL PUSH FOR FINAL COAL ASH SOLID WASTE RULE

Obama administration delays in finalizing EPA's first-time waste rules for coal ash disposal is being blamed for volatility in the coal ash beneficial reuse market and is prompting calls from a large bipartisan group of senators for the administration to quickly finalize nonhazardous solid waste rules, the weaker of two options EPA proposed.

The senators are writing to President Obama urging him to swiftly regulate the material under subtitle D of the Resource Conservation & Recovery Act (RCRA). Sources say those letters are prompted by complaints that the beneficial reuse market for coal ash has cratered due to market uncertainty over the lingering proposal. A large portion of coal ash is used as filler material for concrete and roads.

However, environmentalists that support strict hazardous rules for coal ash are pushing back, arguing that industry's concerns about the EPA delay harming the market for recycling CCRs just as easily support a subtitle C rule.

EPA last year proposed a rule seeking comment on regulating coal ash either as solid waste under RCRA subtitle D or as hazardous waste under subtitle C, after a protracted interagency battle over the agency's preferred approach to propose only hazardous waste rules. The agency had originally intended to finalize the rule this year but now lists no time frame for a final rule.

Sen. Kent Conrad (D-ND), who chairs the Senate Budget Committee, and Sen. Michael Enzi (R-WY), ranking member of the Senate Health, Education, Labor & Pensions Committee, sent a letter May 26 signed by 42 other senators calling on President Obama to swiftly regulate coal ash as a subtitle D solid waste because regulating coal ash as a hazardous

waste under RCRA subtitle C would eliminate the beneficial reuse market.

The market for coal ash reuse has been declining ever since EPA announced it would begin its rulemaking shortly after a major coal ash spill from a surface impoundment dam in Tennessee in December 2008, the letter says, adding that swift action by EPA to establish certainty about coal ash regulation is needed to revive the market.

"Since the EPA first signaled its possible intention to regulate [coal combustion residues (CCRs)] under subtitle C, financial institutions have withheld financing for projects using CCRs, and some end-users have balked at using CCRs in their products until the outcome of the EPA's proposed rulemaking is known," the letter says. "Already, beneficial use of CCRs has decreased, and landfill disposal has increased. This result is counterproductive but likely to continue as long as the present regulatory uncertainty persists."

The letter garnered fairly broad bipartisan support, with 12 Democrats joining 32 Republicans to sign the letter. A number of those Democrats also sit on the powerful Appropriations Committee, including Sens. Jon Tester (D-MT), Mark Pryor (D-AR), Ben Nelson (D-NE), Herb Kohl (D-WI) and Mary Landrieu (D-LA). Others signing the letter include Finance Committee Chairman Max Baucus (D-MT) and commerce committee Chairman John Rockefeller (D-WV).

EPA Administrator Lisa Jackson had originally sought to issue a final rule in 2011, but Mathy Stanislaus, EPA's Assistant administrator for the Office of Solid Waste & Emergency Response (OSWER) said during a House Energy & Commerce Committee hearing April 14 that a final rule is unlikely this year, given the work involved in processing more than 450,000 public comments on the proposed rule. Stanislaus also said EPA would be issuing a notice of data availability concerning the rule, explaining that the agency will seek comment on data it has acquired during its initial notice-and-comment period, which concluded in November.

(SUPERFUND REPORT – 7/13/2011)

STATUS OF EPA CONSTRUCTION SITE TURBIDITY LIMITS

Since 2009, the construction and development community has been awaiting a final decision by the U.S. Environmental Protection Agency (EPA) pertaining to effluent limitation guidelines (ELGs). The EPA's initial guidelines went into effect in February 2010, outlining requirements for sediment and erosion control measures at construction and development sites. Within the guidelines was a limit of 280 nephelometric turbidity units (NTUs) for discharges from construction sites disturbing more than 20 acres that would take effect in August 2011; by 2015 the ELGs would apply to construction sites of 10 acres or more.

In response to the promulgated limit of 280 NTUs, petitions were filed requesting a re-evaluation of NTU limits. According to a memo released by the EPA, the petitions called attention to a "potential error in the calculation of

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numeric limits.

A final rule regarding NTU limits reportedly was expected by May 30, 2011, ensuring the revised NTU limits would be incorporated in the construction general permits (CGP) expected to take effect on June 30, 2011. Currently, EPA is proposing to extend the existing CGPs to Jan. 31, 2012, allowing more time to resolve the 280-NTU limit.

(CE NEWS – July 2011)

EPA TO UPDATE MACT STANDARDS FOR AEROSPACE MANUFACTURING AND REWORK FACILITIES

On September 1, 1995 (60 FR 45948), EPA promulgated the National Emission Standards for Aerospace Manufacturing and Rework Facilities (40 CFR 63, Subpart GG) under section 112(d) of the Clean Air Act (CAA). The National Emission Standards for Hazardous Air Pollutants (NESHAP) sets MACT standards for existing and new major sources of hazardous air pollutant (HAP) emissions and includes standards to control volatile organic compounds (VOC) emissions.

Under CAA section 112(d)(6) EPA is required to review standards issued under section 112 and to revise them “as necessary (taking into account developments in practices, processes and control technologies)” no less frequently than every 8 years. EPA also must evaluate the MACT standards within 8 years after promulgation and promulgate standards under CAA section 112 (f)(2) if required to provide an ample margin of safety to protect public health or prevent an adverse environmental effect. The source category will be assessed for inhalation risks, including cancer risk and incidence, population cancer risk, and non-cancer effects (chronic and acute). EPA also plans to evaluate multipathway risk associated with those source categories with significant levels of persistent and bioaccumulative HAP.

EPA will follow the Benzene Policy to identify the source categories as low risk, acceptable risk, or unacceptable risk. EPA will then evaluate the effectiveness and cost of additional risk reduction options and make acceptability and ample-margin-of-safety determinations. If the need for additional controls is identified, the standards will include technology, work practice, or performance standards as amendments to the existing MACT standards.

(Environmental Resource Center – 5/30/2011)

EPA DELAYS BOILER AND INDUSTRIAL WASTE INCINERATOR RULE

EPA is seeking additional public feedback and gathering more information on the final standards for boilers and certain solid waste incinerators that were issued in February 2011. According to the Agency, these additional opportunities for public input will ensure that any final standard will be informed by input and feedback from key stakeholders, including the public, industry, and public health communities.

Input through the public comment process already resulted in dramatic cuts in the cost of implementation, while maintaining maximum public health benefits, under the rule announced

in February. As part of the reconsideration process, EPA will issue a stay postponing the effective date of the standards for major source boilers and commercial and industrial solid waste incinerators to allow the agency to continue to seek additional public comment before an updated rule is proposed. This process of careful consideration of public comments, and close attention to both costs and benefits, is consistent with the president's directives with respect to regulation, as set out in executive order 13563, issued on January 18.

Following the April 2010 proposals, the agency received more than 4,800 comments from businesses and communities, including a significant amount of information that industry had not provided prior to the proposals. Based on this input, EPA made extensive revisions to the standards, and in December 2010 requested additional time for review to ensure the public's input was fully addressed. The court only granted EPA 30 days, resulting in the February 2011 final rules. The agency is reconsidering the standards because the public did not have sufficient opportunity to comment on these changes, and, as a result, further public review and feedback is needed.

EPA was accepting additional data and information on these standards through July 15th.

(Environmental Resource Center – 5/23/2011)

EPA ANNOUNCES UPDATED ENERGY STAR STANDARDS FOR LIGHTING

EPA has updated standards for light fixtures to qualify for the Energy Star label—an efficiency program that has saved consumers money on their energy bills while contributing to cleaner air and protecting people's health since 1992. Effective October 1, 2011, to qualify for the Energy Star label light fixtures will need to increase efficiency 30% above currently qualified fluorescent-based fixtures. In 2013, performance requirements will increase further, providing 40% higher efficiency compared to currently qualified models.

Light fixtures that earn the Energy Star save consumers money on their energy bills and reduce the costs and hassle associated with bulb replacement. The bulbs in Energy Star qualified fixtures last at least 10 times longer than standard light bulbs. The fixtures will continue to meet other strict performance requirements that ensure quick start-up and high quality light output, as well as reduced toxics in the fixture materials. Additionally, the fixtures will come with a 3-year warranty, which is above the industry practice.

Consumers can expect to see a range of technology options qualifying under the new Energy Star requirements—including fluorescent and LED lighting—each held to the same high standard. In order to earn the Energy Star label under the new requirements, product performance must be certified by an EPA-recognized third-party, based on testing in an EPA-recognized laboratory. Manufacturers of the products must participate in verification testing programs run by recognized certification bodies.

Energy Star was started by EPA in 1992 as a market-based partnership to reduce greenhouse gas (GHG) emissions through energy efficiency.

Currently, the Energy Star label can be found on more than 60 different kinds of products as well as new homes and commercial and industrial buildings that meet strict energy-efficiency specifications set by EPA. Last year alone, Americans, with the help of Energy Star, saved \$18 billion on their energy bills while reducing GHG emissions equivalent to 33 million vehicles.

(Environmental Resource Center – 4/11/2011)

EPA PROPOSES TO NARROW BUSH-ERA RCRA WAIVERS, DRAWING MIXED REACTION

EPA is proposing to narrow certain regulatory exemptions from waste management requirements that the Bush administration had granted industry under its definition of solid waste (DSW) rule, drawing early praise from environmentalists but criticism from some industry groups.

The agency's July 6 proposal would amend a 2008 rule which broadened the definition of “solid waste” while narrowing which materials are considered “hazardous” and subject to strict waste handling and disposal requirements. The original measure was aimed at promoting recycling of spent material, but environmentalists sued the agency, saying that it went too far and could lead to dangerous “sham” recycling.

Now EPA is proposing a series of changes that would strengthen the Bush-era version of the rule. During a July 6 conference call, EPA waste chief Mathy Stanislaus said EPA was making the proposed changes because the agency's re-evaluation of the 2008 rule identified regulatory “gaps” that could lead to environmental harms and a lack of publicly available information about recycling practices.

In addition, a new environmental justice review the Obama EPA conducted relative to the rule revealed that low-income and minority populations could be disproportionately affected by the regulation, Stanislaus said. According to Stanislaus, EPA is planning to host a series of public meetings on the rule. The agency will accept public comment for 60 days.

Among the changes EPA is proposing is a requirement for industry to meet all four of the criteria for determining whether recycling is legitimate -- rather than just two of the four criteria that the Bush-era version had required. But the agency has also created a new petition process “for instances where a factor is not met, but the recycling is still legitimate.”

Despite the proposed new petition process, the change is prompting concerns from industry groups, who had lobbied the administration on the eve of the proposal's release to soften several provisions.

A spokeswoman for the National Mining Association (NMA), which had urged the administration not to make all the legitimacy criteria mandatory, says it is “speculative at this point” whether this petition process would adequately address the industry's concerns.

Another change prompting concern from the industry is EPA's first-time definition of what circumstances it would consider materials destined for recycling to be “contained” in a satisfactory

FEDERAL REGULATORY UPDATES (Continued)

manner. In their lawsuit, environmentalists had complained that the term was undefined in the 2008 rule and would thus be difficult to enforce.

Under the new proposal, EPA would consider a hazardous secondary material to be contained if it is managed in a storage unit that "is in good condition, with no leaks or other continuing or intermittent releases of hazardous secondary materials to the environment, and is designed, as appropriate, to prevent releases of hazardous secondary materials to the environment."

The unit must also be "properly labeled or otherwise [have] a system (such as a log) to immediately identify the hazardous secondary materials in the unit" and not "hold incompatible materials and [address] any potential risks of fire and explosions," according to the proposal.

But mining industry officials are concerned that the definition will be problematic, the NMA spokeswoman says. Last week, NMA officials warned that changing the definition could violate past decisions of the U.S. Court of Appeals for the District of Columbia Circuit.

Overall, mining industry officials "are disheartened by the [proposed] rule," the NMA spokeswoman says.

Environmentalists, however, say they are encouraged by EPA's proposal to better define when materials are "contained," but also say they have some preliminary concerns with the circumstances under which the agency would consider such contaminant units to have caused a hazardous release into the environment.

In the proposal, EPA says "that certain units may be subject to occasional precipitation runoff that consists essentially of water, with trace amounts of hazardous constituents," such as metals, and that such units would not be considered to have caused a hazardous release.

But runoff that includes small amounts of metals -- such as arsenic or hexavalent chromium -- could be dangerous, and exempting them from the definition of release seems inconsistent with how the agency would traditionally define the term under the Resource Conservation & Recovery Act (RCRA), activists say.

However, environmentalists overall believe the proposal is a "tremendous step forward" as compared to the 2008 rule, according to one activist.

(SUPERFUND REPORT – 7/11/2011)

EPA PROPOSES FIRST NATIONAL STANDARD FOR MERCURY POLLUTION FROM POWER PLANTS

In response to a court deadline, the EPA has proposed the first-ever national standards for mercury, arsenic, and other toxic air pollution from power plants. The new Power Plant Mercury and Air Toxics Standards—which eliminate 20 years of uncertainty across industry—would require many power plants to install widely available, proven pollution control technologies to cut harmful emissions of mercury, arsenic, chromium, nickel, and acid gases, while preventing as many as 17,000 premature deaths and 11,000 heart attacks a year. The new proposed standards would also provide particular health benefits for children, preventing 120,000

cases of childhood asthma symptoms and about 11,000 fewer cases of acute bronchitis among children each year. The proposed standards would also avert over 12,000 emergency room visits and hospital admissions and 850,000 fewer days of work missed due to illness.

According to EPA, this rule will provide employment for thousands, by supporting 31,000 short-term construction jobs and 9,000 long-term utility jobs.

Toxic air pollutants like mercury from coal- and oil-fired power plants have been shown to cause neurological damage, including lower IQ, in children exposed in the womb and during early development. The standards also address emissions of other toxic metals linked with cancer such as arsenic, chromium and nickel. Mercury and many of the other toxic pollutants also damage the environment and pollute our nation's lakes, streams, and fish. In addition, cutting these toxic pollutants also reduces fine particle pollution, which causes premature death, heart disease, workdays lost to illness, and asthma.

Power plants are the largest remaining source of several toxic air pollutants—responsible for half of mercury and over half of acid gas emissions in the United States. In the power sector alone, coal-fired power plants are responsible for 99% of mercury emissions. Currently, more than half of all coal-fired power plants already deploy the widely available pollution control technologies that allow them to meet these important standards. Once final, these standards will ensure the remaining coal-fired plants, roughly 44%, take similar steps to decrease pollutants.

(Environmental Resource Center – 3/21/2011)

INDUSTRY SAYS EPA RISK ASSESSMENT FAILS TO JUSTIFY STRICT COAL ASH RULE

Industry representatives say EPA's draft assessment of the risks posed by coal ash significantly overstates risks to human health but that even if those risks were accepted, the waste's disposal still falls within the safe risk range sought by the Superfund program -- showing there is limited need for the kind of strict regulation EPA is proposing and activists are seeking.

"The risk results -- given all the conservatism here -- are in about the 10-4 risk level. And that's in the standard risk range of 10-4 to 10-6. Below that, Superfund guidance says you don't need to look for remedies," one industry consultant says. The consultant notes that "the upshot of all this . . . doesn't warrant regulating [coal ash] as a hazardous waste" as EPA is proposing in its pending regulation.

Similarly, the Utility Solid Waste Activities Group (USWAG), a group that represents power plants, says in its comments that the agency has not yet shown that the risks justify its strict regulatory approaches.

In its comments, USWAG estimates that there "could be up to 7,770 users of downgradient groundwater as drinking water for the 508 [coal ash] management facilities evaluated by EPA in the Regulatory Impact Analysis.

The industry criticisms are among a host the agency faces as it seeks to address the risks of

coal ash, or coal combustion waste (CCW). Environmentalists recently issued a report charging that EPA was underestimating the risks of contamination from coal ash.

The proposal has drawn strong opposition from industry groups who charge that the option for regulating CCW as a "hazardous waste" would shut down beneficial reuse of the material. But environmentalists are strongly pushing for a strict hazardous waste approach, saying it is necessary for limiting harmful releases.

EPA Administrator Lisa Jackson had originally sought to issue a final rule in 2011 but she told a March 3 House Appropriations Committee interior panel hearing that a final rule is unlikely in 2011 given the work involved in processing more than 450,000 public comments on the proposed rule.

(By Maria Hegstad – SUPERFUND REPORT – 4/4/2011)

EPA PROPOSES CRITERIA TO WAIVE FEDERAL REQUIREMENTS FOR CAPTURING GASOLINE VAPOR WHEN REFUELING VEHICLES

EPA is issuing a proposal under the CAA that would waive requirements for systems used at gas station pumps to capture potentially harmful gasoline vapors while refueling cars. The proposal is part of the Obama Administration's initiative to review outdated and redundant rules.

Beginning in 2013, states that meet the new criteria would have the option to do away with vapor recovery systems at the pump since an estimated 70 percent of all vehicles will be equipped by then with on-board systems that capture these vapors. The result of the proposal would be the continued protection of air quality and public health while potentially saving affected gas stations more than \$3,000 annually.

Since 1994, gas stations in certain areas have been required to use gasoline vapor recovery systems. The systems capture fumes that escape from gasoline tanks during refueling. However, as required by the CAA, automobile manufacturers began installing onboard refueling vapor recovery (ORVR) technologies in 1998, making gas stations' systems redundant. Since 2006, all new automobiles and light trucks (pickups, vans, and SUVs) are equipped with ORVR.

(Environmental Resource Center – 7/18/2011)

PROPOSED RULE ADDRESSES COOLING WATER INTAKE STRUCTURES AT EXISTING FACILITIES AND PHASE I FACILITIES

EPA has published a proposed rule that would establish requirements for all existing power generating facilities and existing manufacturing and industrial facilities that withdraw more than 2 million gallons per day (MGD) of water from waters of the U.S. and use at 25% of the water they withdraw exclusively for cooling purposes. The proposed national requirements, implemented through NPDES permits, would establish national requirements applicable to the location, design, construction, and capacity of cooling water intake structures at these facilities by setting requirements that reflect the best technology

FEDERAL REGULATORY UPDATES (Continued)

available (BTA) for minimizing adverse environmental impact.

(Environmental Resource Center – 5/2/2011)

BUILDERS GROUP SUES EPA OVER CHESAPEAKE BAY CLEANUP PLAN

A national home builders' group has gone to court to block the Environmental Protection Agency's plan for cleaning up the Chesapeake Bay.

The lawsuit filed Monday by the National Association of Home Builders in U.S. District Court in Scranton, Pa., accuses the federal agency of overstepping its legal authority and relying on flawed computer modeling in ordering Maryland, the five other bay watershed states and the District of Columbia to reduce nitrogen, phosphorus and sediment pollution by 20 to 25 percent over the next 14 years.

The complaint was combined with a similar lawsuit filed earlier this year by the American Farm Bureau Federation and joined by several other agricultural industry groups. Both suits seek to require EPA to withdraw its "total maximum daily load," more commonly known as a "pollution diet," and redraft the plan, leaving more discretion with the states and allowing more time for public review and comment.

"We're not against cleaning up the bay, but we are against bad science and bad rulemaking, and that's what we want them to go back and fix," said Tom Ward, a lawyer for the national builders group. John E. Kortecamp, executive vice president of the Home Builders Association of Maryland, said his group was not consulted on the lawsuit and declined to comment.

The Chesapeake Bay Foundation and the National Association of Clean Water Agencies, representing local wastewater treatment plant operators, as well as a Pennsylvania utility association, have moved to intervene in defense of EPA's bay cleanup plan. William C. Baker, president of the Annapolis-based foundation, called the builders' lawsuit "yet another attempt by a special interest to avoid responsibility for their part of the total pollution loading."

(By Tim.wheeler@baltsun.com – 6/28/11)

LEAD; CLEARANCE AND CLEARANCE TESTING REQUIREMENTS FOR THE RENOVATION, REPAIR, AND PAINTING PROGRAM

As part of a settlement of litigation over certain post-renovation cleaning requirements of the 2008 Lead Renovation, Repair, and Painting Program (RRP) rule, the EPA agreed to propose a number of revisions to the 2008 RRP rule that established accreditation, training, certification, and recordkeeping requirements as well as work practice standards for persons performing renovations for compensation in most pre-1978 housing and child-occupied facilities and to subsequently take final action on the proposed rule by July 15, 2011. The proposed rule published on May 6, 2010.

EPA has decided not to promulgate dust wipe testing and clearance requirements as proposed. However, EPA is promulgating several other revisions to the RRP rule, including a provision

allowing a certified renovator to collect a paint chip sample and send it to a recognized laboratory for analysis in lieu of using a lead test kit, minor changes to the training program accreditation application process, standards for learning in accredited training programs, minimum enforcement provisions for authorized state and tribal renovation programs, and minor revisions to the training and certification requirements for renovators.

EPA is also promulgating clarifications to the requirements for vertical containment on exterior renovation projects, the prohibited or restricted work practice provisions, and the requirements for high-efficiency particulate air (HEPA) vacuums. EPA's action appeared in the August 5, 2011 Federal Register and is EPA's final action on all aspects of the May 6, 2010 proposal.

This final rule is effective October 4, 2011.

EPA PLANS GUIDE TO CLARIFY 'WASTE' FOR COMBUSTION BUT INDUSTRY SEEKS RULE

EPA is planning to issue guidance to help industry determine when discarded materials are considered a "waste" subject to strict incinerator air quality rules when combusted or a "fuel" subject to less stringent boiler rules, according to an EPA concept paper detailing the agency's plans.

But industry groups say the guidance and any additional clarifications, while welcome, do not adequately address their concerns with EPA's rule defining when the material is considered "waste" or "fuel" and are urging the agency to delay the regulation and incorporate the guidance into a revised rule.

The rule, issued by EPA earlier this year, defines non-hazardous secondary materials (NHSM) under the Resource Conservation & Recovery Act (RCRA). Issued as part of a regulatory package of measures designed to limit air emissions from industrial boilers, commercial and industrial solid waste incinerators (CISWI) and other combustion units, it defines when the materials are considered a "waste" that must be combusted in incinerators subject to strict air quality requirements or a "fuel" that can be combusted in boilers that are subject to less stringent requirements.

While EPA has delayed implementing the boiler and CISWI rules, industry groups are also urging the agency to delay the NHSM rule as well. Industry says the RCRA rule needs to be rewritten and are supporting legislation to delay implementation of the entire regulatory package. Environmentalists have also criticized the rule for creating an unlawful "loophole" for allowing waste materials to be burned as fuel and one environmentalist says the guidance will not do anything to put the rule on a more solid legal footing. A source with Earthjustice says the guidance would give industry more information on complying with the underlying RCRA rule, which the source says is "blatantly illegal . . . EPA can't declare that waste is not a waste."

Of particular concern to industry are the rule's "legitimacy criteria," which are used to determine whether secondary materials can be considered as a non-waste fuel. Those criteria include that the non-hazardous secondary material must be managed as a valuable commodity, have a

meaningful heating value and be used as a fuel in a combustion unit that recovers energy, and contain contaminants at levels comparable to or lower than those in traditional fuels which the combustion unit is designed to burn, says the final NHSM rule.

An EPA spokeswoman says the agency outlined its plans to develop the guidance in the NHSM rule and that the concept paper is the first step towards developing the guidance.

"Since promulgation of the rule, EPA has also received questions from the regulated community as to how specific provisions in the rule will be implemented, particularly those provisions related to meeting legitimacy criteria," the spokeswoman says. "We have held several meetings with industry representatives to discuss and understand their questions and concerns and to review newly available data that would help inform development of followup guidance."

Now EPA says in a Comparable Contaminant Guidance Concept Paper for the NHSM rule that the agency will soon issue guidance to provide a methodology to measure contaminant levels. "This concept is important in determining whether a material is being used as a product fuel or is also being burned to destroy waste materials," the concept paper says. "That is, even if burned as a fuel, a secondary material would be a waste if contaminants are present at excessive levels."

The guidance would further include "a methodological example" that industry can use to determine whether the materials are comparable to traditional fuels with regard to contaminants, though the agency says in a footnote that it will also consider alternative methodologies for determining contaminant levels. "Any use of additional data or an alternate methodology would be evaluated by EPA when determining whether the legitimacy criteria have been met," the footnote says.

(SUPERFUND REPORT – 7/25/2011)

NESHAPS FOR GROUP I POLYMERS AND RESINS; MARINE TANK VESSEL LOADING OPERATIONS; PHARMACEUTICALS PRODUCTION; AND THE PRINTING AND PUBLISHING INDUSTRY

EPA is taking final action for four national emission standards for hazardous air pollutants (NESHAP) that regulate 12 industrial source categories evaluated through risk and technology review. The four NESHAPs include: National Emissions Standards for Group I Polymers and Resins (Butyl Rubber Production, Epichlorohydrin Elastomers Production, Ethylene Propylene Rubber Production, Hypalon™ Production, Neoprene Production, Nitrile Butadiene Rubber Production, Polybutadiene Rubber Production, Polysulfide Rubber Production, and Styrene Butadiene Rubber and Latex Production); Marine Tank Vessel Loading Operations; Pharmaceuticals Production; and the Printing and Publishing Industry. For some source categories, EPA is finalizing decisions concerning the residual risk and technology reviews. This final action became effective on April 21, 2011.

(Environmental Resource Center – 5/2/2011)

PA UPDATES

NEW DEP OIL & GAS FAQ PAGE

The Department of Environmental Protection has launched a new section of its Oil & Gas Industry Resources web page listing frequently asked questions and answers concerning the Chapter 78 new well-construction regulations. The page will be updated as more questions are received. DEP also has plans to create something similar for surface and permitting issues. To access the resources page, where you will find the FAQ section at the top of the page, go to www.dep.state.pa.us/dep/deputate/minres/oil-gas/loi.htm. Don't forget to bookmark it.

(PIOGA – 6/2011)

PENNSYLVANIA'S LAND RECYCLING PROGRAM DEPARTMENT OF ENVIRONMENTAL PROTECTION ANNOUNCES AUL REGISTRY AVAILABLE ONLINE

The Pennsylvania Activity and Use

Limitations Registry (PA AUL) is now available online. The PA AUL fulfills PA DEP's obligation to track environmental covenants as required by Pennsylvania's Uniform Environmental Covenants Act (Act 68 of 2007) where engineering or institutional controls are necessary to demonstrate or assure maintenance of an Act 2 remediation standard. The PA AUL Registry also tracks other mechanisms that may impose an activity and use limitation on a property other than an environmental covenant.

The registry utilizes GIS mapping technology and provides the user with a multitude of methods to search for sites that have an activity and use limitation requirement for the subject property. In addition to mapping the project site, the website also provides the user with access to electronic files where the user may view the environmental covenant, Consent Order & Agreement, Administrative Orders or other mechanism that may be providing use limitations

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- DEP AUL Registry, pg. 9

on the property. Directions on how to effectively utilize the registry may be found under "Show Getting Started with PA AUL Registry" at the link provided below.

DEP's Land Recycling Program will be maintaining the PA AUL and addressing any problems or errors which may arise during the early release period. Beyond this period, DEP may make occasional changes/updates in order for the registry to better serve the needs of the public and the Department.

Any questions or problems noted on the PA AUL should be e-mailed directly to: landrecycling@state.pa.us.

TECHNOLOGY UPDATES

BISPHENOL A MAY CAUSE WHEEZING IN CHILDREN

To the growing list of concerns about bisphenol A – a chemical used in many plastics – add kids' wheezing.

A Pennsylvania State University College of Medicine researcher has found that a pregnant women's exposure to the chemical, also known as BPA, may be associated with wheezing in her young child.

The researcher, Adam Spainer, and assistant professor of pediatrics, presented the work May 1 at a pediatrics meeting in Denver.

Asthma rates have risen – from roughly 5 percent of children in the 1970s to nearly 10 percent now. Why?

Many suspect environmental exposures may play a role. But – exposures to what?

Recent work suggests that prenatal BPA exposure caused a kind of asthma in mice.

So Spainer began looking at 367 children, 99 percent of whose mothers had detectable levels of BPA in their urine during pregnancy.

Since asthma is difficult to diagnose in children, Spainer and his colleagues looked simply at wheezing. In follow-up calls over three years, the parents reported any incidents.

At 6 months of age, the odds of wheezing were twice as high for children whose mothers had higher BPA levels. The effects may lessen as the children age.

Spainer found that higher BPA concentrations early in pregnancy – 16 weeks – were associated with wheezing.

(By Sandy Bauers, *Philadelphia Inquirer* – 5/9/2011)

COPPER KILLS 97% OF HOSPITAL SUPERBUGS

It's a breakthrough that's stunning scientists who have never been taught the truth about the antimicrobial properties of copper and silver: Copper surfaces in hospitals reduce infections by 40 percent and kill 97% of superbugs!

Read more in our story: <http://www.natural>

news.com/033008_copper_antimicrobial.html
(Natural News – 7/15/2011)

PHILADELPHIA UPDATES ITS STORMWATER MANAGEMENT GUIDANCE MANUAL

In April, the Philadelphia Water Department updated its Stormwater Manual. Updates include:

What is not earth disturbance:

- Restriping or milling and repaving of paved areas, parking lots, walkways, etc., as long as the subbase is not exposed during the milling process.

What earth disturbance area does not have to manage stormwater?

- Replacement of existing public roads when stormwater runoff characteristic are not significantly affected.

Applicability and Approval

When in doubt be conservative:

- Please contact PWD Stormwater Plan Review should you need additional clarification regarding what is and is not an earth disturbance activity.

TRASH REMOVAL FROM STORMWATER IN DC

Hickey Run is a tributary of the Anacostia River in Washington, D.C. It enters the National Arboretum via a culvert under New York Avenue. Prior to this the Hickey Run traverses a highly urbanized area in Washington, DC which subjects it to large amounts of non point source pollution such as oil, grease and trash.

New York Avenue has been identified as a "chronic trash hot spot area". It is at this location that the U.S. Army Corps of Engineers, District Department of Environment, DC Water and Sewer Authority and the U.S. Department of Agriculture, the owner of the National Arboretum, chose the Terre Kleen with specially designed trash boxes, to intercept the massive amounts of trash that are carried by the Hickey

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Run.

In September 2010, the U. S. Environmental Protection Agency (USEPA), the District of Columbia and the state of Maryland announced a Total Maximum Daily Load (TMDL) for Trash for the Anacostia River, making the Anacostia River the first river in the nation to have a Trash TMDL under the National Pollution Discharge Elimination System (NPDES) regulations under the Clean Water Act (CWA), 33 U.S.C. } 1251, et.seq. . The TMDL requires the capture of 600 tons of trash from the Anancostia watershed annually. The TMDL helps contribute to attainment of the goal of the Trash Free Potomac Watershed Initiative and implementation of the Potomac River Watershed Trash Treaty and the Anacoatia River Cleanup and Protection Act of 2009.

After a rigorous vetting process the interested parties unanimously chose the Terre Kleen specially modified to contain two large trash boxes. The water from the Hickey Run is directed into the Terre Kleen where oil, grease and sediment are first removed and then the trash is captured in the trash boxes. Terre Kleen's proven sediment removal capabilities, using inclined plates, and its fully enclosed baffled trash boxes provides an optimum solution for the trash plagued Hickey Run tributary to the Anacostia River.

NEW DOCUMENT – INVESTIGATION AND REMEDIATION OF PLATING FACILITIES

The California Department of Toxic Substances Control has issued the fifth document developed as part of its proven technologies and remedies (PT&R) initiative. The guidance addresses the overall cleanup process for various types of metal finishing facilities. The document

TECHNOLOGY UPDATES (Continued)

streamlines the cleanup process by applying previously identified proven technologies for cleanup of metals and VOCs in soil. The guidance identifies likely cleanup technologies for remediating hexavalent chromium and VOCs in groundwater (May 2011, 139 pages). View or download at:

<http://www.dtsc.ca.gov/SiteCleanup/PTandR.cfm>
(TECH DIRECT – 6/1/11)

SMOKE-RELATED CHEMICAL DISCOVERED IN THE ATMOSPHERE COULD HAVE HEALTH IMPLICATIONS

Cigarette smoking, forest fires, and woodburning can release a chemical that may be at least partly responsible for human health problems related to smoke exposure, according to a new study by NOAA researchers and their colleagues.

Using a custom mass spectrometer designed by the researchers, the NOAA-led team was able to get the first look at levels of the chemical, isocyanic acid, in the atmosphere. Isocyanic acid has been difficult to detect with conventional measurement techniques.

“We found isocyanic acid in a number of places, from air in downtown Los Angeles and air downwind of a Colorado wildfire, to cigarette smoke,” said Jim Roberts, lead author of the new paper and a chemist with NOAA’s Earth System Research Laboratory in Boulder, Colorado. “We also demonstrated that it dissolves readily in water, which means that humans can be exposed directly if it gets into eyes or lungs.”

The health effects of such exposure are not fully known. In the body isocyanic acid, described by the chemical formula HNCO, is part of a biochemical pathway linked with cataracts and inflammation that can trigger cardiovascular disease and rheumatoid arthritis. Until now, the acid had not been measured in air outdoors or in tobacco smoke.

The research team made four separate measurements of HNCO: in the air in urban Los Angeles, in the air in Boulder downwind of the fall 2010 Fourmile Canyon wildfire, in laboratory burning experiments at high concentrations, and in cigarette smoke. The team also made the first measurements of the acid’s ability to dissolve in water, which determines the chemical’s tendency to dissolve into moist tissues in the body.

“There are literally billions of people in the world who burn biomass for cooking and heating,” Roberts said. “If these indoor fires release similar levels of isocyanic acid as the fires we studied in the laboratory, families could be exposed to high levels of the chemical.”

Roberts and colleagues from NOAA and University of Colorado at Boulder’s Cooperative Institute for Research in Environmental Sciences, the North Carolina Agricultural and Technical State University, and the University of Montana published their paper in the May 17 edition of the Proceedings of the National Academy of Sciences.

During simulated wildfires in the Montana laboratory, levels of HNCO approached 600 parts per billion volume (ppbv). The HNCO was a few thousand times less concentrated in both the air in Los Angeles during a time without recent fires, and in the air in Boulder when the Fourmile Canyon fire was burning upwind.

At about 1 ppbv, the research team calculated that enough HNCO would dissolve into exposed tissues—lungs and eyes—that those tissues could be vulnerable to “carbamylation,” part of the chemical process triggering inflammation and cataract development. People could experience higher exposure to HNCO near wildfires or in indoor environments where coal, wood, or other biomass is burned for heating or cooking. The health effects of chronic exposure to lower-level amounts isocyanic acid, such as those found in the California and Colorado air are not known.

(Environmental Resource Center – 5/23/2011)

THE CHESAPEAKE BAY: AN EVALUATION OF PROGRAM STRATEGIES AND IMPLEMENTATION

The Committee on Evaluation of Chesapeake Bay Program Implementation for Nutrient Reduction to Improve Water Quality in May released a prepublication report on the Chesapeake Bay.

Key issues in the report are:

- Tracking and Accounting – Accurate tracking of BMPs is of paramount importance because the CBP relies upon the resulting data to estimate current and future nutrient and sediment loads to the Bay.

- The current accounting of BMPs is not consistent across the Bay jurisdictions.

- Additionally, given that some source-sector BMPs are not tracked in all jurisdictions, the current accounting cannot on the whole be viewed as accurate.

- The committee was unable to determine the reliability and accuracy of the BMP data reported by the Bay jurisdictions.

- The committee was not able to quantify the magnitude or the likely direction of the error introduced by BMP reporting issues.

- A consolidated regional BMP program to account for voluntary practices and increase georeferencing of BMPs presents opportunities to improve the tracking and accounting process.

- Targeted monitoring programs in representative urban and agricultural watersheds and subwatersheds would provide valuable data to refine BMP efficiency estimates, particularly at the watershed scale, and thereby improve Watershed Model predictions.

- Additional guidance from the EPA on the optimal extent of field verification of practices in relation to expected benefits would improve tracking and accounting of both cost-shared and voluntary practices.

- Electronic tracking and data transfer systems are likely to improve the quality of reporting and reduce the jurisdictions’ tracking and accounting burden but may currently be contributing to delayed assessments of implementation progress.

TWO-YEAR MILESTONES

- The two-year milestone strategy commits the states to tangible, near-term implementation goals and improves accountability and, therefore, represents an improvement upon past CBP long-term strategies. However, the strategy, in and of itself, does not guarantee that implementation goals will be met, and consequences for nonattainment remain unclear.

- CBP jurisdictions reported mixed progress

toward their first two-year milestone goals. However, data were insufficient to meaningfully evaluate implementation or anticipated load reduction progress relative to the goals.

- The first two-year milestone goals will likely be the easiest to achieve.

ADAPTIVE MANAGEMENT

- Neither the EPA nor the Bay jurisdictions exhibit a clear understanding of adaptive management and how it might be applied in pursuit of water quality goals.

- Successful application of adaptive management in the CBP requires careful assessment of uncertainties relevant to decision making, but the EPA and Bay jurisdictions have not fully analyzed uncertainties inherent in nutrient and sediment reduction efforts and water quality outcomes.

- Targeted monitoring efforts by the states and the CBP will be required to support adaptive management.

- Additional federal actions are needed to fully support adaptive management in the CBP.

- Without sufficient flexibility of the regulatory and organizational structure within which CBP nutrient and sediment reduction efforts are undertaken, adaptive management may be problematic.

STRATEGIES FOR MEETING THE GOALS

- Success in meeting CBP goals will require careful attention to the consequences of future population levels, development patterns, agricultural production systems, and changing climate dynamics in the Bay Watershed.

- Helping the public understand lag times and uncertainties associated with water quality improvements and developing program strategies to account for them are vital to sustaining public support for the program, especially if near-term Bay response does not meet expectations.

Agricultural Strategies

- Improved and innovative manure management
- Incentive-based approaches and alternative regulatory models.

Urban Strategies needed include:

- Regulatory models that address stormwater, growth and development, and residential fertilizer use.

- Enhanced individual responsibility.

- Additional air pollution controls.

- Innovative funding models will be needed to address the expected costs of meeting Bay water quality goals.

- Establishing a Chesapeake Bay modeling laboratory would ensure that the CBP would have access to a suite of models that are at the state-of-the-art and could be used to build credibility with the scientific, engineering, and management communities.

Recovery of the Chesapeake Bay from excessive nutrient and sediment loads will require profound changes in the Bay watershed. However, opportunities exist to improve upon the current tracking and accounting strategies, provide support for effective applications of adaptive management, and enhance the credibility of modeling strategies. To reach the long-term goals, Bay partners will likely need to consider innovative strategies, including some that are receiving little attention today. Meanwhile, given that nutrient legacy effects in the watershed will significantly delay the Bay’s full water quality response to landbased

TECHNOLOGY UPDATES (Continued)

BMPs, the CBP should help the public understand lag times and uncertainties and develop program strategies to better quantify them.

The Chesapeake Bay is North America's largest and most biologically diverse estuary, home to thousands of species of plants and animals (CBP, 2000) as well as an important commercial and recreational resource. The Chesapeake Bay serves as a key economic driver in the mid-Atlantic region, and the Chesapeake Bay Foundation (2010) valued its worth at over one trillion dollars to the watershed's economy.

The Chesapeake Bay was among the first of the major U.S. estuaries where concerted efforts were made to understand the causes and consequences of changing ecosystem conditions. During the mid-1970s, a young U.S. Environmental Protection Agency (EPA) led the first comprehensive and detailed attempt to understand the Bay's condition and what would be necessary to restore it to its former condition.

In 1983, the Chesapeake Bay Program (CBP) was established, based on a cooperative partnership among the EPA, the state of Maryland, the commonwealths of Pennsylvania and Virginia, and the District of Columbia, to fully address the extent, complexity, and sources of pollutants entering the Bay (EPA, 1983a). By 2002, the states of Delaware, New York, and West Virginia committed to the CBP's water quality goals by signing a Memorandum of Understanding (CBP, 2002).

The Chesapeake Bay's full recovery may not be achievable for a long time as population growth pressures increase. The difficult economy poses another level of challenges. We can only hope that innovations and common sense environmental awareness can help continued progress toward water quality goals.

GROUP MAY ADOPT WEAKER METHANE VAPOR LIMITS THAN LOCAL GOVERNMENTS

An industry standards group is creating a panel to draft guidance for assessing and remediating threats posed by vapor intrusion from methane, the ubiquitous gas stemming from landfills, energy drilling and other sites, but the guide could be weaker than approaches currently used by some local governments who have crafted their own standards absent one from EPA.

In particular, some panelists say they are aiming to set mitigation thresholds to address risks posed by the gas closer to a 5 percent concentration of its lower explosive limit, whereas some local governments have adopted thresholds of less than 1 percent.

One source with the group says local governments are often "hijacked by politics."

The American Society for Testing And Materials (ASTM) task force will comprise representatives from industry, stakeholders, private consultants and at least one EPA representative in order to draft a methane vapor standard that allows for "risk based mitigation" of the soil gas at new and existing developments, according to an outline of the proposed document.

In particular, the standard will contain information on where and when to sample, what to analyze and how to assess and manage any risk.

Methane acts far differently than other sub-

stances known to pose a vapor intrusion threat, and is largely "misunderstood," according to the source. Unlike chlorinated solvents -- the substances most commonly associated with vapors -- methane gas is explosive but has few long-term health risks. The gas is explosive when in concentrations between 5 percent and 15 percent, although for an explosion to occur, oxygen and an ignition source must be present.

In addition, the gas can develop in soil over time, meaning that consultants need to look at whether conditions are ripe for its creation and not a fixed starting mass, as in the case of chlorinated solvents, resulting in the need for "a totally different way of looking at and mitigating it," the source says.

EPA has largely failed to address mitigation and remediation of methane gas except on land-fill sites, and has made no indication it intends to specifically do so in two forthcoming vapor intrusion documents, one that is aimed at chlorinated solvents and a second for petroleum hydrocarbons.

In the absence of an EPA or other national standard, states and local governments have instituted their own, especially in California where there have been several high-profile methane contamination cases.

(By Jenny Hopkinson – SUPERFUND REPORT
– 3/21/2011)

GREEN REMEDIATION BEST MANAGEMENT PRACTICES: INTEGRATING RENEWABLE ENERGY INTO SITE CLEANUP (EPA 542-F-11-006)

The U.S. Environmental Protection Agency (EPA) Principles for Greener Cleanups outline the Agency's policy for evaluating and minimizing the environmental 'footprint' of activities undertaken when cleaning up a contaminated site. Use of the best management practices (BMPs) identified in EPA's series of green remediation fact sheets can help project managers and other stakeholders apply the principles on a routine basis, while maintaining the cleanup objectives, ensuring protectiveness of a remedy, and improving its environmental outcome.

View or download at:

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

(Tech Direct – 5/1/2011)

IN SMALL DOSES: ARSENIC

Researchers from the Dartmouth Toxic Metals Research Program have created a 10-minute video for the general public on the subject of arsenic. Funded by the National Institute of Environmental Health Sciences Superfund Research Program, the film brings home findings of research on arsenic in well water by identifying high-concentration areas in New England and offering pointers for residents relying on wells for their drinking water. To educate residents about health problems associated with arsenic and what they can do to protect themselves, Dartmouth provides links to additional information from EPA and the U.S. Geological Survey, as well as to state agencies that offer well-water testing for as little as \$10.

View at <http://insmalldoses.org>

(Tech Direct – 5/1/2011)

PENNDOT ISSUES DESIGN AND USE GUIDELINES FOR WARM MIX ASPHALT

On July 12, 2011, PENNDOT issued use guidelines (Strike-Off Letter 420-11-04) for Warm Mix Asphalt (WMA) to its District Executives. PENNDOT's internal goal is to have a minimum of 20% of asphalt mixture paving performed utilizing approved WMA technologies or piloting non-approved technologies during the calendar year 2011. PENNDOT is encouraging Districts and Counties to become familiar with the WMA technologies as there is a potential that Hot Mix Asphalts (HMA) may be replaced by WMA for environmental or performance reasons within the next five years.

WMA technologies allow asphalt producers to lower the temperatures at which the material is mixed and placed on roads. Reductions of 50 to 100 degrees Fahrenheit have been documented. These temperature reductions have the obvious benefits of cutting fuel consumption (estimated around 30%) and decreasing the production of greenhouse gases. Research has shown that there are measureable decreases of CO, CO₂, SO₂, NO_x, and total hydrocarbons with the use of WMA technologies. Additional engineering benefits include improved compaction on roads, the ability to haul paving mix for longer distances, and extending the paving hours and even the paving season by being able to pave at lower temperatures. In addition to these benefits, lowering the production temperature can reduce the production of emissions (estimated to be between 30 and 90% lower) from the pavement itself. By reducing temperatures, there are lower emissions from WMA which improve conditions for workers from a health and safety standpoint, as well as improve conditions for neighbors nearby paving projects.

The Strike-Off letter provides information on the selection procedure for potential projects, pavement and WMA designs, WMA quality control testing protocols, temperature placement requirements and other technical issues. The guidelines provided will allow District Engineers the flexibility to implement the use of WMA on appropriate projects in lieu of other HMA to achieve PENNDOT's internal goal of 20% by the end of this year.

The Pennsylvania Asphalt Pavement Association (PAPA) has been a proponent of the use of WMA products and technologies for some time now and has established a WMA Committee to "develop and promote protocols of best available technology and practices for specifying and advancing the use of Warm Mix Asphalt to promote the success of WMA for all stakeholders." PAPA has increased its interactions with local governments and well as PENNDOT District Maintenance meetings this year to educate Engineers on the benefits of using WMA technologies. PAPA has prepared a presentation on WMA which can be found at <http://pahot-mix.org/PDF/warmmix.pdf>. Based on all of the benefits of WMA, it is likely that WMA will indeed be the paving technology of choice for many more projects in the near future.

For more information call Walter Hungarter at 215-265-1510 Ext. 238 or by email at: whungarter@rtenv.com.

NJ UPDATES

REPORT SHOWS GREENHOUSE GAS EMISSIONS DECLINE 8% IN NEW JERSEY

Statewide greenhouse gas (GHG) emissions decreased by more than 8% in 2008, bringing New Jersey under 2020 emissions levels targeted by the State's Global Warming Response Act, according to a legislatively mandated report issued by the DEP.

The "Statewide Greenhouse Gas Emission Inventory for 2008" shows 124.9 million metric tons of carbon dioxide equivalent emissions (MMTCO₂E) generated in New Jersey in 2008. That was down from 135.9 MMTCO₂E in 2007 and is below the 2020 target of 125.6 MMTCO₂E.

According to the report, the top three causes of GHG emissions are transportation, electricity generation, and combined fossil fuel use in residential, commercial, and industrial sectors. Emissions resulting from transportation accounted for the highest portion, or 40% of 2008 GHG; electricity generation caused 24% of greenhouse emissions; and combined residential, commercial, and industrial factors accounted for about 30%.

Accounting for the biggest reduction in 2008 is the electricity sector which declined by 5.6 MMTCO₂E. Transportation emissions declined by 2.3 MMTCO₂E, the largest decline in that sector since 1992.

The Statewide Greenhouse Gas Inventory for 2008 is a biennial report that is required under New Jersey's Global Warming Response Act, which was enacted in 2007. The report presents data for 2008 and compares emissions to 2007 levels, and the 2020 and 2050 Statewide limits established by the Act.

To view the Statewide Greenhouse Gas Emission Inventory for 2008, visit:
www.nj.gov/dep/oce/ghg-inventory2008.pdf.

(Environmental Resource Center – 6/62011)

PUBLIC ACCESS LAW REVISIONS AFFECTING WATERFRONT BUSINESSES PROPOSAL

The DEP has proposed changing its 2007 regulation that would eliminate what waterfront businesses saw as its most heavily-handed requirement: Provide unlimited public access.

The change is part of what the Christie administration says is an approach to business regulations that uses common sense. But environmental groups are taking aim at it, proving common sense to one party is a raw deal to another.

The rule, unveiled April 4, calls for businesses to maintain the public access they already have. New development would need to provide public access or pay into a municipal public access fund. And existing businesses could continue without providing the public a pathway through their property to the water.

(By Michael L. Diamond – APP.com – 4/15/2011)

DEP NEGOTIATES IMPROVED NEW YORK CITY RESERVOIR OPERATING PLAN TO BETTER PROTECT DELAWARE RIVER'S RESOURCES

New York City has agreed to modifications of releases of water from its reservoir system in the Catskill Mountains to better protect the ecology of the Delaware River in New Jersey and other downriver states, and help provide drought relief and flood protection, Commissioner Bob Martin announced today.

The agreement worked out with the New York City Department of Environmental Protection and approved by the four states that share the river basin - New Jersey, New York, Pennsylvania and Delaware - will better control the river's salt line, typically found in an area around the Delaware Memorial Bridge in Salem County, thereby better protecting aquatic life, as well as drinking-water suppliers and industries that utilize fresh water from the river.

The agreement enables water purveyors in a broad swath of central New Jersey to tap into a

NJ UPDATES

- Greenhouse Gas Declines, pg. 12
- Public Access Law Revisions, pg. 12
- New York Reservoir Plan, pg. 12

larger share of Delaware River water via the Delaware & Raritan Canal. It also calls for the city to test a procedure to help to alleviate threats of flooding along upper portions of the Delaware River.

These steps took effect June 1st. After one year, all the parties will evaluate the reservoir management plan to see how it can be improved.

Under terms of the modifications:

- Fishery officials from all four states and the city will form a panel to advise the city on maintaining water flows and temperatures to maintain a healthy and vibrant fishery.

- New Jersey can increase its diversion via the Delaware & Raritan Canal during drought warnings from 85 million gallons per day to 100 million gallons per day. During drought emergencies, the diversion will remain at 85 million gallons per day.

- New York City has set an operational goal to maintain its reservoirs at 10 percent below capacity from Sept. 1 to March 15, and an average of five percent below capacity from July 1 to Sept. 1 and from March 15 to May 1. That step could help alleviate river flooding during periods of major storms and heavy snow melt.

Using a high-tech modeling tool, the city's Department of Environmental Protection developed a new formula that dramatically improves the ability to forecast and model water conditions, and make decisions on use of shared resources of the Delaware River in a new and better way. That can improve conditions for fish and other aquatic life in the Delaware River and keep the river's salt line in check. During droughts, this area of brackish water can move up the river and potentially affect industrial and drinking water intakes in southern New Jersey.

(NJDEP – 4/7/2011)

KEN EDEN GETS QEP CREDENTIAL

The Institute of Professional Environmental Practice (IPEP) has awarded Kenneth S. Eden of RT certification as a Qualified Environmental Professional (QEP). Achievement of the QEP certification is considered to be an accomplishment of the highest order, signifying strong professional and ethical standards in the arena of environmental management. The award comes after rigorous scrutiny of experience and qualifications, and satisfactory completion of a written exam. As a QEP, Mr. Eden is required to participate in continuing education and to maintain high ethical standards.

The QEP certification is the first and only multi-media, multi-disciplinary, board-certified credential of its kind that requires environmental professionals to consider the overall environmental picture, and to have the skills and knowledge to resolve real world problems. Through the QEP certification, environmental professionals demonstrate the breadth and depth of their knowledge and experience. It is

distinguished from other certifications by its cross-disciplinary nature. The QEP is international in scope and has received accreditation by the Council of Engineering and Scientific Specialty Boards (CESB).

Mr. Eden is a Project Manager for RT Environmental Services, Inc. in our King of Prussia, PA location. Mr. Eden is currently working on a high profile soil and groundwater remediation investigation site impacted with heavy metals in New Jersey. Mr. Eden has also assisted with an expert witness case involving a former service station and improper removal of underground storage tanks (USTs) as well as management of UST closures, and Phase I and Phase II Environmental Site Assessments throughout New Jersey, Pennsylvania, and Delaware.

Gary R. Brown, President of RT also holds the QEP Credential. We congratulate Ken on this important achievement.

NATIONAL ASSOCIATION OF HOME BUILDERS – LBP RULE CHALLENGE - THE NAHB CHALLENGED A FINAL EPA RULE ENTITLED “LEAD; AMENDMENT TO THE OPT-OUT AND RECORDKEEPING PROVISION IN THE RENOVATION, REPAIR, AND PAINTING PROGRAM; FINAL RULE,”

The provision of the Renovation Rule that allowed renovators to do renovation work in owner-occupied (as opposed to rented) target housing without following the training and work practice requirements of the Renovation Rule, provided that the homeowner certified that there were no children under six or pregnant women in residence, and the home did not meet the definition of a child-occupied facility. As decided below, this “exemption” cannot be used.

SUMMARY OF ARGUMENT

When EPA proposed and promulgated the Opt-Out Amendment, the Agency acknowledged that it was deliberately eliminating the opt-out provision in the Renovation Rule so that homeowners could no longer opt-out of the Renovation Rule requirements and renovators would be required to comply with the Renovation Rule requirements in all target housing without regard to the age or status of occupants. EPA clearly articulated its reasons for eliminating the opt-out provision based on the factors required under TSCA – safety, reliability, and effectiveness, and provided as well-reasoned explanation for changing its view of considerations it cited in support of the opt-out provision when the Renovations Rule was promulgated. Additionally, EPA thoroughly considered the economic impact of the Opt-Out Amendment and, although no cost-benefit analysis is required under TSCA, determined that the low estimate of the quantifiable benefits of the Opt-Out Amendment almost triples the high estimate of its costs. Accordingly, the Agency’s action was reasonable under the APA’s narrow standard of review, which applies when an agency revises a prior action, just as it applies when an agency acts in the first instance. Thus, the Opt-Out Amendment is not arbitrary, capricious, or otherwise contrary to law under the APA.

Moreover, Petitioners’ challenge to the Agency’s authority to promulgate the Opt-Out Amendment because it regulates “potential lead-based paint hazards” or “potential exposure” to young children and pregnant women is without merit for two reasons. First, the argument is time-barred, and therefore the Court is without jurisdiction to consider it. Second, TSCA mandates that EPA regulate the renovation and remodeling activities that create lead-based paint hazards in target housing, and neither the statute nor EPA’s regulations require a finding of actual exposure or high blood-lead levels, or a determination that young children or pregnant women live in the target housing. Prior to promulgating the Renovation Rule, EPA determined that renovation activities in target housing that disturb lead-based paint cause lead-based paint hazards. Therefore, EPA had ample authority to promulgate the Opt-Out

Amendment, requiring that the Renovation Rule’s requirements apply to all target housing without regard to occupancy.

Finally, the Court lacks jurisdiction to review Petitioners’ claim that EPA violated the RFA by promulgating the Opt-Out Amendment without convening a second small business advocacy review panel focused solely on the Opt-Out Amendment. In any event, such a claim is without merit because EPA complied with the RFA in promulgating the Opt-Out Amendment. Accordingly, the Court should deny the instant petition for review.

ARGUMENT

The Opt-Out Amendment is the product of a straightforward application of TSCA. As required by TSCA section 403, in 2001, EPA promulgated a regulation identifying lead-based paint hazards “for purposes of [TSCA subchapter IV]” (which includes TSCA section 402(c)(3), the authority for the Renovation Rule and the Opt-Out Amendment). See 15 U.S.C. 2683; 40 C.F.R. § 745.65. The TSCA section 403 hazard standards apply to all target housing and child-occupied facilities. See 40 C.F.R. § 745.61. TSCA section 402(c)(3) in turn requires EPA to revise its lead-based paint activities regulations to apply them to “renovation or remodeling activities in target housing...that create lead-based paint hazards.” 15 U.S.C. § 2682(c)(3). In promulgating the Renovation Rule, EPA concluded that all renovation activities that disturb lead-based paint in target housing create dust-lead in excess of the hazard standard in 40 C.F.R. § 745.65(b), and therefore create lead-based paint hazards. See 73 Fed. Reg. at 21 698-99; see also 75 Fed. Reg. at 24,804. Target housing is “any housing constructed prior to 1978[.]” with certain statutory exceptions not relevant here. 15 U.S.C. § 2681(17) (emphasis added). In developing the TSCA section 402(c)(3) renovation regulations, EPA must consider “reliability, effectiveness, and safety.” 15 U.S.C. § 2682(a)(1).

Thus, the central question for EPA in reconsidering the opt-out provision which excused contractors from following any of the Renovation Rule’s work practice requirements, save for obtaining the homeowner certification, in a subset of target housing – was whether the opt-out provision was reliable, effective, and safe. In promulgating the Opt-Out Amendment, EPA concluded that it was not. See 75 Fed. Reg. at 24,807. EPA further concluded that elimination of the opt-out provision rendered the Renovation Rule more consistent with the statutory provisions discussed above. See *id.* at 24,806. The administrative record for the Opt-Out Amendment simply does not provide a basis to exempt from the Renovation Rule a subset of target housing based on occupancy.

RT PROJECT COMPLETIONS

- Chester County, Pennsylvania residential heating oil tank release . . . *Groundwater Cleanup Liability Protection under Storage Tank Program.*
- Passaic County, New Jersey metal products manufacturing facility . . . *New Jersey Industrial Site Recovery Act Alternate Compliance approval.*
- Philadelphia building products chemical manufacturing facility . . . *Act II Cleanup Liability Protection for groundwater.*
- Burlington County New Jersey proposed school expansion . . . *Metals impacted soil remediation and Sitewide Response Action Outcome* under New Jersey Site Licensed Site Remediation Professional program.
- Mercer County waste hauling products manufacturing facility . . . *Sitewide Response Action Outcome.*
- Hunterdon County, New Jersey agricultural properties . . . *Farm dump remediation, and Sitewide Response Action Outcome.*

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

Environmental Protection Agency; Identification of Non-Hazardous Secondary Materials That Are Solid Waste; Final Rule
(Federal Register – 3/21/2011)

Surface Transportation Board; Solid Waste Rail Transfer Facilities
(Federal Register – 3/24/2011)

Environmental Protection Agency; Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure (SPCC) Rule -- Amendments for Mile and Mile Product Containers; Final Rule
(Federal Register – 4/18/2011)

Environmental Protection Agency; National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units; Proposed Rule
(Federal Register – 5/3/2010)

Environmental Protection Agency; Elemental Mercury Used in Barometers, Manometers, Hygrometers/Psychrometers; Significant New Use Rule; Proposed Rule
(Federal Register – 5/6/2011)

Environmental Protection Agency; National Emissions Standards for Hazardous Air Pollutants: Secondary Lead Smelting; Proposed Rule
(Federal Register – 5/19/2011)

Nuclear Regulatory Commission; The Commission is amending its regulations to improve decommissioning planning and thereby reduce the likelihood that any current operating facility will become a legacy site. The amended regulations require licenses to conduct their operations to minimize the introduction of residual radioactivity into the site, which includes the site's subsurface soil and groundwater. Licenses also may be required to perform site surveys to determine whether residual radioactivity is present in subsurface areas and to keep records of these surveys with records important for decommissioning; Final Rule
(Federal Register – 6/17/2011)

Department of Transportation; Hazardous Materials; Revision to the List of Hazardous Substances and Reportable Quantities; Pipelines and Hazardous Materials Safety Administration (PSMSA); Final Rule
(Federal Register – 6/27/2011)

Environmental Protection Agency; Definition of Solid Waste; Proposed Rule
(Federal Register – 7/22/2011)

Environmental Protection Agency; Testing of Bisphenol A; Advance notice of proposed rulemaking (ANPRM)
(Federal Register – 7/26/2011)

Environmental Protection Agency; Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Sulfur; Proposed Rule
(Federal Register – 8/1/2011)

Environmental Protection Agency; Hazardous Waste Management System; Identification and Listing of hazardous Waste; Carbon Dioxide (CO₂) Streams in Geologic Sequestration Activities; Proposed Rule
(Federal Register – 8/8/2011)

SETTING PRIORITIES – A SIMPLE APPROACH THAT'S REAL

By Larry Bily

I learned about this method of setting priorities at a seminar on time management. First, list all of your projects or tasks (five for this example). Next, compare A to B and place a check next to the one that has the higher priority. Then compare A to C, A to D, and A to E, placing a check next to the higher priority task. After comparing all of the A's, then compare B to C, B to D, and B to E, then C to D and C to E, finally D to E. Your result should look something like this.

TASK A		2
TASK B		0
TASK C		3
TASK D		4
TASK E		1

It is now obvious that D has the highest priority, followed by C, A, E and B. If there is a tie, it can be broken by which had the higher head to head comparison or which has the closer due date.

PENNSYLVANIA BULLETIN NOTICES

Notices – Guidance for Filter Plant Performance Evaluations – Surface Water Treatment Rule; Final Technical Guidance-Substantive Revision

March 12, 2011

Regulations, Technical Guidance & Permits – Published Notice of a correction to the Land Recycling Program numeric standard

March 21, 2011

Notices – Availability of Final General Plan Approval and/or General Operating Permit for Natural Gas, Coal Bed Methane or Gob Gas Production or Recovery Facilities

March 26, 21011

Regulations, Technical Guidance & Permits – The Fish and Boat Commission published notice of changes of new royalty payments for sand and gravel extracted from Commonwealth waters.

May 16, 2011

Rules and Regulations – Incidental Coal Extraction, Bonding, Enforcement, Sediment Control and Remaining Financial Guarantees

June 18, 2011

Rules and Regulations – Amendments to the Water Quality Regulations, Water Code and Comprehensive Plan to Update Water Quality Criteria for Toxic Pollutants in the Delaware Estuary and Extend These Criteria to Delaware Bay

June 25, 2011

Notices – Guidelines for Development of Critical Area Resource Plans – Final Technical Guidance-New Guidance

July 16, 2011

Notices – Dam Safety and Waterway Management; Water Quality Certification under Section 401 of the Federal Clean Water Act and Federal Consistency Review under the Coastal Zone Management Act of 1972 for the Army Corps of Engineers Pennsylvania State Programmatic General Permit (PASPGP-4)

July 16, 2011

Notices – Water Quality Toxics Management Strategy – Final Technical Guidance-Minor Revision

July 30, 2011

Notices – Permit Modification Proposed under the Solid Waste Management Act (35 P.S. 6018.101— 6018.1003); the Municipal Waste Planning, Recycling and Waste?§§ 4000.101—4000.1904); and Residual Waste Regulations?Reduction Act (53 P.S. §§ for a General Permit to Operate Residual Waste Processing Facilities and the Beneficial Use of Residual Waste other than Coal Ash

August 6, 2011

Notices – Availability of Modified Chapter 105 Water Obstruction and Encroachment Permit Application and Supporting Documents for Consistency with the Pennsylvania State Programmatic General Permit 4 (PASPGP-4)

August 6, 2011

Notices – Proposed Modification to General Permit BWQP-GP-15: Private Residential Construction in Wetlands and 401 Water Quality Certification for Consistency with the Pennsylvania State Programmatic General Permit 4 (PASPGP-4)

August 6, 2011

Notices – Renewal of Department of Transportation's Statewide NPDES MS4 Individual Permit

August 6, 2011

Regulations, Technical Guidance & Permits – Final Guidance on Regional Civil Assessment Procedures

August 15, 2011

RT RECEIVES COMMENDATION FOR SAVING REAL ESTATE TRANSACTION

A Vice President of a major national real estate firm contacted RT with a real estate crisis, another environmental consulting firm refused to sign a Small Business Association reliance letter, dooming a commercial real estate transaction at the last minute. RT was asked if we could complete a fast turnaround Phase I ESA, as we had previously completed Pennsylvania Act 2 Land Recycling work at the subject property, located on a major thoroughfare in Philadelphia.

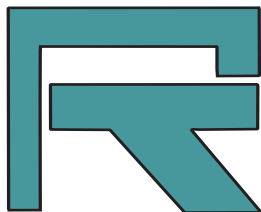
A quick review of RT's file and recent work by the other consultant revealed that the EPA All Appropriate Inquiry Rule could be complied with, and after RT verified that a short-term schedule could be met, the closing date was reset.

One week later, shortly after closing, we received the following by email:

Just want to say thanks again for your help and quick turnaround on the Roosevelt Blvd. report. A week ago, the buyer was on the brink of losing nearly a quarter of a million dollars by defaulting on the sale. Thanks to the great efforts by Matt Martelli and your team, we were able to keep the deal together and complete closing successfully today.

We at RT have always placed high value on the reliability of our services, and we always stand behind our work. Naturally, we were glad to help and offer thanks for the kind words from the Vice President of the highly respected national real estate organization.

-Gary R. Brown, P.E.



KEY HIGHLIGHTS

FEDERAL UPDATES

- Hazwaste Manifest Revisions, pg. 4
- EPCRA/Non-Reactive Solids, pg. 4
- Coal Ash Rule, pg. 4, pg. 5
- Waters of the US Definition, pg. 5
- Boiler Air Rule Delay, pg. 6

NJ UPDATES

- Greenhouse Gas Declines, pg. 12
- Public Access Law Revisions, pg. 12
- New York Reservoir Plan, pg. 12

PA UPDATES

- Marcellus Shale Recommendations, pg. 1
- New Oil & Gas FAQ, pg. 9
- Philadelphia Stormwater Manual Update, pg. 9
- DEP AUL Registry, pg. 9

TECHNOLOGY UPDATES

- StormwaterRx AQUIP Approval, pg. 3
- Plating Facility Remediation, pg. 9
- Green Remediation, pg. 11
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