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EPA, U.S. Army define “Waters of the United States”



On May 26, EPA head Gina McCarthy and the Assistant Secretary of the Army, Jo Ellen Darcy, signed the final clean water rule to define “Waters of the United States.”

According to the rule’s preamble, the final rule does not establish any regulatory requirements, but instead defines the scope of waters that are protected under the Clean Water Act (CWA) in light of the statute, science, Supreme Court decisions, and the agencies’ experience and technical expertise.

The proposed version of the rule had garnered over a million comments, which both EPA and the Army say they took into account when drafting the final rule.

EPA claims the rule ensures that waters protected by the CWA are more precisely defined and predictably determined. This, in turn, will make applying for permits easier and faster for businesses and industry. In addition, there are no new requirements for agriculture and the final rule maintains all previous exemptions and exclusions.

See **Final rule focuses on streams, not ditches**, p. 2

FMCSA updates list of designated and restricted hazmat routes



The Federal Motor Carrier Safety Administration (FMCSA) recently updated the National Hazardous Materials Route Registry (NHMRR). The new list supersedes the NHMRR published on July 14, 2014, and includes current route limitations and allowances, and revised information on state and tribal government routing agency contacts.

The NHMRR lists, as reported by state and tribal government routing officials, all designated and restricted road and highway routes for transportation of highway route controlled quantities (HRCQ) of Class 7 (radioactive) materials (RAM) and non-radioactive hazardous materials (NRHM) transportation.

To find the most up-to-date listing of hazmat routes, visit bit.ly/1Bpogfx.



Final rule focuses on streams, not ditches, Continued from p. 1

EPA said that before this rulemaking, protection for many of the nation's streams and wetlands had been confusing, complex, and time-consuming as the result of Supreme Court decisions in 2001 and 2006.

Permitting

Now, the rule makes it clear that a CWA permit is only needed if a water is going to be polluted or destroyed. Further, the rule only protects the types of waters that have “historically been covered” under the CWA.

EPA stresses that the new rule does not regulate most ditches and does not regulate groundwater, shallow subsurface flows, or tile drains. And it does not make changes to current policies on irrigation or water transfers or apply to erosion in a field. Finally, EPA is emphatic that the new rule does not address land use or private property rights.

What will the rule cover?

EPA says that the new Clean Water Rule explains the following:

- Defines and protects tributaries that impact the health of downstream waters. The CWA protects navigable waterways and their tributaries. A tributary must show physical features of flowing water — a bed, bank, and ordinary high water mark — to warrant protection. The rule also provides protection for headwaters that science shows can have a significant connection to downstream waters.
- Provides certainty in how far safeguards extend to nearby waters. The rule protects waters that are next to rivers and lakes and their tributaries because science shows that they impact downstream waters.



- Protects the nation's regional water “treasures.” Science shows that specific water features can function like a system and impact the health of downstream waters.
- Focuses on streams, not ditches. The rule limits protection to ditches that are constructed out of streams or function like streams and can carry pollution downstream. So ditches that are not constructed in streams and that flow only when it rains are not covered.
- Maintains the status of waters within Municipal Separate Storm Sewer Systems. The rule encourages the use of green infrastructure.
- Reduces the use of case-specific analysis of waters. Previously, almost any water could be put through a lengthy case-specific analysis, even if it would not be subject to the CWA.

Rule coverage and SPCC

If you are not currently covered by the Spill Prevention, Control, and Countermeasures (SPCC) rule, you may need to take a second look. SPCC requirements are triggered if a facility has an aggregate aboveground oil storage capacity of 1,320 gallons or a completely buried storage capacity of 42,000 gallons, and *there is a reasonable expectation of an oil discharge into or upon navigable waters of the U.S. or adjoining shorelines*. What is meant by “reasonable expectation” and “navigable waters” may have expanded because of the new definition of Waters of the U.S.

More information

EPA updated its Clean Water Rule webpage on May 27 with links to the final rule, fact sheets, maps, videos, support documents, and many other resources. Find it here: www2.epa.gov/cleanwaterrule.

Ruling goes against California truckers

In the battle of EPA against California truckers, EPA won the most recent round. The District of Columbia Circuit of the U.S. Appeals Court found that petitioners who challenged EPA's efficiency and greenhouse gas emissions regula-

tions for trucks in California have no legal standing to do so.

The Court said that in 2014, it upheld EPA's car emissions standards, and would uphold them again. At the same time, petitioners brought suit against EPA over its green-

house gas emissions standards for heavy duty trucks. The groups argued that the rules artificially inflated truck prices in California.

Read the case at 1.usa.gov/1LtDsOK.



Agency denies petitions to reconsider Utility MATS

At the end of April, EPA said it would not reconsider the Mercury and Air Toxics Standards (MATS) and the Utility New Source Performance Standards. In the past, the agency has reconsidered portions of the final rules for "National Emission Standards for Hazardous Air Pollutants (NESHAPs) From Coal and Oil-Fired Electric Utility Steam Generating Units" and "Standards of Performance (NSPS) for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units." However, this time, EPA

denied the remaining requests from 23 petitions.

EPA fully explained the rationale for each denial, but in the end, the agency says that the petitions do

not meet the criteria for reconsideration and/or are moot.

EPA's *Federal Register* notice is here: 1.usa.gov/1EnXRhY.



EPA agrees to finalize volume requirements for renewable fuels



2014 came and went without EPA finalizing the 2014 applicable percentage standards under the Renewable Fuel Standard (RFS) program.

Now, in a proposed consent decree in response to a lawsuit brought by the American Petroleum Institute (API) and the American Fuel and Petrochemical Manufacturers, EPA plans to establish the following schedule for issuing renewable fuel standards for 2014 and 2015:

- By June 1: EPA will propose volume requirements for 2015.

- By November 30: EPA will finalize the volume requirements for 2014 and 2015 and resolve a pending waiver petition for 2014.

Outside of the scope of the consent decree, EPA also plans to:

- Propose the RFS volume requirements for 2016 by June 1, and finalize them by November 30;
- Propose and finalize the RFS biomass-based diesel volume requirement for 2017 on the same schedule; and
- Re-propose volume requirements for 2014, by June 1, that reflect the volumes of renewable fuel that were actually used in 2014.

The Agency intends to issue a *Federal Register* notice allowing the public an opportunity to comment on the proposed consent decree.

Find the consent decree at 1.usa.gov/1AjUAppg, and watch JJKA.com for news as it develops.





EPA wants sewage incineration plants to follow federal plan

EPA is proposing a rule for federal plan requirements regarding sewage sludge incineration (SSI) units constructed on or before Oct. 14, 2010.

EPA issued emissions standards for new and existing sewage sludge incineration units in 2011. The Agency wants to require existing SSI units to implement the 2011 emission guidelines (EG) in states that did not have an approved state plan in place by Mar. 21, 2012. EPA says the federal plan will result in emissions reductions of certain pollutants from all affected units.

The proposed SSI federal plan includes:

- Emissions limits for all regulated pollutants;
- Visible emissions limit for ash handling operations;



- Requirements for annual inspections of emissions control devices;
- Annual testing, monitoring, recordkeeping, and reporting requirements;
- Procedures for submitting test data to EPA;

- Schedule for compliance with the federal plan;
- Operating permit provisions; and
- Delegation of authority provisions.

An SSI unit is an incineration unit combusting sewage sludge to reduce the volume of sewage by removing combustible matter. These units include: sewage sludge feed systems; auxiliary fuel feed systems; grate systems; flue gas systems; waste heat recovery equipment; and bottom ash systems.

Find the proposed rule by using Docket ID Number EPA-HQ-OAR-2012-0319 at www.regulations.gov.



Firefighters exposed to cancer risks on the job, says NIOSH

As if firefighters' jobs weren't tough enough, a new study from NIOSH found firefighters have an increased risk for several major cancers. And black and Hispanic firefighters had even higher risks for developing cancer than their white coworkers.

According to NIOSH, firefighting is considered one of the most hazardous occupations, and involves regular exposure to known carcinogens. In the study, which used data from 1988-2007, firefighters were found to have increased risks for melanoma, acute myeloid leukemia, multiple myeloma, and cancers of the esophagus, prostate, brain, and kidney. Black and Hispanic firefighters were also found to have increased risks for non-Hodgkin's lymphoma, chronic lymphocytic leukemia, chronic myeloid leukemia and cancers of the tongue, testis, and bladder.

NIOSH says the study included more firefighters with cancer than any previous study. This allowed authors to assess the association between firefighters and the development of 32 different cancers in all firefighters combined, along with firefighters of various races and ethnicities. Of the 32 cancers assessed, the risks of 14 cancers were significantly elevated in one

or more firefighter groups. Because black and Hispanic firefighters had significantly increased risk for more cancers than white firefighters, NIOSH calls for further investigation of the cancer risks for various races and ethnicities within this profession.

For more NIOSH information on firefighter health and safety, visit www.cdc.gov/niosh/firefighters.





Facilities that emit GHGs may be eligible for rescinded permits

EPA's 2010 GHG Tailoring Rule set emission thresholds and air permitting requirements for large facilities. However, in June 2014 the Supreme Court ruled that EPA may not treat greenhouse gases (GHGs) as an air pollutant when deter-

mining if a facility is subject to air permitting. The Court also found that facilities that must otherwise obtain permits for Prevention of Significant Deterioration (PSD) or Title V may continue to be subject to GHG permitting. These facilities will be required to limit their GHG

emissions through the application of Best Available Control Technology (BACT).

In light of the Supreme Court decision, EPA was told to consider whether it needed to revise its GHG permitting regulations. And on May 7, the Agency published a direct final rule and a proposed rule concerning the Tailoring Rule. The new direct final rule allows the Agency to rescind EPA-issued PSD permits for facilities that would otherwise not be required to obtain permits except for their GHG emissions. Note that the rule does not actually invalidate any permits; it simply allows EPA or the authorized state agency to do so.

Right now, it's uncertain how states that implement their own clean air permitting programs will address rescinding the permits.

The rule will take effect on July 6 unless EPA receives negative feedback about the rulemaking. In that case, the Agency will withdraw the direct final rule and replace it with the proposed rule. Find the rule here: www.gpo.gov/fdsys/pkg/FR-2015-05-07/pdf/2015-10628.pdf



Subcommittee acts to protect waters from cosmetic microbeads

The House Energy and Commerce Subcommittee on Health held a May 1 hearing on the issue of H.R. 1321, the Microbead-Free Waters Act. The bill is aimed at protecting America's waters from microbeads in cosmetic products.

Full committee Chairman Fred Upton (R-MI) said, "Microbeads are those tiny little scrubbers in your soap, cleansers, and even toothpaste. On their own, they are nearly invisible, smaller than a pinhead.

But once they've flushed down the drain is when the problems begin. Because they are so small, they escape water filtration systems and end up in our bodies or water, including the Great Lakes. They are known to absorb pollutants, and are often mistaken as food by fish and wildlife. Simply put, microbeads are causing mega-problems."

The bill is still in its early stages, but watch JJKeller.com for updates.





Senators argue against adding Oil & Gas to list of TRI reporters



On May 19, Senators Jim Inhofe (R-OK) and David Vitter (R-LA) called on EPA to reject an October 2012 petition from the Environmental Integrity Project that requests the Agency add the Oil & Gas Extraction Industry to the list of Toxic Release Inventory (TRI) reporters. The petitioners filed a complaint on Jan. 7, 2015, in the U.S. District Court for the District of Columbia seeking to compel EPA to act on the petition. The Senators said the petition was “frivolous, inappropriate, and unnecessary.” They stated that action to list the Oil & Gas industry “runs counter to the intent of the TRI and

would further diminish the limited value that the current TRI serves.” The Senators also cited EPA’s previous reasoning for not proposing expansion to Oil & Gas exploration and production. In 1996 EPA stated, “This industry group is unique in that it may have relative activities located over significantly large geographic areas. While together these activities may involve the management of significant quantities of EPCRA section 313 chemicals in addition to requiring significant employee involvement, taken at the smallest unit

(individual well), [neither] the employee nor the chemical thresholds are likely to be met.”

These conditions remain the same, the Senators say. Therefore, EPA should reject the petition as soon as possible. Read the letter here: 1.usa.gov/1Q1Ft5b.



OSHA finalizes confined spaces in construction rule

On May 4, OSHA issued a final standard for construction work in confined spaces, which will take effect Aug. 3, 2015. A confined space is defined as a space that is large enough and so configured that an employee can bodily enter it, has limited or restricted means for entry and exit, and is not designed for continuous employee occupancy. For example, pits, manholes, sewers, ducts, tanks, crawl spaces, and many attics are not intended for continuous occupancy. They may also be difficult to exit in an emergency.

OSHA explains that employees working in confined spaces face life-threatening hazards including toxic substances, electrocutions, explosions, and asphyxiation. However, the new construction standard, Subpart AA of 29 CFR 1926, will provide construction workers with protections that match those for manufacturing and general industry workers, but with some



differences tailored to the construction industry. These include requirements to ensure that multiple employers share vital safety information and to continuously monitor hazards.

The new standard sets requirements for practices and procedures to protect employees engaged in construction activities at a worksite with one or more confined spaces. Key provisions of the final standard require employers to:

- Determine what kinds of spaces their employees will be in, what hazards could be there, and how

those hazards should be made safe;

- Train each employee whose work is regulated by this standard, at no cost to the employee;
- Develop and implement a written confined space program if employees will enter permit spaces;
- Take effective steps to prevent employees from entering those spaces, if employees do not need to enter the permit spaces; and
- Provide rescue and emergency services for employees who enter permit spaces, should anything go wrong.

In addition, if a contractor (or subcontractor) will be hired to do confined space work, the controlling contractors and host employers must discuss spaces on the site and their hazards with both entry employers and each other before and after entry.

Find the rule on JJKeller.com.



Health care facilities may soon have clarity on drug disposal

It's likely that EPA's proposed rule on "Management Standards for Hazardous Waste Pharmaceuticals" is headed for publication soon. EPA sent the rulemaking to the White House Office of Management and Budget (OMB) on March 19, giving the OMB 90 days for review, unless the Office files for an extension.

EPA says the rule is needed because health care facilities that generate



hazardous waste pharmaceuticals have reported having difficulties complying with the manufacturing-oriented framework of the hazardous waste regulations for a number of reasons.

- First, under the current hazardous waste regulatory scheme, health care workers, whose primary focus is to provide care for patients, are often responsible for the implementation of the regulations.
- Second, a health care facility can have thousands of items in its formulary, making it difficult to know which ones are hazardous wastes when disposed.
- Third, some active pharmaceutical ingredients are listed as acute hazardous wastes, which

are stringently regulated even in small amounts.

To address these concerns, and make it easier for health care facilities to comply with the regulations, EPA is proposing to revise the regulations to improve management and disposal of hazardous waste pharmaceuticals.

The Agency says the revisions will focus on clarifying regulations for managing unused and/or expired pharmaceuticals (known as reverse distribution). In 2008, EPA proposed to address hazardous waste pharmaceuticals by adding them to the Universal Waste rule. However, EPA received adverse comments on the 2008 proposal. The expected upcoming proposal will address those comments.



Chemistry advocates react to BPA being listed on Prop 65

The American Chemistry Council (ACC) has lots to say about California including bisphenol A (BPA) on Proposition 65—the state's list of hazardous chemicals. Proposition 65 itemizes chemicals known to cause cancer, birth defects, or other reproductive harm, and requires businesses to inform their customers about exposures to these chemicals.

Effective May 11, California's Office of Environmental Health Hazard Assessments (OEHHA) scientific panel listed BPA as "known to the state of California to cause reproductive toxicity."

In response, the ACC's Steven G. Hentges, Ph.D., released the following statement: "We strongly disagree with the ... decision to list BPA under Proposition 65 as a female reproductive toxicant. The decision is not supported by the extensive scientific record presented

to the committee and is completely contrary to explicit input provided by the U.S. Food and Drug Administration (FDA). In April, FDA's acting chief scientist submitted a letter ... stating that the results of FDA's own comprehensive research 'do not support BPA as a reproductive toxicant.'"

Hentges went on to say that in January, the European Food Safety Authority claimed that BPA is safe

as used in food contact materials and other consumer products, and that "BPA poses no health risk to consumers of any age group (including unborn children, infants, and adolescents) at current exposure levels."

On May 7, OEHHA held a public meeting along with the Developmental and Reproductive Toxicant Identification Committee (DARTIC), where DARTIC, in its capacity as the state's scientific experts, determined that BPA was "clearly shown through scientifically valid testing according to generally accepted principles to cause reproductive toxicity."

Regulations for listing of chemicals by the DARTIC are set out in Title 27, California Code of Regulations, Section 25305(b)(1).

Find CA's updated list of Proposition 65 chemicals at www.oehha.ca.gov.





2013 industrial stormwater permits clear review process

Heads up — the White House Office of Management and Budget has completed its review of the Stormwater Multi-Sector General Permit (MSGP). At press time, no notice has yet appeared in the *Federal Register*.



expired on Sept. 29, 2013. Since that time, EPA has continued to enforce the 2008 permits.

The MSGP is a single permit that covers 29 industrial sectors, including:

- Facilities subject to New Source Performance Standards — 40 CFR 122.26(b)(14)(i)
- Heavy manufacturing — 122.26(b)(14) (ii)
- Mining, Oil & Gas — 122.26(b)(14) (iii)
- Hazardous waste facilities — 122.26(b)(14) (iv)
- Landfills — 122.26(b)(14) (v)
- Recycling facilities — 122.26(b)(14) (vi)
- Steam electric power plants — 122.26(b)(14) (vii)
- Transportation industries — 122.26(b)(14) (viii)
- Sewage treatment facilities — 122.26(b)(14) (ix)
- Light industry — 122.26(b)(14) (xi)

EPA has issued industrial stormwater permits under the National Pollutant Discharge Elimination System (NPDES) since 1995, reissuing them every few years. The MSGP applies in areas of the country where EPA is the NPDES permitting authority, including the states of Idaho, Massachusetts, New Hampshire, and New Mexico; the District of Columbia, Puerto Rico, all U.S. territories except the Virgin Islands; federal facilities in Colorado, Delaware, Vermont, and Washington; most Indian lands; and a few other specifically designated activities in specific states such as oil and gas activities in Texas and Oklahoma.

The new permit was proposed in 2013 to replace the 2008 MSGP. And in fact, the 2008 permit

Changes that apply to the 2013 permit include new benchmark values for facilities discharging into saltwater: arsenic, cadmium, copper, cyanide, lead, mercury, nickel, selenium, silver, and zinc.

Other changes include the following:

- Adding new specificities for several of the control measures for clarity;
- Streamlining the documentation for Stormwater Pollution Prevention Plans (SWPPPs);
- Making SWPPPs accessible to the public;
- Allowing electronic submissions of the Notice of Intent, Notice of Termination, annual report, and monitoring documents;
- Requiring pavement wash water discharges to be treated by control measures;
- Reducing inspection requirements;
- Setting specific deadlines for taking corrective actions; and
- Including the Airport Deicing Effluent Limitation Guideline.

Watch JJKeller.com for more permit information.



New fact sheet explains impact of reform bill on SPCC and farms

EPA recently released a fact sheet explaining the impacts of the Water Resources Reform and Development Act (WRRDA) of 2014, as signed by President Obama on June 10, 2014, on the Spill Prevention, Control, and Countermeasures (SPCC) rule and farms. The agency says it also plans to revise the SPCC rule consistent with the WRRDA amendments through a future rulemaking.



The WRRDA is a law authorizing the U.S. Army Corps of Engineers to develop, maintain, and support the county's waterway infrastructure and

support effective, targeted flood protection and environmental restoration. Section 1049 of the Act changes certain applicability provisions of the SPCC rule for farms,

and modifies the criteria under which a farmer may self-certify a SPCC plan.

According to the fact sheet, under WRRDA, a farm is not required to have an SPCC plan at all if it has:

- An aggregate aboveground storage capacity less than 2,500 gallons OR
- An aggregate aboveground storage capacity greater than 2,500 gallons and less than 6,000 gallons and no reportable discharge history.

Region 1 (New England) — CT wants to phase out plastic bags

Connecticut's SB-349 would enact legislation to implement a gradual phase-out of single-use plastic bags from certain stores and retailers. The bill would impose a 10-cent fee on plastic bags until all single-use bags are removed from circulation by Oct. 1, 2017, and ban all bags not specifically designed for reuse by Oct. 1, 2019. (1.usa.gov/1GAENmV)

Region 2 — (NJ / NY) — New York protects nail salon workers

New York Governor Andrew Cuomo launched a public education and outreach campaign to protect nail salon workers from abuse and health risks. The campaign includes information sessions along with printed materials to help nail salon workers understand their rights. In addition, the NYS Department of Health will conduct a review of chemical agents used in nail salons. (on.ny.gov/1HnmBsX)

Region 3 (Mid-Atlantic) — USGS studies PA fracking water

The U.S. Geological Survey released a study of 13 hydraulically fractured shale gas wells in Pennsylvania, finding the microbiology and organic chemistry of the wells' produced waters (the water that is brought back to the surface) varied widely from well to well. No discernible pattern emerged for the differences, but they may be linked to the time a well is in production. (on.doi.gov/1EuWMOO)

Region 4 (Southeast) — AL adopts exclusions for wipes

In March, the Alabama Department of Environmental Management aligned its regulations with new federal regulations covering conditionally excluded solvent-contaminated wipes. EPA's 40 CFR

261.4(a)(26) and (b)(18) conditionally exclude from the definition of hazardous waste wipes that are intended to be disposed and from the definition of solid waste wipes that are intended to be laundered and reused. (bit.ly/1GAG90P)

Region 5 (Great Lakes) — CRT mishandling costs MN recycler

An electronic waste recycling business in Minnesota found out the hard way that crushed cathode ray tubes (CRTs) are considered hazardous waste. (When they are intact, CRTs are not regulated as hazardous waste unless they are stored for longer than one year.) During an inspection, the MN Pollution Control Agency discovered the company had stored more than 5 million pounds of crushed CRTs in 128 semi-trailers.

Region 6 (South Central) — LA agencies agree on BMPs

The Louisiana Department of Environmental Quality and the LA Dept. of Agriculture and Forestry signed an agreement that will consolidate both agencies' paperwork and regulatory workloads. The new Memo of Understanding provides guidelines for participants to obtain approval to participate in the Best Management Program (BMP) which covers the management of solid wastes from agriculture and forestry production and processing. (1.usa.gov/1RkkvRO)

Region 7 (Midwest) — KS develops searchable website

The Kansas Department of Health and the Environment (KDHE) has developed a website to allow the public to search on environmental "points of interest" located within the state. The public can search for contaminated sites by the ISL (Identified Sites List), TRI (Toxics Release Inventory), spills, or LUST (Leaking Underground Storage



Tanks). The public can also search by regulation. (maps.kdhe.state.ks.us/keif/)

Region 8 (Mnts and Plains) — MT reviews mine comments

The Montana Department of Environmental Quality (MDEQ) issued a preliminary determination on an air quality permit for a proposed coal mine in the southeast portion of the state. The preliminary determination was open for comments until June 10, and now the agency is reviewing the comments it received. The MDEQ is preparing an Environmental Impact Statement on the mine. (1.usa.gov/1SAbCoP)

Region 9 (Pacific SW) — CA has FAQs on 2030 Carbon Target

The California Air Resources Board (CARB) released a PDF with frequently asked questions (FAQs) on the 2030 Carbon Target and Adaptation. CARB says it is taking "early, decisive action" to curb carbon outputs because the state is experiencing adverse conditions linked to climate change. CA's Executive Order B-30-15 accelerates cuts to carbon output through 2030. (bit.ly/1IY1aVd)

Region 10 (Pacific NW) — WA completes draft emergency plan

Washington's Department of Ecology (WDOE) completed a draft contingency plan outlining how responders will protect public safety and the environment in the event of an oil spill along Interstate 5 in three counties. WDOE says the plan is necessary because of significant increases in the amount of oil transported through inland areas of the state. (1.usa.gov/1JUbrRr)

Spring agenda forecasts active rulemaking year

The Spring 2015 Regulatory Agenda is out! The agenda, which appeared on the White House Office of Information and Regulatory Affairs webpage on May 22, provides a



glimpse into EPA's plans for the coming year.

While the agency has plenty of regulations in the works, from the prerule to the final rule stages, we've chosen several significant rulemakings to bring to your attention. To view all of



EPA's planned regulatory actions, go to www.reginfo.gov/public/do/eAgendaMain and select *Environmental Protection Agency* from the dropdown list.

Agency Rule List - Spring 2015

Rule stage	Rule title	RIN	Date
Final	NPDES electronic reporting rule	2020-AA47	10/00/15
Proposed	Expansion of industry sectors covered by the Toxics Release Inventory (TRI)	2025-AA33	09/00/15
Proposed	Effluent guidelines and standards for oil & gas extraction	2040-AF35	04/07/15
Proposed	Unregulated contaminant monitoring for public water systems	2040-AF49	10/00/15
Final	Effluent limitations guidelines and standards for the steam electric power generating point source category	2040-AF14	09/00/15
Final	Water quality standards regulatory revisions	2040-AF16	06/00/15
Final	Clean water rule: Definition of "Waters of the United States"	2040-AF30	05/00/15
Proposed	Modernizing CAA accidental release prevention regulations	2050-AG82	09/00/15
Proposed	Management standards for hazardous waste pharmaceuticals	2050-AG39	07/00/15
Proposed	Hazardous waste generator improvements rule	2050-AG70	07/00/15
Proposed	National Contingency Plan revisions	2050-AG78	06/00/15
Final	Revising underground storage tank regulations	2050-AG46	05/00/15
Proposed	Fine particulate matter NAAQS: State implementation plans	2060-AQ48	05/29/15
Proposed	Interstate Transport Rule for the 2008 Ozone NAAQS	2060-AS05	12/00/15
Proposed	GHG emissions and fuel efficiency standards for medium- and heavy-duty engines and vehicles—Phase 2	2060-AS16	06/00/15
Proposed	Emission standards for new and modified sources in the oil and natural gas sector	2060-AS30	08/00/15
Proposed	Federal plan for regulating GHG emissions from electric generating units	2060-AS47	08/00/15
Proposed	Protection of stratospheric ozone: Update to the refrigerant management requirements under Section 608 of the CAA	2060-AS51	11/00/15
Final	Standards of performance for municipal solid waste landfills	2060-AM08	05/00/15
Final	Review of the NAAQS for ozone	2060-AP38	10/00/15
Final	Review of the NAAQS for lead	2060-AQ44	04/00/16
Final	Standards of performance for GHG emissions: Electric utility generating units	2060-AQ91	08/00/15
Final	Data requirements rule for the one-hour SO ₂ primary NAAQS	2060-AR19	10/00/15
Final	Carbon pollution emission guidelines for existing stationary sources: Electric utility generating units	2060-AR33	08/00/15
Final	NESHAPS for major sources: Industrial, commercial, and institutional boilers and process heaters	2060-AS10	11/00/15
Proposed	Chemical substances (manufactured, imported, or processed) as nanoscale materials; Reporting and recordkeeping	2070-AJ54	07/06/15
Proposed	Significant new use rules; Amendments to HazCom provisions	2070-AJ94	11/00/15
Final	Formaldehyde emissions: Composite wood products	2070-AJ92	11/00/15

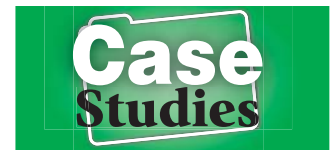
Three-judge panel rules against emergency generator exemptions

On May 1, a three-judge panel cancelled EPA's 2013 exemptions for emergency generators. That rule allowed reciprocating internal combustion engines (RICE) to operate for up to 100 hours per year without being subject to Clean Air Act emissions limits. The rule was designed to prevent grid failures or blackouts as part of emergency demand response.

However, the Circuit Court of Appeals for the District of Columbia said, "EPA too cavalierly sidestepped its responsibility to address reasonable alternatives. Its action was not rational and must,

therefore, be set aside." Further, the Court found that the rule was "arbitrary and capricious." EPA had failed to consider comments that questioned the rule's impact on the grid or questioned the evidence upon which the rule was based.

EPA said it had established the exemptions in response to comments from power generators to an earlier rulemaking. The comments claimed to need at least 60 hours per year of emergency resources available to them in order to take part in regional transmission emergency load response programs.



Not true, said the Court. The 60-hour requirement did not cover individual engines, and engines could be aggregated to meet the 60-hour minimum.

The Delaware Department of Natural Resources and Environment Control, along with others such as the Electric Power Supply Association, filed suit against EPA saying the exemptions actually created more pollution. In addition, the regulation was causing the grid to be *less* reliable — not more reliable. Plus, they argued that owners of backup generators were able to underbid their competition because they were exempt from expensive emission controls. This also resulted in the regular power generators underinvesting, thereby reducing the power supply available in an emergency — and increasing the need for the backup generators.

The Court told EPA that it can file a motion requesting that the current rule remain in place or that it be given time to develop interim standards.

EPA is still reviewing the Court's decision. Watch JJKeller.com for new developments.

Legal enforcement options expanded for DOE employees

An April 29 final rule expanded the arresting powers of the Department of Energy; specifically, the rule authorizes DOE contractors and employees to make an arrest without a warrant for certain crimes. This means a DOE employee may arrest any individual who has committed a federal crime in the presence of a DOE protective force officer regarding the property of the

U.S. in the custody of DOE or DOE contractors.

What does this actually mean?

The new rule is aimed at protecting nuclear weapons or ongoing shipments of nuclear components and other special nuclear materials.

Read more about it at 1.usa.gov/1AvZzD5.



Algal blooms threaten drinking water



Remember the drinking water advisories issued last summer? In one instance, more than a half-million residents in Toledo, Ohio, were told not to drink their water because of a massive algal bloom in Lake Erie, the source of the city's drinking water. Well, EPA is telling people to expect more of the same this summer. In fact, the Agency estimates that between 30 and 48 million people whose drinking water source is a reservoir or lake may be vulnerable to algal toxin contamination.

On May 6, EPA issued health advisory values for states and drinking water utilities to use to protect Americans from elevated levels of algal toxins in their drinking water. Algal blooms in rivers, lakes, and bays can produce harmful toxins. Because utilities often use these water bodies as sources of drinking water, EPA needed to know the range of safe and unsafe algal toxin levels in tap water. The agency also provided recommendations for utilities on how best to monitor and treat drinking water for algal toxins and notify the public of algal contamination in their drinking water.

EPA will issue final documents containing the health advisory values, recommended monitoring and treatment approaches, and all



supporting technical information before summer. Summer's warm temperatures provide optimal conditions for algal growth.

Health advisories

Health advisories are not regulations, but provide technical guidance to help state and local officials and managers of water systems protect public health. They identify concentrations of contaminants above which adverse health effects are possible and provide testing methods and treatment techniques.

The health advisory values for algal toxins recommend 0.3 micrograms per liter for microcystin and 0.7 micrograms per liter for cylindrospermopsin for drinking water for children younger than school age. For all other ages, the health advisory values for drinking water are 1.6 micrograms per liter for microcystin and 3.0 micrograms per liter for cylindrospermopsin.

Potential health effects from longer exposure to higher levels of algal toxins in drinking water include gastroenteritis, and liver and kidney damage. The health advisory values are based on exposure for 10 days. While briefly exceeding these advisory levels may not indicate an immediate emergency, EPA recommends utilities use treatment techniques to lower levels as quickly as possible. Steps that can protect the public from algal toxins in drinking water include:

- Watching for harmful algal blooms in water bodies used as a source of drinking water.
- Monitoring source water and drinking water for detections of algal toxins.
- Treating drinking water as necessary to reduce and remove algal toxins.

- Notifying the public that younger than school age children should not drink the water, or issue boil water advisories if levels are above the recommendations.
- Notifying the public that no one should drink the water, or issue boil water advisories if levels are above the recommendations.

EPA worked with Health Canada to develop the health advisories. Also, the World Health Organization has indicated it will use the health advisories to reevaluate global recommendations for levels of algal toxins.

False sense of security?

At the same time, the U.S. Army Corps of Engineers announced it will stop issuing advisories against swimming in several Oregon reservoirs it manages. In an April 13 press release, the Corps said, "Through a policy change, Portland District will no longer regularly test for blue-green algae blooms on its Oregon reservoirs. Emphasis now is to increase public awareness of the potential for blue-green algae blooms that may be harmful to people and pets."

"It can take more than a week to collect, analyze and receive test results from water samples for a potentially toxic blue-green algae bloom," said Portland District Chief of Operations Dwane Watsek. "Our past practice of waiting for the results before advising the public promotes a false sense of security among our visitors. Boaters, swimmers and other water recreation users began to rely on the presence or absence of public health advisories



to plan their recreation in Corps reservoirs.”

Instead of health advisories, the Corps advises visitors to exercise personal judgment when water shows signs of a bloom. The precautions include:

- Staying out of affected water;
- Keeping children and pets away;
- Not drinking or cooking with affected water; and
- Washing thoroughly with another water source if a bloom was contacted.

Beyond health advisories

According to EPA, nutrient pollution is one of the county’s most challenging and widespread problems. Excess nitrogen and phosphorus in the air and water have led to poor water quality in more than

100,000 miles of rivers and streams; approximately 2.5 million acres of lakes, reservoirs, and ponds; and more than 800 square miles of bays and estuaries in the U.S. Excess nitrogen and phosphorus in water can cause algal blooms.

People who are exposed to these algal blooms from swimming in polluted water, consuming tainted fish or shellfish, or drinking contaminated water can become sick.

Algal blooms can also produce “dead zones” in waterbodies, killing aquatic life, raising the costs for treating drinking water, and hurting communities and businesses that depend on clean water.

EPA says it is developing an early warning indicator system using historical and current satellite data to detect algal blooms. Agency

researchers want to create a mobile application to inform water quality managers of changes in water quality using satellite data on cyanobacteria algal blooms from three partnering agencies: NASA, NOAA, and the U.S. Geological Survey.

Also, EPA is working to combat nitrogen and phosphorus pollution by:

- Providing states with technical guidance and resources to help them develop water quality criteria for nitrogen and phosphorus as part of their surface water quality standards.
- Helping states identify waters with nitrogen and phosphorus pollution and to develop Total Maximum Daily Loads (TMDLs) to limit allowable nutrient inputs.
- Awarding grants to states for operating nonpoint source management programs.
- Administering a permit program that restricts the amount of nitrogen and phosphorus released to the environment from point sources, such as wastewater treatment plants.
- Providing funding for constructing and upgrading municipal wastewater facilities and implementing nonpoint source pollution control and estuary protection projects.
- Working with its state and federal partners on the Mississippi River/Gulf of Mexico Watershed Nutrient Taskforce to reduce dead zones.
- Conducting and supporting research on nitrogen and phosphorus pollution-related topics.

For more information on nutrient pollution, see www2.epa.gov/nutrientpollution.

Use EPA's new and improved ECHO tool to search for enforcement info

In May, EPA released Enforcement and Compliance History Online (ECHO) Version 2.4, which features updated Clean Air Act stationary source data and a tailored search interface. This newest update is the latest in a series of updates designed to “modernize” the ECHO website, which has been around since 2002. EPA says the original site processed over two million queries a year, but it didn't easily support modern features such as frequent data updates and web services.

ECHO allows the public access to data stored in EPA compliance and enforcement data systems and provides information about environmental inspections, violations, and enforcement actions for EPA-regulated facilities like power plants and factories.

Also in May, EPA released the Federal Insecticide, Fungicide, and Rodenticide Act Dashboard (Pesticides Dashboard) to the public. The Pesticides Dashboard will initially present three years of compliance and enforcement activity data on the regulated universe of pesticide-

producing establishments, allowing FIFRA compliance information to anyone with Internet access. Future updates will focus on compliance with the worker protection standards. On the dashboard, the public can view and download information about the number of pesticide-producing establishments and inspections, along with the government's response to these violations during the three most recent years. Data is presented for states, tribes, EPA regions, and the nation as a whole.

The Agency began modernizing ECHO in 2013. ECHO Versions 2.0 – 2.4 offer the following features:

ECHO 2.0

- Enhanced visualization and navigation
 - Modernized interface
 - Responsive design for viewing on tablets
 - Task-based navigation
- Quick searches
- All data facility search (including access to air, water, hazardous waste, and drinking water data)

What You Can Do

- Summary search results
- Detailed facility report
- Error reporting
- State comparative maps and dashboards
- More current data (weekly data refreshes for most data)

ECHO 2.1

- EPA enforcement case report
- Drinking water (Safe Drinking Water Act) system search
- Updated national data download files

ECHO 2.2

- Water (Clean Water Act) facility search
- Clean Water Act effluent charts

ECHO 2.3

- Hazardous waste (Resource Conservation and Recovery Act) facility search
- EPA civil enforcement case search

ECHO 2.4

- Clean Air Act facility search

EPA still has plans in the works to update its EPA and state annual enforcement actions map, create a mobile-phone friendly version, refine results directly on the search results screen, provide options to display more than five years of data, include more data on “non-standard” Clean Water Act facilities, provide links to and information from documents (such as inspection reports and enforcement actions), and deliver more powerful, customizable mapping capabilities. EPA has posted video tutorials on how to use the site at echo.epa.gov/help/tutorials.



Train on managing liquid, ignitable wastes

If you accumulate liquid, ignitable wastes on site, your employees need to know how to work safely near and with the waste, and what to do in the event of an emergency.

EPA requires small quantity generators (between 100 and 1000 kg of hazardous waste per month) to provide employees basic training as outlined at 40 CFR 262.34(d) (5). Large quantity generators (over 1000 kg of hazardous waste per month) must train employees in all of the training elements found in 265.16. Conditionally exempt small quantity generators (less than 100 kg of hazardous waste per month) are not required to provide training, but it is a best practice to do so. All training must be geared toward the particular hazardous substances and job requirements found at an employer's site.

Overview – Flammable and ignitable liquids OSHA/EPA crossover

EPA and OSHA have different definitions and requirements for storing and handling flammable liquids and ignitable wastes. OSHA does not regulate hazardous waste, but the Agency does require employers to keep their employees safe on the job. You should understand OSHA's regulations for storing and handling flammable liquids as well as EPA's regulations.

1. OSHA defines a "flammable

liquid" at 29 CFR 1910.106(a) (19) as:

Any liquid having a flashpoint at or below 199.4°F.

Flammable liquids are divided into four categories as follows:

Category 1 includes liquids having flashpoints below 73.4°F and having a boiling point at or below 95°F.

Category 2 includes liquids having flashpoints below 73.4°F and having a boiling point above 95°F.

Category 3 includes liquids having flashpoints at or above 73.4°F and at or below 140°F. When a Category 3 liquid with a flashpoint at or above 100°F is heated for use to within 30°F of its flashpoint, it shall be handled in accordance with the requirements for a Category 3 liquid with a flashpoint below 100°F.

Category 4 includes liquids having flashpoints above 140°F and at or below 199.4°F.

Note: When a liquid with a flashpoint greater than 199.4°F (93°C) is heated for use to within 30°F (16.7°C) of its flashpoint, it shall be handled in accordance with the requirements for a Category 4 flammable liquid.

Paragraph (e) to §1910.106 describes OSHA's requirements for storing and handling flammable liquids, which are similar, but not the same as EPA's regulations for managing ignitable wastes. Employers must follow prescriptions for fire control, water supply, fire



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extinguishers, equipment maintenance, recognition of ignition sources, electrical operations, and more.

There is also some crossover with EPA when it comes to oily rags or wipes. OSHA's §1910.106(e)(9)(iii) for waste and residue says "combustible waste material and residues in a building or unit operating area shall be kept to a minimum, stored in covered metal receptacles, and disposed of daily."

2. EPA defines an ignitable waste at 40 CFR 261.21. Most ignitable wastes are liquids — although a nonliquid waste can be hazardous due to ignitability if it can spontaneously catch fire under normal handling conditions and can burn so vigorously that it creates a hazard. And certain compressed gases and oxidizers can also be ignitable. A liquid is ignitable if it "has a flash point less than 60°C (140°F), as determined by a Pensky-Martens Closed Cup Tester, using the test method

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ISSN 1935-0309

GST R123-317687

(41815)

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specified in ASTM Standard D 93-79 or D 93-80, or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D 3278-78.

Ignitable wastes are given the waste code of D001.

Managing ignitable wastes

If you have a flammable or ignitable waste, then you need to manage it according to the container requirements §265.173. Containers holding hazardous waste must be:

- Closed during storage, except when waste is added or removed. In addition, containers must not be handled, opened, or stored in a manner that may cause them to leak.
- Located at least 15 meters (50 feet) from the facility's property line. This requirement is also referred to as the "buffer zone requirement" because it creates a

zone of protection between waste storage and adjoining properties.

- Separated and protected from sources of ignition or reaction including but not limited to: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (e.g., from heat-producing chemical reactions), and radiant heat.
- While ignitable or reactive waste is being handled, the owner or operator must confine smoking and open flame to specially designated locations. "No Smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

Treating ignitable wastes

If you are required to treat the liquid ignitable waste to meet the Land Disposal Restrictions (See 40 CFR 268), then you must take

precautions to prevent reactions which:

- Generate extreme heat or pressure, fire or explosions, or violent reactions;
- Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health or the environment;
- Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;
- Damage the structural integrity of the device or facility;
- Otherwise threaten human health or the environment.



Employee handout: Know how to manage ignitable wastes

If you manage hazardous liquids or liquid ignitable waste on the job, you must be trained to handle them safely. Your employer must train you on OSHA's chemical safety regulations for hazard communication, hazardous waste cleanup operations, and the general occupational safety and health standards at 29 CFR 1910 — especially Subpart H for hazardous materials.

You must also train on EPA's hazardous waste management regulations at 40 CFR 262 and §265.16. At a minimum, you must understand the hazards of the waste you are exposed to, how to protect yourself from those hazards, what to do in a spill or emergency, how to call for help, where the exit routes and emergency equipment are located,

and how to clean up the spill (if that is part of your job).

Liquid ignitable wastes must be handled very carefully. You must take care not to allow incompatible wastes to mix. In fact, you should store incompatible wastes in separate areas to prevent explosions, fires, leaks, spills, and other catastrophic events. In addition, ignitable wastes must be stored at least 50 feet from the property line to reduce the risk of the public coming into contact with the waste or being harmed in an explosion. This may also prevent the waste from migrating off the property if a leak does occur.

Do not stack drums of ignitable wastes.

You must also keep ignitable or reactive wastes away from:

- Fire
- Hot surfaces such as operating machinery or engines
- Radiant heat or sunlight
- Cutting and welding operations
- Frictional heat (don't pull drums along the ground)
- Sparks from static electricity, electrical operations, or friction and
- Water (some chemicals react violently with water).

Of course, you should not smoke around ignitable wastes and "No Smoking" signs must be posted at all areas near ignitable or reactive wastes.

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