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Pruitt backs down on ozone delay

Facing legal action, EPA Administrator Scott Pruitt did a quick reversal of an earlier decision to delay by 1 year the statutory deadline for initial designation of areas under the 2015 national ambient air quality standards (NAAQS) for ozone. Major environmental and public health groups and the attorneys general (AGs) of 16 states had filed law suits to block the delay. In a notice released August 2, 2017, Pruitt now says there "may be areas of the United States for which designations could be promulgated in the next few months." The Administrator adds that he "may still determine that an extension of time to complete designations is necessary, but is not making such a determination at this time."

In a June 6, 2017, letter to U.S. governors, Pruitt had justified the 1-year delay, stating that three main data quality issues supported the extension: an incomplete understanding of the role of background ozone levels; appropriately accounting for international transport of air pollution; and timely consideration of exceptional events demonstrations. The current attainment/nonattainment designations recommended by the states were based on air quality data collected between 2013 and 2015. The EPA followed the letter with formal notification of the 1-year delay (June 28, 2017, *FR*. ▲

EPA seeks to keep oxides of nitrogen primary NAAQS

Following its review of the primary National Ambient Air Quality standards (NAAQS) for oxides of nitrogen, the EPA is proposing to retain without revision the standards that were set in 2010. The Agency acknowledges that certain levels of oxides of nitrogen in the ambient air have a detrimental effect on people, and particularly children, with asthma and other respiratory illnesses. But the EPA adds that "available studies do not call into question the adequacy of the public health protection provided by the current standards."

In its proposal, the Agency states that in deciding to retain the existing NAAQS for oxides of nitrogen, it considered its 2013 Integrated Science Assessment (ISA) developed for the current review; analyses and considerations in the Agency's Policy Assessment; and the advice and recommendations of the Clean Air Scientific Advisory Committee. The ISA concluded that "a causal relationship exists between short-term nitrogen dioxide (NO_2) exposure and respiratory effects based on evidence for asthma exacerbation." In addition, the ISA stated that there is "likely to be a causal relationship" between long-term NO_2 exposures and respiratory effects based on the evidence for asthma development in children.

The EPA must make a final determination on the primary NAAQS for oxides of nitrogen by April 6, 2018. The proposal was published in the July 26, 2017, *FR*. ▲

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9th Circuit upholds EPA's delay of chlorpyrifos decision

Several environmental groups failed to persuade the U.S. Court of Appeals for the 9th Circuit to order the EPA to decide now on whether or not it would ban the pesticide chlorpyrifos. According to the court, the Agency's announcement to delay for up to 5 years any decision about what to do about chlorpyrifos is not out of line with an earlier order by the court.

In 2007, the Pesticide Action Network North America and the Natural Resources Defense Council (PANNA/NRDC) petitioned the Agency to revoke all food tolerances for chlorpyrifos. Following years of delay by the EPA, in August 2015, the 9th Circuit ordered the Agency to take final action on the petition by March 31, 2017.

In a June 5, 2017, petition to the 9th Circuit, PANNA/NRDC contended that EPA's denial and delay could not constitute the final action the court ordered, which the groups believe is a decision on whether or not to revoke food tolerances for chlorpyrifos. Moreover, the groups assert, the EPA has repeatedly found chlorpyrifos to be unsafe.

The 9th Circuit responded to the groups' petition by pointing out that in its August 2015 order, it instructed the EPA to "issue *either* a proposed or final revocation rule *or* a full and final response" to the PANNA/NRDC's petition. [emphasis added] The court notes that the most recent petition from the groups faulted the EPA for "fail[ing] to act *on the substance* of the petition." But the court said that the case is currently concerned with timing, not with substance.

"PANNA's complaints arrive at our doorstep too soon," concluded the court. "Although we previously condemned EPA's 'egregious' delay in responding to PANNA's petition, the agency has now complied with our orders by issuing a 'final response to the petition,'" said the 9th Circuit.

The 9th Circuit's ruling is at http://bit.ly/2tcQ75w. ▲

Pruitt's Superfund plan

"Returning the EPA to its core mission" of "protecting the health of Americans and the environment" has been one of EPA Administrator Scott Pruitt's most common refrains. That statement has now been fleshed out with a new report containing 42 recommendations to improve the Superfund program, and an accompanying memo from Pruitt directing that 11 of those recommendations be undertaken immediately. The actions include:

- Prioritize and take action to expeditiously effectuate control over any site where the risk of human exposure is not fully controlled.
- Utilize early or interim response actions, including removal authority or interim remedies, more frequently to address immediate risks, prevent source migration, and return portions of sites to reuse while more detailed evaluations of other portions are ongoing.
- Identify potential contaminated sediment or complex groundwater sites where adaptive management strategies can be implemented.
- Focus training, tools, and resources on current NPL sites with the most reuse potential.
- Work with potentially responsible parties (PRPs); state, tribal, and local governments; and real estate professionals to identify future reuse in PRP-lead cleanups.
- Encourage PRPs to work with end users to voluntarily perform assessment and additional cleanup or enhancement work to achieve reuse objectives and fund or perform enhanced cleanup or betterment by voluntarily entering into agreements with end users.
- Use enforcement authorities, including unilateral orders to recalcitrant PRPs, more actively to discourage protracted negotiations over response actions.
- Maximize deletions and partial deletions of sites that meet Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and National Contingency Plan requirements.

The task force report is at http://bit.ly/2uBrwso. Pruitt's memo is at http://bit.ly/2uU7Nod. ▲

Court limits EPA's waiver authority on renewable fuels

A ruling by a panel of the U.S. Court of Appeals for the D.C. Circuit effectively limits the ability of the EPA to use a key tool in setting the minimum amounts of renewable fuel that must be introduced into the nation's transportation fuel supply each year.

The decision affects EPA's general waiver authority (specifically, the *inadequate domestic supply* waiver), which, under the Clean Air Act and Energy Policy Act, allows the Agency to reduce the specific minimum amounts of total renewable fuel the statutes direct must be introduced into commerce.

The reduction based on demand-side factors was challenged by Americans for Clean Energy (ACE), which asserted that the scope of EPA's inadequate domestic supply waiver authority is clear; that is, it authorizes the Agency to consider *supply-side* (the volume of renewable fuel available to refiners, blenders, and importers) factors affecting the volume of renewable fuel that is available to *refiners, blenders, and importers* to meet the statutory volume requirements. It does not, according to ACE, allow the EPA to consider *demand-side* (volume of renewable fuel available to consumers) constraints on the consumption of renewable fuel when determining the available renewable fuel supply.

According to the panel, the EPA has access to that waiver authority only in the context of the supply side, but the

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Is Pruitt missing the advantages of 'sue and settle'?

Litigation likely to lead to losses

EPA Administrator Scott Pruitt has stated that the Agency's days of rulemaking by settling with plaintiffs who sue the Agency—a phenomenon popularly called *sue and settle*—are over. News media report that Pruitt informed EPA officials through a directive that they may no longer enter court-approved consent decrees negotiated with third party nonprofit organizations. Questions have been raised as to whether this directive actually exists in writing. However, there is no question that the regulated community and its main supporters in Congress have joined Pruitt in seeking ways to at least limit occurrences of sue and settle. The problem is that sue and settle is an established part of the U.S. legal system, and the EPA may be creating more difficulties than benefits for itself by abandoning it entirely. The pros and cons of the practice were discussed in a May 24, 2017, hearing of the House Subcommittee on the Interior, Energy, and Environment.

Statutory obligations

Sue and settle, as it relates to the EPA, occurs when a group petitions the court to compel the Agency to meet nondiscretionary obligations in the Clean Air Act (CAA), Clean Water Act (CWA), and other environmental statutes. Rather than fight it out in court, the Agency negotiates a court-approved, legally binding settlement with the plaintiffs. Frequently, no other parties participate, including the regulated community that will be most directly affected by the settlement.

Sue and settle opponents generally assert that the EPA and the regulated community would benefit more if the Agency defended itself in court rather than allowing plaintiffs, usually environmental groups, to have such a strong hand in rulemaking. But some stakeholders assert that it makes sense for the EPA to engage in sue and settle because it wants to avoid defending itself in cases it is almost certain to *lose*. Most settlements involve the Agency's failure to meet statutory deadlines for specific actions. In such instances there is little opportunity for a strong defense and attempting one will likely just squander resources and postpone the inevitable.

Certainly, sue and settle generally does not offer clear advantages to the regulated sectors. But the fate of the practice may depend more on the advantages and disadvantages it holds for the EPA. Can Pruitt reasonably prefer a policy in which the EPA and Department of Justice attorneys refuse to settle and uniformly choose to battle environmental groups in courtrooms? That does not sound likely, and the ultimate policy may be more a matter of changing the *way* sue and settle is conducted rather that eliminating the practice entirely. Those changes may fall into the purview of Congress.

Chamber of Commerce reports

The EPA has agreed to settle lawsuits out of court for many years. But the sue and settle controversy began attracting more attention in May 2013 when the U.S. Chamber of Commerce (CoC) issued *Sue and Settle: Regulating Behind Closed Doors*. This report catalogued 71 lawsuits filed against the EPA and other federal agencies between 2009 and 2012, which were settled under CoC's definition of "sue and settle." The EPA was involved in 60 of the settlements. The CoC updated the report in 2017, finding that between January 2013 and January 2017, the Agency entered into 77 consent decrees.

"These agreements resulted in over 100 regulatory actions with some actions imposing $1 billion or more in annual costs and burdens on businesses, consumers, and local communities," testified William L. Kovacs, CoC's senior vice president for Environment, Technology & Regulatory Affairs, at the hearing. Kovacs continued:

"Together these reports demonstrate how sue and settle agreements distort the regulatory process and undercut the public's role in rulemaking that Congress required through the Administrative Procedure Act. As a result of the sue and settle process, the Agency intentionally gives up its discretion to perform its duties in a manner that it believes serves the public interest best, and agrees to bind itself to the terms of settlement agreements. In doing so, the agency agrees to prioritize the demands of activist groups over and above competing interests—including committing congressionally appropriated funds. This process also allows agencies to avoid the normal protections built into the rulemaking process—review by the Office of Management and Budget and the public, and compliance with executive orders—at the critical moment when the agency's new obligations are created."

Kovacs noted the following sue and settle agreements involving the EPA and the price tags that went with them:

- Chesapeake Bay Clean Water Act rules—up to $6 billion in compliance costs for states.
- 2013 revision to the PM-2.5 National Ambient Air Quality Standards—up to $350 million **in** annual costs.
- 2015 Clean Power Plan—between $5.1 billion and $8.4 billion in annual costs.
- 2015 start-up, shutdown, and malfunction (SSM) rule—nearly $12 million in annual costs.
- Over 50 CAA federal implementation plans (FIPs) issued under President Barack Obama, where a total of 5 had been promulgated under President George H.W. Bush, President George W. Bush, and President Bill Clinton. The EPA imposes FIPs on states whose state implementation plans (SIPs) are rejected in whole or in part by the Agency.

Failure to meet deadlines

As noted, almost all sue and settle agreements result from the EPA failing to meet statutory deadlines for issuing rules. But Kovacs points out that the Agency rarely meets these deadlines.

"EPA has consistently failed to meet the vast majority of its action deadlines,

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even in past years when the agency has enjoyed staffing and budget levels well above current levels," said Kovacs. "Given the thicket of interrelated statutory deadlines—some dependent on the completion of others—and the procedural requirements that are a prerequisite to agency action, it is essentially impossible for EPA to meet its continuous deadlines."

But the impact of settlements with environmental groups, Kovacs continues, goes beyond the issue of deadlines. For example, court-imposed deadlines may force the EPA to miss other regulatory responsibilities that are more critical; rush through rulemaking; and avoid meeting analytical requirements. Kovacs says the most troublesome consequence of sue and settle is that "advocacy groups can also significantly affect the regulatory environment by compelling an agency to issue substantive requirements that are not required by law." Kovacs's examples here are the timetables and enhanced total maximum daily loads (TMDLs) established by the EPA for the Chesapeake Bay, which resulted from a sue and settle agreement.

"First, by being able to sue and influence agencies to take actions on specific regulatory programs, advocacy groups use 'sue and settle' to dictate the policy and budgetary priorities of an agency," testified Kovacs. "Instead of agencies using their discretion in best utilizing their limited resources, they are forced to shift these resources away from critical duties to satisfy the narrow demands of outside groups."

According to Kovacs, it is in Congress's hands to bring sue and settle under control. Legislation already introduced includes a bill that would compel agencies to inform the public whenever they receive Notices of Intent to sue from private parties and afford affected parties an opportunity to intervene *before* filing a settlement with a court. Kovacs further recommends that Congress extend/stagger the deadlines contained in the CAA and the CWA and also provide the EPA with an affirmative defense to deadline suits, under which a plaintiff must show that the Agency acted in bad faith in missing a deadline.

Settlements and the rule of law

All of this misses the role settlements play in federal rulemaking and the advantages they offer, according to Justin Pidot, a professor at the University of Denver College of Law and before that an appellate attorney in the Environment and Natural Resources Division of the U.S. Department of Justice (DOJ). Pidot first emphasizes that environmental litigation plays an important role in achieving the goals that Congress has established in federal environmental laws, most of which contain provisions allowing citizen suits. Pidot states:

"The ability of the public to hold federal agencies to account is a crucial component to the rule of law. Litigation keeps agencies honest and accountable to the mandates that Congress has established and ensures that agencies both fulfill their affirmative obligations and do not engage in illegal actions. Environmental litigation itself does not negatively affect the economy, states, or local communities. Litigation merely enforces the legal rules that Congress has established by statute or implementing agencies have established by regulation. Litigation that holds federal agencies accountable is appropriately encouraged by existing provisions that require the federal government in certain circumstances to pay the legal fees of a party that successfully sues the federal government."

Pidot goes on to describe settlements themselves as a "central feature of the American legal system:"

"The vast majority of lawsuits in the American justice system settle—by some estimates, between eighty and ninety-two percent of all cases. Moreover, this is widely viewed as a good thing. Settlements preserve judicial resources and allow the parties to reach an agreement, rather than have a resolution imposed by a judge or jury. Given the frequency of settlements, and the strong public policy favoring settlement, it should come as no surprise that the federal government, like any party in civil litigation, sometimes reaches a settlement. The so-called 'sue-and-settle' phenomenon, then, is simply the ordinary course of litigation in the American legal system."

Also, as noted above, almost all sue and settle cases involve deadlines the federal government should have met but didn't. "When these lawsuits don't settle, the government loses them," said Pidot. Then, instead of settling on new deadlines, the agency will have to accept whatever schedule the judges decide on. "Agencies simply have more control over the terms of settlements than over the terms of a judge's order," Says Pidot. "Put another way, settlements limit the role of judges in setting federal policy—something which those that oppose 'activist' judges should celebrate."

Saving resources

Other advantages noted by Pidot:

- Settlements save government resources. These resources largely take the form of staff time at both the DOJ, which represents environmental agencies in federal court, and the agency being sued.
- Settlements save taxpayer dollars by reducing the amount of attorneys' fees the federal government has to pay.
- Settlements conserve judicial resources by resolving cases without a judge having to rule on liability and craft a remedy.

One additional and crucial point made by Pidot is that only the DOJ—not the EPA or another executive branch agency—can approve settlements.

"This independent review by lawyers charged with representing the United States as a whole, rather than implementing particular statutes, limits an agency's ability to enter into settlements," Pidot testified. "An agency has to not only want to enter a settlement, but the agency has to convince lawyers at the Department of Justice that settlement is both appropriate and desirable. Because Department of Justice lawyers will not be driven by the agency's mission, but rather by legal considerations, vesting settlement authority at the Department of Justice significantly limits agencies ability to enter into collusive settlements [e.g., with environmental groups]."

Testimony from the House hearing on sue and settle is at http://bit.ly/2uGhbtE. ▲

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CFATS expedited program has few takers

Revised tiering methods may increase interest

As required by Congress, the Government Accountability Office (GAO) recently reported on the status, progress, and expected future of the Expedited Approval Program (EAP) for site-security plans (SSPs) available to facilities that must comply with the Department of Homeland Security's (DHS) Chemical Facility Anti-Terrorism Standards (CFATS). The EAP is a simplified approach to meeting the SSP requirements. Congress authorized the EAP in response to industry complaints that developing *standard* plans as well as provisions of the alternative security program (a third-party or industry organization program) was overly burdensome, particularly for smaller facilities. But in the 2 years the EAP has been available, only 2 of 2,496 eligible facilities have made use of it, and one of those facilities has since exited the CFATS program because it is no longer considered high risk. The main question the GAO addresses in its report is why an option that was believed to provide significant regulatory relief has been essentially unused.

10 years of CFATS

Authorized by Congress in the DHS Appropriations Act of 2007, the CFATS program is intended to ensure the security of the nation's chemical infrastructure against terrorist attacks by identifying, assessing the risk posed by, and requiring the implementation of measures to protect chemical facilities. The original legislation required the DHS to issue regulations establishing risk-based performance standards for chemical facilities that, as determined by the DHS, present high levels of risk; the act also required vulnerability assessments and development and implementation of SSPs for such facilities.

The DHS published the CFATS interim final rule in April 2007. Appendix A to the rule, published in November 2007, lists 322 chemicals of interest (COIs). According to the DHS, subject to certain statutory exclusions, all facilities that manufacture COIs, as well as facilities that store or use such chemicals as part of their daily operations, may be subject to the CFATS. However, only chemical facilities determined to possess a requisite quantity of COIs (called the *screening threshold quantity* (STQs), also listed in Appendix A) and subsequently determined to present high levels of security risk are subject to the more substantive requirements of the CFATS. Under the original CFATS, if DHS's Infrastructure Security Compliance Division (ISCD), which implements the CFATS program, determines that a facility is high risk, the facility must complete and provide a standard security plan or an alternative security program to the ISCD.

2014 authorization

In 2014, Congress reinvigorated the CFATS program, which was experiencing multiple problems at the DHS end, by reauthorizing the program for 4 years. This was a requested and much appreciated solution to the 1-year-at-a-time reauthorization that left both DHS staff managing the program and facilities complying with the standards uncertain about what the next year would bring. While 4 years of funding was the headline item in the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014 (Act), the legislation also included several enhanced policing provisions, including protections for whistleblowers and more tools to identify and enforce violations. An additional provision that has received little attention established the EAP. Under the EAP, facilities in the lower half (Tiers 3 and 4) of CFATS's four-tier, high-risk hierarchy are entitled to meet their CFATS obligations by agreeing to implement a standard security program developed by the ISCD. The ISCD launched the EAP in May 2015 by issuing a guidance document; facilities were invited to join about 1 month later.

EAP's security measures

The core section of the EAP is a list of specific security measures that the ISCD developed and determined are sufficient to meet the risk-based performance standards that must be achieved in a CFATS SSP. Facility officials simply put a checkmark next to each applicable security measure that the facility has in place. For each applicable security measure that the facility does not have in place, the officials must explain the security measure planned to be implemented in the next 12 months. If the facility has a material deviation from a security measure, facility officials are to explain compensatory measures that provide comparable security. The facility must also submit a certification that the owner or operator has visited, examined, documented, and verified that the facility meets the criteria in the SSP.

For Tier 3 or Tier 4 facilities that choose to submit the expedited security plan, the ISCD reviews the plan to determine if it is sufficient and, if so, issues a letter of acceptance. If the expedited plan is determined to be facially deficient, the facility is no longer eligible to participate in the EAP and must submit a standard security plan or an alternative security program. For expedited facilities that receive a letter of acceptance, the ISCD does not conduct an authorization inspection because the Act does not provide for this inspection at expedited facilities. However, the ISCD told the GAO that it intends to conduct compliance inspections to confirm that the facility has implemented its approved security plan as required by the CFATS.

EAP was on industry's radar

In its interviews with ISCD officials and industry, the GAO learned that the ISCD did attempt to make the regulated sector aware of the availability of the EAP. Specifically, before issuing the EAP guidance, the ISCD held meetings with officials representing the Chemical Sector Coordinating Council, the Food and Agriculture Sector Coordinating Council, and the Oil and Natural Gas Subsector Coordinating Council. The ISCD also contacted these groups after the guidance was issued. In addition, before

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implementing the EAP, the ISCD gave presentations about the EAP at the Chemical Sector Security Summit in July 2015 and to other groups, including three labor unions. The ISCD officials informed the GAO that its chemical security inspectors and other staff routinely discuss the EAP when conducting CFATS-related outreach. According to the GAO, representatives of 8 of the 11 industry organizations queried told the GAO that they have been generally pleased with how the ISCD has implemented the CFATS program in recent years. One possible reservation is that some industry reps said the ISCD did not accept their offers to assist in developing the EAP guidance. The ISCD explained that it had only 6 months after the Act was made law to develop the guidance, an insufficient amount of time to set up an effective dialogue with stakeholders.

Officials representing the two EAP chemical facilities told the GAO that they decided to take advantage of the program because they are small operators that store a single COI on-site and do not have staff with extensive experience or expertise in chemical security. Using the EAP would reduce the time and cost needed to meet their CFATS obligations. The officials also noted that EAP's prescriptive nature helped them to quickly determine the measures that had to be in their SSPs.

Timing and prescriptive nature of EAP

Based on its interviews with ISCD officials and industry, the GAO said it is likely the EAP has been little utilized for the following reasons:

- **Timing.** ISCD officials stated that the timing of EAP's implementation may be the primary reason only two facilities have used it. The officials explained that by the time the ISCD had implemented the EAP, the majority of eligible facilities had already submitted standard SSPs or alternative security programs to the ISCD, so it was not worthwhile for the facilities to start over again to use the EAP.
- **Prescriptive nature.** The EAP is built with specific security measures that must be met. Under the standard SSP and alternative security program requirements, facilities have more flexibility in selecting the contents of their plans. The GAO learned that the prescriptive nature of the EAP likely deterred some facilities from using it.

  "According to ISCD officials, some industry officials think that certain EAP-required security measures are too strict for tier 3 and tier 4 facilities," says the GAO. This opinion is shared by industry.

  "Officials we interviewed from 5 of the 11 industry organizations said that some, if not most, EAP-required security measures are more robust or strict than they should be for tier 3 and tier 4 facilities," says the GAO. "ISCD officials agreed that some EAP required security measures are strict because the CFATS Act of 2014 requires that DHS develop specific security measures and approve expedited security plans that are determined to not be facially deficient based only on a review of the plan."

  An example of a prescriptively strict requirement is EAP's screening requirements for vehicles. That measure states that a facility must screen and inspect all vehicles for firearms, explosives, or certain materials before allowing vehicles access to the facility's perimeter by visually inspecting the vehicle, using a trained explosive detection dog team, under-/overvehicle inspection systems, or cargo inspection systems. Despite its stringency, this requirement offered attractive clarity to the two facilities that used the EAP.
- **No authorization inspection.** The lack of an authorization inspection—which is required for standard SSPs—may have discouraged and continues to discourage facilities from using the EAP. Some facility officials told the ISCD that this inspection provides useful information about their facility's security.
- **Certification form.** The certification form that a facility official must sign under penalty of perjury and submit to the ISCD under the EAP may deter some facilities because it may lead to the authorizing official being legally liable and subject to penalties in certain circumstances.

Revised tiering

Two related issues—ISCD's development of a revised chemical security assessment tool and a revised tiering strategy—may also be influencing the popularity of the EAP. The revised assessment tool responded to concerns raised by both prior GAO reports and stakeholders that the previous methodology did not address all elements of threat, vulnerability, and consequence. In response, the ISCD says it will initiate a phased approach to retier about 27,000 facilities. ISCD officials said these facilities must resubmit Top-Screens (a survey of holdings that facilities must complete and submit to the ISCD once they come into position of STQs of COIs) using its Chemical Security Assessment Tool 2.0. The revised tiering methodology will be used to determine if each facility is high risk, and if so, assign the appropriate risk tier to the facility. The result will change risk assessments for some facilities.

Also, some facilities will be submitting new information for the first time in 7 or 8 years.

Collectively, these developments suggest that some facilities will be moving from one tier to another or will drop out of the CFATS entirely. Given the uncertainty of upcoming tier position, facilities may be unwilling to commit to the EAP or any new compliance strategy.

GAO's report is at http://bit.ly/2vEvW4S.

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Compliance Quiz

The Department of Homeland Security's list of Chemicals of Interest (COI) for its Chemical Facility Anti-Terrorism Standards (CFATS) was derived from the following existing lists *except:*

a. Chemicals listed under the EPA's Toxics Release Inventory

b. Chemicals covered under the EPA's Risk Management Program

c. Hazardous materials, such as gases that are poisonous by inhalation

d. Explosives regulated by the Department of Transportation

Answer: a

Navigating CWA pollutants and pollutant controls

The Clean Water Act (CWA) terms *conventional pollutants*, *nonconventional pollutants*, *toxic pollutants*, and *priority toxic pollutants* have been around for a long time and are key elements in the writing of National Pollutant Discharge Elimination System (NPDES) permits. But noting that these terms are as old as the CWA itself is not intended to suggest that all compliance managers have a complete and instantaneous understanding of what they mean and how they differ. As with other environmental statutes that were written and amended in the 1970s and 1980s, regulatory terms accumulated one on top of the other with little consideration of or serious efforts to avoid the resulting confusion.

One can find an even more glaring example of regulatory obfuscation in the six acronyms designating levels of CWA pollution control—best practicable control technology currently available (BPT), best conventional pollutant control technology (BCT), best available technology economically achievable (BAT), New Source Performance Standards (NSPS), pretreatment standards for new sources (PSNS), and pretreatment standards for existing sources (PSES). In fact, the different types of pollution controls apply to the different types of pollutants so that managers will need to grasp both sets of terms and their relationships when either negotiating with regulatory agencies on individual NPDES permits or understanding the thinking behind NPDES general permits they must comply with. We provide the definitions for the different pollutants and how the levels of control apply.

Definitions

Conventional pollutants. These are the first round of pollutants for which the CWA required permitting. Conventional pollutants are generally found in sanitary waste from households, businesses, and industries. CWA Section 304(a)(4) instructed the EPA administrator to identify conventional pollutants, including but not limited to biological oxygen demand, suspended solids, fecal coliform, pH, and any additional pollutants the EPA viewed as conventional. The EPA eventually added oil and grease to the list of conventional pollutants.

Toxic pollutants. The 1972 CWA amendments instructed the EPA to publish a list of toxic pollutants. The EPA did not meet this requirement in a timely manner, and it was not until the 1977 CWA amendments that the basis for the regulatory program for toxic pollutants was established. The 1977 amendments reoriented U.S. water pollution control by adjusting technology standards to reflect the shift away from conventional pollutants toward control of toxics. CWA Section 307(a) originally identified 65 toxic pollutants and classes of pollutants for 21 major categories of industries (known as *primary* industries). That list was later further refined into the current list of 126 *priority toxic pollutants*.

Nonconventional pollutants. The 1977 amendments also created a new pollutant category, nonconventional pollutants, which are pollutants that are not included in either the conventional pollutant or toxic pollutant categories. Nonconventional pollutants include chlorine, ammonia, nitrogen, phosphorus, chemical oxygen demand (COD), and whole effluent toxicity (WET).

Controls

BPT. BPT applies to existing direct dischargers to surface waters. Traditionally, the EPA establishes BPT effluent limitations based on the average of the best performance of facilities within the industry of various ages, sizes, processes, or other common characteristics. BPT is the basis for permitted discharges of conventional pollutants, priority toxic pollutants, and nonconventional pollutants.

BCT. BCT applies to existing direct dischargers to surface waters and forms the basis for permitted discharges of conventional pollutants.

BAT. BAT applies to existing direct dischargers to surface waters and represents the best available economically achievable performance of plants in an industrial subcategory or category. BAT forms the basis for permitted discharges of priority pollutants and nonconventional pollutants.

NSPS. The NSPS applies to new direct dischargers to water bodies. The NSPS should represent the most stringent controls attainable through the application of the best available demonstrated control technology for all pollutants (i.e., conventional, nonconventional, and priority pollutants).

PSNS. PSNS are national, uniform, technology-based standards that apply to dischargers to publicly owned treatment works (POTWs) from specific industrial categories (i.e., indirect dischargers). PSNSs are designed to prevent discharges of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. PSNS form the basis for permitted discharges of priority pollutants and nonconventional pollutants.

PSES. Like PSNS, PSES are national, uniform, technology-based standards that apply to existing indirect dischargers. PSES are designed to prevent the discharges of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. PSESs form the basis for permitted discharges of priority pollutants and nonconventional pollutants.

Discussions of types of CWA pollutants and controls are at http://bit.ly/2hkxKtK and http://bit.ly/2w2szlx. ▲

(News *continued from page 2)*

Agency impermissibly used the waiver in the context of the demand side.

The ruling is a significant victory for the ethanol industry and corn growers, who express outrage over EPA's use of the waiver, which depresses the commercial prospects for ethanol and other renewable fuels. Conversely, the ruling is a setback for the traditional petroleum sector, which has resisted the intrusion of renewable fuels into their market.

The court's ruling also covers several other challenges to the Agency's renewable fuel standards, each of which the panel rejected. The court's ruling is at http://bit.ly/2eTJent. ▲

Broad support for carbon capture bill

There is strong bipartisan support in Congress behind a bill that would improve an existing federal tax credit to promote and spur carbon capture, utilization, and storage (CCUS) technologies and processes, which involves collecting carbon dioxide (CO_2) emissions from power plants and industrial facilities and condensing them into liquid that is injected into underground geologic formations either for permanent storage or for enhanced oil recovery (EOR).

The Furthering Carbon Capture, Utilization, Technology, Underground Storage, and Reduced Emissions Act ((FUTURE Act), S. 1535) was introduced by Senator Shelley Moore Capito (R-WV) and now has 25 cosponsors from both sides of the aisle.

CCUS Commercialization of CCUS has been slow, which prompted Congress several years ago to pass an addition to the Internal Revenue Code, called the 45Q tax credit. This provision provides two incentives—a $10/ton credit for CO_2 used in EOR and a $20/ton credit for CO_2 injected into geological reservoirs without application for EOR.

As it now works, the 45Q credit has not met all expectations. The primary problem is a cap of 75 million tons of CO_2 that can be sequestered. The FUTURE Act and companion legislation in the House makes the 45Q tax credit permanent and also extends use of the credit for carbon that is captured and used in the production of commercial products, provided the carbon is securely stored in those products.

Text of the bill is at http://bit.ly/2ukXKaN. ▲

New chemical backlog is gone, says Pruitt

EPA Administrator Scott Pruitt's "core statutory mission" includes implementing the 2016 amendments to the Toxic Substances Control Act (TSCA) and particularly completing new chemical reviews more quickly. Upon taking charge of the Agency, one of Pruitt's initial challenges was reducing a backlog of 600 new chemicals stuck in the EPA review process. Now, 6 months later, Pruitt has announced that the backlog has been eliminated (http://bit.ly/2vdj3xH).

TSCA requires that the EPA approve new chemicals once it is assured that the chemical is not likely to carry unreasonable risks for its intended and reasonably foreseen uses. According to Pruitt, the Agency has accelerated new chemical risk reviews by:

- Redeploying staff to increase the number of full-time equivalent staff working on new chemicals.
- Initiating a LEAN exercise to streamline work processes around new chemical review.
- Institutionalizing a voluntary presubmission consultation process so that submitters have a clear understanding of what information will be most useful for EPA's review of their new chemical submission and of what they can expect from the Agency during the review process. While such engagement before submission is an additional up-front time and resource commitment by submitters and the EPA, it should more than pay for itself with faster, better-informed EPA reviews, says the Agency. ▲

EPA wants to eliminate $28 million monitoring requirement

A requirement to place wireless continuous monitors on containers at off-site waste and recovery operations (OSWROs) to detect leaks from pressure relief devices (PRDs) would be eliminated under an EPA proposal (August 7, 2017, *FR*). The proposal responds to an industry petition for reconsideration of the requirement, which is included in the Agency's 2015 residual Risk and Technology Review (RTR) of the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for OSWROs. Jointly submitted by the American Chemistry Council and Eastman Chemical Company, the petition argued that the transitory nature of containers at OSWRO sites would make the installation of continuous monitoring devices technically impossible. Moreover, the petitioners said other federal regulations cover leak detection of OSWRO containers, and therefore, the RTR requirement is redundant.

The EPA agreed with this reasoning. Elimination of the requirement will save facilities subject to the NESHAP $28 million in capital costs and $4.4 million a year in operational and maintenance costs, according to the Agency.

The Agency has preliminarily decided that the existing NESHAP PRD inspection and monitoring requirements are effective and sufficient, particularly given the high cost and difficulty of conducting continuous monitoring as contemplated by the RTR amendment. ▲

Former EPA official sounds off

EPA staff who left the Agency after President Donald Trump installed Scott Pruitt as administrator have been publicly voicing concerns about the new direction the Agency is taking. One such assessment by a former and long-tenured EPA senior official, Elizabeth Sotherland who directed the Office of Science and Technology under EPA's Office of Water, is highly critical of Pruitt's priorities and actions.

In what appears to be a farewell message to her colleagues, Sotherland makes the following points about the top regulatory and environmental priorities of Trump and Pruitt.

Regarding Pruitt's assertion that, in Sotherland's words, the EPA is "acting outside legal mandates and running roughshod over states' rights," she says the Agency has always followed a cooperative federalism approach since most

environmental programs are delegated to states and tribes who carry out the majority of monitoring, permitting, inspections, and enforcement actions.

Sotherland says the president's requirement that for every new regulation issued, two regulations of equal or greater cost be repealed forces the EPA to "choose which Congressional law to ignore," after which it will have to defend itself in costly litigation for doing so.

Finally, Sotherland notes that the EPA already has repeals of 30 rules under consideration. Coupled with internal budget cuts and defunding to the states, this is effectively an "industry deregulation approach based on abandonment of the polluter pays principle that underlies all environmental statutes and regulations."

Sotherland's statement was made public by Public Employees for Environmental Responsibility (PEER) at http://bit.ly/2waWtUO. ▲

Senators want complete advice from science committee

Three Republican members of the Senate Committee on Environment and Public Works have asked EPA Administrator Scott Pruitt to ensure that members of the Agency's Clean Air Scientific Advisory Committee (CASAC) meet all their statutory responsibilities when providing advice to the Agency on the National Ambient Air Quality Standards (NAAQS).

CASAC members are non-EPA experts appointed by the EPA administrator for a 3-year term and provide independent expert advice to the Agency. The primary responsibility of the CASAC is to "recommend to the Administrator any new national ambient air quality standards and revisions of existing criteria and standards as may be appropriate…."

Senators John Barrasso (WY), Shelley Moore Capito (WV), and Mike Rounds (SD), were specifically concerned that the CASAC has "never" provided the Agency with advice on the adverse social, economic, and energy effects of the NAAQS, one of the four areas listed by the Clean Air Act (CAA) for which the CASAC provides feedback.

In its report, the GAO noted that the CASAC responds only to "charge questions" put to it by the EPA.

The senators' letter followed EPA's notice (June 27, 2017, *FR*) requesting nominations for members of the CASAC and the Agency's Science Advisory Board.

The senators' letter is at http://bit.ly/2wmnXXT. ▲

Keep your hazardous waste containers closed and decrease violations

By Elizabeth Dickinson, JD, Legal Editor

Improper management of containers holding hazardous waste often lead the list of violations discovered at hazardous waste generator facilities. One violation that often tops the list is the failure to keep a container closed. One key in avoiding this violation is to know how the U.S. Environmental Protection Agency (EPA) interprets "closed."

When is a container closed?

The requirements for both large quantity generators (LQGs) and small quantity generators (SQGs) are clear: "A container holding hazardous waste must always be closed during accumulation, except when it is necessary to add or remove waste." But what does "closed" really mean? The EPA went into great detail in a 2011 guidance document that, although citations have recently changed, is still good guidance for what constitutes a closed container. The document gives many scenarios of when a container is closed, including these examples for typical containers, such as 55-gallon (gal) drums:

- All openings or lids are properly and securely affixed to the container.
- Funnels used to add or remove liquid wastes are screwed tightly to the bunghole and fitted with a gasket, if necessary, to seal the funnel lid firmly closed.
- Funnel lids for closed-head and closed-top drums are fitted with a locking mechanism.
- Funnels have a one-way valve that allows hazardous waste to enter the container but prohibits the waste or emissions from exiting the container.
- Open-head drums or open-top containers (e.g., where the entire lid is removable and typically secured with a ring and bolts or snap ring) of liquid hazardous waste are considered closed when the rings are clamped or bolted to the container.
- For solid and semisolid hazardous wastes, lids make complete contact with the rims all around the top of the container.

Exception. There is an exception to the closed-container requirement in the satellite accumulation area (SAA) regulations. The New Hazardous Waste Generator Improvements Rule, which went into effect at the federal level on May 30, 2017, specifies that SAA containers must always be closed during hazardous waste accumulation, *except*:

- When adding, removing, or consolidating waste; *or*
- When temporary container venting is necessary for proper operation of equipment or to prevent dangerous situations, such as a buildup of extreme pressure.

EPA's rationale for keeping containers closed is to minimize emissions of volatile wastes, to help protect ignitable or reactive wastes from sources of ignition or reaction, to help prevent spills, and to reduce the potential for mixing of incompatible wastes and direct contact of facility personnel with waste. ▲

◀ From The States

Connecticut releases draft for updated energy strategy

The Connecticut Department of Energy and Environmental Protection (DEEP) recently released an updated energy strategy for the state. According to DEEP, the *2017 Draft Connecticut Comprehensive Energy Strategy* (CES) is intended to advance the state goal to create a cheaper, cleaner, more reliable energy future for state residents and businesses.

The draft 2017 CES focuses on the following themes to achieve the state's goals:

- Decreasing carbon emissions to advance the state's climate goals;
- Increasing supplies of renewable energy, including expanding the state's renewable portfolio standard to 30 percent Class I renewable by 2030, prioritizing low-cost grid-scale renewable energy procurements, and a transition to more transparent, cost-certain tariffs for behind-the-meter renewables;
- Expanding energy-efficiency initiatives, including procurement of efficiency as a resource and ensuring equitable efficiency investment across fuel types, and reducing the energy affordability gap in low-income households;
- Supporting the modernization of the electric grid; *and*
- Accelerating strategic electrification of transportation services through implementing the zero-emission vehicle memorandum of understanding (MOU) and developing an electric vehicle road map.

The draft updates the state's first CES, which was released in 2013. DEEP is accepting comments on the draft 2017 CES through September 25, 2017. DEEP has scheduled a series of meetings for review and comment on the draft though August and September.

Find the draft 2017 CES, executive summary, planning schedule, and more information at http://bit.ly/2tWxash. ▲

Illinois: Cleaning up air regs

The Illinois EPA recently published its July 2017 Regulatory Agenda, which indicates that the agency is undergoing some housekeeping with respect to its air quality requirements. The planned regulatory actions seek to streamline the air permitting process and remove unnecessary regulations.

Illinois EPA is seeking to simplify the public notice process by planning to introduce regulatory amendments that will allow the publication of such notices for certain air permits electronically, on the agency's website, rather than publishing notices in local newspapers.

The agency is also planning to repeal several regulations that, for whatever reason, no longer serve a valid regulatory purpose, including:

- 35 IAC 264 regarding the interpretation of regulations for grain handling and grain drying, which the agency has been deemed no longer necessary;
- 35 IAC 266 regarding the method for calculating process weight rate to determine compliance with particulate matter standards, which is outdated;
- 35 IAC 273 regarding the sale of nitrogen oxides (NOx) allowances generated under the state's NOx Trading Program. The program has been sunsetted;
- 35 IAC 274 regarding the distribution of NOx allowances under the Clean Air Interstate Rule (CAIR). However, CAIR has been replaced by the Cross-State Air Pollution Rule (CSAPR); *and*
- 35 IAC 278 regarding procedures for measuring transfer efficiency from certain surface coating operations, which are now outdated.

For more information, see the July 2017 Regulatory Agenda at http://bit.ly/2udtZHV. ▲

Kentucky: Ozone attainment

The EPA recently redesignated the Kentucky portion of the Cincinnati, Ohio-Kentucky-Indiana nonattainment area to attainment for the 2008 Ozone National Ambient Air Quality Standards (NAAQS). As a result of this action, the entire state of Kentucky is in attainment of the 2008 Ozone NAAQS.

The Kentucky portion of the Cincinnati nonattainment area is composed of Boone, Campbell, and Kenton Counties. The redesignation of the Kentucky Counties also means that the entire Cincinnati area is in attainment, as the Ohio and Indiana portions were redesignated to attainment in December 2016 and April 2017, respectively.

The redesignation from nonattainment to attainment significantly impacts the permitting requirements for new or modified major sources in the area.

For more information, contact EPA Region 4's Richard Wong at wong.richard@epa.gov or by phone at 404-562-8726. ▲

Maryland addresses stationary engines

The Maryland Department of Environment (MDE) recently proposed regulatory amendments that will make the state regulations consistent with federal standards for stationary internal combustion engines (ICEs) and reciprocating internal combustion engines (RICEs). The proposed amendments impact the state exemptions from permits to construct and state regulations for distributed generation.

The MDE is proposing to amend the current permit to construct exemption for stationary ICEs to apply only to emergency engines. An additional exemption is being proposed for RICEs or stationary ICEs that are the primary source of power for agricultural or industrial equipment with an output less than 500 brake horsepower.

The MDE is also proposing to amend the applicability and definitions of Code of Maryland Regulations (COMAR) 26.11.36, which regulates distributed generation, to make it clear that the distributed generation requirements apply to any RICE or stationary ICE subject to:

- 40 CFR 63, Subpart ZZZZ—National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines
- 40 CFR 60, Subpart IIII—Standards of Performance for Stationary Compression Ignition Internal Combustion Engines

- 40 CFR 60, Subpart JJJJ—Standards of Performance for Stationary Spark Ignition Internal Combustion Engines

For more information, contact Randy Mosier of the MDE at randy.mosier@maryland.gov. ▲

EPA delays effective date of Massachusetts MS4 GP

The EPA has postponed the July 1, 2017, effective date of its 2016 General Permit (GP) for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4s) in Massachusetts for 1 year to July 1, 2018, pending judicial review of the permit.

After EPA Region 1 issued the Massachusetts GP on April 4, 2016, several parties filed petitions for review of the permit in the U.S. Court of Appeals for the D.C. Circuit. In light of this litigation, the parties requested that the EPA postpone the effective date of the GP for several reasons, including sparing eligible MS4s in Massachusetts from being subject to permit terms and conditions that could change as a result of the court case. The EPA has agreed with this reasoning.

The 2016 GP allows eligible MS4s in Massachusetts to obtain National Pollutant Discharge Elimination System (NPDES) permit coverage for their stormwater discharges and would replace the 2003 GP. This permit change will affect approximately 260 towns and other municipalities, including a number of state- or federally owned colleges, Veterans Administration hospitals, prisons, and military bases.

For more information, contact EPA Region 1's Thelma Murphy at murphy.thelma@epa.gov. ▲

Montana to reissue SGGP

The Montana Department of Environmental Quality (DEQ) is proposing to reissue the Montana Pollutant Discharge Elimination System (MPDES) *General Permit for Sand and Gravel Operations* (SGGP) and has published a draft permit for public comment.

Significant changes from the existing 2012 SGGP include:

- The new requirement that permit applicants, before submitting a Notice of Intent (NOI), must determine whether the proposed discharge will be located within designated sage grouse habitat, and if necessary, consult with the Montana Sage Grouse Habitat Conservation Program;
- The new requirement that discharges to impaired water bodies must be consistent with approved Total Maximum Daily Loads (TMDLs) and assigned wasteload allocations (WLAs);
- The removal of flow as an effluent limit parameter; *and*
- The new requirement that permittees must maintain a daily visual observation log to monitor for the presence of hydrocarbons and any noticeable physical changes to receiving waters.

The draft permit can be found at http://bit.ly/2udGH9n.

Nevada to revise pesticide application regs

The Nevada Department of Agriculture (NDA) has proposed several amendments to its rules regulating pesticide application, which include revisions to the license fields and categories available for pest control personnel and primary principal commercial applicators.

Specifically, the new regulations would create a new license field for consultants, which would apply to any person wishing to solicit sales of pesticides or pest control services, provide technical information on pesticides or pest control, provide pest identification, or make recommendations for pesticides or other products used for pest control. Two new license categories for the consultant field would also be created, namely "Agricultural" and "Urban."

The rule revisions would also eliminate the "Fungi Pests" license category for aerial and agricultural ground pest control personnel and primary principal commercial applicators. Instead, that category would be merged with the "Insect Pests" category to create the new category of "Agricultural Plant Pests."

Finally, the amendments would create the new license category of "Soil Fumigation" for both pest control personnel and primary principal commercial applicators. This category would apply to the use of various substances, including fumigants, to control pests present in soil at the time of treatment, such as plant-parasitic nematodes, soil-borne pathogens, weeds, and insects.

For further information, contact NDA's Pest Control Division at 775-353-3712. ▲

Washington revises public participation grant process

The Washington Department of Ecology (WDOE) has issued a final rule amending the regulations that set forth eligibility criteria and funding requirements for grant projects approved by the WDOE pursuant to the Model Toxics Control Act (Act). The purpose of the grants is to raise sufficient funds to clean up all hazardous waste sites and to facilitate public participation in the investigation and remedying of a release or threatened release of a hazardous substance.

The final regulations revise who is eligible to receive a grant, application evaluation criteria, definitions, and grant administration procedures. The WDOE provides grants up to $60,000 per year to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest groups. Priority is given to applicants that meet any of the following criteria:

- Facilitate public participation in hazardous substance release sites.
- Facilitate public participation in highly impacted or low-income communities.
- Have not received funding in the past 2 years.

"Low income" is defined as a household with income less than or equal to twice the federal poverty level, and "low-income community" is any community where the proportion of an area's low-income population is greater than the comparison areas (e.g., city, county, state).

The WDOE will provide public notice of the application period, deadlines, and provide application guidelines. Applications will be accepted only through the Department's online application system and must include all required elements as outlined in the guidelines.

The effective date of the revised regulations was July 29, 2017. ▲

Pitfalls of Noncompliance

You can avoid violations like these by knowing how to comply with federal and state environmental laws.

Lead paint troubles

Pike International, LLC, and affiliates
Connecticut *Region 1*

RRP and TSCA violations: According to the EPA, Pike International, LLC, which manages and owns over 800 residential units in New Haven, was in violation of Toxic Substances Control Act's (TSCA) Residential Real Estate Notification and Disclosure Rule and the Renovation, Repair and Painting (RRP) Rule. The EPA reviewed Pike's records and discovered numerous instances in which the companies had not complied with either the Disclosure Rule or with RRP practices. The EPA alleged that the company failed to provide tenants with an EPA-approved lead-hazard information pamphlet, failed to disclose the presence of known lead-based paint and/or records or reports concerning lead-based paint to tenants, failed to include a Lead Warning Statement in or attached to lease contracts, failed to obtain initial firm certification under the RRP Rule before performing renovation work on pre-1978 housing, failed to assign a certified renovator to renovation work being performed on pre-1978 housing, and failed to maintain records demonstrating compliance with RRP Rule requirements.

Penalty: $12,139 fine. In addition, the company will spend at least $109,246 on a lead abatement project at three of its properties.

Waste problems

Caribbean All Metal Recyclers Corp.
Puerto Rico *Region 2*

RCRA violations: According to the EPA, Caribbean All Metal Recyclers, a commercial recycling business that collects and stores spent lead acid batteries (SLABs) before delivering them to the Port of San Juan, Puerto Rico, for immediate export, was found in violation of Resource Conservation and Recovery Act (RCRA) regulations. EPA inspections revealed that, in May and June 2015, Caribbean All Metal Recyclers unlawfully exported SLABs from the Port of San Juan to South Korea and also to China.

Penalty: $16,000 fine.

Air violations

Johnson Controls Battery Group, Inc.
Ohio *Region 5*

CAA, NESHAP violations: The EPA alleged that the Johnson Controls Battery Group, Inc., was in violation of Clean Air Act (CAA) violations. The company exceeded particulate matter (PM) and lead emissions limits and failed to operate a pollution control device as required by its operating permit. Johnson Controls Battery Group failed to properly record operating parameters for a pollution control device as required by the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Lead Acid Battery Manufacturing Area Sources.

Penalty: $20,000 fine. In addition, the company will spend $26,000 on a supplemental environmental project (SEP). Under the SEP, the company will install and operate a baghouse monitoring and historical data recording system for immediate alarm and notification in the event that differential pressure falls outside of operating ranges.

Risk management violations

City of Bloomington Water Treatment Plant (WTP)
Illinois *Region 5*

CAA, RMP violations: In June 2016, the EPA conducted a compliance inspection of the City of Bloomington WTP and found that the WTP was in violation of Risk Management Program (RMP) regulations. The WTP failed to maintain supporting documents for an alternate release, failed to compile design information of the ventilation system in the chlorine room, failed to address hazards and stationary sources in the process hazard analysis, and failed to prepare a training record for each employee that received refresher training on the operating procedures.

Penalty: $2,400 fine.

Pesticide violations

Suterra, LLC
Oregon *Region 10*

FIFRA violations: Suterra, a pesticide manufacturer, was in violation of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) regulations when it imported three different pesticide products: Z-9-hexadecenal pheromone, Z-11-hexadecenal pheromone, and Z-13-hexadecenal pheromone. At the time of distribution, the products were misbranded. The products lacked key contents, including directions for use, hazard and precautionary statements, ingredient statements, and net contents.

Penalty: $9,900 fine.

Failure to report releases

Vanguard EMS, Inc.
Oregon *Region 10*

EPCRA violations: The EPA alleged that Vanguard EMS was in violation of Emergency Planning and Community Right-to-Know Act (EPCRA) regulations. The company failed to report its releases of lead for 2 years. The public was deprived of timely and accurate data.

Penalty: $21,900 fine.

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