

The RT Review

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NEW REPORT SHOWS PROGRESS REDUCING AIR POLLUTION IN EASTERN UNITED STATES

2004 decreases in emissions of ozone forming nitrogen oxides (NOx) signal that ozone air quality throughout the eastern US is improving. According to a new report released in mid-August, "Evaluating Ozone Control Programs in the Eastern United States: Focus on the NOx Budget Trading Program, 2004", EPA's rule, known as the "NOx SIP Call," has yielded reductions to improve air quality for more than 100 million people. The NOx SIP Call directs 21 eastern states and the District of Columbia to reduce emissions of NOx during the summer months. All states subject to this rule chose to comply by participating in the EPA-administered NOx Budget Trading Program.

"The NOx Budget Trading Program is yet another example of how market-based trading programs are significantly reducing emissions of air pollutants," said EPA Administrator Stephen L. Johnson. The NOx SIP Call and our new clean Air Interstate Rule ensure that Americans continue to breathe cleaner air by dramatically reducing air pollution that moves across state boundaries."

The NOx Budget Trading Program was modeled after the Ozone Transport Commission's NOx Budget Program and EPA's Acid Rain Program to deliver important emissions reductions efficiently and effectively. Under this program, the report shows that power industry summertime NOx emissions have dropped significantly in 2004. Total ozone season NOx emissions from power plants and other large combustion sources were 30 percent lower than in 2003, and 50 percent lower than in 2000. The NOx reductions, when combined with other control programs have reduced ozone season NOx emissions from sources in 19 eastern states and the District of Columbia, by 70 percent below 1990 levels.

Continued NOx emission reductions are anticipated under the NOx SIP call and the Clean Air Interstate rule, or CAIR. CAIR, issued March 10, 2005, will permanently cap power plant emissions of SO2 and NOx in 28 eastern states and the District of Columbia. In 2015, CAIR, the NOx SIP Call and other programs in the East will reduce ozone season NOx emissions by about 50 percent and annual NOx emissions by about 60 percent from 2003 levels.

The new report, "Evaluating Ozone Control Programs in the Eastern United States: Focus on the NOx Budget Trading Program, 2004" is available at: <http://www.epa.gov/airtrends>. Information and background on the NOx SIP Call is available at <http://www.epa.gov/airmarkets/fednox>.

(EPA Press Release - (8/18/05))

NEW GENERATION OF BROWNFIELD SITES RECEIVING TOP ATTENTION

The next generation of Brownfield sites are already turning out to be all that planners and those concerned about the environment wanted to see happen as the nation accommodates population growth. In Pennsylvania and New Jersey, legislatures and governors, several years ago, created both economic and permit expediting incentives which are now coming to fruition. Now, projects are even being put forth which can include transportation infrastructure improvements drawing political public support, a very positive answer to the "NIMBY" syndrome, which has delayed many projects.

Two example projects currently being proposed by Develcom, a Bellmawr, New Jersey, redevelopment organization, include key infrastructure and transportation improvements in congested areas - in suburban Willow Grove, Pennsylvania, and in Bellmawr, New Jersey. Bellmawr, located at the confluence of New Jersey's North-South freeway (I-76) and I-295 has the highest volume freeway "intersection" in the southern part of New Jersey.

The Willow Grove project includes redevelopment of a Willow Grove "main street" area, and movement and redevelopment of a Home Depot site. A new "connector road" has been incorporated into the plan, which will provide permanent improvement to traffic conditions in the area, including better access to the Willow Grove interchange of the Pennsylvania Turnpike. The Willow Grove project will clearly make "highest and best use of the land" through construction of parking garages immediately adjacent to new retail space, and, the traffic improvements will improve existing infrastructure, not simply make use of it.

The Willow Grove site has a number of environmental issues to deal with, which are being evaluated by RT Environmental Services as part of redevelopment plans.

The Bellmawr project involves a larger site with three former landfills, greater than 100 acres in size. Although clay materials underlay the landfill sites, the landfills were not closed in accordance with modern environmental regulations. A Memorandum of Agreement has already been entered into between Develcom and the New Jersey Department of Environmental Protection, to investigate this site and to make sure that any remaining areas of environmental concern associated with the landfill are addressed as part of the redevelopment process.

Redevelopment of the Bellmawr site poses a number of challenges, including that a connector ramp between the North-South freeway and I-295 is proposed to be installed in the near future across the site as part of the New Jersey Department of Transportation's "Missing Moves" project. Bellmawr's long-time mayor, Joseph Petrucci, has called for proper closure of the landfill as part of any aspect of site redevelopment. Recently, New Jersey Transportation Commissioner Jack Latierre, and Develcom principal, Charles Gallub, agreed that, by working together:

- Proper closure of the landfill can be achieved.
- Integrated drainage solutions can be implemented providing state of the art stormwater controls, and protecting nearby Big Timber Creek.
- The congested areas of Bellmawr near the Creek Road exits can be improved, by construction of by-pass roads, improving existing traffic backups.

The Camden Courier Post also recently featured the project in a headline story, indicating that the site may be South Jersey's first "transit village." This possibility depends on the selection of PATCO High Speed Line expansion routes as two of the planned routes, would go past the site. Develcom has offered free space for a new rail station, should either of the routes which would traverse the site near the North-South freeway, be selected.

Although a "transit village" is a new concept to South Jersey, transit villages have received considerable attention in Pennsylvania and North Jersey. Located mostly at commuter rail stops, transit villages typically have a mix of commercial and residential uses, and frequently residents to go to their jobs without the use of cars. Transit villages are considered a key element in helping to revitalize America's cities and near suburban areas. Implementation of a transit village approach at the Bellmawr site has been well received initially, and improved connections to New Jersey Turnpike Exit 3 are

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**NEW GENERATION OF BROWNFIELD SITES
RECEIVING TOP ATTENTION (continued from page 1)**

also under study.

Under a Remedial Investigation Work Plan, RT Environmental Services is currently completing an in depth environmental study of the site, which is clearly unique. Attention is being given to the Big Timber Creek estuary, which is likely to see water quality improvements as a result of the project. Water quality testing is currently underway, and an environmental objective associated with the site redevelopment is to carefully assess current groundwater and surface water quality to assure that future improvements, which are expected to include capping of much of the site are properly designed and implemented. Already, a major retailer has expressed interest in a portion of the site, and another, focused on residential development has expressed strong interest as well. Early site inspection and historical data review results suggest that New Jersey DEP's long-standing Coastal Area Facilities Review Act and Wetlands Protection Program historically protected the Big Timber Creek estuary from early sprawl development impacts, as the area of active wetlands remains very large, compared nearly all other New Jersey or Pennsylvania estuaries. It is anticipated that with proper closure of the three landfills, further water quality improvements will occur.

As the metropolitan areas in the northeastern part of the U.S. rediscover their "river historical roots," proper development in estuary areas, while addressing past environmental impacts from filling activities, enhances overall environmental protection.

RT is also working on another Big Timber Creek estuary site in Westville, where, the Pennsylvania Railroad established a power plant

in the early part of the 20th Century to feed power to an electric rail line serving Woodbury, Millville, and Atlantic City. The power plant had asbestos issues, but, the plant was properly abated and demolished when Conrail assets were purchased by CSX and Norfolk Southern railroads. Redevelopment of this site, would involve a number of remediation aspects as well. Similar to portions of the Bellmawr site, the Westville site would also be considered for residential redevelopment, making maximum use of existing infrastructure, and construction of mid and/or high-rise buildings. Yet another Brownfields riverfront site is close to approval in the Vineland/Millville area.

RT appreciates the trust our clients place in us as better and better Brownfields site redevelopment projects are conceived and move to fruition. Both key states we operate in, Pennsylvania and New Jersey, have taken important steps in the last year to make sure that Brownfield projects receive proper attention; Mr. Kenneth Kloo is effectively managing brownfields efforts at the New Jersey Department of Environmental Protection, and the Land Recycling Program in Pennsylvania has been given a new leader, Mr. Eugene DePasquale. These important leadership efforts in both states means that Brownfields site projects will receive the attention they deserve, at the highest level of each state's Department of Environmental Protection.

Should you need any further information on Brownfields initiatives, contact Gary Brown in our King of Prussia office, or Justin Lauterbach in our New Jersey Office. As always, we appreciate the opportunity to be of service.

**PCB REMEDIATION WASTE REGULATORY
CHANGES UNDER CONSIDERATION**

Congress directed the Office of Management and Budget (OMB) to prepare an annual Report to Congress on the Costs and Benefits of Federal Regulations. On February 20, 2004 (69 Fed. Reg. 7987), OMB made the report "2004 Draft Report to Congress on the Costs and Benefits of Federal Regulations" publicly available and requested public nominations of regulatory reforms. One of the nominations that OMB received was from the Utilities Solid Waste Advisory Group (USWAG). (See, USWAG letter dated May 20, 2004, to Ms. Lorraine Hunt, OMB, subject: Draft Report to Congress on the Costs and Benefits of Federal Regulation; Notice and Request for Comments.) It contends that in two different sections of the PCB regulations at 40 CFR §761.61, EPA treats identical PCB remediation waste at concentrations less than 50 parts per million (ppm) differently. (See, Comment 1, in USWAG May 20, 2004, letter of OMB.) USWAG further contends that the regulations at 40 CFR 761.61 and 40 CFR 761.50(b)(3)(ii) state that all PCB remediation waste containing less than 50 ppm PCBs can be disposed of based on its as-found concentration in a municipal solid waste landfill. EPA is reviewing the regulations to determine whether they should be clarified and streamlined to minimize any potential confusion and if so, how.

The regulations and policy being reviewed include: 40 CFR 761.61; 40 CFR 761 Subpart G (PCB Spill Cleanup Policy); and 40 CFR 761.50(b)(3)(ii).

EPA is considering whether to reorganize the cleanup regulations, for instance, by integrating the PCB Spill Cleanup Policy into the PCB remediation regulations, separating the disposal provisions from the cleanup provisions, providing clarification on the applicability of the cleanup regulations, and identifying a sub-set of PCB self-implementing cleanups and disposals that will no longer be subject to EPA approval. In general, EPA has requested comments from stakeholders on the following issues:

- Whether the regulations pertaining to PCB remediation waste need to be clarified and if so, how can EPA clarify them?
- How should the regulations be organized to better clarify the disposal requirements for cleanups under 40 CFR 761.61(a) and the disposal of PCB remediation waste under 40 CFR 761.61(b)?
- Are there other regulations other than those discussed above that should be changed to improve the regulations that relate to PCB remediation waste?
- Can the regulations be modified or organized in other ways that would make them easier to use and more transparent?
- Whether there are self-implementing cleanups and disposals that need not be subject to EPA review? If so, what are the characteristics of these sites?

(USEPA - 7/21/05)

EPA TESTS QUICK DEMOLITION METHOD LEAVING ASBESTOS IN PLACE

The closed U.S. Army base Fort Chaffee has been identified by the U.S. Environmental Protection Agency as the site for the testing of a new Alternative Asbestos Control Method, which would lower the restrictions on demolition of buildings that contain asbestos. Not all the asbestos would have to be removed before demolition under the new method.

The Alternative Asbestos Control Method removes only the most friable, or brittle, materials containing asbestos before demolition, but leaves some asbestos containing materials, such as wall systems, in place.

The most friable asbestos-containing materials are removed under the requirements of the Asbestos National Emissions Standards for Hazardous Air Pollutants (NESHAP) and are disposed of as asbestos-containing wastes.

Once the most friable materials are safely removed, the demolition proceeds using amended water suppression before, during, and after demolition, in order "to trap

asbestos fibers and minimize their potential release to the air," the EPA said.

Wastewater generated during the demolition is collected, and all contaminated materials are disposed as asbestos-containing waste. A two-inch layer of soil is removed to ensure that no residual soil contamination remains at the site.

The new method "may serve as an alternative to the current NESHAP for demolition of buildings containing asbestos," the EPA said.

The agency says the new method may "accelerate the demolition of many abandoned buildings around the nation that remain standing, currently presenting a variety of serious risks to nearby residents."

"Using the Alternative Asbestos Control Method, these former blighted areas would then be available redevelopment, creating jobs and tax revenues for communities," said the agency.

The demonstration will include environmental monitoring, and will allow for a

representative of the city, Arkansas Health Department, or the EPA to stop work if conditions so merit, the federal agency said.

The site is in a remote, secure location, to assure no public exposure, and has several identical structures with asbestos-containing building materials to facilitate a side-by-side comparison of the Alternative Asbestos Control Demolition method vs. the current NESHAP method.

The buildings have a clearance of approximately 1,000 feet from the nearest occupied site on the eastern side, and more than that in all other directions.

The project will be carried out as a joint effort of the Fort Chaffee Redevelopment Authority, the Arkansas Department of Environmental Quality, the U.S. Department of Energy, and the EPA.

"Public involvement of local residents will be solicited at various stages throughout the project, and will be an integral part of the project plan," the EPA said.

(Environment News Service – 8/8/05)

RT STAFF AND PROJECT NEWS

As of mid fall more Brownfields site work was continuing to dominate RT's project agenda. Work at an additional service station/petroleum release site in Cumberland County was underway, to be managed by Justin Lauterbach, General Manager of RT's New Jersey Office. A new Act 2 site, with impacted groundwater from former wood preserving operations was also underway in Lower Bucks County, PA, being managed by Mark Eschbacher, P.G.

Gary Brown obtained his NJDEP Cleanup Star Certification, which is being put to quick use for a Tech Rules Preliminary Assessment of a 90 acre cranberry bog site in Burlington County. Dave Carlson, lead hydrogeologist in RT's New Jersey Office assumed responsibility for project management of a Brownfield site investigation of a former petroleum research site, near the New Jersey Turnpike in the Central part of New Jersey. A large number of areas of concern are being investigated by former owners, with minor areas of concern being investigated by the purchaser, RT's client.

Rob Carey and Thomas Donovan are tackling a remedial project in Winslow, where a significant amount of debris and waste was found to be present at a former landscaping company site scheduled for residential development. Larry Bily and Benjamin Shaw continue to work at the Budd Commerce Center Site in Philadelphia, and the American Metro Brownfields redevelopment site, near Trenton, NJ. Also assisting on both projects, and implementing state of the art PCB well and floor sampling techniques is Scott Hazelton.

Chris Ward and Shane Dorward are implementing a North Penn Area Brownfields site investigation involving former underground storage tank area release and a large concrete material waste pile, prior to planned purchase and redevelopment.

A number of new employees have joined RT to meet a strong client demand, at our many project sites.

New employees include:

- Gina Testa, who has a BS Degree in Biology from Philadelphia University. Gina has previous regulatory experience, as well as air permitting and environmental site assessment experience.

- Teresa Andres, joined RT with a Masters Degree from Rowan University. Teresa is already hard at work on Phase I Environmental Site Assessments, including a preliminary assessment and soil sampling at a former cranberry bog site in Evesham Township, NJ.

- Robert McKenzie, joins RT with 17 years of experience in asbestos testing and abatement oversight. Bob has an Associates Degree from Miami Dade Community College.

- Dave Carlson, joins RT's New Jersey Office as lead Hydrogeologist. Mr. Carlson is an NJDEP closure subsurface evaluator, and is a Professional Geologist in Pennsylvania. Dave has a Bachelor of Arts Degree in Geology from Franklin and Marshall College.

- Ben Shaw, joins RT as an Environmental Engineer working in Walter Hungarter's King of Prussia Engineering Group. Ben is working on preparing Contingency Plans for asphalt plants, and is completing sampling activities at TK the Budd remediation/Brownfields Site, in Philadelphia. Ben is a Stevens Institute of Technology Graduate.

- Shane Dorward, joins RT in Rob Carey's Remediation Group in our King of Prussia Headquarters. Shane has a Bachelor of Science Degree in Environmental Studies from Temple University, where he graduated with honors. Shane is currently completing a number of soil and groundwater investigation projects at Brownfield sites, as well completing Phase I Environmental Site Assessment work.

- John McCabe joined RT's NJ Office as environmental engineer, reporting to Joe Lang. John is a Penn State Graduate with a degree in Environmental Systems Engineering.

RT is very proud of our new staff, and we look forward to the opportunity to continue to be of service to our clients who continue to award us many new and exciting projects.

PA UPDATES

AMOUNT OF WASTE DEPOSITED IN PA LANDFILLS DOWN FOR THIRD CONSECUTIVE YEAR

The Department of Environmental Protection reported that the total amount of waste disposed of in Pennsylvania landfills dropped for the third consecutive year, decreasing from 25.39 million tons in 2003 to 25.18 million tons last year.

(DEP Update – 7/20/05)

PENNSYLVANIA GIVES \$5.5 MILLION FOR OPEN SPACE, RECREATION

Pennsylvania Governor Edward Rendell announced \$5.4 million in grants to undertake 47 local and regional greenways, open space, community park and recreation projects in 30 counties across Pennsylvania.

“Through our partnership grant program, I have focused on giving Pennsylvania communities the helping hand they need to become more vibrant places to live, work and plan,” Governor Rendell said.

“We have a number of different grants that we provide to allow urban and rural communities to develop their streetscapes, promote outdoor attractions and develop plans that will ultimately create a more efficient and pleasurable use of green space.”

Statewide, the grants will fund a variety of open space acquisition, greenways and community park and recreation projects, including acquisition of 18 tracts and the protection of 1,291 acres.

The largest grant of \$500,000 went to Willistown Township in Chester County for acquisition of approximately 10 acres adjacent to West Chester Pike and Delchester Road for preservation of open space and natural areas for the Okehocking Preserve.

An Urban Audubon Center in Philadelphia will be explored and development plans for six parks in Williamsport will be funded.

The Community Conservation Partnership Program grants are funded through the state Department of Conservation and Natural Resources by Growing Greener, Keystone '93 and federal funds.

For more information and a complete list of the grants by count, visit www.dcnr.state.pa.us, and select “grants.”

(Environment News Service – 8/29/05)

PENNSYLVANIA FACILITIES MUST MONITOR DISCHARGES TO CHESAPEAKE

Pennsylvania is imposing new monitoring requirements for 190 sewage and industrial discharges as part of the state's Chesapeake Bay Tributary Strategy, Environmental Protection Secretary Kathleen McGinty announced.

The Chesapeake Bay Tributary Strategy is a wide-ranging water quality initiative designed to clean up the state's rivers and streams, enhance the health of families and preserve the rural character and farming economy of Pennsylvania.

The watersheds of the Susquehanna and Potomac rivers in Pennsylvania suffer from nutrient and sediment pollution. The tributary

strategy is expected to improve water quality in the 13 sub-basins that make up these two watersheds.

“This is an important step toward restoring impaired waters in Pennsylvania and the Chesapeake Bay – requiring 190 significant sewage and industrial discharges to reduce their nutrient loads,” McGinty said. “Monitoring nutrient loads is critical to documenting our progress in the Bay restoration effort and helps to identify steps each discharger may need to undertake to achieve any future nutrient load reductions.

As part of the Chesapeake 2000 Agreement among Bay states and partners in the restoration effort, Pennsylvania agreed to develop a tributary strategy to reduce total nitrogen and phosphorus to the Bay by about 40 percent from both point and nonpoint sources by 2010.

As part of the point source part of Pennsylvania's strategy, DEP is amending National Pollutant Discharge Elimination System (NPDES) permits for 190 facilities identified to be significant contributors of nutrients. Permits will be amended to require the monitoring and reporting of total nitrogen and phosphorus. This is the first component of the point source implementation strategy.

Point source discharges contribute about 11 percent of the total nitrogen and about 18 percent of the total phosphorus to the Chesapeake Bay from Pennsylvania waters based on 2002 estimates.

Full implementation of the point source control program will achieve an estimated reduction of 3.1 million pounds of nitrogen and 745,000 pounds of phosphorus per year.

(Environment News Service – 8/8/05)

EPA ADMINISTRATOR LAUDS INNOVATIVE PROGRAM IN PHILADELPHIA

EPA Administrator Stephen L. Johnson cited a Philadelphia initiative as a national model for reclaiming and managing vacant urban lots.

In a city tour of formerly abandoned sites, Administrator Johnson saw how sites have been converted from rubble to green spaces lush with grass and shade trees. Although the spaces are often small, by reclaiming many sites in the area of North Philadelphia, the abandoned lots have been converted into green corridors.

“This community-driven partnership has turned urban blight into urban pride,” said Administrator Johnson. “The environmental and economic results achieved here in Philadelphia are a model for communities across the country and will be showcased by the White House at the Conference on Cooperative Conservation in St. Louis this month.”

The tour was hosted by J. Blaine Bonham, Jr., executive vice president of the Pennsylvania Horticultural Society (PHS). Guest included representatives from the city's Neighborhood Transformation Initiative and the Philadelphia Waste Department.

The vacant land program is run by the Pennsylvania Horticultural Society's

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Philadelphia Green program and is a part of the horticultural Society's “Green City Strategy.”

One of the key advantages of investments in greening and in vacant land management is the increase in property values by as much as 30 percent. This fact was reported in “The Determinants of Neighborhood Transformation in Philadelphia – Identification and Analysis,” a study undertaken by the Wharton School of the University of Pennsylvania's Real Estate Department with support from the William Penn Foundation to look at revitalization strategies and their impact on neighborhoods.

The program started as a greening program to renew small spaces in neighborhoods, one step-at-a-time. Now PHS has added a storm water management component, turning spaces that were neighborhood eyesores into places that now beautify the neighborhood, also providing shade and environmental benefits. To learn more about this program see

www.pennsylvaniahorticulturalsociety.org/phlgr/en/index.html.

(EPA News Release – 8/2/05)

POROUS PARKING LOTS EASE STORM WATER DAMAGE IN PENNSYLVANIA

A new parking area paved with a permeable covering has replaced an impervious surface on a municipal lot where oil and other residue from vehicles would accumulate and then wash into Baker Creek when it rained or snow melted.

Kelly Burch, Northwest regional director with the Pennsylvania Department of Environmental Protection, visited the newly surfaced municipal parking lot in North East Borough last week. The project was financed through a \$150,000 Growing Greener grant from the state of Pennsylvania.

“Paved surfaces like parking lots interrupt the natural recharging of groundwater,” Burch said. “That can lead to contamination, erosion and the muddying of streams when we have heavy rain-falls that cause a lot of runoff. This project will significantly cut back on urban-related pollution entering Baker Creek, which runs alongside the parking lot.”

Growing Greener has helped to develop five porous pavement parking lots in Erie County, providing examples for future pavement projects with the goal of reducing storm water runoff and eliminating or reducing the need for stormwater detention.

The Baker Creek Watershed Association received the grant to create 320 feet of new streamside buffer, nearly 8,000 square feet of green space, 340 square yards of infiltration gallery and 1,350 square yards of pervious parking service in the center of the downtown.

In addition, roof runoff from surrounding business building was captured and redirected into

PA UPDATES (Continued)

infiltration galleys to eliminate the surface flushing effect.

In addition to the permeable surface that will allow precipitation to be filtered as it percolates into the ground, native plants and a bioretention area are being installed to further improve the ecological functioning of the area.

Other permeable pavement lots in Erie County are at the Asbury Woods Trail head, the Erie County Conservation District, Unitarian Church and Bayfront Center for Maritime Studies.

(*Environment News Service -7/19/05*)

PENNSYLVANIA DENTISTS AGREE TO RID THEIR OFFICES OF MERCURY

Pennsylvania dentists and the state Department of Environmental Protection (DEP) have launched a new partnership to review voluntary best management practices for mercury-bearing amalgam wastes and collect obsolete supplies of elemental mercury to prevent the material from entering the environment.

"This marks a major accomplishment in efforts to ensure a cleaner, healthier environment in Pennsylvania," DEP Secretary Kathleen McGinty said.

McGinty signed a Memorandum of Understanding with Pennsylvania Dental Association Chief Executive Officer Camille Kostelac-Cherry to implement the two-pronged approach to reduce mercury discharges from dental offices.

Together, the agencies will collect stored elemental mercury from dental offices statewide for recycling and conduct a review of the voluntary use of best-management practices for reducing amalgam wastes in dental offices.

The program is being launched as a three-month trial in 16 eastern Pennsylvania counties before being implemented on a statewide basis.

Dentistry switched from elemental mercury to amalgam capsules about 25 years ago. Previously, dentists mixed the amalgam for fillings using elemental mercury. As a result, many dental offices still have containers of excess elemental mercury stored in their offices.

Through surveys conducted in 2001 and 2004, the state has identified approximately 1,062 pounds of elemental mercury ready for collection from dental offices across the state.

Although use of elemental mercury has become obsolete, mercury compounds still are commonly used in dental practices.

Mercury makes up approximately 50 percent of the amalgam used in dental offices for fillings. Amalgam particles are a potential source of mercury not only in wastewater but also in ground water, streams and rivers. Pennsylvania has approximately 8,000 dentists discharging to about 920 publicly owned water treatment works.

The review of amalgam waste best-management practices will allow DEP to ascertain the number and percentage of dental facilities voluntarily implementing best management practices. The data will be used as a basis to determine whether future regulatory action is warranted to reduce the amount of mercury entering the environment through wastewater discharges.

Currently, there is little hard data in Pennsylvania to determine the amount of mercury being discharged from dental offices, and the results of national studies are so variable as to be inconclusive. One study found that 60 percent of mercury in water treatment works comes from dental practices, while a study conducted by the

U.S. Navy determined that only 0.006 percent of mercury leaches out of dental amalgam particulate into the wastewater stream.

In January 2004, DEP began its Mercury Reduction Initiative, a comprehensive strategy to reduce mercury in the environment. Last November, DEP launches the Pennsylvania Mercury Automobile Switch Removal Program. This voluntary program is expected to recycle 600 pounds of mercury over the next two years from vehicles that are no longer useable.

(*Environment News Service -7/22/05*)

NEW TOXICS MANAGEMENT STRATEGY PROPOSED IN PA

On April 16, the Pennsylvania Department of Environmental Protection ("PADEP") published its revised Toxics Management Strategy for public comment. The Toxics Management Strategy describes how PADEP will develop effluent limitations for toxic pollutants in National Pollutant Discharge Elimination System ("NPDES") permits and how permit writers should develop appropriate permit conditions for toxic pollutants. Under this new policy, PADEP intends to account for cumulative impacts to watersheds by reviewing all existing and proposed NPDES discharges within the same watershed at the same time. Consequently, some NPDES permits may be reopened before their scheduled expiration. The Toxics Management Strategy will become effective upon final publication in the Pennsylvania Bulletin.

(*Manko Gold Katcher & Fox Client Alert - 6/05*)

PENNSYLVANIA BULLETIN NOTICES

TECHNICAL GUIDANCE & PERMITS:

Bureau of Deep Mine Safety Compliance and Enforcement Procedures. Effective Date: 8/27/05.

FINAL TECHNICAL GUIDANCE - MINOR REVISION:

Guidelines for Development and Implementation of Emergency Response Plans. This document is being revised to add regulatory references and update contact information. Effective Date: 8/6/05.

PROPOSED RULEMAKING:

The Environmental Quality Board published the Newtown Creek package of proposed stream delineation changes in Bucks, Carbon, Centre, Chester, Clearfield, Fayette, Lancaster, Schuylkill and Warren counties. DEP is also made a number of corrections to earlier stream redesignations.

CLASS A WILD TROUT CHANGES:

The Fish and Boat Commission published notice of changes to the list of Class A Wild Trout Streams in Lehigh County.

ENGINEERS, GEOLOGISTS, SURVEYORS FEES:

The State Board for Professional Engineers, Land Surveyors and Geologists published notice of final registration fee increases.

IRRC MEETING:

On August 25 the Independent Regulatory Review Commission will consider Environmental Quality Board regarding Final Lake Redesignations (7-388), Final Bond Adjustment and Bituminous Mine Subsidence Control Standards (7-385) and Concentrated Animal Feeding Operations (7-391). For copies of these regulations, check the Environmental Quality Board webpage - April and June 2005 meetings.

PROPOSED REVISIONS TO GENERAL PLAN APPROVAL AND GENERAL OPERATING PERMIT:

BAQ-GPA/GP-3 (GP-3) for portable nonmetallic processing plants. The primary purpose of this revision is to reflect the way general permit conditions have evolved since GP-3 was issued initially. These changes clarify that the general permit may be used either as a general plan approval or as a general operating permit for a portable nonmetallic processing plant in a facility, as outlined under Condition 2 or, Applicability/Source Coverage Limitations. In addition, diesel fired internal combustion engines powering portable nonmetallic processing plants are now a separate source category requiring separate authorization through BAQ-GPA/GP-9 or BAQ-GPA/GP-11. Several requirements have been added for dust suppression system, baghouse and scrubber.

FINAL TECHNICAL GUIDANCE - NEW GUIDANCE

Development of a Replacement Source for a Community Water System. Effective Date: Upon publication of notice as final in the Pennsylvania Bulletin.

FINAL TECHNICAL GUIDANCE - NEW GUIDANCE

Policy on Public Participation in the Permit Application Review Process.

DRAFT TECHNICAL GUIDANCE - SUBSTANTIVE REVISION

Public Water Supply Manual - Part II Community System Design Standards. Effective Date: Upon publication as final in the Pennsylvania Bulletin.

REGULATIONS: EQB OKs DEVELOPMENT OF PA-ONLY MERCURY LIMITS

The Environmental Quality Board approved a motion to allow the Department of Environmental Protection to move forward with developing a Pennsylvania-only rule limiting mercury emissions from coal-fired power plants.

MINOR REVISION:

Radon Certification Policy. Notice of Draft Change.

DRAFT:

Guidelines for Identification of Critical Water Planning Areas. Notice of Draft Change.

TECHNICAL GUIDANCE & PERMITS:

Notice announcing the availability of a waste management general permit for the processing and beneficial use of non-liquid spent mushroom substrate.

TECHNICAL GUIDANCE & PERMITS:

Pennsylvania Drinking Water Information System (PADWIS) Inventory Users Manual. Notice of Draft Revision.

TECHNICAL GUIDANCE & PERMITS:

Continuous Source Monitoring Manual. Notice of Draft Revisions.

TECHNOLOGY UPDATES

CARBON MONOXIDE FROM WILDFIRES MATCHES HUMAN EMISSIONS

Wildfires in Alaska and Canada in 2004 emitted as much carbon monoxide as did human activities in the continental United States during the same time period, according to new research by the National Center for Atmospheric Research (NCAR).

To determine the extent to which wildfires contribute to atmospheric pollution, the researchers used a novel combination of observing instruments, computer models, and numerical techniques that allowed them for the first time to distinguish between carbon monoxide coming from the wildfires and from other sources.

The team concluded that the Alaskan and Canadian wildfires emitted about 30 teragrams of carbon monoxide from June through August of last year.

Because of the wildfires, ground-level concentrations of ozone increased by 25 percent or more in parts of the northern continental United States and by 10 percent as far away as Europe.

"It is important to see how the influence of these fires can reach large parts of the atmosphere, perhaps even over the entire Northern Hemisphere," says NCAR scientist Gabriele Pfister, the study's lead author. "This has significant implications as societies take steps to improve air quality."

Carbon monoxide, a toxic gas that can affect human health even at low levels, is emitted by wildfires as well as by motor vehicles, industrial facilities, and other sources that do not completely burn carbon based fuels.

Ground-level ozone, which affects human health in addition to damaging plants and influencing climate, is formed from reactions involving atmospheric pollutants, including carbon monoxide, the presence of sunlight. Both pollutants are monitored by the U.S. Environmental Protection Agency.

Wildfires in Alaska and western Canada were particularly intense in the summer of 2004, due to unusually warm and dry weather.

(Environment News Service – 7/1/05)

REPORT: PARKING LOTS CARRY POLLUTION THREAT

A study released in June by Austin officials and the U.S. Geological Survey blames a common chemical for significantly more pollution, particularly in waterways, than was previously believed. Such a finding could have implications not only for Austin's efforts to protect its creeks and streams, but for anyone, anywhere, who walks or plays on a parking lot.

The culprits are sealants that protect parking lots, according to the study that was to appear in *Environmental Science & Technology*, the journal of the American Chemical Society.

"We're surrounded, in the areas that we live and work, by parking lots. This is not a contamination issue that is limited to industrial areas or densely urbanized downtown areas," said Barbara Mahler, a research hydrologist for the Geological survey and the report's lead author.

"This is a potential contamination issue that affects all of us."

State and federal environmental officials said they want to review the study, and possibly conduct new ones, to ascertain the risk to people and the environment and to determine whether policymakers need to take action.

The contamination in question comes from a family of chemicals known as polycyclic aromatic hydrocarbons, or PAHs. Such chemicals can, with sufficient concentrations and exposure levels, cause cancer in humans and kill aquatic life.

Health officials said PAH levels in the parking lot sealants are almost certainly too low to make people sick. The biggest concern, city officials say, is for aquatic ecosystems. According to Wednesday's report, parking lot sealants may contribute about 90 percent – perhaps even 95 percent – of the PAH pollution in urban watersheds.

Because of the findings, city officials are contemplating a ban on sealants deemed harmful to the environment. But they also plan discussions through the summer with state and federal counterparts, other scientists and companies that make or sell parking lot sealants.

PAHs are primary components of many common parking lot sealants, particularly those with coal tar, a toxic byproduct of coke, a fuel derived from coal that's used in the production of steel.

Though the report and the city have singled out coal-tar sealants, the Geological Survey's Mahler said it's not clear whether other types are substantially better for the environment.

Austin officials pointed to parking lot sealants as a likely source of PAHs in 2003, in the midst of a series of American-Statesman stories about pollution in an around Barton Springs pool. The series speculated that the intense concentrations of pollutants may have come from buried hazardous waste.

After a three-month review, during which the city kept the pool closed, health and environmental officials from the state and federal governments declared that the pollution did not threaten the health of swimmers.

The city and the Geological Survey continued studying the source of the pollution. High levels of PAHs have also been found in parts of Waller Creek through the University of Texas campus, the ponds in the Central Market area north of UT, Walnut Creek around Metric Boulevard in North Austin and other areas.

The city also has tested parking lots across Austin, including at the Texas Commission on Environmental Quality offices on North Interstate 35 and the American-Statesman building just south of downtown. All showed high levels of PAH contamination, officials said.

As part of the study released Wednesday, the Geological Survey and the city extensively tested parking lots at the former Robert Mueller Municipal Airport, and they studied parking lots and watersheds in Austin and Fort Worth. Initial findings, reported a year ago, showed that PAH concentrations in the particles washing off coal-tar-treated parking lots were 65 times higher than those in the runoff from untreated lots.

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The conclusions, Mahler said, were reviewed by other scientists before *Environmental Science & Technology* agreed to publish them.

(By Stephen Scheibal, Austin (Tex.) Statesman, 6/23/05)

CARGILL TO BUILD NATION'S LARGEST BIODIESEL PLANT IN IOWA

With the capacity to produce 37.5 million gallons of renewable, clean-burning biodiesel a year, Cargill's planned biodiesel plant in Iowa Falls is set to be larger than any of the United States' current plants.

Cargill announced last month that it planned to start construction of the new plant this summer, with production expected in April 2006.

Organizers say the plant will initially produce biodiesel exclusively from soybean oil, but in the future, they hope to add animal fat and waste grease capabilities as well.

Adjacent to its existing soybean crush facility in Iowa Falls, Cargill also plans to build a glycerin refinery that can turn out 30 million pounds per year.

"The price volatility of the soybean oil and petroleum markets can be challenging for biodiesel producers," said Wayne Teddy, president, Cargill Grain and Oilseed Crush Supply-North America. But "by leveraging Cargill's experience with other renewable fuels, utilizing our expertise in processing, logistics and risk management, as well as accessing our production of multiple feedstocks," the company will make the enterprise a success, Teddy said.

Cargill is the nation's third largest ethanol producer. It has an ethanol facility in Eddyville, Iowa that produces 35 million gallons per year and another just across the Nebraska border in Blair that produces 85 million gallons per year.

"Our biodiesel initiative reflects ongoing government support for renewable fuels and our broader commitment to invest in the U.S. renewable fuels industry, while generating new markets and applications for American farmers," he said.

Iowa farmers have invested millions of tax form checkoff dollars in the development, production and promotion of soy biodiesel.

There are 52 biodiesel retail fueling stations and more than 350 biodiesel fuel distributors in the state.

(Environment News Service – 7/6/05)

ALLERGIES PLAGUE MORE THAN HALF THE U.S. POPULATION

For Americans aged six to 59, the changes are greater than 50-50 that they will be allergic to at least one of 10 common substances. According to a large national study, more than 50 percent of the U.S. population in that age range tested positive to one or more allergens.

TECHNOLOGY UPDATES (Continued)

Based on data from the third National Health and Nutrition Examination Survey, researchers found that 54.3 percent of individuals tested had a positive skin test response to at least one of the 10 allergens tested. A positive skin test result may mean the individual is more vulnerable to asthma, hay fever, and eczema.

The highest prevalence rates were for dust mite, rye, ragweed, and cockroach, with about 25 percent of the population testing positive to each allergen.

Peanut allergy was the least common, with nine percent of the population reacting positively to that food allergen.

The new findings published in the August issue of the "Journal of Allergy and Clinical Immunology" were conducted by researchers at the National Institute of Environmental Health Sciences (NIEHS) and the National Institute of Allergy and Infectious Diseases in Bethesda, Maryland, both components of the National Institutes of Health.

Some 10,500 individuals participated in the skin testing. During these tests, skin was exposed to substances that are known to cause allergies, known as allergens, and a positive test was determined by the size of the reaction on the skin.

The 10 allergens tested include: dust mite, German cockroach, cat, perennial rye, short ragweed, Bermuda grass, Russian thistle, White oak, *Alternaria alternata*, and peanuts.

Dust samples from the homes of 10,000 individuals are being analyzed for allergens, and blood samples taken from these individuals are being examined for antibodies to those allergens.

"Allergy and asthma control begins at home for more than 50 million Americans who have allergies, and the 20 million who have asthma," said Mike Tringale, director of communications for the asthma and Allergy Foundation of America, a citizens support group. "When allergy suffers clean properly, they can manage their indoor air quality and lessen the nasal congestion, coughing, sneezing, headaches and severe, flu-like symptoms, they often experience."

For tips on cleaning to manage allergies, visit <http://www.aafa.org/display.cfm?id=4>.

(*Environment News Service* – 8/8/05)

EPA LAUNCHES NATIONAL CLEAN WOODSTOVE CAMPAIGN

As part of a national effort to reduce pollution by replacing older woodstoves with cleaner-burning EPA-certified stoves, residents of Libby, Mont. (Lincoln County) will breathe cleaner air thanks to a woodstove "changeout" campaign established by EPA, the woodstove industry, and state and local governments.

"Helping areas of the country reduce pollution and meet national air quality standards for fine particles is our top priority," EPA Assistant Administrator for Air and Radiation Jeffrey Holmstead said. "By combining local programs like clean woodstove installation with tough new federal regulations on power plants, cars, trucks, and diesel equipment, we can dramatically reduce fine particle pollution and improve public

health across the country."

Roughly six percent of all fine particle pollution (PM 2.5) in the United States comes from wood smoke. In some areas where woodstove use is high, wood smoke can account for a greater share of PM 2.5. Replacing older wood stoves with EPA-certified stoves can reduce wood smoke – by 70 percent on average.

(*EPA Press Release* – 7/16/05)

METHANE MAY PACK DOUBLE THE CLIMATE PUNCH OF EARLIER ESTIMATES

The impacts of the greenhouse gas methane on climate warming may be double the standard amount attributed to the gas by most scientists today.

Methane, the primary component of natural gas, is said by the U.S. Environmental Protection Agency (EPA) to account for 16 percent of all greenhouse gas emissions resulting from human activities.

New calculations by a NASA scientist show that methane emissions may account for a much greater percentage, up to a third of all climate warming between the 1750s and today.

Dr. Drew Shindell, a climatologist at NASA's Goddard Institute for Space Studies, believes we need to look at greenhouse gases when they are emitted at Earth's surface, instead of looking at the greenhouse gases after they have been mixed into the atmosphere.

This idea contrasts with the way greenhouse gases were measured for the major, standard investigations into the state of global warming published in a series of reports from the Intergovernmental Panel on Climate Change (IPCC) Assessment, involving the work of thousands of climate scientists.

The IPCC reports rely on measurements of greenhouse gases as they exist in the atmosphere, after they may have mixed with other gases.

The IPCC states that methane increases in the atmosphere account for only about one sixth of the total effect of well-mixed greenhouse gases on warming.

But Shindell points out that the IPCC findings do not reflect the quantities of gases that were actually emitted.

and once they do, looking at them after they've mixed and changed in the atmosphere doesn't give an accurate picture of their effect," Shindell said.

While carbon dioxide is the most abundant greenhouse gas, the others – methane, nitrous oxide, and halocarbons – also contribute to the blanket of gas trapping the heat of the sun close to the planet.

Emitted from both human and natural sources, these gases are called well mixed greenhouse gases because of their long lifetimes of a decade or more, which allows them to disperse evenly around the atmosphere.

Molecule for molecule, methane is 20 times more potent than carbon dioxide (CO₂) as a greenhouse gas, but CO₂ is much more abundant than methane and the predicted growth rate is far greater.

Since 1750, methane concentrations in the atmosphere have more than doubled, though the rate of increase has slowed during the 1980s and 1990s, for reasons as yet unknown to scientists, Shindell says. Fourteen countries are working together to recover methane and use it as a clean energy source. The Methane to Markets Partnership, launched in Washington, DC on November 16, 2004, includes the United States, the UK, China, Russia, Brazil, India, Italy, Japan, Australia and Nigeria, among others.

Dr. Shindell's methane measurements study was recently published in the journal "geophysical Research Letters."

To find out more, visit Dr. Shindell's web page at: <http://www.giss.nasa.gov/~dshindel/>

(*Environment News Service* – 7/19/05)

MTBE CONTAMINATED GROUNDWATER CONCENTRATED IN NORTHEAST

The presence of methyl tert-butyl ether (MTBE), a component used to add oxygen to gasoline to meet federal Clean Air Act standards, has been detected as a contaminant in ground water supplies underlying urban areas, particularly in the northeastern United States.

Researchers from the U.S. Geological Survey examined the occurrence of MTBE and gasoline hydrocarbons in ground water throughout the United States and found that nationwide, MTBE was detected as frequently as some other chemicals that have been used for longer periods of time.

MTBE was detected more frequently in urban areas compared to other land use types, such as agricultural areas, putting shallow ground water supply in these areas at risk for contamination. The chemical occurred most frequently in the northeastern states.

Moran says that there may be "unforeseen health consequences" that result from the ingestion of water contaminated with MTBE, even when the water has no unusual taste or odor.

"Few concentrations of MTBE in groundwater exceed the current USEPA Drinking-Water Advisory," said Moran. "This means that most MTBE concentrations in ground water will not cause taste and odor concerns. However, low concentrations of MTBE in drinking water may have unforeseen health consequences."

Past research has shown that possible human health consequences as a result of MTBE contamination in drinking water include carcinogenesis and detrimental reproductive and developmental effects.

Researchers say determining the factors related to the occurrence of MTBE, as in this study, may help to reveal the sources and pathways of MTBE to ground water, and the vulnerability of aquifers to MTBE contamination.

Dr. Moran's findings were published in the July-August issue of the journal "Ground Water."

(*Environment News Service* – 7/19/05)

INSURERS LINK GLOBAL WARMING WITH HIGHER COST OF STORMS

Last year, experts were wary of linking the unusual number and severity of storms to long

TECHNOLOGY UPDATES (Continued)

range trends such as global warming, but this year the connection is being made by the people who pay the bills for storm damages.

New calculations from the Association of British Insurers based on international scientific research shows that due to global warming, the costs of Japanese typhoons could increase by around two-thirds over the next 75 years.

The Association of British Insurers (ABI) calculates that Japan could sustain damage of up to about 3.8 trillion yen (US\$34 billion) annually by 2080 if global warming continues at its current pace.

The increase would be double the cost of typhoon damage in 2004, which was the costliest year in the last 100 years.

The good news is that the ABI's report, "Financial Risks of Climate Change," shows that these costs can be reduced if governments take action now to reduce carbon emissions.

"This could save up to 80 percent of the predicted extra costs," the report says.

The ABI report also recommends that governments continue to improve coastal defenses and flood protection inland; and change building codes to ensure more weather resilient buildings.

(Environment News Service – 7/26/05)

AUTOMAKERS, ENERGY DEPARTMENT INVEST IN HIGH PERFORMANCE BATTERIES

Energy Secretary Samuel Bodman and leaders of the U.S. Council for Automotive Research (USCAR) announced an agreement to invest in development of advanced high performance batteries for electric, hybrid electric and fuel cell vehicles.

The investment could amount to \$125 million over five years. Bodman said.

USCAR is the umbrella organization of DaimlerChrysler, Ford and General Motors, which was formed in 1992 to further strengthen the technology base of the domestic auto industry through cooperative research.

Joining Bodman in signing agreements at the Automotive Hall of Fame were Mark Chernoby, DaimlerChrysler vice president of advanced vehicle engineering; Dr. Gerhard Schmidt, Ford vice president for research and advanced engineering; and Thomas Gottschalk, GM executive vice president of law and public policy and general counsel.

"Bringing together the best minds in industry, government and academia will develop technology faster and more cost effectively than any one organization could do alone," said USCAR Executive Director Bill Gouse.

In Michigan to highlight this agreement and a similar one that will invest up to \$70 million to develop lightweight, high-strength materials that increase fuel efficiency through a reduction of vehicle weight, Bodman said the Bush administration is dedicated to new energy technologies.

The new \$125 million agreement is set for three years with two one-year continuing options in which the government and industry will share the costs of research.

As part of the new agreement, the Department

of Energy's (DOE) FreedomCAR Program and USCAR's U.S. Advanced Battery Consortium will split the cost of research and development for a number of new battery materials and technologies that have the potential to increase storage and charge/discharge performance, improve durability and reliability and reduce cost.

The DOE/USCAR partnership has been ongoing for more than 10 years. It has developed the nickel metal hydride (NiMH) battery technology used in all current, commercially available, light-duty hybrid electric vehicles.

In addition, the Advanced Battery Consortium also is pursuing the development of advanced lithium ion systems. This emerging technology offers the promise of compact, longer-life, high power and high energy batteries for electric, hybrid-electric vehicles and fuel cell vehicles.

Battery developers can leverage their resources in combination with those of the automotive industry and the federal government, through the Advanced Battery Consortium. This pre-competitive cooperation is intended to minimize duplication of effort and risk of failure, and maximize the benefits to the public of government funds.

(Environment News Service – 7/14/05)

BACTERIA MODIFIED TO MAKE ECO-SAFE PLASTICS, SOLVENTS

Trials have begun in Kansas on an environmentally friendly production method for a chemical called succinate, a key ingredient of many plastics, drugs, solvents and food additives.

The technology, developed with funding from the U.S. National Science Foundation and the U.S. Department of Agriculture, uses a genetically modified form of the bacteria *E. coli* that metabolizes glucose, or sugar, and produces almost pure succinate.

"Succinate is a high-priority chemical that the U.S. Department of Energy has targeted for biosynthesis," said process co-developer George Bennett, professor and chair of the department of chemistry and cell biology at Rice University in Houston.

Biosynthesis is the formation of a chemical compound by a living organism.

"One reason for this is succinate's broad utility – it can be used to make everything from non-corrosive airport de-icers and nontoxic solvents to plastics, drugs and food additives," Bennett said.

The centerpiece of Rice University's succinate technology is a mutant form of *E. coli* that makes succinate as its only metabolic byproduct. The technology is taking its first step from the laboratory to the marketplace in August with the start of industrial scale-up efforts in Kansas.

A Kansas-based company, AgRenew Incorporated, has just begun testing how to use farm-grown products like grain sorghum as food for the succinate-producing bacteria.

Finding such environmentally friendly methods to make key chemicals like succinate is a high priority for the chemical industry. Many researchers are trying to create a succinate-producing bacterial mutant by either inserting genes

that boost succinate production or deleting genes that interfere with it.

(Environment News Service – 8/24/05)

ARCTIC FORECAST TO LOSE ICE COVER WITHIN 100 YEARS

Climate warming across the Arctic is pushing the Arctic system into a seasonally ice-free state for the first time in more than one million years, concludes a new report by U.S. and Canadian scientists. The melting is accelerating, and the researchers could find no natural processes that might slow or reverse the thawing of arctic glaciers and ice sheets.

The de-icing of the Arctic will raise sea levels worldwide, flooding coastal areas inhabited by millions of people, the scientists warn. The indigenous people and animals of the Arctic which includes parts of Alaska, Canada, Russia, Siberia, Scandinavia and Greenland, are already feeling the heat.

"What really makes the Arctic different from the rest of the non-polar world is the permanent ice in the ground, in the ocean and on land," said lead author University of Arizona geoscientist, Jonathan Overpeck. "We see all of that ice melting already, and we envision that it will melt back much more dramatically in the future as we move towards this more permanent ice-free state."

The report by Professor Overpeck and his colleagues was published in the August 23 issue of "Eos," the weekly newspaper of the American Geophysical Union.

In the past, the Arctic has experienced glacial periods, where sea ice coverage expanded and ice sheets extended into Northern America and Europe, and warmer interglacial periods during which the ice retreats, as it has during the past 10,000 years.

By studying ice cores and marine sediments, scientists have a good idea what the "natural envelope" for Arctic climate variations has been for the past million years, Overpeck said.

"In the past, researchers have tended to look at individual components of the Arctic," said Overpeck. "What we did for the first time is really look at how all of those components work together."

The Arctic is "highly complex, with a tightly coupled system of people, land, ocean, ice and air that behaves in ways that we do not fully comprehend, and which has demonstrated a capacity for rapid and unpredictable change with global ramifications," the NSF Arctic System Science Program declares on its website. "The Arctic is pivotal to the dynamics of our planet and it is critical that we better understand this complex and interactive system."

Overpeck's team concluded that there are two major amplifying feedback systems in the Arctic that accelerate changes in the system. They involve the interplay between sea and land ice, ocean circulation in the North Atlantic, and the amounts or precipitation and evaporation in the system.

The white surface of sea ice reflects radiation from the sun, for example, Overpeck said. However, as sea ice melts, more solar radiation is

TECHNOLOGY UPDATES (Continued)

absorbed by the dark ocean, which heats up and results in yet more sea ice melting.

While the scientists identified on feedback loop that could slow the changes, they did not see any natural mechanism that could stop the dramatic loss of ice.

In addition to sea and land ice melting, Overpeck warned that permafrost – the permanently frozen layer of soil that underlies much of the Arctic – will melt and eventually disappear in some areas. Such thawing could release additional greenhouse gases stored in the permafrost for thousands of years, which would amplify human-induced climate change.

Overpeck said humans could step on the brakes by reducing carbon dioxide emissions.

(Environment News Service – 8/25/05)

EUROPEANS WANT TO CURB AVIATION'S RISING CLIMATE EMISSIONS

Even though airfares might go up, European citizens, nongovernmental organizations and the aviation industry support taking action to limit the aviation sector's growing impact on climate change, according to a public Internet consultation conducted by the European Commission.

Simultaneously, the Commission released a new study which shows that it would be feasible to include airlines in the European Union greenhouse gas emissions trading scheme. The Commission is considering this among other options as it prepares to put forward an EU strategy in the fall for tackling aviation's contribution to climate change.

"The message from the many citizens and organizations who expressed their views is very clear – it is time for the air transport sector to start contributing to the fight against climate change," said Environment Commissioner Stavros Dimas.

"And there is an understanding and acceptance that this must happen even if it may lead to a modest rise in ticket prices," he said.

More than 5,500 individuals and 200 organizations submitted responses to the consultation. A large majority of those citizens responding – 82 percent – fully agreed with the policy objective of including the air transport sector in efforts to mitigate climate change.

Nine out of ten fully or somewhat agreed with the objective of strengthening economic incentives for air transport operators to reduce their impact on the climate. Only 13 percent did not agree that increasing the price of air transport would be acceptable if it is necessary to reduce its impact.

Aircraft contribute to climate change in many ways, of which the emission of the greenhouse gas carbon dioxide (CO₂) is the best understood and quantified. Aviation's share of overall EU greenhouse gas emissions is rapidly increasing.

While the EU's total greenhouse gas emissions fell by 5.5 percent from 1990 to 2003, carbon dioxide emissions alone from the international aviation of the 25 member states of the European Union increased by 73 percent in the same period.

The world passenger aircraft fleet is predicted to double by 2020 leading to another big jump in emissions if no further action is taken.

(Environment News Service – 8/1/05)

NON-STICK CHEMICAL 80 TIMES NORMAL LEVELS IN OHIOANS' BLOOD

Water contaminated with C8, a chemical used in the production of non-stick cookware, is responsible for high levels of the chemical in the blood of residents in four southeastern Ohio communities, new government sponsored research shows.

C8 is the commonly used name for perfluorooctanoic acid, or PFOA – a chemical used in the production of fluoropolymers. Fluoropolymers are used to make non-stick surfaces for cookware and in the manufacture of clothing, carpeting, and other products resistant to grease, water, and stains. According to manufacturers, C8 is not present in the final products. C8 is very persistent in the environment and is not biodegradable. Once inside the human body, it is very slowly eliminated.

C8 levels more than 60 to 80 times higher than those typically found in the general population were measured in the nation's first government sponsored epidemiological study of C8 levels in the blood of residents of a four-community region of southeastern Ohio.

A random sample of 326 residents was selected from 160 households in Belpre, Little Hocking, Cutler, and Vincent. All four communities are situated across the Ohio River from a facility where C8 is used in the manufacture of Teflon, a nonstick coating on cookware. C8 is known to have contaminated the residential water supplies of communities near the plant. Parts of Little Hocking and Belpre are immediately across the river from the plant and could be subject to air pollution from the plant.

Cutler and Vincent are several miles from the plant and would not be expected to have exposure to air pollution from the plant. However, all four communities share the same water supply.

(Environment News Service – 8/1/05)

CITY TO SAVE \$120 MILLION USING INNOVATIVE COMBINED SEWER OVERFLOW TREATMENT SHAFT PROCESS

The City of Dearborn, Michigan, has revised its plan for a combined sewer overflow (CSO) control project, a move that the Dearborn Times-Herald reports will save the city \$120 million over original cost estimates. The new plan employs an innovative, compact and patented vertical treatment shaft process in a fully automated design that lowers both capital and O&M costs by incorporating proven principles and techniques in a unique and effective manner. The project has bid under budget and the bid evaluation is now in progress.

The innovative design features large, vertical capture shafts for the city's CSO outfalls 16 and 17 that can treat 461 cfs and 1,861 cfs respectively. They provide "first-flush" capture

capability and treatment for all overflow volumes. The unique design relies on gravity, which eliminates the need for pumping and maintains very low flow velocities and associated head losses. The majority of the facility is underground; only the control/disinfection building is above ground.

The vertical treatment shaft suffers no additional groundwater infiltration compared to a tunnel that requires transportation and treatment. Local "sinking caisson" construction expertise reduces construction risk and potential cost escalation. Screening and solids handling occurs within the shaft, eliminating screening storage and associated odors; thus no solids handling or disposal is required. In addition, the vertical shaft treatment process provides proper disinfection contact time, vessel flushing, air venting, odor control, surge control, skimming and settling.

On the downstream side of an underflow weir in the center of each shaft, a patented CDS Technologies Raked Bar Screen fine screening system provides hydraulically driven, automated, self-cleaning, reliable, and proven (over 600 installations) treatment. The modular 316 SS, 5-mm-spaced screen bars are continually combed with self-lubricating combs. Its ridged, modular design eliminates the need for seasonal re-tensioning of the bars. In addition, the horizontal modular screen configuration results in a uniform upward flow and velocity through the screen that ensures minimum (4 in.) head losses and symmetrical distribution of forces on the cleaning rakes. This minimizes any potential jamming and breaking of comb tines.

The Raked Bar Screen requires minimal maintenance. All maintenance can be performed from the top/clean water side of the screen. Unlike other systems, the Raked Bar Screen can operate completely submerged.

During dry weather conditions, when the interceptor sewer is below capacity, all flows are below the upstream pipe weir of the vertical treatment shaft and flow by gravity to the interceptor. In wet weather conditions, when the interceptor exceeds capacity, flow rises over the upstream feed pipe weir and begins to fall into the treatment shaft. Chlorine is automatically injected prior to the upstream weir via chemical mixers.

As the storm event continues, the shaft fills as floatables are trapped on the upstream side of the shaft's underflow weir and settled solids, due to the low velocity flow under the shaft weir, begin and continue to settle. As the shaft becomes full, the Raked Bar Screen activates and continually operates to trap screenings of mostly neutrally buoyant materials in the waste stream while allowing treated water to flow to the river.

As the storm event subsides, dewatering pumps activate, and the water is drawn down to around the 10-ft level when a flushing mode begins using a proprietary high-pressure nozzle system to keep settleables in suspension. Dewatering chopper pumps continue until the shaft is emptied. The shaft is then injected with an odor-neutralizing solution.

(Water & Wastes Digest – 9/16/05)

INTEGRATING CAD AND GIS DATA FOR ENVIRONMENTAL PROFESSIONALS

Part I

Reducing Headaches during Proposals and Preliminary Investigations with Public GIS Data

by Dana Breig Probert

In the life of an environmental professional, nothing is more exciting than embarking on a new project.

We spent many hours putting together a proposal, and then more up front work once the contract has been signed. This usually involves some preliminary fact finding about the site in question perhaps including:

- Deed Research at the County Building
- Historical Aerial Photography in State or Local Archives
- Tax Map or Parcel Research through bulky and infrequently updated map books
- Flood Map Research from Paper Flood Maps
- Wetlands Investigations through expensive onsite studies
- Soil Investigations from onsite work or books of soil surveys
- Archaeological Investigations and Historical Research from consultants
- Road Centerlines from Surveys, Map Research, DOT Contract research

Gathering this information takes up valuable billable time, vehicle expenses, copying fees, and headaches. Delays or omissions when gathering this information can be costly- you could lose out on the contract, or worse- miss something important that causes a significant change in project scope- such as not catching a potential 404 Wetland or Historical Preservation site.

Many environmental professionals do not realize that they can get much of this data for no charge without leaving the office.

When you have software such as Autodesk Map, or other software that reads these types of files, you can build a thorough basemap that includes all of the above information and more to give you a good preliminary idea of what is going on at your site. Many environmental professionals already have this software in their offices but are unaware of how valuable it is. Even if you do not have such software yet, you can still use some of these websites to view and explore the location of your project.

Better yet, once you build this basemap for a certain area (let's say the State of Delaware) you can use it for every project that comes your way within that geographic area.

In Delaware, GIS data is indexed at the Delaware DataMIL. The DataMIL's Metadata Explorer is analogous to a library card catalog. You run a search using key words, geographic location or and the DataMIL then lists all of the GIS data available that match your criteria. Some examples of what we find here for Kent County, Delaware include: Municipal Boundaries, Watershed Boundaries, Hundred (Township) Boundaries, Soil Maps, Groundwater Recharge Areas, etc. Most, if not all, of this data is publicly available at no charge, georeferenced and ready for import into

Autodesk Map. Most states have a similar "card catalog" or GIS Data Clearinghouse where you can find similar base information. Many of these clearinghouses also offer some sort of "Map Lab" where you can view some of the data using your web browser so you don't need any special software.

The Federal Government, through USGS, offers up even more public data at their Seamless Data website. One of the highlights of data available here is high resolution infrared images. These images have 1 meter or better resolution- you can almost see the blades of grass!

Every time a US Census is performed, the Census department updates their road centerline inventory. This centerline data is the base information for most online driving directions services, and it is available for download for free. You can use this data to further enhance your basemap by showing all of the roads in the area surrounding your site, including their road names and addressing information.

Many counties offer tax parcel information in GIS form. Sometimes this data is free, other times the county requires a nominal fee. Once you import this parcel information, you now can see all of the lots surrounding your site without ever having to leave your desk to do deed or plat research. This data does not take the place of a thorough survey, but it does give you a great start during the preliminary stages of the project.

There is an unbelievable amount of data out there, this is just the beginning. I've included a list of weblinks below to help you begin to build you basemap and streamline your fact-finding ventures.

If you would like to learn more about the specifics of integrating GIS data stay tuned to this newsletter for more in my series "Integrating CAD and GIS Data for Environmental Professionals". Also, please feel free to email me any time with comments, questions or topic suggestions: dana.probert@cadapult.net.

List of Websites where you can find data mentioned above:

Pennsylvania Spatial Data

Access <http://wiz.pasda.psu.edu/uci/>
PA Basemap data

Delaware DataMIL

<http://datamil.delaware.gov/>
DE Basemap data

USGS Seamless Data

Site <http://seamless.usgs.gov/>
High Res Infrareds and more

US Census Road Centerline Files

(TIGER) <http://www.census.gov/geo/www/tiger/index.html>

All US Road Centerlines

Federal Gov't Data

<http://www.geodata.gov/gos>

Clearinghouse for Wetlands Inventories, etc.

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RISE IN CO2 EMISSIONS WILL OUTPACE EARTH'S ABSORPTION CAPACITY

There are limits to the planet's ability to absorb increased emissions of carbon dioxide, according to one model in a new generation of computer climate models that include the effects of Earth's carbon cycle.

If current production of carbon from fossil fuels continues unabated, by the end of the century the land and oceans will be less able to take up carbon than they are today, the model indicates.

"If we maintain our current course of fossil fuel emissions or accelerate our emissions, the land and oceans will not be able to slow the rise of carbon dioxide in the atmosphere the way they're doing now," said Inez Fung at the University of California, Berkeley.

Fung is director of the Berkeley Atmospheric Sciences Center, co-director of the new Berkeley Institute of the Environment, and professor of earth and planetary science and of environmental science, policy and management.

mate model results that appears this week in the Early Online Edition of the Proceedings of the National academy of Sciences (PNAS).

She was a member of the National Academy of Sciences panel on global climate change that issued a major report for President Bush in 2001 claiming, for the first time, that global warming exists and that humans are contributing to it.

"It's all about rates," Fung said Thursday. "If the rate of fossil fuel emissions is too high, the carbon storage capacity of the land and oceans decreases and climate warming accelerates."

Currently, the land and oceans absorb about half of the carbon dioxide produced by human activity, most of it resulting from the burning of fossil fuels, Fung said. Some scientists have suggested that the land and oceans will continue to absorb more and more CO2 as fossil fuel emissions increase, making plants flourish and the oceans bloom.

(Environment News Service - (8/5/05)

ALL WORLD'S GLACIERS COULD MELT, LATEST SCIENTIFIC DATA INDICATES

Global warming caused by human activities may result in the complete disappearance of glaciers from entire mountain ranges, according to the latest update of a United Nations supported report issued once every five years. The World Glacier Monitoring Service warns that the greenhouse effect is leading to processes "without precedent in the history of the Earth."

"The last five-year period of the 20th century has been characterized by an overall tendency of continuous if not accelerated glacier melting," says the World Glacier Monitoring Service 1995-2000 edition of the Fluctuations of Glaciers report, compiled with the support of the UN. Environmental Programme (UNEP).

"The two decades [from] 1980-2000 show a trend of increasingly negative balances with average annual ice thickness losses of a few decimeters," the report adds. "The observed

TECHNOLOGY UPDATES (Continued)

trend of increasingly negative mass balances is consistent with accelerated global warming.”

Analysis of repeated inventories shows that glaciers in the European Alps have lost more than 50 percent of their volume since the middle of the 19th century, and that a further loss of roughly one fourth the remaining volume is estimated to have occurred since the 1970s, the report states.

“With a realistic scenario of future atmospheric warming, almost complete deglaciation of many mountain ranges could occur within decades, leaving only some ice on the very highest peaks,” it says.

While earlier reports anticipated a periodic variation in glaciers, “there is definitely no more question of the originally envisaged “variations périodiques des glaciers” as a natural cyclical phenomenon, the latest report states.

“Due to the human impacts on the climate system (enhanced greenhouse effect), dramatic scenarios of future developments – including complete deglaciation of entire mountain ranges – must be taken into consideration,” it emphasizes.

The report says, “Such scenarios may lead far beyond the range of historical/Holocene variability and most likely introduce processes without precedence in the history of the Earth.”

The scientific opinion on climate change, as expressed by the UN Intergovernmental Panel on Climate Change (IPCC) and endorsed by the national science academies of the G8 nations, is that the average global temperature has risen $0.6 \pm 0.2^\circ\text{C}$ since the late 19th century, and that “most of the warming observed over the last 50 years is attributable to human activities.”

Greenhouse gases emitted by the combustion of coal, oil and gas form an atmospheric blanket, trapping the Sun’s heat close to the planet and raising the surface temperature.

The World Glacier Monitoring Service is online at: <http://www.geo.unizh.ch/wgms/>

(*Environment News Service – (8/5/05)*)

NEW DOCUMENTS AND ONLINE RESOURCES

Site Characterization Library Version 3.0 (DVD—EPA 542-C-05-001; CD EPA 542-C-05-002). This electronic library provides a centralized, field-portable source of site characterization information. The library includes 400 documents, 80 web links, 54 software programs, and 11 audio-visual files. It includes existing publicly-available software, published guidance, journal articles; reports, internet web sites, video clips, and other information relating to site characterization; obtaining representative samples from heterogeneous media; developing conceptual site models; managing uncertainty in environmental decision making; illustrating sampling, analytical, data management, and data presentation methodologies; and illustrating innovative site characterization technologies (June 2005). Copies can be ordered from NSCEP at (800) 490-9198 or (513) 489-8190 or fax to (513) 489-8695. Please note that it is available in TWO (2) different formats. Please specify either the DVD or the CD format.

Proceedings from the 2005 International Phytotechnologies Conference are now available! This conference was organized by the Environmental Protection Agency and answered the persistent questions of what contaminants can plants clean, how long will it take, and how much money can be saved over conventional technologies. Fourteen different sessions were held, with representation from 24 different countries. To view the proceedings, see <http://clu-in.org/phytoconf/agenda.cfm>. Also on this website are the

proceedings from the 2000 and 2003 Phytoremediation Conferences along with the 2004 Alternative Landfills Cover Conference.

(*Tech Direct – 8/1/05*)

ARMY SMALL ARMS TRAINING RANGE ENVIRONMENTAL BEST MANAGEMENT PRACTICES (BMP) MANUAL

The U.S. Army Aberdeen Test Center’s (ATC) Military Environmental METDC has developed an operational small arms range environmental best management practices (BMP) manual for the U.S. Army Environmental Center (USAEC) under the Advanced Range Design Program (DTC Project No. 9-CO-160-000-504), a part of USAEC’s Sustainable Range Technology Program. There are many existing regulatory issues that must be considered when operating and maintaining a small arms firing range, and this manual will be used by Army installations when conducting an internal screening-level assessment of potential environmental concerns associated with routine training activities at operational small arms firing range. In addition, this manual serves as guidance on how to address or mitigate identified areas of concern capable of being addressed through relatively simple changes in the way the range is operated and maintained, or by personnel for use in maintaining the long-term sustainability of their operational small-arms ranges and range areas. This document aims to illustrate the ability to proactively improve both the environmental conditions of a range and the range’s mission of troop training and readiness.

Currently the manual is under review and will be released in the fall of 2005.

(*Fielding Environment Solutions – 7/25/05*)

DISCARDED EQUIPMENT CONTAINING MERCURY NOW MANAGED AS UNIVERSAL WASTE

A final rule that classifies mercury-containing equipment as universal waste will help eliminate mercury in the environment and encourage mercury recovery and improved, safe management of mercury waste. Previously, unregulated households and some small businesses were not required to manage used mercury containing equipment as a hazardous waste, resulting in some mercury waste getting thrown in the trash. Under this rule, used mercury-containing equipment will be readily collected for recycling or disposal at a properly permitted facility.

Mercury-containing equipment includes various types of instruments that are commonly used in industry, hospitals and households, such as thermometers, barometers and mercury switches. Other items already managed as universal waste include batteries, thermostats and fluorescent lamps.

This final rule imposes management standards similar to those for universal waste thermostats because of similarities in the waste streams. Under the system, recordkeeping, storage and transportation requirements for generators of waste, collectors, and transporters are reduced to encourage local governments, communities, and retailers to set up collection programs that will pull these wastes out of municipal trash and into the hazardous waste system. Stringent federal hazardous waste management requirements for final disposal or recycling remain unchanged. EPA estimates that about 1,900 generators handling approximately 550 tons of mercury-containing equipment annually will be affected by this rule.

For more information on the rule, go to: <http://www.epa.gov/epaoswer/hazwaste/recycle/electron/crt.htm>.

(*EPA News – 8/1/05*)

DOT EXPANDS SCOPE OF HAZARDOUS MATERIALS REGULATIONS

Persons who offer hazardous materials for transportation must properly classify, package, mark, label, placard, and prepare shipping papers for their shipments. Moreover, they are subject to training and hazardous material security requirements.

DOT has adopted a definition for “person who offers or offeror” which has clarified the scope of the regulations applicable to shippers of hazardous materials. The definition, published in the July 28 Federal Register (HM-223A) codifies DOT’s earlier interpretations and administrative determinations on the applicability of the hazardous material regulations.

Under the rule, which becomes effective on October 1, 2005, “person who offers or offeror” to mean any person who performs or is responsible for performing any pre-transportation function required by the DOT Hazardous Materials Regulations or who tenders or makes the hazardous material available to a carrier for transportation in commerce.

The rule points out that the carrier is not an offeror when it performs a function as a condition of accepting a hazardous material for transportation in commerce or when it transfers a hazardous material to another carrier for continued transportation without performing a pre-transportation function.

The final rule states that there can be more than one offeror of a hazardous material and that each offeror is responsible for only for the specific pre-transportation functions that it performs or is required to perform. Each offeror or carrier can rely only on information provided by a previous offeror or carrier unless the offeror or carrier knows or, a reasonable person acting in the circumstances and exercising reasonable care, would have knowledge that the information provided is incorrect.

(*Environmental Tip of the Week – 8/1/05*)

FEDERAL REGULATORY UPDATES

EPA REVISES RCRA TEST METHODS

In the June 14 *Federal Register*, EPA revised testing and monitoring requirements in the Resource Conservation and Recovery Act (RCRA) hazardous and non-hazardous solid waste regulations as well as for certain Clean Air Act (CAA) regulations that relate to hazardous waste combustors. These amendments allow more flexibility when conducting RCRA-related sampling and analysis by removing from the regulations a requirement to use the methods found in "Test Methods for Evaluating Solid Waste, physical/Chemical Methods," also known as "SW-846," in conducting various testing and monitoring and by limiting required uses of an SW-846 method to circumstances where the method is the only one capable of measuring the particular (i.e., the method is used to measure a required method-defined parameter). According to EPA, these changes should make it easier and more cost effective to comply with the affected regulations, without compromising human health or environmental protection.

In these revisions to SW-846, EPA is:

- Reforming RCRA-related testing and monitoring by restricting requirements to use SW-846 to only those situations where the method is the only one capable of measuring the property (i.e., it is used to measure a method-defined parameter). This will allow more flexibility in RCRA-related sampling and analysis by removing unnecessary required uses of SW-846.

- Withdrawing the cyanide and sulfide reactivity guidance from sections 7.3.3 and 7.3.4 of SW-846 and withdrawing required uses of reactive cyanide and sulfide methods and threshold levels from conditional delisting.

- Amending the regulations for the ignitability and corrosivity hazardous waste characteristics: As part of this, EPA is clarifying in 40 CFR 261.22(a)(2) that SW-846 Method 1110A, "Corrosivity Toward Steel," is the "standardized" (as described in 40 CFR 261.22(a)(2)) SW-846 method that is required to be used to determine the characteristic of corrosivity for steel. EPA is also removing the reference to equivalency petitions in the ignitability characteristic at 40 CFR 261.21(a)(1). However, regarding the methods required for the determination of flash point under the characteristic of ignitability, the Agency decided not to replace the standard test methods ASTM D 3278-78 and D 93-79 with the latest versions of those methods.

- Incorporating by reference Update IIIB to SW-846, which includes the revised Chapter Seven, and eleven revised methods, including method revisions to remove a requirement to use the SW-846 Chapter Nine, "Sampling Plan."

- Adding Method 25A as an analytical option to analyses conducted in support of air emission standards for process vents and/or equipment leaks at treatment, storage, and disposal facilities.

- Removing a requirement to demonstrate that feedstream analytes are not present at levels above the 80% upper confidence limit above the mean for sources subject to NESHAP: Final Standards for Hazardous Waste Combustors.

- Removing from the regulations unnecessary references to SW-846, which do not affect the intent of the RCRA regulation.

(*Env. Tip of the Week* – 6/17/05)

CCA TREATED WOOD MULCH CLASSIFIED AS HAZARDOUS WASTE

EPA issued a clarification memo that indicates that wood mulch produced from CCA-treated wood is not exempt from regulation as hazardous waste under 40 CFR 261.4(b)(9). This is because the intended end uses of the CCA-treated wood products are as building materials, not for manufacturing mulch.

For example, CCA-treated wood waste generated during construction using CCA-treated wood, is generated by persons using the wood for its intended end use, and therefore would not be regulated as hazardous waste under this exemption (unless of course this wood waste is then used to produce mulch). In contrast, persons who shred or chip waste CCA-treated lumber into wood mulch for uses such as in landscaping applications are not using the treated wood for its intended end use. Therefore, the exemption at 261.4(b)(9) does not exempt wood mulch produced from discarded CCA-treated wood.

(*Env. Tip of the Week* – 6/27/05)

NEW INDUSTRIAL STARTUP, SHUTDOWN AND MALFUNCTIONS REQUIREMENTS

Through proposed regulatory clarifications, EPA announced that affected industries must minimize emissions during their facilities' startup and shutdown, or at times when equipment is malfunctioning. The proposed clarifications would amend a rule known as the "General Provisions."

The General Provisions require facilities develop a startup, shutdown, and malfunction (SSM) plan. An SSM plan describes how a source will operate to minimize emissions during periods of startup, shutdown, and malfunction. Providing they minimize emissions at all times, the proposed amendments would allow a facility to alter the plan on a limited basis.

Facilities must maintain these plans on site and must report to their state or local permitting authorities that they have complied with the plans. EPA will accept comment on this proposal for 45 days after it is published in the *Federal Register*.

(*Env. Tip of the Week* – 7/12/05)

DOJ APPEAL AIMS TO OVERTURN KEY RULING ON SUPERFUND OVERSIGHT COSTS

The Justice Department (DOJ) is seeking to overturn a key appellate circuit ruling preventing the government from recovering EPA oversight costs at Superfund cleanups conducted by private parties. If successful, DOJ's efforts could set the stage for regulators to recover tens of millions of dollars in oversight costs in states with the largest number of Superfund sites, including New Jersey and Pennsylvania.

Industry officials, who filed a brief opposing the DOJ effort, fear the government's push may succeed after the U.S. Court of Appeals for the 3rd Circuit earlier this year granted the government's unusual request to hear the case before all judges in the circuit, rather than following the usual process of having a three-judge panel first review the case.

One industry source says the court's decision is unusual not only because the justices agreed to an

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immediate en banc review but also because DOJ's brief explicitly calls for the court to overturn its long-standing precedent in *U.S. v. Rohm and Haas Co.* barring the government from recovering oversight costs.

Industry is "afraid they're ready to take a fresh look" at the precedent, one industry source says, and "the government has been gunning to overturn Rohm and Haas for years."

In its 1993 decision in *Rohm and Haas Co.*, the 3rd Circuit barred the government from using the Superfund statute to recover oversight costs at polluter-conducted Superfund removals since there is no explicit mention in the Superfund statute of government authority to recover the costs.

But DOJ is arguing in this case, *U.S. v. DuPont and Ciba Specialty Chemicals Corp.*, that the *Rohm and Haas* decision did not explicitly consider whether the government could recover oversight costs at remedial action sites, and only addressed removal sites. It also argues that the court's previous decisions rejecting oversight cost suits at removals should be overturned, noting it conflicts with numerous appellate court rulings that reject the 3rd Circuit's reasoning.

In the *DuPont* case, DOJ is seeking to recover roughly \$747,000 in removal oversight costs and almost \$649,000 in remedial action oversight costs related to a cleanup the company conducted at the Newport, DE, Superfund site. *DuPont* spent \$35 million over a decade to cleanup the 120-acre industrial site, which is contaminated with a variety of heavy metals and hazardous chemicals, according to the industry brief and EPA documents. The company conducted the cleanup after EPA issued in 1994 a unilateral administrative order (UAO), or an order compelling a company to conduct cleanup, after negotiations to agree to a consent order fell through. The UAO did not address oversight costs.

But the U.S. District Court for the District of Delaware rejected DOJ's effort to recover remedial action oversight costs, saying the Superfund statute lacks a clear statement of congressional intent to allow the government to recover oversight costs at remedial action sites just as it lacks that statement for removals. It also declined to overturn *Rohm and Haas* as part of DOJ's effort to recover removal oversight costs.

Legal arguments in the case focus on Superfund section 104(a)(1), which discusses the conditions for conducting oversight of remedial investigations and feasibility studies (RI/FS), and section 111(c)(8), which addresses the government's ability to use the Superfund trust fund to pay for oversight of RI/FSs and oversight of remedial actions resulting from consent orders or settlement agreements. An RI/FS is a document detailing a study of a Superfund site and its contamination that is used to design the site's cleanup plan.

In a July 1 brief responding to DOJ's appeal, *DuPont* and *Ciba Specialty Chemicals Corp.* say

FEDERAL REGULATORY UPDATES (CONTINUED)

there is no basis for the 3rd Circuit to overturn Rohm and Haas because the Superfund statute does not meet a test established in a 1974 Supreme Court ruling in *National Cable Television Association v. U.S.* requiring Congress to clearly state its intent to impose fees on regulated industry. The 3rd Circuit relied on that ruling to reject previous government efforts to recover oversight costs.

But DOJ is arguing that the 1993 ruling should be overturned, with the 5th, 8th and 10th circuits having ruled in the government's favor in cases interpreting the government's authority to recover oversight costs at private cleanups. Those decisions rejected the 3rd Circuit's reasoning that Congress did not clearly state its intent to allow oversight cost recovery, saying the National Cable ruling addressed user fees imposed on industry in order to do business, while Superfund "response costs are neither fees nor taxes, but rather, payments by liable parties in the nature of restitution for which they are responsible," according to the 5th Circuit's 1997 decision in *U.S. v. Lowe*.

"Since Rohm and Haas was decided, two federal courts of appeals have rejected the application of the National Cable clear statement rule to determining whether the government may recover costs of overseeing private party pollution cleanups, another appeals court has called the application of National Cable to [Superfund] oversight costs in question, and a fourth has rejected its application in analogous circumstances," DOJ's brief says.

The government is also arguing that because the Rohm and Haas decision refers to oversight costs for Superfund removals, or short-term cleanups often conducted on an emergency basis, it does not apply to its effort to recover remedial action oversight costs related to the DuPont cleanup because EPA is seeking to recover oversight costs for a remedial action, or a long-term site cleanup.

"Rohm and Haas did not consider whether the definition of 'remedial action' contained a clear statement allowing the government to recover costs of overseeing responsible party remedial action activities," DOJ says. Moreover, DOJ says, such a conclusion would conflict with three other appellate courts, which for varying reasons have ruled that remedial action oversight costs are recoverable. Two of the three courts said the language in Superfund was explicit enough to meet the National Cable test requiring a clear statement, the brief says.

In their brief, the companies say Congress clearly indicated in the original Superfund legislation, as well as 1986 amendments to the law, that oversight costs could not be recovered in the situations DOJ says they are available. "Not only is there no mention of 'oversight' in the text of the original [Superfund] statute, and in particular in the definitions of 'removal' and 'remedial action,' but the omission took on even greater significance in 1986, when Congress amended [Superfund] expressly to permit recovery of oversight expenses in limited circumstances not applicable here," the companies say. "Those amendments demonstrate that when Congress wishes to authorize the agency to seek reimbursement for oversight, it knows how to do so. As this court correctly concluded in Rohm and Haas, Congress has provided no such authorization for

removal and remedial actions generally."
(*Superfund Report* – 7/18/05)

ASARCO BANKRUPTCY RAISES CONCERNS OVER FUTURE CLEANUP COSTS

ASARCO's recent filing for bankruptcy protection is raising questions over who will pay an estimated \$1 billion to clean up the approximately 90 contaminated sites the company says it is responsible for nationwide.

EPA, state officials and environmentalists are concerned the bankruptcy will force increased payments from taxpayers. The company's bankruptcy could also force increased payments from other liable parties at multi-party sites where the company is liable because of the Superfund law's strict joint and several liability scheme.

While the mining and smelting company was forced by the Department of Justice (DOJ) in 2003 to establish a \$100 million trust fund to address its cleanup liabilities, EPA, state officials and environmentalists say that amount is insufficient to address its total cleanup obligations, estimated by some to be over \$1 billion. Already, cleanup at an ASARCO site in Washington has stalled due to funding uncertainties, according to media reports.

ASARCO, a subsidiary of Grupo Mexico SA, filed for Chapter 11 bankruptcy protection Aug. 9 at the U.S. Bankruptcy Court in Corpus Christi, TX, citing its existing environmental cleanup liabilities and future litigation expected by the federal government, municipalities and private parties.

In an Aug. 10 statement, the company's President and CEO Daniel Tellechea said a number of factors contributed to the voluntarily filing, including its involvement in numerous lawsuits with the federal government, state environmental agencies and private entities "as a result of the company's lead, zinc, cadmium, arsenic and copper mining, smelting and refining operations over the last 106 years." The release also noted there are approximately 95,000 asbestos-related personal injury claims pending against ASARCO, and the company has been involved in a protracted dispute with striking mine workers as well.

The company intends to use the protection to reorganize, according to the statement.

(*Superfund Report* – 8/15/05)

COURTS FACE KEY TEST ON SCOPE OF SUPERFUND LIABILITY FOR CAFO WASTES

In separate groundbreaking lawsuits, federal courts in Texas and Oklahoma are facing key decisions on whether Superfund cleanup and natural resource damage (NRD) liability apply to animal wastes generated by concentrated animal feeding operations (CAFOs).

The litigation, which includes a suit filed by the state of Oklahoma against several major poultry producers, comes as members of Congress and industry are increasingly raising concerns about the application of Superfund law – known as the Comprehensive Environmental Response, Compensation & Liability Act (CERCLA) – to agricultural operations. "CERCLA was not drawn up with this in mind," says one industry attorney.

The Oklahoma case also follows recent rulings in two key citizen suits that have accepted the principle that some agricultural producers may be liable to report releases under CERCLA requirements.

Oklahoma Attorney General Drew Edmondson (D) on June 13 filed a suit in the U.S. District Court for the Northern District of Oklahoma against Tyson Foods and 13 other poultry growers, charging that animal wastes generated at CAFOs in the state and used as fertilizer throughout the Illinois River Watershed (IRW) trigger Superfund cleanup and NRD liability. "These 'poultry growing operations' results in the generation of hundreds of thousands of tons of poultry waste for which the poultry integrator defendants are legally responsible," the complaint states. "It has been, and continues to be, the poultry integrator defendants' practice to store and dispose of this waste on the lands within the IRW – a practice that has caused injury to the IRW, including the biota, lands, waters and sediments therein."

The suit also asserts NRD claims for contamination from the CAFOs, which one industry attorney says is unprecedented. "It's the first time I've seen that ... theory applied to any livestock operations," the source says. State, tribal and federal trustees are allowed under state and federal laws to seek the costly and controversial damages to compensate the general public for the loss of resource use resulting from releases of hazardous substances.

One of the CAFO attorneys not involved in the suit says Oklahoma's complaint raises questions over whether chemicals in animal waste are considered hazardous under CERCLA. For example, while phosphorous is considered hazardous under Superfund, animal waste may contain a form of the chemical – phosphates – that is less hazardous. "That's at the heart of the issue," the source says.

In a very similar case, the U.S. District Court for the Northern District of Oklahoma ruled in 2003 in *The City of Tulsa v. Tyson Foods* that the alternate form of phosphate in animal waste is considered hazardous under CERCLA. However, the ruling was later vacated under a settlement agreement and thus cannot be cited as a precedent, the source says.

In addition, industry sources say the use of animal wastes as fertilizer may qualify for an exemption in section 101(22)(D) of CERCLA, which exempts the "normal application of fertilizer" from the definition of hazardous release. But the scope of that exemption is unclear. The issue was raised in the vacated City of Tulsa ruling, but was never addressed by the court.

However, both issues are central to another lawsuit proceeding in the U.S. District Court for the Western District of Texas. In that case, *The City of Waco v. Dennis Schouten*, Waco is also making CERCLA claims over CAFO wastes from dairy farms. An attorney for the defendants says the case has its "genesis" in the Tulsa case, and the dairies are raising similar defenses. "We contend the fertilizer exemption applies, [and that phosphates in the animal wastes] are not listed hazardous substances but naturally occurring chemicals."

The case is currently in the discovery phase and is expected to go to trial next year, says an attorney for the city of Waco.

EPA is currently establishing an enforcement

FEDERAL REGULATORY UPDATES (CONTINUED)

agreement that would temporarily exempt participating CAFOs from the reporting requirements in exchange for funding a study of the emissions. However, environmentalists filed suit against the deal earlier this month in the U.S. Court of Appeals for the District of Columbia Circuit, and many facilities appear hesitant to sign up, in part because they are concerned the agreement may not protect them from future citizen suits.

In addition, Sen. Larry Craig (R-ID) last year proposed amending CERCLA to exclude CAFOs from the reporting requirements, and environmentalists expect the amendment to come up again this Congress.

A spokesman for Senate Environment & Public Works Committee Chairman James Inhofe (R-OK) – the former mayor of Tulsa – says the senator is closely following the state's lawsuit against the poultry companies and hopes a settlement can be reached. The spokesman declined to comment further on whether the senator would support amending the Superfund law regarding its application to agricultural operations.

(Superfund Report – 6/20/05)

CIRCUIT COURT REJECTS ADMINISTRATION CLAIMS ABOUT FOIA EXEMPTIONS

A federal circuit court has rejected the Bush administration's argument for denying public access to internal policy memos, in a case that environmentalists say could have a chilling effect on efforts by EPA and other federal agencies to restrict access to documents under the deliberative process provision of the Freedom of Information Act (FOIA).

The U.S. Court of Appeals for the 2nd Circuit ruled that Department of Justice's Office of Legal Counsel was not entitled to shield an internal memo because it based immigration policy on the memo. While the ruling has no direct bearing on EPA, sources say the broader implications could affect overall agency operations in handling internal information.

The circuit court in *National Council of La Raza, et al. v. Department of Justice* rejected the Bush administration's request to adopt a "bright-line test" for when documents must be publicly released. The administration asked the court to narrow public access to documents that are explicitly used or incorporated in policy decisions. But the court found that "such a test is inappropriate because courts must examine all the relevant facts and circumstances in determining whether express adoption or incorporation by reference has occurred."

The ruling follows a recent decision by the D.C. Circuit rejecting environmentalists' arguments in a similar disclosure case over whether a related law, the Federal Advisory Committee Act (FACA), applied to Vice President Cheney's National Energy Policy Development Group (NEPDG). The government successfully argued that it was exempt because the task force was comprised solely of government employees. Environmental groups had argued that energy industry officials met so often with the task force – and had such influence – they became de facto members and as such, FACA applied to the task force. An environmental law expert at Georgetown University calls the 2nd Circuit's decision important because "it is a blow to the administration's efforts to use Exemption 5

expansively... This administration is generally hostile to the idea of FOIA. They say FOIA requires government to expose too much of the deliberative process and want to see it contained.

An attorney in the 2nd Circuit case says the plaintiffs are pleased with the ruling, but the administration could seek a further review by either asking for a three-judge panel or the full circuit to reconsider the ruling. The issue could also be eventually taken to the Supreme Court, the source says.

(Defense Environment Alert – 6/28/05)

EPA UNLIKELY TO SET INTERIM TCE LEVEL DESPITE LAWMAKER, STAFF URGING

EPA is unlikely to set an interim cleanup standard for trichloroethylene (TCE) – a solvent found at numerous defense and industrial facilities nationwide – until it receives the results of a scientific study on the contaminant, despite pressure from a bipartisan coalition of House lawmakers and regional EPA staff to do so, sources say.

A bipartisan group of House lawmakers sent a June 24 letter to EPA Administrator Steve Johnson urging the agency to develop interim TCE screening levels in what is the latest salvo in an ongoing dispute over the status of an agency standard for the ubiquitous chemical. The agency has been under fire from state officials and activists who believe EPA's recent decision to have the National Academy of Sciences (NAS) review the standard presents an unnecessary delay (Defense Environment Alert, Jan. 11, p8).

In the June letter, the lawmakers, including Reps. Susan Kelly (R-NY) and Frank Pallone (D-NJ), argue that the agency should use provisional screening levels based on a 2001 human health risk assessment until a final standard is developed. "We strongly urge EPA to adopt a protective 'interim' approach," the letter states.

However, an agency source says it appears EPA headquarters will not promulgate an interim standard because it wants to wait for the results of the NAS study, the source says. The study began in September 2004 and will last for 18 months, according to NAS.

The purpose of the study is to "identify and assess the key scientific issues relevant to analyzing the human health risks" of TCE, according to the project scope. Specifically, NAS "will give consideration to pertinent toxicological, epidemiological, population susceptibility, and other available information" in determining what factors should be considered in developing a risk assessment for the compound.

The chemical, which is used as a solvent in cleaning metal aircraft parts, electronics and other machinery, has been linked to birth defects and childhood cancer and is found at hundreds of federal facilities and Superfund sites. The chemical is often an issue at sites with so-called vapor intrusion, which occurs when contaminants enter dwellings from underground soil and water contamination.

EPA completed a draft TCE risk assessment in August 2001. The assessment calls for cancer slope factors predicting a risk between 4x10⁻¹ to 2x10⁻² per milligram of kilogram body weight per day. Slope factors refer to the potency of a carcinogen. The assessment is up to 20 times more stringent than EPA's previous estimate set in

the 1980s. The assessment also concluded the pregnant women and children are more susceptible to TCE.

In the letter, the lawmakers stress the need for an interim standard to address vapor intrusion. "Most immediately, vapor exposure investigations should use sampling technologies designed to detect TCE down to those provisional levels," the letter states.

At the same time, EPA project managers, industry officials and activists are also calling for an interim screening or action level, although they disagree about what that should be. Numerous sources say the standard would give regulators and responsible parties a better idea of when cleanup is necessary and how much remediation would be required.

An EPA source says regional program managers argue that without a standard in place for TCE, it is more difficult to make remediation decisions. Because there is no formal policy on determining risk, different regions, are taking their own approaches, the source says. For example, Region VIII decides what actions to take by examining both an earlier 1989 standard and the 2001 screening level as the high and low ranges for risk, making a decision on what action to take based on the likely future use of the land.

(Defense Environment Alert – 7/12/05)

SENATE PASSES LEGISLATION RENEWING OIL SPILL 'POLLUTER PAYS' TAX

With industry backing, Senate lawmakers are working to renew a tax on oil companies to provide more funding in the face of a rapidly depleting trust fund used to cleanup oil spills.

Lawmakers, led by Sen. Ted Stevens (R-AK), recently placed language in the Senate's comprehensive energy bill that would renew a 5-cent-per-barrel tax that expired in 1994 on domestic and foreign oil. The tax is used to supply the Oil Spill Liability Trust Fund, which supplements responsible parties' cleanup costs.

Under the Oil Pollution Act (OPA), the fund is used when companies reach statutorily-mandated liability caps and when there is no viable company to pay cleanup costs. But in recent years, the trust fund has decreased and, according to Stevens, will be fully depleted in 2009. There was \$842 million left in the fund as of the end of fiscal year 2004, Stevens said in a June 9 floor statement on his stand-alone bill on which the amendment is based.

The language not only renews the tax, but increases the cap on the trust fund. The fund was originally capped at \$1 billion, but the new language would require that industry pay the tax until the fund reaches a total of \$3 billion. The House Joint Committee on Taxation reports that the change would raise over \$2.5 billion in additional revenue from 2005-2010.

During the June 9 statement on S.1222, the bill on which the amendment is based, Stevens argued that renewing the tax "was the only viable option to maintain the Fund's solvency...." According to Stevens' statement, the fund acts in a similar way to Superfund's "polluter pays" principle, requiring "the responsible party to pay back into the Fund all costs and damages related to a spill."

The oil industry supports the proposal, arguing that, as opposed to the expired Superfund tax, oil companies are the only ones responsible for the

FEDERAL REGULATORY UPDATES (CONTINUED)

spills and should pay a tax to address cleanup costs for which they are liable. But industry wants provisions in the law that would require more transparency to how the funds are applied.

Oil industry officials believe the fund is being depleted more quickly than in the past and want to know why, sources say. But one source says decreased interests rates and an increased amount of orphan sites may be to blame for the depletion.

(*Superfund Report* – 7/4/05)

DISPUTE OVER LOWRY CLEANUP OVERSIGHT COSTS DELAYS ASBESTOS STUDY

A dispute over the costs Colorado officials are charging the military for cleanup oversight of a BRAC base, which could embroil Gov. Bill Owen (R) and the Air Force's acting secretary, is delaying work on a controversial asbestos risk assessment the service wants to use as a national model for asbestos cleanups, sources say.

The disagreement over cost reimbursements has halted oversight of Air Force-related work at the non-privatized portions of the former Lowry Air Force Base, in particular completion of a risk assessment for asbestos in soil the Air Force wants to use as a national tool, according to state and Air Force sources. The asbestos issue at Lowry has drawn national attention because no EPA standard for asbestos in soil exists and military and state officials believe asbestos-contaminated soil could arise as a problem at other closing military bases.

In addition to application at the site, the risk study will provide the Air Force and regulators "with a framework for addressing similar sites across the country," says a spokesperson for the Air Force Real Property Agency in a written response to questions. The Air Force was in the final stages of developing an asbestos risk assessment when the state halted oversight due to the cost dispute, according to a state source. The risk assessment's development so far has been rocky, with the state charging the military's effort has been inadequate (Defense Environment Alert, March 8, p8).

Just weeks before the Colorado Department of Public Health & Environment (CDPHE) halted all oversight work at the former base, a CDPHE official noted that critical work remains to be done, underscoring the importance of resolving the cost reimbursement issue. Addressing the asbestos contamination at the base is a high priority for the Air Force and others, CDPHE environment official Howard Roitman said in a letter to the Air Force. "Finalization of an asbestos risk assessment will provide valuable insight into how the Air Force, EPA and states deal with a contaminant that is being discovered at numerous active and closed military installations." Resolving groundwater issues will also require collaboration, he said.

CDPHE invoked a dispute resolution process March 31, stopping all oversight work April 1, including halting negotiations over privatizing cleanup of the remainder of the base. Part of the base's cleanup had already been privatized, and that work is continuing, according to the source. Work will be halted "until such time as the outstanding bills are paid to [CDPHE] for the months of September 2004 through February 2005," CDPHE hazardous waste Director Gary W.

Baughman said in a March 31 letter to the Air Force.

The state refused to allow the Air Force to pay directly for the asbestos assessment oversight costs, which would have permitted that to go forward while the dispute was being resolved, the Air Force spokesperson says. The spokesperson, however, says the Air Force is continuing to conduct environmental projects, including negotiations with the local redevelopment authority to privatize most of the remaining cleanup.

The two sides are embroiled in a bitter fight over the cost reimbursement issue, as shown by a flurry of correspondence between the Air Force and the state this spring. At issue in the dispute is whether certain costs are eligible for reimbursement by the Air Force to CDPHE under the pact known as the Defense-State Memorandum of Agreement (DSMOA) program. Under DSMOA, the military services reimbursement state regulators for their oversight costs related to military cleanups.

The Air Force has for months withheld full payment of the reimbursement claims submitted by Colorado, alleging the state had not supplied sufficient documentation to determine whether the state's activities were eligible DSMOA funds, according to correspondence from the Air Force. The Air Force has authorized payment of around 63 percent of CDPHE charges covering July-December 2004, according to the Air Force spokesperson.

(*Defense Environment Alert* – 8/9/05)

CLEAN AIR PERMIT REQUIREMENTS CHANGE AGAIN AS D.C. CIRCUIT RULES ON CHALLENGES TO EPA'S REVISED "NEW SOURCE REVIEW" REGULATIONS – AN OVERVIEW

In June, Court of Appeals for the District of Columbia Circuit issued an opinion in *New York v. Environmental Protection Agency*, No. 02-1387 (D.C. Cir. June 24, 2005), addressing challenges by industry, environmental groups, and individual states to the United States Environmental Protection Agency's (EPA's) December 2002 new source review (NSR) regulations under the federal Clean Air Act. The NSR program sets up a pre-construction permit system to regulate construction of large, new sources of air pollution, as well as significant "modifications" of existing large sources. As originally conceived in the 1970s, NSR for existing sources sought to take older plants and force them to install state-of-the-air pollution control, but only when they were otherwise undergoing a significant modification. Many have criticized the NSR program as unwieldy and for creating perverse incentives not to modernize or to replace outdated power plants, refineries, and manufacturing facilities. EPA intended the 2002 rule and certain other related rules to "reform" NSR to make it more tractable.

New York v. EPA upheld some of EPA's NSR revisions and struck down others. Most importantly, the court upheld EPA's proposed change in the test for when a modification to an existing plant triggers NSR, including more stringent emission control requirements. Prior to the 2002 rule, EPA had compared a source's baseline (that is, current or recently past) actual annual emissions to its future potential annual emissions

if the source operated continuously at full capacity as newly permitted. NSR applied under this "actual-to-potential" test if the difference exceeded a tons-per-year threshold of significance (established at different levels depending upon the given pollutant and regional air quality). The *New York v. EPA* court endorsed a change to an "actual-to-projected future actual" test that would be less likely to trigger NSR. The court also affirmed the use of plantwide applicability limits (PALs) to net out emissions increases and decreases, and a long "look-back" to establish a high baseline emission. However, the court remanded the rule's exemptions for "clean units" that already meet stringent air pollution standards and for pollution control projects that result in a significant net increase in emissions of some air pollutant.

On a whole, the opinion fundamentally allows EPA's NSR reform initiative to move forward, although on a somewhat narrower scope than its Bush Administration sponsors had been contemplating, and of course with several significant questions still left unresolved. Juxtaposed with the almost contemporaneous decision of another court of appeals in an NSR enforcement case, *United States v. Duke Energy Corp.*, No. 01-1763 (4th Cir. June 15, 2005), *New York v. EPA* may actually confuse the state of NSR. *Duke Energy* implicitly rejects the statutory interpretation underlying either the actual-to-potential or actual-to-projected future actual tests. *Duke Energy* appears to require a comparison of hourly emission rates rather than annual emission totals. The *New York v. EPA* court makes only a feeble attempt to reconcile the cases.

The Court's Ruling – Key Highlights

A. NSR Revisions or Practices Upheld

1. Modification. Separate from the federal NSR program, the Clean Air Act also establishes a New Source Performance Standard (NSPS) program which sets category-by-category technology-based emission control requirements for new and modified industrial facilities. Under EPA's NSR program, an increase has been measured by comparing pre- and post-change annual emission levels, while under the NSPS program, the measurement compares pre- and post-change *hourly* emission rates. This distinction makes a difference most commonly when a modification allows a facility to operate more hours during the year, but does not affect the emissions rate for any hour that the facility operates.

The *New York v. EPA* court ruled explicitly that the statute did not require EPA to define a "modification" for purposes of NSR and for purposes of NSPS in the same way. In so doing, the court affirmed 25 years of EPA regulatory practice.

2. Calculating emissions increases. (a) *Actual-to-projected actual calculation methodology upheld.* EPA's 2002 NSR revisions enacted a methodology for calculating emissions increases, and to determine in turn whether they were significant and trigger NSR requirements, by comparing pre-change actual emission levels. The court upheld this provision. (b) *No ruling on actual-to-potential test.* (c) *Ten-Year "Look-back" Provision for Calculating "Baseline" Emission Upheld.* (d) *Demand Growth Exclusion Upheld.*

FEDERAL REGULATORY UPDATES (CONTINUED)

B. NSR Revisions Overtaken.

1. Avoiding Recordkeeping for Post-Change Emissions. EPA's 2002 NSR revisions exempted source owners or operators who believed a change had no reasonable possibility of producing a significant emissions increase from any recordkeeping requirements relating either to data on which those projections are based or to information on actual emissions going forward. The court remanded this exemption to EPA for further refinement or explanation on the grounds that the Agency had not adequately explained how it would be able to detect and to enforce against parties improperly employing this exemption without these records being available.

2. Clean Unit Exemption. The Court vacated this newly-introduced portion of the NSR rules on the grounds that the Clean Air Act requires these rules to evaluate emissions increases based on actual emissions, and that the clean unit exemption fails to do so. In this way, units that install controls to meet the state-of-the-art in 2005 will not be protected from a renewed NSR evaluation should they be modified in, say, 2008 in a way that causes a significant net increase in emissions.

3. Pollution Control Project Exclusion. The 2002 rule would have excluded "pollution control projects" from NSR review. A "pollution control project" reduces emissions of some pollutants, allows increases in others, but has a net beneficial environmental effect. This NSR provision codified for all sources an exclusion adopted for utilities in 1992 and increasingly introduced by regulatory practice for other sources through the 1990's. In perhaps its most surprising ruling, the court vacated this exclusion for both utility and non-utility emission sources on the grounds that the Clean Air Act provided no authority to exempt modifications causing significant emissions increases of a pollutant, regardless of whether the modifications are implemented primarily to reduce emissions of other pollutants or are judged to have a net environmental benefit.

Impact of the Court's Decision

Under *New York v. EPA*, large portions of EPA's 2002 NSR revisions withstood attack. Nevertheless, they still will not necessarily affect sources directly right away. The NSR regulatory program established by the federal Clean Air Act requires implementation measures at both the federal and state level. Once EPA promulgates its NSR regulations, they do not take immediate effect. Rather, states are required to adopt essentially equivalent regulations to implement the program. EPA reviews the states' programs. EPA set a deadline for states to adopt their NSR programs by January 2006. Some states already had regulations in place which incorporate by reference specific parts of EPA's NSR program as revised, and those parts will take effect immediately. Otherwise, however, many states are not expected to act within this timeframe.

Conclusion

The opinion in *New York v. EPA* was neither strictly a pro-environment or a pro-business ruling. Instead, the court maintained a legal perspective on these issues in upholding a number of NSR revisions intended by the Bush Administration to ease incrementally the regulatory impact of the NSR program on industry,

while vacating certain specific provisions intended to achieve similar ends. State regulators still must decide (with EPA's oversight) how to formulate implementing regulations in light of the Court's ruling, and further litigation over both questions answered and unanswered is likely. Thus, even after this eagerly awaited decision, owners and operators of major sources face considerable uncertainty as to when they have to seek NSR approval before undertaking changes to their facilities. They have labored under that uncertainty for years, the landscape has become incrementally more favorable for them, but the outcome in any given case remains difficult to predict.

With all this anguish, one might inquire whether the program makes sense. As we discuss above, sophisticated critics of NSR have argued that whether NSR applies or does not apply to any given change to a large facility, the very existence of the program artificially keeps old plants operating. So long as they are "grandfathered," they need not install pollution controls that their competitors must have, and so have some considerable economic advantage. If a modification is subject to NSR and the source proceeds, a large facility (like a power plant) will invest tens or hundreds of millions of dollars in pollution control devices retrofitted to the existing plant. That will create enormous disincentives to abandoning that facility in the near term.

If one wished to encourage economic activity and a reduced environmental impact, one might seek to provide incentives to replace older facilities with newer ones. NSR does the opposite. Accordingly, many wonder whether all of this uncertainty and legal wrangling is over the correct issue. In the current climate, Congress is unlikely to take on a statutory change; Clear Skies seems to be going nowhere, and might be a step backward in any event. *New York v. EPA* raises the interesting question whether a state program that facilitate and encourage development of new facilities when coupled with the retirement of old ones should be the preferable objective for Clean Air Act regulatory programs to pursue.

Excerpts from Article by Glenn L. Unterberger, Esq. and David G. Mandelbaum, Esq. – Ballard Spahr Andrews and Ingersoll, LLP. To request a copy of the full article, send an Email: to publications@ballardspahr.com.

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EPA SETS EMISSION STANDARDS TO STATIONARY DIESEL ENGINES

As part of a nationwide effort to control fine particle and ground level ozone pollution, the U.S. Environmental Protection Agency (EPA) proposed emission standards for stationary diesel engines.

Stationary diesel internal combustion engines are used to generate electricity and operate compressors at facilities such as power and manufac-

turing plants. They are also used in emergencies to produce electricity and pump water for flood and fire control.

The proposed standards, known as New Source Performance Standards, will reduce harmful emissions of nitrogen oxides, particulate matter, sulfur dioxide, carbon monoxide, and hydrocarbons from new, modified, and reconstructed stationary diesel internal combustion engines.

The standards will subject stationary diesel engines to the same levels required by EPA in the non-road diesel engine rule. As proposed, the rule will affect 81,500 new stationary diesel engines and result in total pollutant reductions of over 68,000 tons in 2015.

Emissions reductions will occur gradually from 2005 to 2015, reaching reductions of 90 percent or more from baseline levels in some cases. EPA estimates the total nationwide annual costs for the rule to be \$57 million in the year 2015.

Allen Schaeffer, executive director of the Diesel Technology Forum, said the industry is "firmly committed to continuous progress and a cleaner environment." "Diesel technology has been on a path of continuous improvement for over a decade," said Schaeffer. "Since 1994, engines have been manufactured to operate smoke-free, and tailpipe emissions from trucks and buses sold today have been reduced by more than 80 percent compared to engines built in the late 1980s," he said.

"Beginning in 2007, these on-highway diesel engines will produce near-zero emissions thanks to clean fuels and advanced engine technologies that will result in a 99 percent reduction of particulate matter (PM) emissions and an 87 percent reduction in nitrogen oxides (NOx) from current levels," Schaeffer explained.

EPA will accept comments on this proposed rule for 60 days following publication of the proposed rule in the Federal Register.

(*Environment News Service* – 7/1/05)

NEW STANDARD HAZARDOUS WASTE PERMIT

EPA is standardizing the federal hazardous waste permitting process by simplifying its administrative procedures, permit renewal, and modification processes. According to the Agency, the new streamlined system reduces paperwork and is expected to save states and industry more than \$3 million a year while maintaining stringent hazardous waste management requirements.

The revised process is similar to the prior process, yet saves EPA, states, and facilities time and money. Facilities are still required to have the pre-application meeting with the public followed by the submission of a Notice of Intent, and supporting information. Detailed facility information, normally submitted as part of the Part B application, will be stored on-site for review, if necessary. The Notice of Intent and supporting materials, in most cases, should provide sufficient information to the regulatory agency to make a draft permit decision that safeguards human health and the environment.

Under the simplified process, regulatory authorities can issue a draft permit to eligible facilities within a year of the date the application was received. Eligible facilities include

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hazardous waste management facilities otherwise subject to hazardous waste permitting that generate and then store or non-thermally treat hazardous waste onsite in tanks, containers, and containment buildings. Also eligible are facilities that receive hazardous waste generated offsite by a generator under the same ownership as the receiving facility, and then store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings.

The standardized permit issued to a facility will consist of two parts: a uniform portion, and when necessary, a supplemental portion. The uniform portion, required in all standardized permits, includes the general facility standards and unit specific standards from 40 CFR 267. The supplemental portion includes site-specific conditions unique to the facility, such as corrective action requirements, and any other requirements deemed necessary to meet safe environmental standards. These permitting standards will become effective 30 days after publication in the Federal Register.

You may be eligible for a standardized permit if:

➤ You generate hazardous waste and then store or non-thermally treat the hazardous waste onsite in containers, tanks, or containment buildings; or if

➤ You receive hazardous waste generated offsite by a generator under the same ownership as your facility, and then you store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings.

Learn more about this rule and how to take advantage of its new streamlined requirements at Environmental Resource Center's Advanced RCRA training. A pre-publication copy of the final rule is available at this link from the EPA.

(Environment Tip of the Week – 8/8/05)

EPA STRUGGLING TO DEVELOP EFFICIENCY MEASURE FOR RCRA CLEANUPS

EPA is struggling to create an efficiency measure at the behest of the White House for gauging the success of its Resource Conservation & Recovery Act (RCRA) cleanup program, which is drawing concerns from the many states overseeing cleanups that they may be penalized for taking longer to remediate complex sites, state and EPA sources say.

The efficiency measure is a requirement of the White House Office of Management & Budget's (OMB) program assessment rating tool (PART) process, under which federal agencies must evaluate how their programs are providing results from appropriated funds. OMB uses the evaluations, including the efficiency measures, to determine whether the programs are achieving results, giving the programs effective, moderately effective, adequate, ineffective and results-not-demonstrated ratings. Poor PART ratings can lead to budget cuts.

According to OMB documents, efficiency measures "are usually expressed as a ratio of inputs to outcomes," comparing the amount of money spent on an activity to the results stemming from that activity.

But states are raising concerns that the RCRA cleanup, or corrective action (CA), program was

"not designed to track efficiency in a traditional way," according to one state source, who says states fear the measure may not reflect that certain cleanups take longer to complete. States oversee a large percentage of RCRA CA sites, with 38 states and one territory enjoying delegated authority to run CA programs.

A state official speaking at a meeting on RCRA cleanups last month indicated EPA was considering dividing the number of CA remedy components completed by the amount of federal funding provided.

The first source says states are concerned the measure may not accurately show the variations among CA sites. "Every corrective action site is a little different," the source says. But if you evaluate how many remedies are completed per dollar spent, that assumes every remedy is of similar complexity and takes a similar amount of time to put in place. Measuring remedies per dollar spent "may appear to show less efficiency when you're not really comparing apples to apples," the source says.

(Defense Environment Alert – 6/14/05)

DISTRICT COURT ALLOWS SETTLING POLLUTER GROUP SUITS UNDER AVIALL RULING

A recent Pennsylvania federal district court ruling appears to be easing industry concerns about the ability of polluter groups that settle their cleanup liability at hazardous waste sites – a frequently used approach at sites involving multiple parties – to sue non-settling parties for cleanup following the Supreme Court's Aviall decision.

Industry officials were concerned that because the Aviall ruling required parties to be sued before being able to pursue non-settling third parties under section 113(f) of Superfund law, they believed the high court ruling might require all parties in a settling group to be sued before being able to pursue suits against other responsible parties.

Industry officials say that may be difficult to ensure because in many instances, parties that had not been sued by the government would join with a group that had been sued to conduct joint cleanups, thereby making it difficult to determine whether the group could still pursue third parties for cleanup costs without additional legal action as required by Aviall.

In its July 20 decision, the U.S. District Court for the Eastern District of Pennsylvania in *Boarhead Farm Agreement Group v. Advanced Environmental Technology Corporation* ruled that the plaintiffs could pursue a cost recovery suit against the defendants even though not all of the group's members had been sued by the government.

The district court's ruling is also noteworthy because the court is under the jurisdiction of the U.S. Court of Appeals for the 3rd Circuit, which presides over states including New Jersey, the state with the most Superfund sites in the country.

While it is unclear how the 3rd Circuit will rule if the lower court's decision is appealed, industry attorneys tracking the case say the issue of suits by groups of potentially responsible parties (PRPs) is important because of the numerous sites where polluters band together to conduct cleanups.

The district court says in its July 20 ruling that the non-settling members of the polluter group can also sue other polluters for cleanup costs because the group qualifies under the law's definition of "any person" that can bring suit, once a "civil action" has been filed.

"It is reasonable to conclude that [Aviall] does not address what the words 'any person' and 'during or following any civil action' might mean where a [Superfund section] 113(f)(b) was brought by multiple plaintiffs only some of which had been parties to a civil action relating to a site. Indeed, a plain-reading of the language [of the relevant Superfund provisions] suggests that one need not have been a party to the prior civil action to bring a contribution claim, only that a relevant prior civil action must exist," the court says.

The district court ruled that the PRP group overall, including members that had not settled with EPA, were able to sue under section 113(f)(1)(b) because deciding otherwise would "eviscerate the right of contribution for parties who join with parties sued by EPA to remediate a Superfund site pursuant to the consent decree entered by the EPA." According to the court, "Such a result is not required by Cooper industries," and, "It would torture the plain meaning of the statute and discourage PRPs from cooperating and settling with PRPs who were sued without the costs and delay of litigation.

According to the district court, the Supreme Court's ruling was narrow and left numerous questions for lower courts. "Notably Justice [Clarence] Thomas highlights various questions raised by factual circumstances not before the court that remain open, suggesting that the decision should be read narrowly, according to the facts of that case," the decision says.

And, the court says, unlike in Aviall, which involved one company suing another, with no legal action taken by the government, the Boarhead Farms case involves a group of PRPs and several legal actions. "Unlike the facts under which the Supreme Court made its holding in Cooper industries, this is not a case where remediation has been 'wholly unhinged from any governmental involvement or oversight,'" the decision says. "Instead, remediation has been done pursuant to two consent decrees with the Environmental Protection Agency, following its suit of all but one member of the Agreement Group."

(Superfund Report – 8/1/05)

PROPOSED RULE FOR IRON AND STEEL MANUFACTURING

In a Federal Register Notice, EPA proposed to amend certain provisions of the effluent guidelines for Iron and Steel Manufacturing. Based on new information and analysis, the Agency is proposing to reinstate the provision authorizing alternative oil and grease limitations with one exception. The notice also proposes to correct errors in the effective date of new source performance standards. Comments must be received by September 9, 2005.

(Environment Tip of the Week – 8/23/05)

EPA PROPOSES NEW TEST METHODS FOR WASTEWATER AND SEWAGE SLUDGE

EPA is proposing new test methods that will

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lead to the detection of four types of bacteria in wastewater and sewage sludge. EPA's proposal centers on culture-based approaches to detecting enterococci and *Escherichia coli* (E. coli) in wastewater. Additional tests will identify salmonella and fecal coliform bacteria in sewage sludge. The bacteria are seen as "health indicators" that point to possible contamination and the need for further investigation and treatment. The new tests will yield results within 24 hours and provide treatment facilities with an indication of the effectiveness of their treatment techniques. Information about this and other water analytical methods are available at:
<http://www.epa.gov/waterscience/methods>.

(*Environment Tip of the Week* – 8/23/05)

ENVIRONMENTAL RED LIGHTS, GREEN LIGHTS IN NEW TRANSPORTATION LAW

A \$286.4 billion transportation bill was signed into law by President George W. Bush in late July, enacting a measure that covers six years of funding for federal highways and transit programs, as well as highway safety and motor carrier safety programs.

About 80 percent of the funding in the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy For Users, or SAFETEA-LU, will pay for highway projects, with most of the remainder earmarked for mass transit.

Environmentalists called SAFETEA-LU a mixed bag, but applauded positive advances such as a provision that includes wildlife conservation in transportation planning, a measure to improve the transport of hazardous materials, funding for the Clean School Bus program, and billions in funding to reduce air pollution from construction equipment.

SAFETEA-LU increases funding for constructing and improving highways by 30 percent over the previous law, TEA 21, and increases transit funding, said Congressman Don Young, an Alaska Republican who chairs the House Transportation and Infrastructure Committee and also served as chairman of the House Senate Conference on the highway and transit funding legislation.

This legislation improves transportation project delivery "by insuring better coordination among state departments of transportation and federal permitting agencies," Young said. "This bill results in safer roads, which are built faster and that last longer."

American Public Transportation Association (APTA) President William Millar said that a great deal more money will be needed in the immediate future to cover infrastructure needs, "The U.S. Department of Transportation has identified infrastructure needs far in excess of the final amount approved in this new legislation, and our members hope that Congress will continue to review funding sources and mechanisms that will enable us to more completely address the growing needs in our country," Millar said.

APTA is a nonprofit international association of 1,500 members organizations including public transportation systems; planning, design, construction and finance firms; product and service providers; academic institutions, and state associations and departments of transportation.

Joan Claybrook, president of the nonprofit

group Public Citizen and a former administrator of the National Highway Traffic Safety Administration (NHTSA), said the biggest impact will come from addressing the two most lethal types of crashes – rollovers and side impacts. This law requires the NHTSA to create, for the first time, a stability standard designed to prevent rollovers by April 2009 and write new rules to protect occupants in these side impact crashes by July 2008.

The law improves the safety of hazardous materials shipments by providing new enforcement options for serious violations of hazardous materials safety regulations. The Conference Report also requires Mexican and Canadian commercial motor vehicle operators transporting hazardous materials in the United States to undergo a background check similar to that required for U.S. licensed operators, and improves the procedures of current hazardous materials background checks.

The Recreational Boating Safety and Sport Fish Restoration programs were reauthorized, allowing continued funding for activities that will protect coastal wetlands, promote sport fish restoration, reduce water quality impacts from recreational vessels, and increase boating access.

The new law streamlines the federal Railroad Rehabilitation and Improvement Financing loan program and increases the amount of loans for railroad infrastructure improvements. A new program to fund the relocation of rail lines and other projects that help ease congestion, noise, and other impacts from railroads on communities was included, as was additional funding for high speed rail planning and development efforts.

A provision to provide access to billions of funding to reduce air pollution from construction equipment authored by Senator Hillary Rodham Clinton, a New York Democrat, and cosponsored by Senate Environment and Public Works Committee Chairman James Inhofe, an Oklahoma Republican is included in the law.

It enables states to tap into the \$12 billion included in the transportation reauthorization bill for the Congestion Mitigation and Air Quality program for diesel retrofits on vehicles and equipment used on construction highway projects in non-attainment areas.

"This legislation has enormous potential to reduce pollution, create manufacturing jobs, and help the small businesses that build our roads and highways," said Senator Clinton. "It provides access to billions of dollars for states and localities to use to help road builders add modern pollution controls to their equipment."

The filters in these controls are manufactured by Corning Inc. in New York state. Peter Volanakis, Corning CEO, said, "In addition to providing communities across the U.S. with new options for achieving cleaner air, this provision has the potential to increase demand for diesel after-treatment systems by helping to finance the installation of retrofits on existing diesel vehicles and equipment."

U.S. Environmental Protection Agency figures show there are approximately 1.2 million pieces of construction equipment that could benefit from being retrofitted with pollution control or anti-idling technologies.

A typical piece of construction equipment, such as a 178 horsepower bulldozer, emits as much pollution as 26 new cars today, which con-

tributes to ozone and fine particulate pollution. Exposure to fine particles has been linked with premature death, respiratory and cardiovascular disease, decreased lung function, asthma attacks, and cardiovascular problems. Children, the elderly, and people with heart and lung disease are particularly vulnerable. Adding pollution controls to construction equipment can cut these harmful emissions by more than 90 percent.

(*Environment News Service* – 8/1/05)

\$1 BILLION CLEAN-UP SETTLEMENTS REACHED WITH BALTIMORE CO. AND WASHINGTON SUBURBAN SANITARY COMMISSION

The Department of Justice, the Environmental Protection Agency, and the Maryland Department of the Environment announced two major Clean Water Act settlements with Baltimore County and the Washington Suburban Sanitary Commission (WSSC), that are anticipated to lead to more than \$1 billion in sewer system improvements.

Combined with a recent federal settlement against the Washington, D.C. Water and Sewer Authority and a joint federal-state settlement against the City of Baltimore, the settlements are designed to prevent chronic sewage overflows to regional waterways, including the Chesapeake Bay and the Anacostia, Patapsco, Patuxent, and Potomac Rivers.

The two joint federal-state settlements will protect regional waters from contamination by untreated sewage, which contains bacteria, pathogens and other harmful pollutants that seriously degrade water quality, harm aquatic life and threaten public health.

Over the past five years, the Justice Department, the EPA, and the State of Maryland have cooperated to reach a number of settlements with regional sewer authorities to help reduce pollutants from reaching tributaries to the Chesapeake Bay. The consent decrees are the latest successes in this interagency effort.

Under a settlement agreement filed in federal court, Baltimore County has committed to implement comprehensive investigation, rehabilitation, and maintenance measures throughout its sanitary sewer system that are expected to result in more than \$800 million in improvements over the next 14-1/2 years.

Baltimore County operates a sanitary sewage collection system that utilizes more than 3,000 miles of sewer lines and 110 pumping stations to transport sewage to wastewater treatment plants operated by the City of Baltimore. The United States and Maryland allege that the county has violated the federal Clean Water act and equivalent Maryland laws by allowing the repeated overflows of tens of millions of gallons of raw sewage from its collection system into area waterways since at least 1997.

The settlement requires Baltimore County to implement corrective measures to address both past and potential future causes of sewage overflows. Specific requirements include elimination of system relief points that allow discharges during heavy rains, completion of specific repair or replacement work in known overflow areas, ensuring that backup power exists for pumping stations, and increased oversight and regulation of grease management to reduce associated sewer backups. The county will also perform a compre-

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hensive proactive inspection of its collection system piping, equipment, and pump stations and deficiencies before they result in sewage overflows.

Baltimore County also has agreed to pay a \$750,000 penalty (divided equally between the United States and Maryland), and to perform three supplemental environmental projects valued at \$4.5 million. These projects include funding the design of nutrient removal enhancements at Baltimore City's Patapsco wastewater treatment plant, completing the restoration of several stream areas degraded by urban impacts, and installing a trash collection system to remove and dispose of floating debris.

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In another settlement being filed today, WSSC has agreed to a 14-year, \$200 million plan to repair and upgrade its wastewater collection system and improve water quality monitors. This agreement resolves Clean Water Act litigation brought by the United States, Maryland, and a coalition of four environmental groups.

WSSC owns and operates the sanitary sewage collection system that collects wastewater from residents of Montgomery and Prince George's counties in Maryland. WSSC allegedly violated the Clean Water Act by failing to properly operate and maintain its sewage collection system, resulting in sanitary sewage overflows into area streams and backups into buildings.

In this settlement, WSSC has agreed to a number of modifications and improvements. The commission will perform extensive sewer system evaluations on its 26 sewer basins, covering more than 5,000 miles of sewer pipe to repair or replace any identified problems. WSSC will conduct performance assessments on the modifications and develop a revised "collection System Operation and Maintenance Plan" that requires more frequent sewer pipe cleaning, root control and televising of pipes. The terms of the agreement also require WSSC to develop revised "emergency response plans" for sanitary sewer overflows and building backups, and improve operations of its pump stations if they experience overflows. The

company is also required to implement a new "fat, oil and grease" (FOG) permitting program, that will require "food establishments" in Montgomery County and Prince George's County to acquire a permit to discharge FOG into the collection system that will establish permit to discharge FOG into the collection system that will establish standards for better FOG management. WSSC will also regularly test the water quality of 24 major tributaries of the Anacostia River, the Potomac River, and Rock Creek to determine whether work being performed under the decree is having an impact on pollutant levels. All remedial measures must be completed within 14 years and are estimated to cost \$200 million.

Under the terms of the consent decree, WSSC is also required to pay a \$1.1 million cash penalty, divided equally between the United States and Maryland, as well as to complete three supplemental environmental projects – valued at \$4.4 million-specified in the agreement.

(EPA Press Release – 7/25/05)

GROUND-LEVEL OZONE PROGRESS TO CONTINUE

To continue progress toward meeting a stronger 8-hour ozone standard, EPA is taking final action to revoke the prior, less stringent 1-hour standard. In the same action, EPA is making exceptions for 14 "Early Action Compact" areas, which will still be covered by the 1-hour standard as they work to meet the 8-hour standard ahead of schedule. Due to the terms of the compact, these areas must keep certain 1-hour ozone controls in place until they meet the more protective 8-hour ozone standard. In exchange for a deferred effective date of their 8-hour ozone designation, Early Action Compact areas have agreed to take action to achieve clean air earlier than required under the 8-hour standard – no later than December 31, 2007. In light of the revocation of the 1-hour ozone standard, minor technical changes were also made to the Code of Federal Regulations to accommodate the areas that are technically still covered by the old standard. To learn more about this action, visit:

<http://www.epa.gov/ozonedesignations/>

(EPA News – 7/27/05)

EMISSIONS TRADING PROPOSED TO HELP IMPROVE VISIBILITY

Expanding upon the Clean Air Visibility Rule, EPA proposed an emissions trading program to help state and tribal governments improve visibility in national parks and wilderness areas. The proposal outlines an alternative emissions trading program that gives flexibility for states or tribal government in ways to apply Best Alternative Retrofit Technology (BART). The BART requirements would be satisfied if the trading program meets or exceeds the visibility benefits resulting from BART.

The BART requirements of the clean Air Visibility Rule apply to industrial facilities, built between 1962 and 1977, that emit air pollutants that reduce visibility by causing or contributing to regional haze. The Clean Air Visibility Rule, including the BART requirements finalized on June 15, 2005, will provide approximately \$240 million annually in visibility improvements in southeastern and southwestern parks. The rule

will also provide substantial health benefits in the range of \$8.4 - \$9.8 billion each year – preventing an estimated 1,600 premature deaths, 2,200 non-fatal heart attacks, 960 hospital admissions, and more than 1 million lost school and work days. The total annual costs of this rule range from \$1.4 to \$1.5 billion. The proposal applies to an emissions trading alternative that states and tribes may use to improve visibility in specially protected areas.

The proposed emissions trading rule will be open for public comment for 45 days after publication in the Federal Register. EPA will take final action on this issue by November, 2005.

(Env. Tip of the Week – 7/25/05)

U.S. ANNOUNCES CLEAN AIR AGREEMENT WITH NATION'S LARGEST HAZARDOUS WASTE TREATMENT AND DISPOSAL OPERATOR

The Justice Department and the Environmental Protection Agency (EPA) announced a settlement with Clean Harbors Environmental Services that is expected to enhance calculating and reporting on benzene emissions from North America's largest operator of hazardous waste treatment and disposal facilities. This settlement involves ten facilities in eight states. It confirms the proper industry standard for compliance with the Clean Air Act regulation that limits benzene emissions from facilities that treat, store, and dispose of hazardous waste.

The affected facilities are located in Chicago, Illinois; Cincinnati, Ohio; Braintree, Massachusetts; Bristol, Connecticut; Baton Rouge, Louisiana; Plaquemine, Louisiana; La Porte, Texas; Deer Park, Texas; Kimball, Nebraska; and Aragonite, Utah.

The agreement with Clean Harbors is part of EPA's efforts to enhance compliance with benzene regulations among hazardous waste treatment, storage, and disposal facilities. Benzene is a hazardous air pollutant and a known carcinogen.

A consent decree, filed in U.S. District Court for the Northern District of Illinois, will require Clean Harbors to properly determine the benzene quantities in waste shipments received from its customers. Clean Harbors will not be allowed to estimate the benzene received by using the middle number in a range of possible benzene concentrations that a customer supplies. Instead, Clean Harbors will have to measure the actual benzene concentration or use the high end of the range in order to ensure that benzene is not underreported. Underreporting benzene can result in failing to install pollution controls on tanks and other equipment that handle benzene.

(EPA – 9/13/05)

U.S., CANADA JOIN TO CUT FREIGHT INDUSTRY EMISSIONS AND SAVE FUEL

A new U.S.-Canada partnership could save up to 440 million gallons of fuel and prevent emissions of an estimated 5 million tons of carbon dioxide – a greenhouse gas – per year. To achieve that goal, EPA and Natural Resources Canada (NRCan) will coordinate voluntary cross-border projects with the freight industry focusing on idle

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reduction, deployment of clean technologies, and driver training and awareness.

EPA Acting Assistant Administrator Bill Wehrum and NRCAN Acting Deputy Minister Dr. Nawal Camel signed the memorandum of understanding (MOU) today at a freight facility near the Ambassador Bridge Border Crossing in Michigan. There are 13 million truck border crossings between Canada and the United States each year, including 3.3 million at the Ambassador Bridge.

The collaboration brings together the complementary strengths of EPA's SmartWay Transport Partnership and NRCAN's FleetSmart. SmartWay emphasizes the deployment of innovative technologies. FleetSmart specializes in driver education and training.

Additional information on the MOU and SmartWay is available at:

<http://www.epa.gov/smartway>.

Additional information on FleetSmart is at: <http://oee.nrcan.gc.ca/transportation/fleetSMART.cfm> (EPA – 9/14/05)

EPA PASSES POWER OVER PARKS AIR QUALITY TO STATES

A federal rule approved by the U.S. Environmental Protection Agency in June hands state governments a lead role in deciding how to improve air quality at many national parks and wilderness areas. The agency announced the rule to satisfy a court ordered consent decree with a conservation group, but it will fail to achieve clean air, the group says.

States have until 2018 to fully implement the rule, which aims to cut emissions from a wide array of industrial facilities until prior to 1977, including utility and industrial boilers, pulp mills, refineries and smelters.

Pollution from these facilities is reducing visibility and negatively impacting 156 national parks and wilderness areas across the United States, including Shenandoah, Great Smoky Mountains, Glacier, Big Bend, Acadia, Sequoia, and Yosemite National Parks.

The facilities covered by the rule each have the potential to emit more than 250 tons a year of visibility impairing pollution, including the particulate matter (PM_{2.5}), sulfur dioxides, nitrogen oxides, and some volatile organic compounds.

Some facilities may not have to make any emission cuts under the rule, which orders states to consider the visibility impacts of an individual facility when determining whether they have to install controls, and what those controls would be.

State implementation plans for reducing haze in the specially protected area must be submitted to the EPA by December 2007.

By 2018 the rule will cut annual emissions of NO_x by some 600,000 tons and annual SO₂ pollution by some 400,000 tons, according to the EPA.

"America's national parks and wilderness areas are getting a new level of protection," said Jeff Holmstead, assistant administrator for the Office of Air and Radiation. "The Clean Air Visibility Rule – combined with stringent standards for a dramatically cleaner new generation of vehicles and deep cuts in power plant emissions – mean that our views will be clearer and the air healthier."

The agency estimates the rule will cost some \$1.5 billion annually but will provide more than

\$8 billion in public health benefits and some \$240 million a year in increased tourism at the affected parks and wilderness areas.

The EPA announced the rule in order to satisfy a deadline ordered by a consent decree with Environmental Defense – it finalizes goals for cleaner air in the parks set by Congress in 1977.

But Environmental Defense, a national conservation group based in New York City, says the new rule falls short of what is needed to clean the air in national parks.

"Unfortunately, EPA has made it harder for states to restore clean air to our national parks by exempting some high-polluting industrial sources from clean up requirements," said Environmental Defense senior scientist Jana Milford.

"Protective state action enforcing EPA's pollution control guidelines will now be essential to lift the veil of haze from our nation's crown jewels," she said.

Environmental Defense disagrees with the EPA allowing states to ignore the first 35 days of adverse visibility impacts over a five year period in determining whether a source should be subject to cleanup requirements, dubbed best available retrofit technology or "BART."

Every day of visibility damage matters," said Milford. "We shouldn't have to wait 36 days to demonstrate that the source is harmful."

In June, Environmental Defense released a new report, "Clearing the Haze from Western Skies," documenting the rising pollution levels at national parks in the interior West, from Yellowstone in the north to Grand Canyon in the south.

Coauthored by Milford, the report finds that at parks and monuments across the West, average visibility is frequently only half what it would be under natural conditions, under which views can extend over 150 miles. At western parks and monuments from Guadalupe Mountains in the South to glacier in the North, visibility has worsened over the past decade.

Haze reduces natural visibility distances by as much as 25 miles in the eastern United States and 90 miles in the western parks.

Haze is made up of fine particle pollution, ozone pollution, and deposits of reactive nitrogen that "threaten sensitive mountain ecosystems and human health," the report warns.

Reactive nitrogen is released into the atmosphere in the form of ammonia or nitrogen oxides and falls to Earth in gas, particle or aqueous form. It can lead to over-fertilization of ecosystems, displacing natural species such as alpine wildflowers, and can contribute to acidification of lakes and streams. "High mountain ecosystems and water bodies across the West, from the Sierras and Cascades to the Colorado Rockies, are susceptible to this damage," the Environmental Defense report says.

"The common culprit in this suite of air pollution problems is emissions of nitrogen oxides (NO_x) from power plants, oil and gas production equipment, and motor vehicles" it states.

Milford and her coauthors urge the EPA to ensure that state determinations of sources subject to BART encompass all sources contributing to decreased visibility, human and ecosystem health problems.

Then the states and tribes should set protective emission limits that "accurately reflect the best available retrofit technology," the report recommends.

Recognizing the "tremendous pressure to accelerate oil and gas production in western locations that are close to population centers as well as sensitive ecosystems," Environmental Defense urges states, tribes and federal agencies to adopt "comprehensive and protective emissions control requirements for oil and gas production activities." Finally, the report warns that stringent emissions standards must be applied to new power plants, not only those built before 1977.

Other park advocates, too, are concerned the new EPA rule fails to match the scope of the air quality problems faced by America's 156 parks and wilderness areas and gives states the ability to exempt individual facilities from new pollution controls.

The rule condemns "many national parks to a future of unsightly and unhealthy air pollution," said Tom Kiernan, president of the National Parks Conservation Association. "The main culprits," he said "are hundreds of outdated power plants that have operated for decades without readily available and affordable air pollution control technologies."

"Our A-plus parks do not deserve C-minus protection," Kiernan said.

The report, "Clearing the Haze From Western Skies," is available at

www.environmentaldefense.org/go/westernhaze.

(By J.R. Pegg – *Environment News Service* – 6/16/05)

EPA REMOVES METHYL ETHYL KETONE FROM FORM R REPORTING REQUIREMENTS

To comply with a US District court order issued on June 13, EPA has deleted methyl ethyl ketone (MEK) from the list of chemicals in 40 CFR 372.65 that are subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). This action, which was published at 70 FR 125 Pages 37698-37700, means that you will no longer be required under ECRA section 313 to report releases of and other waste management information on MEK, including those that occurred during the 2004 reporting year. This action does not have any impact on your reporting requirements under EPCRA sections 311 and 312.

In the Federal Register of March 30, 1998 (63 FR 15195), EPA issued a Denial of Petition titled "Methyl Ethyl Ketone; Toxic Chemical Release Reporting: Community Right-to-Know." The denial was in response to a petition from the Ketones Panel of the Chemical Manufacturers Association (CMA) that requested the deletion of methyl ethyl ketone from the list of chemicals reportable under EPCRA section 313 and PPA section 6607.

The American Chemistry Council (formerly CMA) filed suit challenging EPA's decision in the United States District Court for the District of Columbia. Subsequently, the court granted summary judgment in favor of EPA. On appeal, the Court of Appeals for the District of Columbia Circuit reversed the lower court's decision, vacating the lower court's decision, and directing the district court to issue an order to "direct EPA to delete MEK from the TRI." 406 F.3d 738, 742(D.C. Cir. 2005).

(*Environment Tip of the Week* – 7/6/05)

FEDERAL REGISTER NOTICES

<http://www.epagov/homepage/fedrgrstr>

Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing. Partial withdrawal of direct final rule. (*Federal Register - 8/30/05*)

Environmental Protection Agency Guidelines Establishing Test Procedures for the Analysis of Pollutants; Analytical Methods for Biological Pollutants in Wastewater and Sewage Sludge; Proposed Rule. (*Federal Register - 8/16/05*)

Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants: Cellulose Products Manufacturing; Final Rule and Proposed Rule. Direct final rule; amendments. (*Federal Register - 8/10/05*)

Environmental Protection Agency Hazardous Waste Management System; Modification of the Hazardous Waste Program; Mercury Containing Equipment; Final Rule. (*Federal Register - 8/5/05*)

Environmental Protection Agency Regional Haze Regulations; Revisions to Provisions Governing Alternative to Source-Specific Best Available Retrofit Technology (BART) Determinations; Proposed Rule. (*Federal Register - 8/1/05*)

Environmental Protection Agency Waste Management System; Testing and Monitoring Activities; Final Rule: Methods Innovation Rule and SW-846 Final Update IIIB. (*Federal Register - 8/1/05*)

Environmental Protection Agency Mine Safety and Health Administration (MSHA) Asbestos Exposure Limit; Proposed Rule. (MSHA) are proposing to revise our existing health standards for asbestos exposure at metal and nonmetal mines, surface coal mines, and surface coal mines, and surface areas of underground coal mines. The proposed rule would reduce the full-shift permissible exposure limit and the excursion limit for airborne asbestos fibers. (*Federal Register - 7/29/05*)

Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants; General Provisions; Proposed Rule. Proposed amendments; request for public comment. (*Federal Register - 7/29/05*)

Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products; Proposed Rule. (*Federal Register - 7/29/05*)

Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products; List of Hazardous Air Pollutants, Lesser Quality Designations, Source Category List; Reconsideration. Request for Public Comment; Notice of Public Hearing. (*Federal Register - 7/29/05*)

Environmental Protection Agency Approval and Promulgation of Implementation Plans; New Jersey Architectural Coatings Rule. Proposed Rule. (*Federal Register - 7/21/05*)

Environmental Protection Agency Control of Emissions of Air Pollutant From Diesel Fuel. EPA is proposing to correct, amend, and revise certain provisions of the Highway Diesel Rule adopted on January 18, 2001 (66 FR 5002), and the Nonroad Diesel Rule on June 29, 2004 (69 FR 38958). (*Federal Register - 7/15/05*)

Environmental Protection Agency Test Procedures for Testing Highway and Nonroad Engines and Omnibus Technical Amendments; Final Rule. (*Federal Register - 7/13/05*)

Environmental Protection Agency Toxics Release Inventory Reporting Forms Modifications Rule. Final Rule (*Federal Register - 7/12/05*)

Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants: Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j). Final rule; amendment. (*Federal Register - 7/11/05*)

Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants: Oil and Natural Gas Production Facilities. Supplemental proposed rule. (*Federal Register - 7/8/05*)

Environmental Protection Agency Nonattainment Major New Source Review Implementation Under 8-Hour Ozone National Ambient Air Quality Standard: Reconsideration. Final rule; notice of final action on reconsideration. (*Federal Register - 7/8/05*)

Environmental Protection Agency Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations; Final Rule. (*Federal Register - 7/6/05*)

Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing; Final Rule and Proposed Rule. Direct final rule; amendments. (*Federal Register - 7/1/05*)

Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters: Reconsideration. Request for public comment. (*Federal Register - 7/27/05*)

Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants: Cellulose Product Manufacturing. Final rule; correction. (*Federal Register - 6/24/05*)

Environmental Protection Agency Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Control of VOC Emissions From Aerospace, Mobile Equipment, and Wood Furniture Surface Coating Applications for Allegheny County. Direct final rule. (*Federal Register - 6/24/05*)

BREAKING NEWS

The Supreme Court has agreed to hear a case on wetlands regulation under the Clean Water Act. The issue is whether wetlands not connected with navigable waterways can be regulated . . . Stay tuned.

NJ REGULATORY UPDATES

DUPONT TRADES NEW JERSEY RESOURCES FOR RESOURCE DAMAGE

In one of the largest natural resource damage settlements in New Jersey state history, NJDEP has agreed with E.I. DuPont de Nemours and Company to compensate the public for injuries to groundwater at eight DuPont sites with resources rather than cash.

The settlement includes preservation of 1,875 acres of land, spending \$1.8 million to plant 3,000 trees, payment of \$500,000 to the state for water restoration projects and construction of a boat ramp along the Salem River. The preserved land is in Cape May, Gloucester, Middlesex, Passaic and Salem counties.

"This settlement exemplifies a new paradigm for companies to resolve their natural resource damage liabilities in New Jersey," said Acting Governor Richard Codey. "Longstanding damage claims are translating directly into permanent conservation of land and water resources, as well as expanded public access to natural resources."

The resource-to-resource form of compensation developed by the state avoids costly litigation and complex, time consuming monetary valuation of natural resource injuries by focusing on restoration and land preservation projects.

The Department of Environmental Protection (DEP) used this method after DuPont approached the state willing to settle its natural resource damage liability for contaminating 2,400 acres of groundwater.

In the resource-to-resource compensation model, DuPont had to protect an equivalent area of land with a high aquifer recharge rate. Since DuPont only offered 1,875 acres as compensation, the DEP required additional environmental projects to make up for the acreage difference.

DEP is overseeing groundwater testing and cleanup work by DuPont at all eight contaminated sites, which are either presently or formerly owned by the company.

The settlement, which resolves natural resource damage liability for groundwater contamination at all eight sites, requires DuPont to place conservation easements on four undeveloped, uncontaminated properties and donate to the DEP two undeveloped, uncontaminated properties that are in the same watershed as the contaminated sites.

The lands preserved by conservation easement eventually will be transferred to DEP or land conservation organizations approved by the agency.

The Pompton Lake parcels, 73 acres, in and adjacent to the Highlands, have been owned by DuPont since 1902 and will be transferred to DEP and added to Ramapo State Forest. Heavily forested, the land provides wildlife habitat and exhibits some of the highest aquifer recharge in the region.

The Duhernal parcel, 63 acres, is now jointly owned by DuPont, Hercules, Inc. and the Borough of Sayreville. The parcel is part of a larger forested area that recharges the aquifer used by Sayreville and Middlesex County communities as drinking water. Much of the property is uplands that could be developed if sold to a private entity as development encroaches.

The two Repauno parcels, 435 acres, are forested wetlands and emergent freshwater marsh adjacent to the Delaware River. Approximately 100 acres of this land recharges groundwater.

The 955 acres in the Salem Creek parcels are a mixture of open waters and wetlands and adjacent

forested uplands. These parcels provide excellent fish and wildlife habitat, but recreational opportunities have been limited due to restricted access. Now, DuPont will construct a boat ramp with an access road and parking in Mannington Township as part of the settlement.

DuPont will contribute \$500,000 toward the acquisition of 350 acres of undeveloped, forested property in Cape May County. The area is under development pressure and protecting this land is critical to maintaining water supplies. The parcel also serves as a critical refuge for migratory birds.

DEP's voluntary program has resulted in the settlement of natural resource damages at 360 hazardous sites, the agency says. DEP is working with 95 additional responsible parties representing about 850 sites that seek to voluntarily resolve their liability for natural resource damages.

(Environment News Service – 7/11/05)

DEP PROPOSES NEW GREEN ACRES RULES

Department of Environmental Protection (DEP) Commissioner Bradley M. Campbell announced proposed rules that clarify the criteria used to award Green Acres funding and strengthen the standards governing the diversion of Green Acres protected parkland to uses other than recreation and conservation.

"These reforms fulfill our commitment to raise that bar against diversions of protected open space, and codify reforms to unfair funding approach that shortchanged New Jersey's most populated communities for years," said Commissioner Campbell.

The Green Acres rules govern the distribution of Garden State Preservation Trust funding to local governments and nonprofits. The proposed rules would formalize recent efforts by the Green Acres Program to direct more funding to projects located in densely populated communities throughout the State as well as watershed land critical to preserving our water resources. The rules also clarify many procedural requirements for both land acquisition and park development projects that will expedite payments to local governments and nonprofits for approved projects.

"By allowing every part of New Jersey to seek their fair share of open space funding, Commissioner Campbell's reforms to the Green Acres program have made a major difference in the renaissance of Essex County's historic park system," said Essex County Executive Joseph DiVincenzo.

Local government and nonprofits that accept Green Acres funding continue to own and manage their open space and parks, subject to certain restrictions designed to protect the public's investment. Under the new rules, local governments and nonprofits seeking to divert parkland to other uses would be required to give the public greater notice of and opportunity to comment on such proposals. In cases in which diversions are approved, local governments and nonprofits generally would be required to preserve at least twice as much land as they divert. Because major diversions would be subject to more stringent requirements, DEP proposes to create a category of minor diversions of parkland for which application requirements would be streamlined.

In addition, the proposed rules would require local governments to notify DEP and the public

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prior to changing the purpose for which Green Acres-funded parklands are being used to another recreation and conservation purpose. The change would require local governments to advertise and hold at least one public hearing on the proposed change and notify Green Acres of its intent prior to proceeding.

The proposed rules also describe the appraisal requirements established by the Highlands Water Protection and Planning Act. The legislation requires the Green Acres Program to determine a property's fair market value at the time of its acquisition and its hypothetical value as of January 1, 2004. Green Acres participation will be based on the higher of the two values, subject to available funding. The draft rules were published in the New Jersey Register July 5.

(DEP News – 7/13/05)

NEW JERSEY SETS POLLUTION LIMITS FOR 155 MILES OF WATERWAYS

The state of New Jersey is proposing new pollution limits for phosphorus and fecal coliform that cause water quality impairments in more than 155 miles of waterways across the state.

"This is one more tough action that continues New Jersey's commitment to safeguard water resources for residents and future generations," said Acting Governor Richard Codey. "Identifying sources and reducing pollutants is an important step in ensuring New Jersey has safe and healthy water for drinking, and recreational activities.

The 155 miles of waterways to be controlled are located in five watershed regions – Atlantic Coastal, Lower Delaware, Northeast, Northwest and Raritan.

"Phosphorus and fecal coliform are pollutants that degrade our water quality, and our ability to enjoy natural treasures like Swartswood Lake," said Department of Environmental Protection (DEP) Commissioner Bradley Campbell.

Swartswood Lake is contaminated with an excess of phosphorus, a nutrient from agricultural runoff that stimulates algae blooms. The new pollution limits are aimed to reduce and eliminating sources of phosphorus in three waterways entering Swartswood Lake, a Category One waterbody.

"The pollutant and its sources will be identified and eliminated to restore New Jersey's impaired waterbodies of safe and healthy waters that serve as sanctuaries for wildlife and offer swimming, fishing and boating opportunities," said Campbell.

The program sets Total Maximum Daily Loads, or TMDLs, limits that are developed for those waters that do not currently meet federal water quality standards.

New Jersey is now proposing total maximum daily loads for 23 waterways aimed at reducing fecal coliform and phosphorus. Water quality will be restored with strict requirements for fecal coliform pollution reductions of 21 to 98 percent and phosphorus reductions of 50 to 53 percent.

The DEP will achieve the targeted reductions by

NJ REGULATORY UPDATES (Continued)

addressing the sources for fecal coliform and phosphorus including failing septic systems.

The impairment for 20 of the TMDLs is fecal coliform in the form of human and animal wastes. Sewage treatment facilities are potential sources of fecal coliform when equipment failure or operational problems result in the discharge of untreated sewage.

DEP has adopted 230 TMDLs during the last two years. In 2004, 27 TMDLs were successfully completed and in 2003, 203 TMDLs were completed statewide.

DEP published all 23 proposed TMDLs in the May 2005 New Jersey Register.

(Environment News Service – 6/27/05)

DIESEL EXHAUST HARD ON NEW JERSEY RESIDENTS' HEALTH

Unfiltered diesel exhaust is a source of harmful air pollution, adversely impacting the health of residents and increasing health care costs, the New Jersey Clean Air Council says in its latest annual report.

The Clean Air Council, created in 1954, is composed of representatives from public, private and nonprofit groups who serve in an advisory capacity to the Department of Environmental Protection (DEP) regarding air matters.

In its report, the council says that diesel-powered engines, such as those found in trucks and school buses, are responsible for a significant amount of the particulate air pollution in New Jersey, especially in areas of high traffic and large populations such as urban areas.

The DEP supports legislation passed in June, which requires the use of air pollution control technology to reduce particulate emissions from school buses, transit, buses, garbage trucks as well as publicly owned on-road and non-road vehicles.

"This report validates the economic and public health importance of our initiative to reduce soot emission," said DEP Commissioner Bradley Campbell. "All New Jersey residents will play a role on this issue when our soot reduction initiative is presented to voters as a public question."

The adverse health effects caused by air pollution continues to be disproportionately higher in communities of color and low-income communities, the Council found. These communities are often located in urban centers that experience higher levels of pollution because of proximity to traffic and point source pollution such as smokestacks.

"The Clean Air Council is dedicated to improving air quality for all New Jersey's residents, while ensuring a health legacy for generations to come," said Leonard Bielory, M.D., Public Hearing Chairman of the Clean Air Council.

The Council notes that scientific research over the past 30 years indicates a direct link between poor air quality and increased incidence of asthma attacks, heart attacks, and premature deaths. The health care costs associated with treating conditions caused or aggravated by air pollution are high because of the loss of productivity with time away from school and work and the high number of emergency room visits.

In New Jersey, more than two million people under the age of 65 are without insurance, and rely on hospitals as the only source of medical care. The use of the state's hospitals as primary care facilities burdens taxpayers and increases overall state costs.

The Council is also urging DHSS to support regulation to limit smoking in all public facilities to protect the health and welfare of New Jersey's residents, tourists and workers.

(Environment News Service – 7/21/05)

CRITICS SAY FLOOD WARNINGS IGNORED BY DEP

The state Department of Environmental protection for three years ignored warnings by its own scientists that it needed to adopt stronger flood control measures, according to internal documents.

As a result, environmentalists charged that government inaction has led to increased flooding and property damage along the Delaware River and near the Garden State's smaller streams and creeks.

And with residential and commercial development unchecked in crucial watersheds, land that would otherwise absorb water is rapidly disappearing and threatening more severe deluges, they maintain.

"Their own experts' opinions have not been implemented even though they've identified a serious problem," said Bill Wolfe, director of the New Jersey chapter of Public Employees for Environmental Responsibility, a coalition of employees in state and federal environmental regulatory agencies.

Wolfe, a 13-year Department of Environmental Protection worker, left the agency in 2004.

"They try to blame Pennsylvania and New York for making the problem worse because they have no upstream management. But we have to take care of our own house first," he added.

While the flooding has so far been localized in much of South Jersey, those pushing for tougher restrictions and flood control measures contend that could change.

Gloucester County includes about 550 "river miles," or water frontage that could be at risk of increased flooding if dangerous development is not limited, environmentalists said.

DEP regulators in 1999 first identified that development in flood areas statewide threatened downstream landowners with more flooding, according to internal DEP documents released by Wolfe's group. In 2002, DEP regulators drafted a set of 46 recommended changes to the regulations.

Among them were proposals to curb development in flood areas and watersheds, better map and identify trouble spots and extend development buffers around streams and lakes.

(Gloucester County Times – 8/1/05)

DEP: WILL TOUGHEN FLOODING CONTROLS

The Department of Environmental Protection is expected to roll out a tougher set of anti-flood regulations by the end of this year.

That announcement came following a public hearing on the DEP's plan to re-adopt decade-old regulations governing development in New Jersey's watersheds and along its rivers.

During the meeting, attended by just a handful of environmentalists, critics complained DEP Commissioner Bradley Campbell needs to tighten current rules to prevent flooding along the Delaware River and its tributaries statewide.

"We want to make sure these rules are as comprehensive as they can be," said Vincent J. Mazzei, an energy with the DEP's Land Use Regulation Program.

Currently the DEP is in the process of holding public hearings on the old water regulations, which Mazzei said will serve as a placeholder until new standards are approved.

(Gloucester County Times – 8/18/05)

NO CLEANUP FOR GROUND WATER AT NEW JERSEY RADIUM SITES

After assessing the risk of doing nothing to clean up ground water at the Montclair/West Orange and Glen Ridge Radium Sites in Essex County, New Jersey, the U.S. Environmental Protection Agency (EPA) has concluded that the ground water does not require any cleanup.

The conclusions of the study and assessment mean that cleanup work is done at the sites. The agency will take public comment and hold a public meeting and information sessions on this proposed decision.

"With the cleanup complete, EPA has achieved its goal of protecting the people and the environment in the affected communities," said Acting EPA Regional Administrator Kathleen Callahan. "I encourage the public to continue its active involvement in the site and comment on our proposal."

The Montclair/West Orange and Glen Ridge Radium sites were contaminated with radioactive waste materials suspected to have come from radium processing companies located nearby during the early 1900s. Some of the radium-contaminated soil was used as fill or was mixed with cement for sidewalks and foundations.

In 1983, the state of New Jersey discovered homes with high levels of radon gas from the decay of radium in the soil, as well as high levels of indoor and outdoor gamma radiation.

In response, EPA installed radon ventilation systems and gamma radiation shielding in affected homes. The sites were listed on the National Priorities List of the nation's most hazardous waste sites in February 1985.

After performing a scientific study of the nature and extent of the contamination, EPA excavated and disposed of all radium-contaminated soil and restored the affected properties. EPA completed excavation activities in December 2004, removing and disposing of about 220,000 cubic yards of radioactive soil and debris and filling in the excavated areas with clean soil.

At the time EPA decided how to clean up the contaminated soil, the agency also recognized the need to examine potential impacts from the radiological contamination to ground water. EPA performed a study, which shows the ground water meets drinking water standards for radiological contaminants and that radon levels in the ground water are consistent with regional background levels.

(Environment News Service – 6/30/05)

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