

**Environmental Business Council
of the Commerce and Industry Association of New Jersey
ROUNDTABLE MEETING –January 25, 2017
PSEG Training and Development Center, Edison, NJ**

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I. Introduction/General Interest (Lanny Kurzweil – lkurzweil@mccarter.com)

- Trump orders sweeping freeze, pledges energy reforms –
<http://www.eenews.net/eedaily/2017/01/23/stories/1060048765>
- GOP Rep. Goodlatte Proposes Repeal of Chevron Doctrine –
<https://www.law360.com/articles/877136/gop-rep-goodlatte-proposes-repeal-of-chevron-doctrine>
- 2016 Environmental Case Law Highlights
<https://www.law360.com/articles/874699/2016-environmental-case-lawhighlights-part-1>
- The Biggest Environmental Law Rulings of 2016 –
<https://www.law360.com/articles/874290/the-biggest-environmental-law-rulings-of-2016>
- Environmental Cases to Watch in 2017—
<https://www.law360.com/articles/875514/environmental-cases-to-watch-in-2017>
- Environmental Regulation and Legislation To Watch In 2017 –
<https://www.law360.com/articles/875980/environmental-regulation-and-legislation-to-watch-in-2017>
- Energy Regulation and Legislation To Watch In 2017 –
<https://www.law360.com/articles/875191/energy-regulation-and-legislation-to-watch-in-2017>
- DuPont Hit With \$1B Enviro Cleanup Suit in NJ –
<https://www.law360.com/articles/875394/dupont-hit-with-1b-enviro-cleanup-suit-in-nj>
- Trump Taps Oklahoma AG Pruitt To Lead EPA –
<https://www.law360.com/articles/870287/trump-taps-oklahoma-ag-pruitt-to-lead-epa>
- 5 NJ Enviro Developments Attys Need to Know for 2017 –
<https://www.law360.com/newjersey/articles/880133/5-nj-enviro-developments-attys-need-to-know-for-2017>

II. Legislative (Sue Boyle – sboyle@geiconsultants.com & Tony Russo – arusso@cianj.org)

- Legislative Update

III. Brownfields and Site Remediation (Jorge Berkowitz - jberkowitz@langan.com, Michael Sylvester – michael.sylvester@ewma.com, Neil Rivers – nrivers@langan.com, Jeff Cappola – jcappola@wilentz.com, Don Richardson – don.richardson@ewma.com, Robert Crespi - rcrespi@csglaw.com)

▪ **Site Remediation Practitioners’ Forum (Neil Rivers & Jeff Cappola)**

Practice Pointers

- Site Remediation Practitioners Forum - Summary from the December 14th meeting hosted by Equity Environmental Engineering
- Next meeting will be February 22nd – Stantec in Mount Laurel

▪ **Brownfields (Michael Sylvester)**

- Brownfield Coalition - Initiative in Progress

▪ **LSRP Board Updates (Jorge Berkowitz)**

- Site Remediation Professional Licensing Board Announcements Regarding Licensure, Annual Fee, and Change in Contact Information – http://www.nj.gov/dep/srp/srra/listserv_archives/2016/201612_09_srra.html
- Examination Date for 2017 Licensed Site Remediation Professional (LSRP) Licensing Exam – http://www.nj.gov/dep/srp/srra/listserv_archives/2016/20161116_srra.html

▪ **Site Remediation and Other Technical Issues (Don Richardson – don.richardson@ewma.com, Robert Crespi – rcrespi@csglaw.com)**

- Chrome Maker Showed Good Faith in Enviro Row, Judge Says – <https://www.law360.com/articles/868224/chrome-maker-showed-good-faith-in-enviro-row-judge-says>
- Remedial Action Work Plan and Remedial Action Report Online Services Now Available – http://www.nj.gov/dep/srp/srra/listserv_archives/2016/20161209_srra.html
- RAR’s and RAW’s can now be submitted online – <http://www.nj.gov/dep/srp/srra/forms/>
- New Notice Available for Response Outcomes (RAOs) – http://nj.gov/dep/srp/srra/listserv_archives/2016/20161121_srra.html
- Administration Approves Plan to Remove Low-Level Radioactive Slag from Shieldalloy Site In Newfield, Gloucester County http://www.nj.gov/dep/newsrel/2017/17_0003.htm
- SRRA: Technical Guidance Update

E. External Steering Committee Updates (Tracy Straka tstraka@creamerenvironmental.com, Tony Russo – arusso@cianj.org, Rose DeLorenzo, rdelorenzo@matrixnewworld.com)

- Handout from December 14th SRAG Meeting – Site Remediation Program Comprehensive Report Traditional and LSRP Cases

- Monitor NJDEP's website for materials from last meeting
http://www.state.nj.us/dep/srp/srra/stakeholder/cvp_srag/

IV. Natural Resource Damages (Lanny Kurzweil – lkurzweil@mccarter.com)

- NJ Senator Says ExxonMobil Deal Lacked Analysis, Outreach –
<https://www.law360.com/articles/870708/nj-senator-says-exxonmobil-deal-lacked-analysis-outreach>

V. Chemicals and Petroleum (Bruce Groves– bgroves@emilcott.com, Dan McKillop – dmckillop@sh-law.com)

- EPA Finalizes Rule To Boost Safety At Chemical Facilities –
<https://www.law360.com/articles/875693/epa-finalizes-rule-to-boost-safety-at-chemical-facilities>
- EPA Moves to Ban Aerosol De-greasers, Spot Removers –
http://enviropoliticsblog.blogspot.com/2016/12/epa-moves-to-ban-aerosol-de-greasers.html#.WG_AhFMrJEZ
- DEP Accepts Plan To Curb Toxic Chemical In NJ's Drinking Water –
<http://www.njspotlight.com/stories/17/01/10/dep-accepts-plan-to-curb-toxic-chemical-in-nj-s-drinking-water/>
- After Paulsboro Criticism, Railroads Adopt Federal Standards for Chemical Spill Response –
<http://www.philly.com/philly/blogs/capitolinq/After-Paulsboro-railroads-adopt-federal-standards-for-chemical-spill-response.html>
- Concerns Over Oil Pipeline Persist Amid Lack of Plans
<http://www.northjersey.com/story/news/environment/2016/12/21/concerns-over-oil-pipeline-persist-amid-lack-plans/95608172/>

VI. Solid and Hazardous Waste (Dennis Morgan - dmorgan@iceservicegroup.com)

- EPA Has Revised Hazardous Waste Regulations –
<http://www.nj.gov/dep/enforcement/advisories/2017-01.pdf>

VII. Regional Regulatory Affairs (Anthony Savino – anthony_savino@golder.com & Bob Jackson – Bob.jackson@equityenvironmental.com)

Federal

- EPA Inks \$5.6M Deal for NJ Superfund Cleanup –
<https://www.law360.com/articles/863271/epa-inks-5-6m-deal-for-nj-superfund-cleanup>
- EPA Funds Projects to Support Water Conservation and Prevent Chemical Pollution from NJ Businesses During Flooding –
<https://www.epa.gov/newsreleases/epa-funds-projects-support-water-conservation-and-prevent-chemical-pollution-new-jersey>
- EPA Says It Can't Pay For Gold King Mine Spill Claims –
<https://www.law360.com/environmental/articles/881460/epa-says-it-can-t-pay-for-gold-king-mine-spill-claims>

- EPA under Trump – What can we expect?

New York

- Notice of Emergency Adoption (Third Re-Adopt): Amendments to 6 NYCRR Part 597 –
<http://www.dec.ny.gov/regulations/104968.html>
- NYSDEC Independent Analysis Finds EPA Hudson River Cleanup Fails to Protect Human Health and the Environment –
<http://www.dec.ny.gov/press/108737.html>

Pennsylvania

- Pa. Frack Spill Ruling Could Dent DEP's Negotiating Power –
<https://www.law360.com/energy/articles/880807/pa-frack-spill-ruling-could-dent-dep-s-negotiating-power>
- PADEP Offers Funding for Stormwater Management Projects –
<http://www.ahs.dep.pa.gov/NewsRoomPublic/articleviewer.aspx?id=21129&typeid=1>
- PADEP Developing Enhanced Eligibility Standards for Expedited Review of Erosion and Sediment Control General Permits –
<http://www.ahs.dep.pa.gov/NewsRoomPublic/articleviewer.aspx?id=21126&typeid=1>
- Governor Wolf Announces New Methane Rules to Improve Air Quality, Reduce Industry Loss –
<https://www.governor.pa.gov/governor-wolf-announces-new-methane-rules-to-improve-air-quality-reduce-industry-loss/>

VIII. OSHA (Tom Spatafora – tspatafora@posillico.com & Steve Barnett – sbarnett@connellfoley.com)

- Contractor excavation, confined space, training citations, \$197,000, Verona High School, NJ worksite –
https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=33630
- IMTT Bayonne Process Safety Management Standard citations \$99,800 –
https://www.osha.gov/pls/imis/establishment.inspection_detail?id=1151337.015
- JRC Construction fall hazard citation, \$76,000, Jersey City –
https://www.osha.gov/pls/imis/establishment.inspection_detail?id=1152126.015
- Burlington County Roads & Bridges Section citation, \$44,000, Columbus, NJ –
https://www.osha.gov/pls/imis/establishment.inspection_detail?id=1190213.015
- US Postal Service citation, Bloodborne Pathogen Standard, \$342,000 –
https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=33489
- Tree service worker fatality pulled into woodchipper, Albany, NY –
https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=33414
- Dollar General citation, blocked exits, \$215,578, Jonestown, PA –

https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=33369

- OSHA Whistleblower citation, zipline under Consumer Product Safety Act, \$125,000 –
https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=33426
- OSHA issues final rule, walking-working surfaces and personal fall protection –
https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=33438
- OSHA requests input on new rule addressing violence in health care and social assistance workplace –
https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=FEDERAL_REGISTER&p_id=27581
- OSHA issues small entity compliance guide for silica –
<https://www.osha.gov/Publications/OSHA3902.pdf>
- One by one, 3 utility workers descended into a manhole. One by one, they died –
[https://www.washingtonpost.com/amphtml/news/morning-mix/wp/2017/01/18/three-utility-workers-descend-to-their-deaths-in-florida-manhole-overcome-by-fumes/](https://www.washingtonpost.com/amphtml/news/morning-mix/wp/2017/01/18/three-utility-workers-descend-to-their-deaths-in-florida-manhole-overcome-by-fumes/%3Chttps://www.washingtonpost.com/amphtml/news/morning-mix/wp/2017/01/18/three-utility-workers-descend-to-their-deaths-in-florida-manhole-overcome-by-fumes/)
- OSHA under Trump – What can we expect?

IX. Lab (Paul Maide – pmaide@aquaprotechlabs.com)

- ELAC Update

X. Air Quality and Greenhouse Gases (Rich Vaccaro – madisonvector@aol.com & A. Roger Greenway – greenway@rtpenv.com)

- Air Pollution Control, N.J.A.C. 7:27; and State Implementation Plan (SIP) for New Jersey's Control and Prohibition of Air Pollution by Volatile Organic Compounds and Control and Prohibition of Air Pollution by Oxides of Nitrogen –
<http://www.nj.gov/dep/rules/notices/20170103a.html>
- EPA Won't Relax Vehicle Emission Standards for 2022-25 –
<https://www.law360.com/articles/867351/epa-won-t-relax-vehicle-emission-standards-for-2022-25>
- States Fight EPA Cross-State Air Pollution Rule Revamp –
<https://www.law360.com/articles/867292/states-fight-epa-cross-state-air-pollution-rule-revamp>
- European Commission Floats Climate Policy Overhaul –
<https://www.law360.com/articles/867231/european-commission-floats-climate-policy-overhaul>

XI. Sustainability & Energy (Jeffrey Entin – jentin@ramboll.com & Robert Blauvelt – Rblauvelt@GEIconsultants.com)

- NJ's Post-Christie Clean Energy Agenda – <https://enviropoliticsblog.blogspot.com/2017/01/planning-post-christie-clean-energy.html>
- NJ Bill – Solar Power Incentive Program to reduce grid congestion – http://www.billtrak.net/bt217/billtext/A_0/A_044111.PDF
- Largest Military Solar Project in NE launched in NJ – http://enviropoliticsblog.blogspot.com/2016/12/largest-military-solar-energy-project.html?sm_au=iVV14RkvkS7R65Vw
- Final Federal Wind-Turbine Rule Not Good News for Eagles – http://enviropoliticsblog.blogspot.com/2016/12/final-federal-wind-turbine-rule-not.html?sm_au=iVV14RkvkS7R65Vw#.WH5_nFMrJEY
- Breaking up of the Antarctica Ice Sheet? – <http://www.forbes.com/sites/trevornace/2017/01/08/huge-iceberg-size-delaware-break-antarctica/#5f65d23577f1>

XII. Water and Land Use (Jeff Cappola – jcappola@wilentz.com, Amy Greene – amygreene@amygreene.com)

- NJDEP Compliance Advisory - Reminder about Mandatory Change to Submit Pollutant Discharge Elimination System Discharge Monitoring Reports Data Electronically as of December 21, 2016 – <http://www.nj.gov/dep/enforcement/advisories/2016-13.pdf>
- 18 States Sue To Block ESA Habitat Rules – <https://www.law360.com/articles/867064/18-states-sue-to-block-esa-habitat-rules>
- High Court To Review 6th Circ.'s Water Rule Jurisdiction – <https://www.law360.com/articles/881026/breaking-high-court-to-review-6th-circ-s-water-rule-jurisdiction>
- Nationwide General Permits within the New York District – <http://www.nan.usace.army.mil/Missions/Regulatory/Nationwide-Permits/>

XIII. Compliance & Enforcement (Paul Dritsas – pdritsas@mccarter.com)

- EPA Nets \$6B In Penalties From Enforcement Actions In 2016 – <https://www.law360.com/articles/874517/epa-nets-6b-in-penalties-from-enforcement-actions-in-2016>
- Enforcement Annual Results for Fiscal Year 2016 – <https://www.epa.gov/enforcement/enforcement-annual-results-fiscal-year-2016>
- DEP Launches Mobile Application for Reporting of Non-Emergency Environmental Incidents – <http://www.nj.gov/dep/enforcement/advisories/2016-12.pdf>
- Chief Tanker Engineer Gets 8 Months For Hiding Oil Dump – <https://www.law360.com/articles/864947/chief-tanker-engineer-gets-8-months-for-hiding-oil-dump>
- Environmental Enforcement Under Trump: 5 Open Questions - <https://www.law360.com/articles/861210/environmental-enforcement-under-trump-5-open-questions>

**XIV. Environmental Business / Events / Other (Tracy Straka –
tstraka@creamerenvironmental.com)**

- January 26th – Healthcare Roundtable: NJ Health Commissioner Cathleen Bennett, Holy Name Hospital (Teaneck)
- January 27th – Real Property Roundtable: 2017: Will It Be A Good Year for Commercial Real Estate?, Saddle Brook Marriott
- February 15th – Financial Decision Makers Roundtable: Steve Adubato’s “Lessons In Leadership” Forum and Book Signing Event, Hilton Hasbrouck Heights
- March 15th – Chairman’s Reception: Saluting the Generosity of Business “Companies that Care”, Nanina’s In The Park (Belleville)
- May 8th – CIANJ’s Annual Golf Outing, Upper Montclair Country Club (Clifton)
- 2017 Site Remediation Practitioners’ Forums
 - February 22 – Stantec (Mt. Laurel)
 - April 26 – Amec Foster Wheeler (Hamilton)
 - June 28 – Whitestone Associates (Warren)
 - August 30 – Ramboll Environ (Princeton)
 - October 25 – SGS Accutest (Dayton)
 - December 13 – GEI (Mt. Laurel)
- 2017 EBC Roundtables at PSEG Training and Development Center – All dates are Wednesdays
 - January 25
 - March 29- **Please note this will take place at McCarter & English in Newark**
 - May 24
 - July 26
 - September 27
 - November 15

REGULATIONS

Trump orders sweeping freeze, pledges energy reforms

Arianna Skibell, E&E News reporter

Published: Monday, January 23, 2017

President Trump ordered a mandatory freeze on a wide range of pending Obama administration rules over the weekend, taking the first steps toward what he has promised will be a sweeping assault on the former president's regulatory agenda.

In a memorandum, released Friday, Chief of Staff Reince Priebus called for most pending rules to be halted "in order to ensure that the President's appointees or designees have the opportunity to review any new or pending regulations," he wrote.

The freeze could have an immediate effect on a number of non-final rules from agencies like the Department of Agriculture, the Department of Energy, U.S. EPA, the Department of Transportation, among others, according to federal records.

The order calls for all regulations that have been sent to the Office of Federal Register but not published to be immediately withdrawn. For regulations that have been published in the *Federal Register* but have not yet taken effect, the order calls for their postponement for at least 60 days. The memo makes exceptions for rules regarding emergency situations relating to health, safety, finance or national security matters.

Trump may reveal some of his plans for regulatory reform today at 10:30 a.m., when he is scheduled to issue executive orders.

Trump has also relaunched the White House website, clarifying his mission to rollback Obama rules (*Greenwire*, Jan. 20). Pages on climate change, civil rights, health care and LGBT issues have been replaced with pages on "America First Energy Plan," "Bringing Back Jobs and Growth," "Making Our Military Strong Again" and "Standing Up For Our Law Enforcement Community."

In the "America First Energy Plan," the administration lays out goals to reverse Obama actions geared towards combating climate change, while bolstering the oil, gas and coal industries.

"President Trump is committed to eliminating harmful and unnecessary policies such as the Climate Action Plan and the Waters of the U.S. rule," the website now reads.

"The Trump Administration will embrace the shale oil and gas revolution to bring jobs and prosperity to millions of Americans. We must take advantage of the estimated \$50 trillion in untapped shale, oil, and natural gas reserves, especially those on federal lands that the American people own."

The revenue from energy production will be used for major infrastructure projects, according to the website.

While the current freeze will have no impact on existing regulations, like the Clean Power Plan and the Waters of the U.S. rule, **it could effectively halt a final rule from DOT's Pipeline and Hazardous Materials Safety Administration that boosts pipeline safety by improving notification-response time after a spill.**

The rule was released Friday and was slated for publication today (*Greenwire*, Jan. 20).

Another recent PHMSA rule that could be affected is a proposed regulation to shore up restrictions on shipments of crude oil by rail.

The order could also affect a rule EPA is drafting on greenhouse gas pollution from aircraft, a court-ordered rule for hardrock miners to find a way to pay for environmental cleanups and a Fish and Wildlife Service effort to add bumblebees to the endangered species list.

Several new DOE efficiency standards that were part of Obama's effort to cut greenhouse-gas emissions could also be frozen. Standards affecting portable air conditioners, commercial boilers and power supplies were issued Dec. 28, 2016, but have not yet been published in the *Federal Register*.

DOE also released new standards for **pool pumps**, ceiling fans, residential air conditioners and heat pumps that are published but are not due to take effect until later this year. Some of these rules were negotiated with industry and so have a better chance of eventually taking effect.

It is not uncommon for new presidents to halt the outgoing administration's regulatory activity. In anticipation of such a freeze, President Obama took pains to push through as many rules as possible in the waning days of his administration.

While some of these rules, such as the Interior Department's Stream Protection Rule and the Bureau of Land Management's methane rule, are not vulnerable to the new freeze, they could be thwarted by the Congressional Review Act.

The CRA is a little-used, highly effective tool that allows Congress to review and possibly nix new agency rules within 60 legislative days. Renewable fuel standard obligations, vehicle emissions standards and EPA's aircraft emissions endangerment finding could be halted by the CRA.

But older rules like the EPA Clean Water Rule and the Clean Power Plan will be more difficult to repeal and could take years to complete.



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GOP Rep. Goodlatte Proposes Repeal Of Chevron Doctrine

By **Melissa Daniels**

Law360, Los Angeles (January 3, 2017, 9:02 PM EST) -- U.S. Rep. Rob Goodlatte, R-Va., has resurrected a plan to overturn the U.S. Supreme Court's longstanding Chevron doctrine, which gives deference to federal agencies' interpretations of ambiguous laws, by including changes to judicial review powers in a sweeping regulatory reform package introduced Tuesday.

The Chevron doctrine, established as guideline by the U.S. Supreme Court in 1984's *Chevron U.S.A. Inc. v. Natural Resources Defense Council Inc.*, requires courts to give deference to an agency's reasonable interpretations of statutes it administers should the law be ambiguous or silent on certain points. **Last summer**, the House passed a proposal to overturn it on a largely party-line vote, but the Senate didn't move it forward.

Goodlatte introduced his Regulatory Accountability Act of 2017, which includes a repeal of Chevron and ideas from five other agency-targeted proposals, at the outset of the Republican-controlled **115th Congress**. The bill's collection of previously proposed regulatory reforms will cut out "overly-burdensome red tape and regulations" in an effort to promote jobs, innovation and economic growth, Goodlatte said.

"The bill promotes making the regulatory process more transparent for the American people; increases the power of the people's elected representatives and the courts to stop overreaching new rulemaking; and lets the public have the full say they deserve in the rulemaking process," Goodlatte said in a news release.

The Chevron doctrine often shows up in judges' opinions, or it may be debated by litigants embroiled in suits with any number of federal agencies. For example, the Ninth Circuit cited Chevron in an August case denying asylum for a Guatemalan man based on the U.S. attorney general's interpretation of its regulations. In August, the Sixth Circuit found that the Board of Immigration Appeal's precedential opinions on prostitution were entitled to Chevron deference in a decision that upheld a Mexican woman's removal.

Back in July, when the House passed the Separate of Powers Restoration Act to repeal the Chevron doctrine, a statement from The White House threatened a veto and said the bill would "unnecessarily" overrule Supreme Court precedent. Opponents said the bill will add needless complexities that delay judicial review while limiting agency's abilities.

But Goodlatte and repeal supporters say the Chevron doctrine unfairly expands executive branch power. He previously warned that the standard could lead to lazy lawmaking, with Congress knowing judges will defer to agency interpretations where there are gaps and ambiguities in laws.

Goodlatte's Regulatory Accountability Act of 2017 address Chevron by amending the section of the U.S. Code pertaining to judicial review. It adds language that requires courts to review the rules made by agencies, and explicitly prevents other laws from exempting actions from the newly elevated standard of review.

Other prongs of the proposal include requiring agencies to choose the lowest-cost rulemaking alternative and offer greater opportunities for public input and vetting.

It would also require agencies to pinpoint and reduce direct and indirect effects of regulations on small businesses, as outlined by last session's proposed Business Regulatory Flexibility Improvements Act.

Goodlatte's proposal also would prohibit "billion-dollar rules" from taking effect until courts can resolve timely-filed litigation challenging them, and require agencies to publish online information about developing regulations and their costs, and plain-language summaries of new rules.

—Additional reporting by Michael Macagnone, Y. Peter Kang and Cara Bayles. Editing by Joe Phalon.

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2016 Environmental Case Law Highlights: Part 1

By Anthony Cavender, Pillsbury Winthrop Shaw Pittman LLP

Law360, New York (December 30, 2016, 9:43 AM EST) -- This is a review of significant environmental law (and some administrative law) cases decided in 2016 (except, by necessity, for the month on December 2016) by federal and state courts. In view of its length, this article will be published in three parts.

Part 1 will cover cases decided by the U.S. Supreme Court and federal courts sitting in the D.C., First, Second, Third and Fourth Circuits. Part 2 will highlight cases decided by the federal courts sitting in the Fifth, Sixth, Seventh, Eighth and Ninth Circuits. Finally, part 3 will cover cases decided in the Tenth and Eleventh Circuits, as well as several state supreme courts.



Anthony B. Cavender

U.S. Supreme Court

In contrast to more recent terms, the 2015 to 2016 term of the Supreme Court produced only a handful of notable environmental or administrative law decisions.

In *United States Army Corps of Engineers v. Hawkes Co. Inc.*, decided May 31, 2016, the court held that the Army Corps of Engineers' Corps' "approved jurisdictional determinations" under its Clean Water Act authority, are also final agency actions judicially reviewable under the Administrative Procedure Act. The CWA prohibits the discharge of any pollutant into the "navigable waters of the United States" without a permit, and the Corps, during the time relevant to the case, writes the Chief Justice John Roberts, has applied its regulatory definitions and administrative procedures (including judicial determinations) to bring "over 270- to 300-million acres of swampy lands in the United States — including half of Alaska and an area the size of California in the lower 48 state under its jurisdiction."

The scope of the Corps' authority, the cost and length of the permit process, and the definitive nature of approved jurisdictional determinations persuaded the court that the "finality" test of *Bennett v. Spear*, 520 U.S. 154 (1997), was satisfied, and therefore such agency actions are "final" for purposes of APA review. Since this case was decided, several lower courts have used this precedent to facilitate judicial review of a variety of administrative actions. On June 20, 2016, the court decided the case of *Encino Motorcars LLC v. Navarro*, and vacated the ruling of the Ninth Circuit that had extended "Chevron deference" to a U.S. Department of Labor regulation that reversed the department's earlier policy without providing a reasoned explanation for the change.

The court has agreed to hear two new cases of interest: an Eighth Circuit case, *Trinity*

Lutheran Church v. Pauley, regarding the exclusion of the church from a Missouri recycling program on religious grounds; and Gloucester County School Board v. G.G., a Fourth Circuit case that includes a question of whether "Auer Deference" should apply to an unpublished agency letter.

Federal Courts of Appeal and District Courts

D.C. Circuit

The D.C. Circuit has decided an unusual number of Endangered Species Act (ESA) cases this year, and some important Comprehensive Environmental Response, Compensation, and Liability Act-related cases.

The court's ruling in Idaho Conservation League case, decided on Jan. 29, 2016, concerned the U.S. Environmental Protection Agency's rule making duties under CERCLA. By law, EPA is required by Section 108 of CERCLA to establish financial assurance and responsibility rules for classes of facilities that are associated with the production, transportation, treatment, storage or disposal of hazardous substances. However, more than 30 years have passed without any rules or proposed rules being published by the EPA. The court ordered the EPA to expedite its rulemaking schedule for the first class of industries it has chosen to examine, the hardrock mining industry. The EPA was also ordered to prepare a schedule by which it will determine if similar financial responsibility rules should be proposed for the chemical manufacturing, petroleum and coal products, and electric power generation, transmission and distribution industries. On Dec. 1, 2016, EPA released its first notice of proposed rulemaking in response to this decision.

In Defenders of Wildlife and Center for Biological Diversity v. Jewell, decided March 1, 2016, the appeals court affirmed the lower court's decision that the U.S. Fish and Wildlife Service's withdrawal of the proposed listing of the Dunes Sagebrush Lizard as an endangered species was consistent with the Endangered Species Act and the policies the service has employed to administer the act.

In Lockheed Martin Corporation v. United States, decided Aug. 19, 2016, the court affirmed the lower court's holdings that the equitable allocation for the past remedial costs at these sites was NONE for the United States and 100 percent for Lockheed. Going forward, the court allocated future response costs between Lockheed and the United States at each of these three sites, generally in a 75 percent to 25 percent range, with Lockheed being allocated the higher share. The case is noteworthy because of Lockheed's status as a government contractor with many ongoing contracts with the United States. As a result, Lockheed has already recovered nearly 80 percent of the past remediation costs as well as millions of dollars to reimburse Lockheed's legal costs — something that is not otherwise permitted under CERCLA, but the government contracts allow these legal costs to be recovered.

On July 27, 2016, the D.C. Circuit issued a long and complex opinion essentially upholding every regulatory decision made by the EPA in three major Clean Air Act rulemakings: the "Major Boilers" rule, the "Area Boilers" rule; and the "Commercial/Industrial Solid Waste Incinerators" (CISWI) rule. The consolidated cases are United States Sugar Corporation v. EPA, American Forest & Paper Association, et al. v. EPA; and American Chemistry Council v. EPA, and again indicates the substantial deference the court extend to the EPA.

In Mingo Logan Coal Company v. EPA, decided July 19, 2016, the D.C. Circuit held that the EPA acted in conformity with its authority under the CWA and APA when it vetoed a CWA Section 404 dredge and fill permit Mingo Logan Coal Company received from the Corps in 2007 with the concurrence of the EPA. Judge Karen Henderson ruled that Mingo Logan's argument that the EPA was obliged to consider the costs of its action was forfeited because this argument was not effectively made with the EPA and the district court. Judge

Brett Kavanaugh filed a strong dissent, making the case that Mingo Logan had preserved its economic argument, and the EPA was under an obligation to consider the costs of its actions, especially when the permit applicant, on the basis of the initial permitting decision, invested substantial sums of money and hired coal miners. This decision greatly enhances EPA residual authority under Section 404 of the CWA.

In the case of *Earth Reports Inc., et al. v. Federal Energy Regulatory Commission*, decided on July 15, 2016, the court affirmed the Federal Energy Regulatory Commission's "conditional authorization" of the conversion of the Cove Point, Maryland liquefied natural gas (LNG) facility from an import terminal to a mixed-use import and export terminal. The court concluded that, under the law, FERC was not required by NEPA to consider the indirect environmental effects of increased natural gas exports, including possible effects on climate change. The court of appeals also pointed out that the petitioners were free to raise these objections with the U.S. Department of Energy, which "alone has the legal authority to authorize" increased LNG exports.

On June 3, 2016, the D.C. Circuit issued an important administrative law ruling. In *Rhea Lana Inc. v. Department of Labor*, the court reversed the lower court which had held that a warning letter sent to the plaintiff by the Wage and Hour Division of the Department of Labor was not a "final action" for purposes of review under the Administrative Procedure Act. The D.C. Circuit held that the letters were a final agency action because they create significant legal consequences for the plaintiff. The Supreme Court's decisions in *Sackett v. U.S.* and the recent decision in *U.S. Army Corps of Engineers v. Hawkes* were cited as authority.

In *Association of American Railroads v. U.S. Department of Transportation*, decided by the D.C. Circuit on April 29, 2016, the court held that Amtrak's exercise of legislative delegation of authority to it by the Congress is unconstitutional on due process grounds, citing the 1936 Supreme Court decision in *Carter v. Carter Coal*, 298 U.S. 238 (1936), a Supreme Court decision that is not widely cited. Moreover, the Passenger Rail Investment and Improvement Act, by containing a provision that the Surface Transportation Board can designate an arbitrator to resolve disputes between Amtrak and the Federal Railroad Administration, violates the appointments clause of the U.S. Constitution.

On July 5, 2016, the court reviewed the lower court's dismissal of a lawsuit alleging that the government's approval of a Cape Cod offshore wind energy project violated several environmental statutes. The appeals court held that the National Environmental Policy Act finding made by the primary permitting agency, the U.S. Bureau of Ocean Energy Management, did not take a sufficiently "hard look" at the proffered geophysical evidence, and that an ESA "incidental take" determination must be set aside because the service should have considered the submissions of the plaintiffs. Otherwise, the court was satisfied with the project's compliance with the other permitting and development requirements. The case is *Public Employees for Environmental Responsibility v. Hopper, Acting Director of the U.S. Bureau of Ocean Energy Management*. This case indicates how carefully the courts will scrutinize agency NEPA determinations.

On July 5, 2016, the D.C. Circuit issued an important ruling interpreting the reach of the Freedom of Information Act in the case of *Competitive Enterprise Institute v. Office of Science and Technology Policy*. The D.C. Circuit reviewed the CEI's attempts to obtain the records of the director found in emails sent to or from his private, nongovernmental email account. The court holds that an "agency cannot shield its records from search or disclosure under FOIA by the expedient of storing them in a private email account controlled by the agency head," and reversed the lower's ruling that these records, which may otherwise be government records, need not be searched for or turned over.

On June 28, 2016, the court denied petitions to review the NEPA environmental issues affecting two separate Federal Energy Regulatory Commission LNG export terminal

facilities in *Sierra Club and Galveston Baykeeper v. FERC* (pertaining to the Freeport, Texas terminal) and *Sierra Club v. FERC* (regarding the Sabine Pass Terminal). The court found that the petitioners had demonstrated sufficient standing, but the basic flaw in the petitioners' argument seems to have been that FERC's role is fairly circumscribed by law, and that the major complaint was that the export of LNG would inevitably reduce the supply of natural gas for domestic purposes, thus increasing reliance on cheaper sources of energy such as coal. The court was satisfied with the quality and comprehensiveness of FERC's NEPA review of nonexport-related environmental consequences, and that the commission did not act in an arbitrary and capricious manner. The court's opinion is especially valuable because it elucidates the "tangled web" of federal export authorization authority.

On Sept. 9, 2016, the U.S. District Court for the District of Columbia denied a motion for a preliminary injunction filed by the Standing Rock Sioux Reservation against the construction of the Dakota Access Pipeline through the lands of the tribe, which has been upheld by the D.C. Circuit. That case is *Standing Rock Sioux Tribe, et al v. U.S. Army Corps of Engineers*. The tribe alleged that the Corps, in its review of the permitting requirements triggered by the project, had failed to engage in the consultative process requirements of Section 106 of the National Historic Preservation Act (NHPA), but that court denied relief, holding that the tribe largely refused to engage in such consultation.

Second Circuit

On Aug. 8, 2016, the Second Circuit issued a comprehensive opinion affirming in all respects the decision of the U.S. District Court for the Southern District of New York that a foreign judgment obtained by Ecuadorian plaintiffs against Chevron for alleged pollution in the Ecuadoran rain forest by Texaco many years ago was, in fact, procured by fraud. The case is *Chevron Corporation v. Donziger, et. al*, and the court of appeals agreed that equitable relief was warranted under the Federal RICO statute.

Third Circuit

On Jan. 6, 2016, the Third Circuit affirmed the dismissal of a Clean Air Act citizen suit in *Group Against Smog and Pollution (GASP) v. Shenango Incorporated*. Shenango operates coke manufacturing and by-products facility in Allegheny County, Pennsylvania, and the plaintiff alleged that the facility was violating a number of opacity regulations imposed by the local air quality permitting authority, the Allegheny County Health Department (ACHD). In 2012, the Pennsylvania Department of Environmental Protection and the ACHD filed an enforcement action against Shenango in federal court, which resulted in a consent decree to resolve these air quality violations. Importantly, the federal court retained jurisdiction over the consent decree. Then, in 2014, GASP filed a complaint against Shenango in state court, which also resulted in another consent decree with the ACHD. On these facts, the court of appeals agreed that that GASP's citizen suit should be dismissed. According to the court, there was an ongoing diligent prosecution of Shenango when the lawsuit was filed, and this is true even if the ongoing enforcement is currently limited to the ongoing administration of approved consent decrees.

On Aug. 8, 2016, the Third Circuit rejected several challenges to energy projects requiring environmental permits and authorizations granted by state regulatory agencies in New Jersey and Pennsylvania. The consolidated cases are *Delaware Riverkeeper Network et al. v. Secretary, Pennsylvania Department of Environmental Protection and New Jersey Conservation Foundation et al v. New Jersey Department of Environmental Protection*. Transcontinental Gas Pipe Line Company LLC (Transco) operates a natural gas pipeline extending from South Texas to New York, and proposed a local expansion of this pipeline, which required, in addition to the approval of the Federal Energy Regulatory Commission, the issuance of facilitating state environmental permits and authorizations in New Jersey and Pennsylvania, that were granted by the New Jersey and Pennsylvania

Departments of Environmental Protection in 2015. These permitting actions were challenged by several local environmental organizations in the Third Circuit.

The Third Circuit was obliged to consider the arguments the states made that the court was without jurisdiction to review these petitions, particularly concerning those state actions assessing the water quality impacts of this pipeline expansion under Section 401 of the CWA. In a significant ruling, the court responded to these arguments by holding that it had this authority through the Natural Gas Act; that these states were, in fact and law, acting pursuant to federal law in issuing state permits to Transco. To rule otherwise would frustrate the purpose of Congress' grant of jurisdiction to the federal courts under the NGA.

Fourth Circuit

The District Court

On Oct. 17, 2016, the U.S. District Court for the Northern District of West Virginia granted summary judgment to Murray Energy Corporation, which sued the EPA seeking declaratory and injunctive relief against the EPA because the agency has persistently failed to perform a nondiscretionary duty under Section 321(a) of the Clean Air Act (42 USC Section 7621 (a)) to "conduct continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement" of the Clean Air Act with regard to the effect the agency's actions are having on the coal industry and "the hundreds of thousands of people it directly or indirectly employs."

The case is Murray Energy Corporation et al. v. McCarthy. Following a review and analysis of the law and its legislative history, the court concluded that: (1) Section 321(a) imposes a mandatory duty on the EPA to make these studies; (2) that the plaintiffs had standing to maintain these claims; and (3) the EPA has failed or refused to conduct the types of studies the law requires. The court ordered the EPA promptly to develop and submit to the court a plan by which it will comply with Section 321(a), and the plaintiffs will then have an opportunity to comment on these plans. This decision, if affirmed, could have enormous consequences for many EPA rulemaking proceedings.

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The Biggest Environmental Law Rulings Of 2016

By **Juan Carlos Rodriguez**

Law360, New York (December 21, 2016, 5:21 PM EST) -- U.S. courts grabbed headlines in 2016 with rulings in several important environmental law cases, approving Volkswagen's \$14.7 billion settlement over its emissions cheating scandal, allowing the U.S. Environmental Protection Agency to revoke coal permits and blocking key federal rules backed by the Obama administration.

Here are the year's the biggest rulings in environmental law.

Swift VW Settlement Gets Nod

A California federal judge in October approved Volkswagen AG's **\$14.7 billion settlement** with consumers and the federal government over the emissions cheating scandal.

Under the deal, Volkswagen must set aside up to \$10 billion to buy back consumers' cars. The German automaker also has to invest \$2 billion over the next 10 years in projects that support the increased use of zero-emission vehicles, as well as \$2.7 billion to mitigate the effects of the emissions from cars equipped the so-called defeat devices.

Starting in mid-November, about 475,000 owners of affected VW and Audi 2.0-liter diesel vehicles were able to begin seeking buybacks of their cars, or to have their cars fixed. The settlement with the drivers also includes payments of \$5,000 to \$10,000 to most consumers who bought their cars before a September 2015 cutoff, in addition to the buybacks.

And on Tuesday, a California federal judge announced Volkswagen has reached a tentative deal worth at least \$1 billion over 80,000 3.0-liter cars that were implicated in the company's emissions scandal.

The multidistrict litigation is In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation, case number 3:15-md-02672, in the U.S. District Court for the Northern District of California.

Climate Predictions OK'd in ESA Decisions

The Ninth Circuit **in October** ruled that 100-year climate change projections could factor into the National Marine Fisheries Service's decision to list the Pacific bearded seal as a threatened species — a finding that could solidify the government's authority to rely on similar forecasting for future Endangered Species Act listings.

Using the long-term forecast, the NMFS concluded in 2012 that two distinct population segments of the Pacific bearded seal were likely to become endangered within the "foreseeable future" — in this case 2095 — due to the projected loss of Arctic sea ice. The

Ninth Circuit backed that reasoning, finding the agency's decision to be reasonable and calling the climate forecast used the "best available science" on the subject.

The listing decision came under fire from Alaska, oil and gas groups, local governments and others, who were able to get the listing overturned at the district court level but failed at the Ninth Circuit.

The appeals are Alaska Oil and Gas Association et al. v. Penny Pritzker et al., case numbers 14-35806 and 14-35811, in the U.S. Court of Appeals for the Ninth Circuit.

Clean Power Plan Stalls

The U.S. Supreme Court **stayed the implementation** of the EPA's Clean Power Plan in February while it's being challenged in court, reversing the D.C. Circuit and dealing a heavy blow to President Barack Obama's signature climate change initiative.

The D.C. Circuit then further raised the stakes by canceling oral arguments that were scheduled for June in front of a three-judge panel, and instead **holding them in September** in front of an en banc court. Only Supreme Court nominee Merrick Garland sat out the proceedings.

The CPP calls for existing power plants to slash their carbon dioxide emissions by 32 percent from 2005 levels by 2030.

Allison Wood, a partner at Hunton & Williams LLP who is representing rule opponents including the Utility Air Regulatory Group in the litigation, said the high court's stay was the first time that it stepped in and gave emergency relief on an environmental regulation before the D.C. Circuit had weighed in on it.

"It's a clear indication of the significance of the Clean Power Plan litigation," Wood said. "And I thought it reflects a line of cases that we've see over the last few years where the Supreme Court has said the EPA can't overstep."

She said the stay, coupled with the D.C. Circuit's forthcoming en banc ruling, makes much more likely the high court will have the final word on the controversial regulations.

The case is West Virginia et al. v. EPA, case number 15-1363, in the U.S. Court of Appeals for the District of Columbia Circuit.

EPA Given Leeway to Pull CWA Permits

The D.C. Circuit in July **upheld the EPA's revocation** of an Arch Coal mining unit's coal permits, saying the agency has broad authority under the Clean Water Act to yank them due to wildlife concerns.

Mingo Logan Coal Co. had urged the D.C. Circuit to overturn an October 2014 ruling that the EPA could revoke a Clean Water Act permit issued by the U.S. Army Corps of Engineers covering the company's Spruce No. 1 mountaintop coal mine in southwest West Virginia. The company asserted that the EPA lacked the authority to revoke permission after issuing a permit under Section 404 of the CWA, which covers the discharge of dredged or fill material.

But the D.C. Circuit agreed with the EPA that under the CWA, it can act whenever it determines that the discharge of such materials into an area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife or recreational areas.

The case is Mingo Logan Coal Co. v. EPA, case number 14-5305, in the U.S. Court of Appeals for the District of Columbia Circuit.

BLM Fracking Rule Stumbles

A Wyoming federal judge in June **struck down** the U.S. Bureau of Land Management's rule regulating fracking on federal and Native American lands, finding the agency lacked congressional authority for its action — a big win for energy industry groups and states opposed to the rule.

The BLM issued the rule in March 2015, imposing stringent well casing and wastewater storage requirements, as well as requiring drillers to disclose what chemicals they're using in fracking operations. U.S. District Judge Scott Skavdahl, who in September blocked implementation of the rule until the litigation over its legality played out, said the BLM overstepped its authority in issuing the rule because Congress never directed it to enact regulations governing hydraulic fracturing.

Megan Berge, a partner at Baker Botts LLP, said the ruling was important because it cut off an avenue for regulators and environmentalists who wanted to either keep stricter tabs on fracking operations or make it economically unpalatable to extract oil and natural gas through regulations.

"Any time you have a court coming in and deciding that an agency doesn't have authority to issue any type of regulation over some activity, that's incredibly impactful," Berge said.

The BLM has appealed the ruling to the Tenth Circuit.

The case is Wyoming v. Department of the Interior et al., case number 2:15-cv-00043, in the U.S. District Court for the District of Wyoming.

Army Corps Opened Up to CWA Jurisdiction Challenges

The U.S. Supreme Court ruled in May that federal courts **can review determinations** by the Army Corps that a wetland is subject to Clean Water Act regulations.

The decision was a win for landowners who complained they faced unreasonable hurdles when they disagreed with an agency finding. In a unanimous ruling, the justices upheld the Eighth Circuit's ruling that so-called approved jurisdictional determinations are final agency actions that can be reviewed by courts under the Administrative Procedure Act.

The high court said the Corps' jurisdictional determinations meet the criteria for final agency actions — they mark the completion of the agency's decision-making process and are not of a "merely tentative or interlocutory nature," and they determine rights or obligations, or cause legal consequences.

The case is U.S. Army Corps of Engineers v. Hawkes Co. Inc. et al., case number 15-290, in the Supreme Court of the United States.

Texas Haze Plan Put on Hold

The Fifth Circuit in July **stayed the EPA's plan** to require improved visibility in national parks and wilderness areas in Texas through pollution controls at certain power plants.

Texas had asked the Fifth Circuit to stay an EPA rule that replaced Texas' and Oklahoma's plans for reducing regional haze at national parks and scenic areas with federal ones, arguing the rule could make electricity production less reliable. Luminant Generation Co. LLC and Xcel Energy Corp.'s Southwestern Public Service Co. also challenged the rule.

The EPA had largely approved the state implementation plans, but it altered them with a federal plan that called for sulfur-dioxide emissions limitations at eight power plants in Texas.

The Fifth Circuit denied the EPA's motion to transfer the challenge to the D.C. Circuit and stayed the rule, saying the petitioners were likely to succeed on the merits.

The case is State of Texas et al. v. EPA et al., case number 16-60118, in the U.S. Court of Appeals for the Fifth Circuit.

Cross-Border Pollution Claims Fall Flat

The Ninth Circuit in July **overturned a federal judge's ruling** that allowed Washington state and a Native American tribal federation to sue Canadian mining company Teck Cominco Metals Ltd. over aerial emissions from a smelter in Canada that allegedly polluted land in Washington.

The state and the Confederated Tribes of the Colville Reservation sued Teck 12 years ago, claiming it released toxic chemicals from the smelter into the air that then drifted over the U.S. border and settled in the upper Columbia River region, harming water, land and wildlife. In 2014, a Washington federal judge allowed the plaintiffs to assert claims under the Comprehensive Environmental Response, Compensation and Liability Act that the releases constitute a "disposal" as defined by the statute, which would expose Teck to a greater degree of liability.

But the Ninth Circuit held that when a smelter emits pollutants — in this case lead, arsenic, cadmium and mercury compounds — through a smokestack and those compounds contaminate land or water downwind, the owner-operator of the smelter cannot be held liable for cleanup costs and natural resource damages under CERCLA.

The case is Pakootas et al. v. Teck Cominco Metals Ltd., case number 15-35228, in the U.S. Court of Appeals for the Ninth Circuit.

--Additional reporting by Emily Field, Stan Parker and Keith Goldberg. Editing by Mark Lebetkin and Brian Baresch.

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Environmental Cases To Watch In 2017

By **Juan Carlos Rodriguez**

Law360, New York (January 2, 2017, 1:03 PM EST) -- Environmental law promises to make headlines in 2017 as several blockbuster cases are likely to be decided, including litigation over the Obama administration's signature Clean Power Plan climate change regulations, the controversial Waters of the U.S. rule, and if and how climate change may factor into endangered species protection efforts.

Here are the biggest cases environmental attorneys will be watching in 2017.

Clean Power Plan Litigation

In September, an en banc panel of 10 D.C. Circuit judges **heard oral arguments** over the legality of the U.S. Environmental Protection Agency's Clean Power Plan, which calls for existing power plants to slash their carbon dioxide emissions by 32 percent from 2005 levels by 2030.

Opponents of the initiative, including states and industry groups, say the Clean Air Act doesn't give the EPA the authority to carry out the rule. The challengers have argued the rule will illegally force coal-fired power plants out of business and new investment in cleaner energy sources.

While observers wait for the D.C. Circuit's ruling, the election of Donald Trump as president of the United States throws new doubt on the rule's fate, Brendan Collins, a partner at Ballard Spahr LLP, said.

Collins said when the U.S. Supreme Court **stayed the rule** in February, there was an expectation that the rule would eventually reach the high court again, after the D.C. Circuit released its opinion. But he said a Trump administration could be less likely to vigorously defend the rule and could even withdraw from the litigation, as the Obama administration did in litigation surrounding the Defense of Marriage Act.

If the rule does reach the high court, he said the vacancy left by the death of Justice Antonin Scalia will be filled by someone chosen by Trump, who could be less likely to support the EPA.

"If we have a Supreme Court nominee who is equally skeptical of EPA's authority to adopt this rule as Justice Scalia was, those factors suggest that the rule is not going to survive," Collins said.

The case is *West Virginia et al. v. EPA*, number 15-1363, in the U.S. Court of Appeals for the District of Columbia Circuit.

Waters of the U.S. Litigation

The legal war over the Obama administration's Clean Water Rule, also known as the Waters of the U.S. rule, is being waged on multiple fronts: federal district courts, the **Sixth Circuit** and the Supreme Court. Many of the lawsuits were originally filed at the federal district court level, but those are on hold following the Sixth Circuit's May ruling that it has jurisdiction over matter. Rule opponents, however, have asked the high court **to review** the Sixth Circuit's jurisdictional decision.

The rule aims to clarify the scope of the EPA and U.S. Army Corps of Engineers' jurisdiction under the Clean Water Act. Opponents say the rule significantly expands the agencies' authority, while the agencies say the rule actually reduces the amount of waterways for which they can issue permits.

The Sixth Circuit has set a briefing schedule for the merits portion of the litigation, and briefing is already underway at the Supreme Court. Kristy Niehaus Bulleit, a partner at Hunton & Williams LLP, said that as with the Clean Power Plan, the Trump administration has options to alter the course of the litigation if it chooses.

"There are any number of paths forward if the incoming administration chooses, as it said it would, to rethink this rule. The rule is currently stayed by the Sixth Circuit, so one of the things that the new administration is going to have to decide is whether it wants to hold the case in abeyance while it considers its options," she said.

The cases are *North Dakota et al. v. U.S. Environmental Protection Agency et al.*, number 15-3751, in the U.S. Court of Appeals for the Sixth Circuit, and *National Association of Manufacturers v. U.S. Department of Defense et al.*, number 16-299, in the U.S. Supreme Court.

Climate Change As a Factor in ESA Listings

The Ninth Circuit in October ruled that 100-year climate change projections could factor into the National Marine Fisheries Service's decision to list the Pacific bearded seal as a threatened species — the latest ruling to accept climate projections from a 2007 report by the Intergovernmental Panel on Climate Change.

The U.S. Fish and Wildlife Service used the study to justify its decision to list the polar bear as a threatened species in 2011, which the D.C. Circuit upheld in 2013. And in February the Ninth Circuit **upheld the FWS' critical habitat designation** for the polar bear, again finding that future climate change is an appropriate consideration under the Endangered Species Act.

The polar bear habitat ruling has been appealed to the Supreme Court, which declined to review the D.C. Circuit's decision to uphold the listing. Separately, the Ninth Circuit will **hear another case** involving an Arctic species, the ringed seal, the listing of which again relied on climate change predictions.

The polar bear case is *Alaska et al. v. Jewell*, number 16-596, in the Supreme Court of the United States. The ringed seal case is *Alaska Oil and Gas Association et al. v. Penny Pritzker et al.*, number 16-35380, in the U.S. Court of Appeals for the Ninth Circuit.

Gold King Mine Spill Litigation

New Mexico **has sued** Colorado at the U.S. Supreme Court in the aftermath of the 2015 Gold King Mine spill, which released 3 million gallons of wastewater from a mine in Colorado into the Animas River, which carried the pollution into New Mexico.

New Mexico asked the high court in June for permission to file a bill of complaint, alleging

that two decades' worth of Colorado's "disastrous environmental decision-making" set the stage for the catastrophe.

"What makes the case so potentially profound is the idea that one state could sue another state for environmental policies with which it disagrees," Thomas Alleman, a partner at Dykema, said. "In an administration in which the EPA is less active, how does one deal with interstate impacts of pollution? There is a real question here as to whether one state may challenge another state's environmental policies if they have extraterritorial effects."

The case is *New Mexico v. Colorado*, number 220147-ORG, in the Supreme Court of the United States.

Cooling Water Intake Structure Litigation

The EPA in May 2014 finalized a rule requiring power plants and manufacturers to minimize damage to aquatic life caused by pulling in water from lakes and rivers. Industry challengers **are targeting specific provisions** in the rule, while environmental groups contend the rule is fundamentally flawed, saying in part that the EPA picked the wrong standard for the "best technology available" to reduce wildlife deaths at existing facilities.

The agency said that over the long history of the rule — which dates to the EPA's first, unsuccessful attempt to implement it in 1976 — various court decisions have established that Congress crafted Section 316(b) of the Clean Water Act to provide the EPA with "maximum discretion and flexibility" in addressing how best to minimize impacts to aquatic plants and animals from cooling water intake structures.

According to the EPA, it is simply following Congress' directions to figure out the best technology for the construction, design, location and capacity of cooling water intake structures to minimize those impacts and impose standards through National Pollutant Discharge Elimination System permits.

The case is *Cooling Water Intake Structure et al. v. U.S. Environmental Protection Agency et al.*, number 14-4645, in the U.S. Court of Appeals for the Second Circuit.

Water Transfer Rule Litigation

The Second Circuit in December 2015 **heard oral arguments** in litigation over a lower court's decision to strike down an EPA rule that would exempt some water transfers from Clean Water Act review. A decision should come in 2017.

A number of states, including New York, Michigan and Washington, along with some conservation groups, sued the EPA over its 2008 National Pollutant Water Transfer Rule, and in March 2014, a New York federal judge decided it was unlawful. The rule allows water to be transferred between basins without a permit, even if the water is contaminated.

The agency argued that unclear language in the law necessitates the agency be given latitude for its own interpretation of the law.

The rule provides that a discharge permit is not required for the conveyance of water from one body of water to another when there has been intervening use that has discharged a pollutant.

The case is *Catskills Mountains Chapter of Trout Unlimited et al. v. Environmental Protection Agency*, case number 14-1823, in the U.S. Court of Appeals for the Second Circuit.

Power Plant Effluent Rule Litigation

The EPA in September 2015 promulgated the power plant effluent limitation rule, which regulates metals such as mercury, lead and selenium in wastewater. Several industry members subsequently filed challenges to the rule, arguing the agency violated the Clean Water Act and Administrative Procedure Act.

The Utility Water Act Group, Southwestern Electric Power Co., Union Electric Co., Duke Energy Indiana Inc. and the city of Springfield, Missouri, **have argued** the EPA violated the APA by withholding "essential data, methodologies and analyses" from the public record as confidential business information.

The current regulations for the industry were last updated in 1982, and the EPA said they do not adequately address toxic metal discharges because they focused on settling out particulates rather than treating dissolved pollutants. There are approximately 1,080 steam electric power plants in the U.S., and 134 of those will have to make new investments to meet the requirements of the steam electric effluent limitation guidelines, according to the agency.

The case is Southwestern Electric Power Co. et al. v. U.S. Environmental Protection Agency et al., case number 15-60821, in the U.S. Court of Appeals for the Fifth Circuit.

Coal Ash Rule Litigation

The EPA in 2014 promulgated a rule that regulates coal ash as solid waste under the Resource Conservation and Recovery Act, rather than as more strictly controlled hazardous waste.

Green groups including the Sierra Club and Waterkeeper Alliance **opposed the rule** on several grounds, alleging it allows existing, unlined surface impoundments to continue to operate even though the EPA knows that those dumps pose "unacceptable risks of harm to human health and the environment."

Industry groups, while generally supportive of the agency's approach, have said certain aspects of it should be changed. They have argued the EPA's regulation of inactive surface impoundments — essentially pits where coal ash is stored after being produced by burning coal during electricity generation — that no longer receive coal ash is unlawful and should be vacated. The group said this contradicts the plain language of the Resource Conservation and Recovery Act's Subtitle D, which limits the EPA's regulatory authority to overseeing active units still receiving waste for "disposal."

The case is Utility Solid Waste Activities et al. v. Environmental Protection Agency, case number 15-1219, in the U.S. Court of Appeals for the D.C. Circuit.

Public Trust Doctrine Climate Change Litigation

In November an Oregon federal judge **declined to dismiss** a lawsuit accusing the federal government of failing to protect future generations from climate change, concluding that a group of private citizens, including some children, could pursue a claim that the government violated the public trust doctrine by supporting fossil fuel use despite knowledge of the climate change consequences.

The federal government and industry groups intervening on its behalf had urged the court to dismiss the suit, saying the plaintiffs lacked standing to bring the suit, didn't raise any constitutional claims and improperly asked the court to rule on political issues.

An appeal is likely in the works, and observers will be watching to see how this novel legal

Issue is resolved.

The case is Juliana et al. v. U.S. et al., number 6:15-cv-01517, in the U.S. District Court for the District of Oregon.

--Additional reporting by Stan Parker, Keith Goldberg and Stewart Bishop. Editing by Jack Karp.

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Environmental Regulation And Legislation To Watch In 2017

By **Juan Carlos Rodriguez**

Law360, New York (January 2, 2017, 1:03 PM EST) -- The Obama administration gained a reputation for frequently flexing its regulatory muscles and the U.S. Environmental Protection Agency and Department of the Interior have said that trend would continue in 2017 — but the election of Donald Trump throws much of that into confusion as he and a Republican Congress have vowed to dismantle President Barack Obama's environmental legacy.

Here are the regulatory and legislative matters environmental lawyers say they'll be keeping a close eye on in 2017.

Renewable Fuel Standard

The Clean Air Act requires the EPA to set annual renewable fuel standard volume requirements for four categories of biofuels. The agency says that biofuels displace fossil fuels and help reduce greenhouse gas emissions. But the program **has been controversial** since it passed Congress in 2005 and was expanded in 2007. Oil industry groups say the program forces changes the market isn't ready for, and biofuel groups claim the EPA has dragged its heels. To complicate matters, the agency fell far behind its statutory deadlines until very recently.

"Congress will have an opportunity under the Congressional Review Act to reject EPA's final rule establishing the renewable fuel volumes for 2017," said Krista Hughes, an associate at Perkins Coie LLP. "Rejecting the rule under the CRA would cast substantial doubt on the entire program and create complicated legal issues because, when a rule is rejected under the CRA, the agency is prohibited from issuing a similar rule in the future."

She noted that Congress has shown increasing interest in the program, holding several hearings in 2016 examining the EPA's implementation of the program and discussing alternate ways to structure the program.

Trump's nominee for EPA administrator, Oklahoma Attorney General Scott Pruitt, in 2013 criticized the RFS program, calling it "unworkable" and "a flawed program."

Critical Habitat Rules

In February, the U.S. Fish and Wildlife Service and National Marine Fisheries Service **promulgated** two final rules overhauling how they implement critical habitat designation requirements under the Endangered Species Act. One of them revised the definition of "destruction or adverse modification" of habitat, and the other clarified the procedures and standards used for designating critical habitat. But the states said the rules go too far.

Andrew Turner, a partner at Hunton & Williams LLP, said they are some of the most significant ESA rulemakings over the last decade because it changes how both public and private lands are managed. While the rules are final and litigation has already begun, he said attorneys will still be watching to see how the rules are implemented.

"There are big questions about how these rules would be implemented," he said.

Turner pointed to proposed rules designating habitat for the Atlantic sturgeon, which set aside 1,000 miles of river — not all of which the fish even lives in right now.

Drinking Water Regulations for Lead and Copper

The EPA is slated to release a notice of proposed rulemaking for revisions to the Lead and Copper Rule in June. The rule has come under fire following the drinking water crisis in Flint, Michigan, and the agency **has been working** to push out updates to the rule to strengthen it.

In October, the EPA unveiled a white paper that said elements under consideration include full lead service line replacement, corrosion control treatment requirements, health-based benchmarks, point-of-use filters, improvements to sampling requirements, transparency and information-sharing, public education requirements, revised copper requirements, and the rule's relationship with lead in sources other than drinking water.

"EPA's goal for the LCR revisions is to improve the effectiveness of public health protections while maintaining a rule that can be effectively implemented by the 68,000 drinking water systems that are covered by the rule," the agency said on its website.

Migratory Birds

The U.S. Fish and Wildlife Service said it is preparing a programmatic environmental impact statement under the National Environmental Policy Act in advance of a proposal to authorize **incidental take** of migratory birds under the Migratory Bird Treaty Act.

Currently, there is no legal "take" — the legal term for harm or killing — for the 1,027 species of migratory birds shielded under the Migratory Bird Treaty Act, a law passed in 1918 to honor agreements with other countries the creatures travel to, from and through. While some birds are inevitably killed in various industry activities, the MBTA is a strict liability statute, and the service has ensured compliance through selective prosecutions of entities that have egregiously violated it.

"Based on this PEIS, we propose to establish regulations to govern the incidental take of migratory birds from activities under which migratory birds are killed incidental to otherwise lawful activities," the Interior Department said in a regulatory agenda issued in December.

The regulations would establish rules for individual permits and programmatic agreements with federal agencies, and establish the basis for future rulemaking for general authorizations for incidental take of migratory birds, the department said.

The notice of proposed rulemaking was supposed to be issued in December, so it could come out soon.

Confidential Business Information

By the end of 2017, the EPA said it wants to issue a notice of proposed rulemaking to amend its confidential business information regulations. Specifically, the EPA said it intends

to amend the existing CBI regulations to update the regulations to comply with case law requirements; consolidate procedures for identifying, handling, and processing CBI; and correspond with other federal agencies' CBI regulations.

"In amending the CBI regulations, the EPA expects the amendments will improve the processing of information requests for CBI, while ensuring the appropriate protection of CBI and reducing the burden on both the EPA and the regulated community," the agency said.

The issue has taken on a higher profile lately, as some industry groups **have challenged** the EPA's power plant effluent limitation rule, which regulates metals such as mercury, lead and selenium in wastewater, arguing the agency violated the Administrative Procedure Act by withholding "essential data, methodologies and analyses" from the public record as confidential business information.

Endangerment Finding For Aircraft Lead Emissions

On the heels of the EPA's **July finding** that greenhouse gas emissions from aircraft endanger human health and the environment, the agency says it's moving ahead to make a determination about whether emissions from piston-engine aircraft using leaded aviation gasoline pose a similar threat.

The EPA said it is analyzing air quality modeling and monitoring information to make a determination, under Section 231 of the Clean Air Act, of whether lead emissions from aircraft operating on leaded fuel cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.

A notice of proposed rulemaking is currently scheduled to be released by December 2017.

"This will include a description of analyses that EPA conducted to inform the endangerment finding, such as the lead inventory relevant to use of leaded avgas, air quality monitoring, air quality modeling and potential exposure information," the EPA said.

Nanoscale Chemical Reporting Requirements

The EPA said it is developing a final rule related to an **April 2015 proposal** to require reporting and record-keeping requirements under Section 8(a) of the Toxic Substances Control Act for certain chemical substances when they are manufactured or processed at the nanoscale.

Under the proposed rule, manufacturers and processors of nanoscale chemical substances — substances that have structures with dimensions at the nanoscale, or approximately 1-100 nanometers, the EPA noted — would need to report information on specific chemical identity, production volume, methods of manufacture and processing, exposure and release information and environmental and health effects.

Although the EPA currently reviews new nanoscale chemical substances for safety prior to their market debut, the agency said it would be the first time it would use its Toxic Substances Control Act authority to collect existing exposure, health and safety data. Companies manufacturing or processing the substances as part of articles or in small quantities for research and development purposes are excluded from the rule, it said.

The final rule is scheduled to be promulgated in January.

Arctic Drilling

Obama in December **withdrew** the entire U.S. portion of the Arctic's Chukchi Sea and

major portions of the Beaufort Sea from future drilling, as well as U.S. portions of the north and mid-Atlantic Oceans. The withdrawn area covers 115 million acres in the Arctic and 3.8 million acres in the Atlantic.

In a presidential memorandum sent to the U.S. Department of Interior, Obama invoked his executive authority under Section 12(a) of the Outer Continental Shelf Lands Act, a 24-word provision which simply reads, "The president of the United States may, from time to time, withdraw from disposition any of the unleased lands of the Outer Continental Shelf."

Eric Fjelstad, a partner with Perkins Coie LLP and managing partner of the firm's Alaska office, said the move is a "significant" setback for the Alaska oil and gas interests, and other stakeholders interested in seeing expanded access to hydrocarbon in federal lands.

"The withdrawals were intended to be permanent. The question of permanence is a point where interests have differing views, and it will undoubtedly be addressed by the courts or Congress," Fjelstad said.

For example, Congress could craft legislation that would make the Arctic and Atlantic areas available again for leasing, or amend the OCSLA itself to expressly allow presidents to rescind previous withdrawals.

But Fjelstad said even if the withdrawal decision is successfully reversed, the Trump administration or Congress would still need to develop a strategy to reintegrate Arctic areas into the five-year leasing schedule.

"This will take time, energy and political capital. Strategically, this was a smart move for interests opposed to oil and gas activities in Alaska insofar as it puts industry on the defensive, and perhaps makes it harder to pursue competing priorities such as opening the Arctic National Wildlife Refuge and improve the leasing situation in the National Petroleum Reserve," he said.

--Additional reporting by Stan Parker and Keith Goldberg. Editing by Katherine Rautenberg.

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Energy Regulation And Legislation To Watch In 2017

By **Keith Goldberg**

Law360, New York (January 2, 2017, 1:03 PM EST) -- The election of Donald Trump to the presidency will likely bring seismic changes to U.S. energy policy, starting with attempts to unwind President Barack Obama's legacy on climate change.

Trump, an avowed supporter of increased fossil fuel development, has pledged to roll back climate regulations, chief among them the U.S. Environmental Protection Agency's Clean Power Plan and U.S. participation in the Paris climate change agreement. His Cabinet nominations reflect that approach: Proposed EPA administrator Scott Pruitt made a point of fighting the Obama EPA's regulations as Oklahoma attorney general, while Trump's pick for secretary of energy, former Texas Gov. Rick Perry, famously proposed eliminating the Department of Energy in a 2011 presidential debate.

What's more, Trump will have the support of a Republican-controlled Congress that has opposed the Obama administration's climate and energy policies at virtually every turn.

"I think they're going in with the narrative that we ought to roll back regulations, particularly ones seen holding back energy production," said K&L Gates LLP partner Tim Peckinpaugh, who leads the firm's political action committee.

Here are the energy-related regulatory and legislative actions energy attorneys will be watching this year.

Attempts to Kill the Clean Power Plan

The D.C. Circuit is currently mulling the legality of the Clean Power Plan, the centerpiece of Obama's climate change policy, which calls for slashing greenhouse gas emissions from existing power plants. But regardless of the appeals court's ruling, attorneys say Trump's election means the CPP will likely never be implemented.

"I think it's pretty much dead," Perkins Coie LLP partner Brian Potts said. "There are multiple ways that Trump could scrap the Clean Power Plan. He could promulgate a rule that would withdraw it — that would take six months to a year; he could appoint a Supreme Court justice that ultimately overturns it; or he could refuse to keep defending it in court."

But while rescinding the CPP might be straightforward, it won't necessarily be easy, attorneys say.

"A recrafted rule would need to be supported by new technical analysis and new findings," said Gerry Pels, who chairs Locke Lord LLP's environmental section for energy and

industry. "It can't be as simple as 'we're not going to enforce those rules.' They're on the books."

A Potential Exit From the Global Climate Agreement

In addition to rescinding the CPP, Trump pledged on the campaign trail to revoke another key climate commitment from the Obama administration: U.S. participation in the landmark global climate change agreement brokered by more than 190 nations in Paris in December 2015, which went into effect in November. However, Trump appeared to soften that stance somewhat in recent interviews, leaving some observers guessing as to what he'll actually do.

"Where a Trump administration is going to land on the Paris agreement is evolving almost daily," Dentons counsel Jon Sohn said.

Given that the U.S. ratified the agreement via executive order, attorneys say that undoing it could be an easier task than undoing the CPP, though formally withdrawing from the pact is a multiyear process under the terms of the agreement.

But Sohn says the U.S. could pay a political price for withdrawing from the agreement, noting that other nations have called for carbon taxes or other tariffs to be imposed on U.S. goods if it pulls out of the deal.

"Those are ... interesting considerations to take into account before you just leave the agreement," Sohn said. "Other countries that have isolated themselves are Syria, North Korea and Nicaragua. Is that the group the U.S. wants to be associated with on climate change?"

Emergence of the Congressional Review Act as a Weapon

Trump's presence in the White House and the GOP's control of Capitol Hill provide an opportunity to deploy the seldom-used Congressional Review Act to nullify energy and environmental regulations recently crafted by the Obama administration, attorneys say.

"For Congress, it fits entirely into their objective," Peckinpaugh said. "I'm sure the House would be anxious, especially on high-profile controversial rules, to say they ought to be put forward for a vote."

Under the CRA, Congress can pass a resolution disapproving major federal regulations within 60 legislative days of their release by a simple majority vote, and if the resolution is signed by the president, then the regulation is nullified and the decision isn't subject to judicial review.

A recent report by the Congressional Research Service concluded that rules finalized after June 13, 2016, are vulnerable to CRA review and disapproval. Regulations in the danger zone include the Bureau of Land Management's rule limiting venting and flaring from gas wells on public lands, which industry groups and several states have already challenged in court.

But attorneys say the CRA must be wielded carefully, because using it to nullify a regulation prevents similar regulation from being implemented in the future unless Congress passes a law allowing it.

"It's a very blunt instrument, so you can't just use it willy-nilly," said Aaron Cutler, a partner in Hogan Lovells' legislative practice group and a former senior adviser to former House Majority Leader Eric Cantor, R-Va. "If there's some good in the regulation, you're not going to propose to eliminate the whole thing. I think they're going to spend a lot of

time on the EPA and target the rules and regulations that have been rushed out the door."

A Fast Track for Infrastructure Projects

Along with opening up more public lands and waters to fossil fuel development, Trump vowed to remove federal regulatory barriers to increased coal, oil and gas production and fast-track energy infrastructure projects, including by streamlining permitting. He'll have plenty of support from the GOP-controlled Congress, attorneys say.

"I have to believe that expediting infrastructure, making it more of a streamlined process, making it easier to build natural gas pipelines, is going to be the tip of the spear," said Stefan Krantz, who heads Hogan Lovells' energy regulatory group. "If you're a developer of natural gas pipelines, you've got to be pretty optimistic about the change [in administration]."

Among the steps attorneys see Trump and Congress taking to accelerate energy infrastructure development are revisions to the National Environmental Policy Act and rolling back any other project approval processes they deem to be overly burdensome, as well as perhaps greenlighting highly controversial oil pipelines that have been blocked by the Obama administration: TransCanada Corp.'s Keystone XL pipeline and Energy Transfer Partners LP's Dakota Access pipeline.

"I would expect you'll see legislation to accelerate permitting on use of federal lands for energy exploration," Peckinpaugh said. "I think you'll see efforts to move forward on environmental clearances on projects, such as LNG terminals and refineries."

An Uncertain Future for Renewable Energy Tax Credits

While Trump has been full-throated in his support for fossil fuels, he hasn't said much about renewable energy. That has the industry nervous about the future of federal renewable production and investment tax credits that received multiyear extensions in a December 2015 omnibus appropriations bill.

"In the Midwest, the wind industry is booming, largely because of the tax credits," Potts said. "That would be a huge deal if they rolled them back; they're already scheduled to be phased out."

The production tax credit is set to expire in 2020, while the investment tax credit will drop in value in 2019 and reach its lowest level in 2022. That's one reason attorneys say they'd be surprised if Trump, even with a Republican-led Congress, tried to nix the the credits.

The credits have also sparked wind and solar development booms in several Republican-leaning states, and Trump may not want to spark a war with congressional Republicans who back renewable energy development within their states' borders.

"It is a bipartisan product now, and that's meaningful," said Rob Freedman, who co-heads Shearman & Sterling LLP's sustainable development group.

An Overhaul of the Renewable Fuel Standard

The EPA's Renewable Fuel Standard, which calls for increasing amounts of biofuels to be blended into the U.S. fuel supply, has been a political lightning rod for virtually its entire decadelong existence, with lawmakers from both political parties having floated bills to either repeal the program or alter it drastically.

With Republicans in control of the White House and Congress, the legislative environment may finally be right for RFS changes, attorneys say.

"They are a mess right now and there's been a lot of public pressure to close the blender loophole and do something about the small refineries at a minimum, if not scrap the whole program," Perkins Coie's Potts said. "Everyone will agree that they're not working as they're supposed to."

The petroleum industry wants the RFS program scrapped, calling it a stealth tax on gasoline and saying the RFS' Renewable Identification Numbers system, in which RINs are used for trading renewable fuel credits that blenders and refiners can use to meet the EPA's biofuel requirements, is ripe for fraud. Most of the renewable fuel blended into gasoline comes from corn-based ethanol, so those producers support the program, but food and livestock groups oppose it, claiming it will ultimately drive up food prices. Meanwhile, advanced biofuel supporters claim the RFS doesn't offer their products enough support.

Given the range of stakeholders, reform of the RFS is more likely than a repeal of the program, according to Holland & Knight LLP senior policy adviser Beth Viola, who served on the White House Council on Environmental Quality during President Bill Clinton's administration and as an energy and environmental policy adviser to Vice President Al Gore and 2004 presidential candidate John Kerry.

"I think we'll see strange bedfellows come together," Viola said. "You have a bunch of groups in the middle that want to move advanced biofuels forward and roll back on ethanol in terms of the volume numbers."

Renewed Interest in Yucca Mountain

One issue that has stubbornly vexed U.S. energy policymakers is building a long-term storage and disposal site for spent fuel from the nation's nuclear power plants. A proposed waste site at Nevada's Yucca Mountain was canceled by the Obama administration amid heavy local opposition, but congressional Republicans who have consistently supported the site may now have backing from the Trump White House, attorneys say.

"There will be a push to revive Yucca Mountain," Peckinpugh said.

Also working in the site's favor is the retirement of Yucca Mountain opponents' most powerful ally: Senate Minority Leader Harry Reid, D-Nev.

"With Senator Reid's retirement and the work that has been done at Yucca over the last few decades, I think it's safe to say that it's going to get a relook," Squire Patton Boggs LLP principal Lem Smith said.

A Shakeup at FERC

The normally five-member Federal Energy Regulatory Commission currently has just three commissioners, all Democrats. That political balance will likely shift in 2017. Not only can Trump appoint his own chairman, but Commissioner Colette Honorable's term is also set to expire in June, meaning the commission's priorities will shift to reflect the priorities of the Trump administration, attorneys say.

"Typically, FERC has been a little less political than other agencies," Morgan Lewis & Bockius LLP partner Stephen Spina said. "I do think if you have a Republican chairman in this new administration, you may see a pullback on some of the proposed regulations from last year."

Those regulations include FERC's "connected entities" rule requiring the regional grid operators that run wholesale electricity markets to collect information about entities linked

to market participants. The commission has already proposed scaling back its original proposal amid major industry pushback.

A Trump-crafted FERC could also take its foot off the gas when it comes to its market manipulation enforcement efforts. Current FERC Chairman Norman Bay previously led the commission's enforcement division, and both he and the commission have been increasingly criticized by enforcement targets and members of Congress over aggressive enforcement tactics.

"It's probable that the new FERC commissioners would look to ... pull back a little bit on the enforcement efforts," Spina said.

--Editing by Mark Lebetkin.

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DuPont Hit With \$1B Enviro Cleanup Suit In NJ

By Jeannie O'Sullivan

Law360, New York (December 21, 2016, 3:29 PM EST) -- E.I. DuPont De Nemours & Co. has been slapped with a \$1 billion lawsuit by a New Jersey town alleging the chemical giant unlawfully spun off a subsidiary that dumped millions of pounds of hazardous waste in order to avoid responsibility for remediating the contamination.

The town of Carneys Point claims DuPont violated the state's Industrial Site Recovery Act when it transferred chemical manufacturing plant Chambers Works and other "dirty" businesses to another corporate entity in preparation for a merger with Dow Chemical Co., leaving behind 100 million pounds of hazardous waste Chamber Works had discharged into surrounding soil and groundwater, according to a Dec. 12 lawsuit filed in Salem County Superior Court.

The ISRA requires that industrial businesses clean up all hazardous waste before transferring company property, stock and assets to another entity and prior to a merger, the complaint said.

Companies that can't complete the remediation prior to the transfer must put the funds into an account known as a remediation funding source that state and local authorities can access for the cleanup. But DuPont hasn't ponied up the \$1 billion since it transferred Chambers Works and other subsidiaries to an entity known as Chemours Co. in a \$3.9 billion transaction, according to the complaint.

"ISRA is designed to protect local communities from being left with a disaster and no money to clean it up," attorney Catherine Pastrokos Kelly of Meyner & Landis LLP told Law360 Wednesday.

DuPont and its remediation director Sheryl Telford, who is also named as a defendant in the suit, "misinformed" the Department of Environmental Protection in transferring the property to Chemours without posting the cleanup money, Kelly said.

When contacted Wednesday, a media representative for DuPont cited the company's policy of not commenting about litigation.

DuPont operated Chambers Works, which spanned Carneys Point and Pennsville townships, for more than 100 years, according to the lawsuit. During that time, DuPont discharged more than 100 million pounds of hazardous waste that has since migrated to the Delaware River to the west, the Salem Canal to the south and environmentally sensitive areas to the north and residential neighborhoods as far as two miles to the east of the site, the complaint said.

The Chambers Works site is "a disaster worse than" the Exxon Valdez oil tanker, which spilled 88 million pounds of crude oil in Alaska, the complaint says.

The "unfortunate reality" of New Jersey's bygone industrial era is that many defunct manufacturing sites remain as a result of companies going bankrupt or otherwise abandoning the locations, the complaint said.

"It is an understatement to say that these contaminated sites ruin the health, safety and economic life of local communities," the complaint said.

DuPont in 2014 began the series of corporate transfers that shifted Chamber Works, along with its Titanium Technologies, Fluoroproducts and Chemical Solutions businesses, to Chemours, the complaint said. As part of the deal, Chemours assumed "much of DuPont's environmental liabilities," the complaint said.

Assuming DuPont would no longer exist after a Dow merger and Chemours would subsequently have to assume DuPont's environmental liabilities, Chemours could be forced to file for bankruptcy and abandon the Chambers Works site, the complaint said.

"Consequently Chambers Works would be left as a rusting industrial nightmare that the residents of New Jersey will be left to clean up without the funds to do so," the complaint said.

ISRA was enacted in 1983 in order to protect the state and towns from shouldering the burden of companies' environmental cleanup costs violations carry fines of up to \$20,000 a day until compliance is achieved and company principals can be held personally liable, according to the complaint.

Carneys Point is represented by Catherine Pastrokos Kelly, Albert I. Telsey, Matthew P. Dolan of Meyner & Landis LLP.

Counsel information for the defendants was unavailable.

The case is Carneys Point Township v. E.I. DuPont De Nemours & Co. et. al., case number, in the Superior Court of New Jersey, Salem County.

— Editing by Ben Guilfooy.

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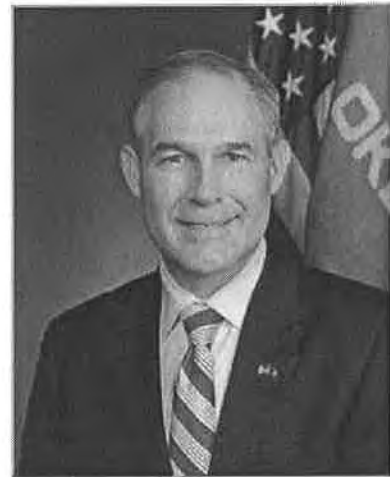
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Trump Taps Oklahoma AG Pruitt To Lead EPA

By Juan Carlos Rodriguez

Law360, New York (December 7, 2016, 5:30 PM EST) -- President-elect Donald Trump said Thursday he will nominate Oklahoma Attorney General Scott Pruitt to lead the U.S. Environmental Protection Agency, indicating that the agency will veer from the Obama administration's climate change-focused agenda and work on assisting the growth of the domestic energy industry.

Pruitt, a Republican, has been a consistent critic of the EPA during his six-year tenure as AG and has helped lead the legal charge against a slew of President Barack Obama's environmental initiatives. That includes the Clean Power Plan, which would slash carbon dioxide emissions from existing power plants, and the Clean Water Rule, which aims to clarify federal jurisdiction under the Clean Water Act.



Scott Pruitt

"For too long, the Environmental Protection Agency has spent taxpayer dollars on an out-of-control anti-energy agenda that has destroyed millions of jobs, while also undermining our incredible farmers and many other businesses and industries at every turn," Trump said in a statement. "As my EPA administrator, Scott Pruitt ... will reverse this trend and restore the EPA's essential mission of keeping our air and our water clean and safe. My administration strongly believes in environmental protection, and Scott Pruitt will be a powerful advocate for that mission while promoting jobs, safety and opportunity."

Pruitt was elected as Oklahoma's attorney general in 2010. His office's website notes that Pruitt established the state's first "federalism unit" to "combat unwarranted regulation and overreach by the federal government." Before being elected attorney general, he served eight years in the Oklahoma Senate. He has never led an environmental agency.

But he and Trump are on the same page about curtailing the EPA's regulatory reach.

"The American people are tired of seeing billions of dollars drained from our economy due to unnecessary EPA regulations, and I intend to run this agency in a way that fosters both responsible protection of the environment and freedom for American businesses," Pruitt said in a statement.

The Trump transition team said Pruitt will be "deeply involved" in the implementation of Trump's energy plan, which the team boasted will bring "an energy revolution that will bring vast new wealth to our country." The team's statement said Pruitt will act to

conserve natural habitats, reserves, and resources, but also said he'll rescind all "job-destroying" executive actions and eliminate barriers to "responsible" energy production. The Trump team claimed those actions will create at least 500,000 jobs each year and produce \$30 billion in higher wages, but did not provide any details.

As attorney general, Pruitt challenged the Clean Power Plan both before and after it was finalized. In a July 2015 statement released in conjunction with the state's preliminary challenge to the rule, Pruitt asserted that the EPA does not possess the authority under the Clean Air Act to carry out the plan.

"The EPA is ignoring the authority granted by Congress to states to regulate power plant emissions at their source. The Clean Power Plan is an unlawful attempt to expand federal bureaucrats' authority over states' energy economies in order to shutter coal-fired power plants and eventually other sources of fossil-fuel generated electricity," Pruitt said.

He claimed the rule — which has been stayed by the U.S. Supreme Court — would threaten energy affordability and reliability, and said air quality issues are best handled by state policymakers.

Pruitt has questioned the scientific backdrop of the CPP as well, saying in a May opinion-editorial in the *National Review* co-authored with Alabama Attorney General Luther Strange that the "debate is far from settled," regarding the effect of human activity on climate change.

"Scientists continue to disagree about the degree and extent of global warming and its connection to the actions of mankind. That debate should be encouraged — in classrooms, public forums, and the halls of Congress," Pruitt and Strange said in the *National Review* op-ed.

That statement runs counter to most other scientific analyses of the climate change phenomenon.

For example, the United Nations and the World Meteorological Organization's Intergovernmental Panel on Climate Change said in a 2013 report that evidence clearly points to human influence as a main factor in climate change.

"Human influence has been detected in warming of the atmosphere and the ocean, in changes in the global water cycle, in reductions in snow and ice, in global mean sea level rise, and in changes in some climate extremes. This evidence for human influence has grown since [a 2007 IPCC report]. It is extremely likely that human influence has been the dominant cause of the observed warming since the mid-20th century," the IPCC's 2013 report said.

Trump in the past has called the idea of human-caused climate change a hoax, although he recently told *The New York Times* he'd keep "an open mind" about it.

On Wednesday, as news of the pick leaked before it was officially announced, New York Attorney General Eric Schneiderman — who is defending the Clean Power Plan in court along with attorneys general from several other states — called Pruitt "a dangerous and unqualified choice," and said Pruitt has failed to protect air and water, and instead acted as "an agent of the oil and gas industry."

"If the EPA under Scott Pruitt fails to uphold our nation's environmental laws, I stand ready to use the full power of my office to compel their enforcement by the agency," Schneiderman said in a statement. "Under the next administration, we will continue to defend the Clean Power Plan, fight to ensure that the U.S. can meet our obligations under the Paris agreement to reduce greenhouse gas emissions, and hold the EPA's feet to the

fire on its fundamental responsibility to protect our environment.”

The Clean Power Plan isn't the only Obama-era EPA rule Pruitt has challenged in court. He has also opposed the agency's Clean Water Rule, also known as the Waters of the United States Rule, which aims to clarify a murky area of law that gives the EPA and U.S. Army Corps of Engineers permitting authority over various waterways in the country.

In a statement on his website from when he filed that legal challenge, also in July 2015, Pruitt called the rule a “brazen effort to stifle private property rights.”

“Respect for private property rights have allowed our nation to thrive, but with the recently finalized rule, farmers, ranchers, developers, industry, and individual property owners will now be subject to the unpredictable, unsound, and often byzantine regulatory regime of the EPA,” Pruitt said.

Pruitt also is fighting the Obama administration on TransCanada Corp.'s proposed Keystone XL pipeline. He and five other attorneys general in May filed an amicus brief on behalf of the company, which has challenged the U.S. Department of State's November 2015 rejection of its application for a cross-border permit.

And the Oklahoma AG has defended the fossil fuel industry from what he has called “politically motivated” actions.

In a 2014 letter to the EPA's Office of Inspector General, Pruitt slammed an agency effort to study hydraulic fracturing's effect on drinking water, saying that previous studies showed no correlation and that states are better able to handle any contamination issues.

“The hydraulic fracturing process is largely responsible for the boom in oil and gas production in the United States and is leading this country towards greater energy independence and security. Because of specific knowledge concerning the diverse landscapes, terrain and geological formations within its borders, the states, and not the EPA, are better equipped to regulate hydraulic fracturing,” he said in the letter.

Environmentalists condemned the pick. Rhea Suh, president of the Natural Resources Defense Council, said in a statement issued Wednesday that Pruitt will not fulfill the EPA administrator's mission to safeguard public health and the environment.

“The American people did not vote to return to the country to the dirty old days or to turn a blind eye on dangerous climate change. If confirmed, Pruitt seems destined for the environmental hall of shame, joining the likes of Anne Gorsuch Burford and James Watt, two disastrous cabinet officials in the 1980s,” Suh said Wednesday.

According to his biography on the Oklahoma attorney general's website, from 2003 to 2010 Pruitt was co-owner and managing general partner of the Oklahoma City Redhawks, the Triple-A baseball team that now goes by the Oklahoma City Dodgers.

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5 NJ Enviro Developments Attys Need To Know For 2017

By Jeannie O'Sullivan

Law360, New York (January 13, 2017, 4:49 PM EST) -- Last year gave New Jersey environmental attorneys much to ponder as 2017 gets underway, with a crackdown on time frames for hazardous materials remediation projects and a shake-up of the window for filing contamination contribution claims.

Other court decisions and regulatory changes could make property owners think twice about disposing of possible evidence during a site cleanup, and cause waterfront contractors to sail more easily through the permitting process but also to pay closer attention to new regulations governing their planned structures.

Here, Law360 looks at recent environmental developments in New Jersey that attorneys should know as the new year unfolds.

Site Cleanup Oversight

New requirements in New Jersey for cleanup projects that threaten to fall behind schedule could pose headaches for owners of contaminated properties and their attorneys.

Last year, the New Jersey Site Remediation Professional Licensing Board adopted a rule concerning the duty of licensed site remediation professionals, or LSRPs, to communicate with clients regarding applicable remediation time frames set by the DEP, notify clients if those time frames are unlikely to be met and the consequences of missing them. Fines and penalties can accrue by the day.

Under the new rule, missed deadlines will immediately subject a site to the DEP's direct oversight, under which the person responsible for the remediation loses much control over decision-making and has to establish and maintain a remediation trust fund in the amount of the projected remediation cost. An annual 1 percent surcharge is assessed until a response action outcome -- formerly known as a "no further action" designation by the DEP -- can be issued by the LSRP.

Another direct oversight requirement is that the responsible party must craft and execute a public participation plan that extends to stakeholders such as municipal officials and citizens, said Daniele Cervino of Beattie Padovano LLC, who represents private equity firms and developers in environmental regulatory and transaction matters.

"It can be a very significant process both in time and in costs," Cervino said.

Contamination Suit Time Limits

The New Jersey Supreme Court's 2015 ruling in *Morristown Associates v. Grant Oil* established that no statute of limitations applies to claims for contribution under the state's *Spill Compensation and Control Act* — upending a 2013 appeals ruling that plaintiffs had six years to file such claims — a Superior Court case decided in 2016 threatens to muddy the topic, according to Mitchell Kizner of *Flaster Greenberg PC*.

In October, Bergen County Superior Court Judge Rachelle L. Harz dismissed property owner 22 Temple Avenue Inc.'s contamination contribution claim against its former dry cleaner tenant, Audino Inc. Harz based her ruling on the doctrine of laches, which sets forth that a legal action isn't enforceable if a long delay has prejudiced the other party.

In the Temple case, between the time of the contamination and the filing of the complaint documents were discarded, witnesses became unavailable and the defendant became infirm, Kizner said. The result is that laches can effectively replace the absent statute of limitations for Spill Act cases.

"Judge Harz recognized that the defense of laches was not specifically listed as a defense in the Spill Act, but she determined that in addition to those listed defenses, common law remedies to prevent injustice were available," Mitchell said.

Preserving Pollution-Related Evidence

Also last year, the state's Appellate Division sent a clear message that a party remediating property contamination can shoot itself in the foot if key evidence is destroyed during the process.

In the contamination case of *18-01 Pollitt Drive LLC v. Engel*, a trial court had dismissed a property owner's complaint for cleanup costs against a former occupant because the owner destroyed evidence, including a pipe and sump pit, that could have held telling information about timing and source of discharges. The trial court ruled that the destruction amounted to spoliation of evidence. The Appellate Division in October found that a dismissal may not have been warranted but an adverse inference charge for the jury was in order.

Pollitt Drive is the type of case that's "keeping environmental attorneys up at night," said Catherine M. Ward, co-chair of the environmental practice group at *Stradley Ronon Stevens & Young LLP*. This kind of mistake, and the chance of a subsequent dismissal of the contribution claim, carries a significant price tag since there's no inexpensive remediation, Ward said.

"It certainly is the kind of thing that's causing environmental attorneys to clearly advise their clients on this issue," said Ward, who counts developers and municipalities among her clients.

Water Quality Rule Updates

Attorneys representing builders should also be paying close attention to a host of amendments to New Jersey water quality rules, according to Ward. The updates have been hailed by developers but panned by environmentalists who say they weaken water protections.

With the stated goal of streamlining the permitting process and reducing duplicative regulations, the DEP's updates, among other changes, increase the amount of riparian zone vegetation allowed to be disturbed for construction; eliminate the differences in stormwater management and Flood Hazard Area Control Act regulations governing the buffers for protected waters and tributaries; and extend the 45-day review window for reviewing FHACA general permit applications to 90 calendar days.

Environmental activist groups such as the New Jersey Sierra Club, Environment New Jersey and Save Barnegat Bay have opposed the rules. In February, those groups, along with residents from the Ocean County town of Eagleswood, turned to the state Appellate Division in the hope of overturning the updated regulations, calling them "arbitrary and capricious" rules that the doesn't keep water safe. The appeal is pending.

Ward noted that builders still have to demonstrate that the project is consistent with the state's water quality management standards.

"We think that this is going to be better overall because it will get us to an objective standard as opposed to a subjective standard," Ward said.

Waterfront Development Compliance

Another DEP compliance initiative announced last year targets marine contractors performing work at residential sites, including the construction, replacement or repair of regulated structures like bulkheads, piers, mooring piles, and boat and personal watercraft lifts.

Due to the discovery of multiple instances of these structures built either without permits or in unpermitted locations and configurations, the DEP's Bureau of Coastal and Land Use Compliance and Enforcement, or CLUE, and Water Enforcement Team, known as WET, will be conducting unannounced compliance inspections.

"The state is basically saying, okay, we're going to watch the contractors," Cervino said.

Attorneys for these contractors must now be extra vigilant in helping their clients avoid building structures in unauthorized areas or that are discordant with state-approved plans. Homeowners who hire these contractors, yet often times don't engage lawyers to oversee the contracts, are also vulnerable to fines and penalties, Cervino said.

--Editing by Brian Baresch.

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Site Remediation Practitioners Forum Summary
December 14, 2016
Hosted by: Equity Environmental

Administrative:

The next meeting will be held on February 22, 2017 at Stantec in Mt. Laurel, NJ.

Topics Requiring EBC Input:

1. Concern for NJDEP's "Moving Target" re: RAOs – The practitioners discussed recent experiences where NJDEP contacted the LSRP with seemingly minor revisions to RAOs. By way of example, one LSRP was asked to modify an RAO for a fuel oil spill at a residential property to clarify the specific location of the spill (e.g., "at the front of the driveway") even though this information is clearly identified in the Remedial Action Report.

The requested changes do not reflect errors or inconsistencies with NJDEP regulations or guidance. Although the changes themselves are modest, the LSRP must still coordinate this work with the PRCR, update the document, and distribute the revised RAO to various state and local agencies – all at a cost to the client. Such changes could lead to greater confusion about the finality of RAOs upon issuance.

We recommend that the EBC Site Remediation and Technical Issues team explore this with NJDEP. It would seem reasonable that RAOs that are issued in accordance with the then-current RAO Guidance should not have to be modified. Alternatively, perhaps SRP can maintain an ongoing list of "best practices" tied to the RAO Guidance on its web page.

Technical Topics Discussed/Practice Pointers

1. Cost Estimates for Remediation Funding Source/Financial Assurance – The group discussed experiences with NJDEP's review of cost estimates provided for Remediation Funding Source (RFS) and Financial Assurance (FA) purposes. In most cases, NJDEP is relying on the information provided by the LSRP without a detailed "bottoms up" review of specific entries. Following are some of practice pointers from that discussion.
 - NJDEP looks more closely at estimates associated with Direct Oversight cases.
 - The primary focus of NJDEP's review appears to be whether the various technical elements needed to achieve closure are included. NJDEP is more likely to comment if they perceive missing line items (potentially reflecting missing tasks). Practitioners should evaluate how clearly the cost projection conveys the complete arc of the project.
 - For RFS estimates, long-term O&M costs need to be included – even though these costs may not need to be included in an FA estimate.
2. File Reviews – It was suggested that practitioners review site information on NJDEP's DataMiner prior to submitting OPRA requests. This will allow for a greater specificity in the request, which should ensure a more complete response. In addition, this information can then be used to review the types of records available when scheduling the file review visit, and as a double check during the file review itself.



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Site Remediation Reform Act (SRRA) Listserv Archives

December 9, 2016 - [SRRA]: Site Remediation Professional Licensing Board announcements regarding Licensure, Annual Fee, and Change in Contact Information

From: owner-srra@listserv.state.nj.us; on behalf of; SRRA <SRRA@dep.nj.gov>

To: srra@listserv.state.nj.us

Date & Time: 12/9/2016 11:06:00 AM

Subject [SRRA]: Site Remediation Professional Licensing Board announcements regarding Licensure, Annual Fee, and Change in Contact Information

[SRRA]: Site Remediation Professional Licensing Board announcements regarding Licensure, Annual Fee, and Change in Contact Information

Be advised of the following announcements and reminders from the Site Remediation Professional Licensing Board:

1. The application period for those wishing to obtain the LSRP license is now open. Applications must be submitted to the Board by January 31, 2017. With Board approval of the application, the applicant may sit for the LSRP examination to be held on April 20, 2017. The Application Form and Instructions as well as information about the examination can be found on the Board website at www.nj.gov/lrspboard/board/licensure/examination_schedule.html.
2. Invoices for the LSRP Annual License Fee have been sent to the current roster of 642 LSRPs which can be found at http://datamine2.state.nj.us/DEP_OPRA/OpraMain/categories?category=SRRA. Payment is due by February 3, 2017. Pursuant to N.J.A.C. 7:26I-3.5(f), an LSRP's license shall immediately expire 90 days after the LSRP's receipt of the Board's annual license fee invoice if the LSRP fails to pay the annual license fee within that 90-day period.
3. Invoices referenced in #2 above were sent to the address selected by the LSRP for correspondence and billing in their initial LSRP licensure application. If you are an LSRP and do not receive an invoice by January 3, 2017, confirm that the Board has your correct address by emailing it to SRPLBoardContact@dep.nj.gov. Please note that changing your address in NJDEP Online does not update DEP or the Board's licensure database.
4. As a general reminder, pursuant to N.J.A.C. 7:26I-2.10(d), LSRPS are required to update any change in their contact information, whether home or business address, phone or email, within 15 days of the change. To do so, email updated contact information to SRPLBoardContact@dep.nj.gov.

SRP Site Remediation Reform Act (SRRA) Web site: www.nj.gov/dep/srp/

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November 16, 2016 - [SRRA]: Licensed Site Remediation Professional (LSRP) Licensing Exam

From: owner-srra@listserv.state.nj.us; on behalf of; SRRA <SRRA@dep.nj.gov>**To:** srra@listserv.state.nj.us**Date & Time:** 11/16/2016 1:15:00 PM**Subject** [SRRA]: Licensed Site Remediation Professional (LSRP) Licensing Exam

Subject: Examination Date for 2017 Licensed Site Remediation Professional (LSRP) Licensing Exam

The Site Remediation Professional Licensing Board will hold the next licensing examination on Thursday, April 20, 2017, time and location to be determined. License applications will be accepted from November 16, 2016 to January 31, 2017. Please note that a new application, instructions, and letter of reference form have been posted on the Board website. Candidates for the examination should ensure they are using the versions dated 10/25/16.

While in the past the examination has been administered on an annual basis, due to the decreasing number of candidates and other factors it is uncertain whether there will be an examination in Spring of 2018. For this reason the Board encourages any qualified candidate to apply for and take the April 2017 examination.

Please visit www.nj.gov/lrspboard for general information about the Site Remediation Professional Licensing Board and visit www.nj.gov/lrspboard/board/licensure/examination_schedule.html for more information and documents relating to the exam. The NJ Department of Environmental Protection's Site Remediation Reform Act (SRRA) website can be accessed at www.nj.gov/dep/srp/.

The Board will provide future notification when the location and time of the examination have been determined.

SRP Site Remediation Reform Act (SRRA) Web site: www.nj.gov/dep/srp/

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Chrome Maker Showed Good Faith In Enviro Row, Judge Says

By Jeannie O'Sullivan

Law360, New York (December 1, 2016, 8:59 PM EST) -- A New Jersey state judge on Wednesday ruled that a chrome manufacturer tasked with an environmental contamination cleanup can have access to its former Hudson County property, but that a court will have to determine the terms of the remediation arrangement with the parcel's new owner.

PPG Industries Inc. engaged in "good faith" to negotiate access to the Jersey City property now owned by real estate holding company Mid-Newark LP and occupied by Ten West Apparel LLC, even offering to buy the property, Chancery Court Judge Barry P. Sarkasian wrote in his opinion granting summary judgment to PPG.

Over the defendants' objections that PPG focused more on "strong-arming" them into selling the property than negotiating access, Judge Sarkasian considered that PPG had previously entered into two consent agreements for a limited investigation of the property, and was also under pressure from the New Jersey Department of Environmental Protection to remediate the contamination.

"Accordingly here, the court finds that the plaintiff did attempt to negotiate in good faith with the defendants to gain access to the property for remediation, and thus, having already proved that access for remediation is necessary, plaintiff is entitled to access to the property under [state law]," the opinion said.

The defendants had also filed a cross-motion for "the establishment of reasonable conditions of access" spelling out a timetable for the remediation and declarations holding PPG responsible for related costs, including the balance on the Mid-Newark's mortgage. Those conditions would require a plenary hearing in the Law Division, Judge Sarkasian decided.

The judge declined to address the monetary contribution claims each of the parties filed under the New Jersey Spill Compensation and Control Act, finding that PPG first needed to progress with the remediation under the Brownfield and Contaminated Site Remediation Act. After that, the claims would be addressed in the Chancery or Law Division, the judge said.

The litigation stems from a July 1990 DEP action ordering PPG to clean up chromium chemical production waste, or CCPW, in 61 sites around the state, according to the opinion. In 2009, PPG and the DEP entered into a subsequent consent order stipulating that PPG would remediate the sites as "expeditiously as possible," the opinion said.

During PPG investigation of two sites on Garfield Avenue in Jersey City, it detected CCPW contamination on the adjacent site owned by Mid-Newark and occupied by Ten West, a

warehouse also owned by Mid-Newark, the opinion said.

PPG and the defendants entered into an agreement in 2010 allowing PPG to access the property only to conduct testing, not remediation, and two years later executed an amended agreement allowing further testing, according to the opinion.

The testing unearthed CCPW and non-CCPW contamination, including scrap metal and fill from the Morris Canal, making the excavation of the neighboring property necessary, according to the opinion.

Because of the residential zoning of the property, it could never be rebuilt if it was demolished, according to the opinion. Knowing that the excavation would impact Ten West parcel, PPG attempted to negotiate to buy the property between August 2014 and August 2015, the opinion said.

The negotiations that involved multiple appraisals by each party, with the defendants proffering higher figures and relocation costs, according to the opinion.

Ultimately, the defendants said they would take \$14.8 million plus relocation expenses or \$11.1 million and relocation expenses, with the land returned to PPG after the remediation, the opinion said. The PPG, however, held firm at \$9 million with no additional expenses, according to the opinion.

During a deposition, PPG's director of environmental affairs had said during a litigation would be necessary if sales negotiations failed, according to the opinion. The defendants, however, claimed that PPG didn't "undertake any effort" to evaluate the possibility of helping it relocate, and never attempted to remediate the property, only purchase it, the opinion said.

Meanwhile, the DEP sent a letter to PPG in May 2015 acknowledged that a consent agreement to remediate the property hadn't been reached but instructed it "pursue access" to the property by that July, according to the opinion. PPG filed its suit seeking access to the property in September 2015.

Representatives for the parties didn't immediately return requests for comment.

PPG Industries is represented by Joseph F. Lagrotteria of LeClair Ryan.

The defendants are represented by Jack Buonocore of McKirdy & Riskin PA.

The case is PPG Industries Inc. v. Mid-Newark LP et. al., case number HUD-C-137-15, in the Superior Court of New Jersey, Hudson County.

—Editing by Joe Phalon.



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December 9, 2016 - [SRRA] Remedial Action Work Plan and Remedial Action Report Online Services Now Available

From: owner-srra@listserv.state.nj.us; on behalf of; SRRA <SRRA@dep.nj.gov>

To: srra@listserv.state.nj.us

Date & Time: 12/9/2016 10:45:00 AM

Subject [SRRA] Remedial Action Work Plan and Remedial Action Report Online Services Now Available

[SRRA] Remedial Action Work Plan and Remedial Action Report Online Services Now Available

The New Jersey Department of Environmental Protection (Department) announces the availability of the Remedial Action Work Plan and Remedial Action Report Online Services. These Online Services allow persons to file the Remedial Action Workplan and Form, and the Remedial Action Report and Form electronically.

Instructions for both Online Services are available on the Site Remediation Program Forms Page (www.nj.gov/dep/srp/srra/forms/). The instructions include every question included in both the RAW or RAR Online Service and should be reviewed before using either Online Service.

The Remedial Action Work Plan and Remedial Action Report Online Services are based on the existing Remedial Investigation Online Service. Training for that Online Service can be viewed at www.nj.gov/dep/srp/srra/training/sessions/online_service_cid_webinar_wny, and the handouts are at www.nj.gov/dep/srp/srra/training/sessions/online_service_cid_handout.pdf.

Use of these Online Services is currently not mandatory. Pursuant to the Administrative Requirements for the Remediation of Contaminated Sites [N.J.A.C. 7:26C-1.6(c)], use of these Online Services will become mandatory 90 days after the Department publishes a notice in the New Jersey Register stating that the Online Services are available. Until such time, either the Online Service or paper Form may be submitted.

The Department is also replacing the previous Authorization form ("Authorization to Submit the Remedial Investigation Report through NJDEP Online") with a new form entitled "Authorization To Submit RIR, RAW, or RAR through NJDEP Online." This new Authorization form should be used for all future submittals using one of these three Online Services. Lastly, the Department is updating the Receptor Evaluation Form to reflect that the form is to be "attached to the Cover/Certification Form if not submitted through a Remedial Phase Online Service."

SRP Site Remediation Reform Act (SRRA) Web site: www.nj.gov/dep/srp/

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Site Remediation Reform Act (SRRA) Forms

The Site Remediation and Waste Management Program SRRA Forms Page has been redesigned into 3 sections 1) NJDEP Online Services, 2) Remedial Phase Reports, Receptor Evaluation and CEA Forms, and 3) General Forms. This change was made to consolidate forms for which an NJDEP Online Service is available and to consolidate the remedial phase reports and related forms that can utilize the new "Cover/Certification Form" when multiple reports are being submitted at the same time. In addition, the content and names of some forms have changed as described below in more detail.

NJDEP Online Forms: This section now contains all the forms that are available for submission using NJDEP Online.

The Remedial Investigation Report Online Service (RIR Online Service) is now available. The RIR Online Service requires the upload/attachment of the RIR, Electronic Data Deliverable and some limited paper forms. **IMPORTANT NOTE:** The files for upload should be ready on your computer prior to starting the RIR Online Service. Also, to avoid confusion when browsing and choosing a file to upload, use file names that are specific to the case. This should include the Program Interest Number, case name and type of document (i.e. 164220_CaseName_CEA). The RIR Online Service Instructions include a comprehensive list of items you need to have in order to complete the submission. The RIR Online Service can only be completed using Versions 1.2 or 1.3 of the Case Inventory Document (CID) which was made available on June 10, 2014.

Training was provided for the CID and RIR Online Service in April 2014, and can be reviewed on the Department website at [Online Services Handout](#) and [NJDEP Online Services and New Electronic Case Inventory Document Webinar](#).

Mandatory DEP Online Services: The Annual Remediation Fee Form and the LSRP Notification of Retention and Dismissal Form have been available as a DEP Online service since September 2012. Unless otherwise instructed by the Department, the use of these services became mandatory on January 18, 2013. The Remedial Investigation Report became mandatory on April 3, 2016.

Remedial Phase Report, Receptor Evaluation and CEA Forms: This section consolidates the remedial phase report forms and common form submittals that accompany the remedial phase reports. The common information fields of these forms have been moved to a new "Cover/Certification Form" to eliminate redundancy when submitting multiple remedial phase forms at one time. Instructions for completing this form accompany this new form on the Forms Page.

General: This section contains the remainder of the forms which do not fit into the above two sections.

In addition, several forms have been renamed as follows:

- Name and Address Change Reporting Form is now "Site and Contact Information Update Form";
- De Minimis Quantity Exemption Application Form is now "ISRA De Minimis Quantity Exemption Application Form";
- General Information Notification Form is now "ISRA General Information Notification Form";
- Remediation Certification Form is now "ISRA Remediation Certification Form"; and
- Remedial Action Permit Transfer/Change of Ownership Application is now the "Remedial Action Permit Transfer/Change of Property Ownership Application".

Remediation Timeframe Notification Form was updated and posted October 23, 2014. This form is to be used to modify the applicable RIR regulatory timeframe and contains two additional checkboxes: "Extension Request" or "Lengthen the Remedial Investigation Report Timeframe".

Unless otherwise noted in Instructions, all form submittals are to be directed to the following address:

Bureau of Case Assignment & Initial Notice
Site Remediation and Waste Management Program
NJ Department of Environmental Protection
401-05H
PO Box 420
Trenton, NJ 08625-0420



Related Links

- [Application for LSRP](#)
- [SRRA Guidance](#)
- [Technical Consultation](#)
Posted 16 August 2010
- [Unregulated Heating Oil Tank \(UHOT\) System Remediation Form](#) (replaces "Unregulated Heating Oil Tank Questionnaire")

Disclaimer

Users of this information should not consider these materials the sole source of information sufficient in itself to dictate any outcome or decision on the remediation of a contaminated site but should refer to the Department's rules and guidance provided on SRP's web site.

NJDEP Online Services	Download	Version & Date	Changes Since Last Version	Rule
► Annual Remediation Fee Reporting Pay/Update Online (Requires Login, Service must be Certified by an LSRP)	Instructions pdf 144 Kb	1.4 - 6/15/2015	See Update Log	7:26C-4.3
► LSRP Notification of Retention or Dismissal Retain/Release Online (Requires Login, Service must be Certified by an LSRP)	Instructions pdf 32 Kb	1.1 - 5/8/2013	See Update Log	7:26C-2.3
► Remedial Investigation Report Online Service Submit RIR Online (Requires Login, Service must be certified by an LSRP)	FAQs pdf 222 Kb	Instructions pdf 124 Kb	1.2 - 4/4/2016	See Update Log 7:26E-4.9
► Remedial Action Workplan Online Service Submit RAW Online (Requires Login, Service must be certified by an LSRP)	FAQs pdf 222 Kb	Instructions pdf 83 Kb	1.0 - 11/17/2016	See Update Log
► Remedial Action Report Online Service Submit RAR Online (Requires Login, Service must be certified by an LSRP)	FAQs pdf 222 Kb	Instructions pdf 92 Kb	1.0 - 11/17/2016	See Update Log



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Site Remediation Reform Act (SRRA) Listserv Archives

November 21, 2016 - [SRRA] New Notice available for Response Action Outcomes (RAOs) - Sediment Contamination from Off-site Source

From: owner-srra@listserv.state.nj.us; on behalf of; SRRA <SRRA@dep.nj.gov>

To: srra@listserv.state.nj.us

Date & Time: 11/21/2016 3:22:00 PM

Subject [SRRA] New Notice available for Response Action Outcomes (RAOs) - Sediment Contamination from Off-site Source

[SRRA] New Notice available for Response Action Outcomes (RAOs) - Sediment Contamination from Off-site Source

The Department is aware that the Model Response Action Outcome (RAO) Document promulgated as Appendix D in the Administrative Requirements for the Remediation for Contaminated Sites (ARRCS, N.J.A.C. 7:26C) does not address certain situations that may occur at sites where remediation's are concluding. When appropriate, the Department works with remediating parties and Licensed Site Remediation Professionals (LSRPs) to ensure that RAOs accurately reflect site-specific conditions and implemented remedial actions. To that extent, the Department has previously posted several additional RAO notices to its website at www.nj.gov/dep/srp/reqs/amcs/. The Department is now posting a new RAO Notice for when it is determined that on-site sediment is contaminated from an off-site source, which is available to LSRPs for their use when writing RAOs.


- Sediment Contamination from an Off-Site Source Not Remediated â€” General

A Downloadable version of this RAO Notice, as well as a description of the Department's approval process for other RAO modifications, is posted on the Department's website at is available at www.nj.gov/dep/srp/reqs/amcs/.

SRRA Site Remediation Reform Act (SRRA) Web site: www.nj.gov/dep/srp/

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news releases

FOR IMMEDIATE RELEASE

January 10, 2017

Contact: Lawrence Hajna (609) 984-1795

Bob Considine (609) 292-2994

Caryn Shinske (609) 984-1795

ADMINISTRATION APPROVES PLAN TO REMOVE LOW-LEVEL RADIOACTIVE SLAG FROM SHIELDALLOY SITE IN NEWFIELD, GLOUCESTER COUNTY

COMPANY TO BEGIN DECOMMISSIONING PLAN IMPLEMENTATION

(17/P3) TRENTON – The Christie Administration today announced that the Department of Environmental Protection has approved a plan that requires the removal of approximately 50,000 tons of slag and baghouse dust containing low levels of radioactivity from the Shieldalloy Metallurgical Corp. site in Newfield, Gloucester County.



The decommissioning plan calls for construction of a short rail spur to link with an adjacent freight rail line so that the materials, covering some seven acres of the site in this small borough just north of Vineland, can be taken by train to federally approved disposal sites located out of state.

"Governor Christie and I have long made it clear that the only acceptable remedy for this site is removal, so that residents of Newfield and Vineland will no longer have to live with the stigma or potential environmental issues from these materials," Commissioner Martin said. "We will continue to work closely with Shieldalloy to ensure the safe and timely removal of these materials, which is the right thing to do for these communities after decades of living with these materials virtually in their back yards."

"This is a win for everyone," said Newfield Mayor Donald Sullivan. "It's an eyesore and having it out of the town will be a plus, without a doubt. Now there's potential for another business coming into the site, down the road."

Shieldalloy produced specialty steel and alloy additives, powdered metals and optical surfacing products at the site for decades before phasing out operations in the late 1990s and early 2000s.

The metals-extraction process produced a rocky by-product known as slag and a fine material known as baghouse dust that contain low levels of radioactivity. Both materials have been stored on the eastern side of the site for many years. One of the metal ores used as a raw material contained small, but regulated, amounts of radioactive uranium and thorium.

The storage area contains nearly 38,000 cubic yards (more than 44,000 tons) of slag and more than 15,400 cubic yards (or 7,000 tons) of baghouse dust. A cubic yard is roughly equivalent to the size of a large kitchen refrigerator.

For decades, the materials were stored under a license issued by the federal Nuclear Regulatory Commission (NRC). As it was phasing out operations, Shieldalloy submitted a decommissioning plan to the NRC proposing to cap the materials and leave them on-site in perpetuity.

In 2009, however, New Jersey became an NRC Agreement State, meaning the federal agency granted the state authority to regulate hundreds of NRC-licensed sites and facilities. Shieldalloy initiated court actions challenging the transfer of regulatory oversight of its site to the DEP.

Federal courts twice remanded jurisdiction of the disposal area back to the NRC. But the state persisted and in December 2014, the U.S. Circuit in Washington D.C., gave the DEP regulatory authority over the Shieldalloy license. Since that time, Shieldalloy has been working cooperatively toward a decommissioning plan acceptable to the DEP. With the approval of the removal plan, Shieldalloy has 60 days to solicit bids and hire a removal contractor. The work plan detailing the removal process will be due nine months after the award of the bid and will specify facilities where the materials will be shipped. The actual removal of the materials is expected to take several years.

In addition to the radiological cleanup that is under DEP jurisdiction, Shieldalloy and a contractor are working actively with the U.S. Environmental Protection Agency's Superfund program in separate actions to remediate non-radiological contaminants in soil, sediments, and groundwater at the site.



-----Original Message-----

From: owner-srra@listserv.state.nj.us [<mailto:owner-srra@listserv.state.nj.us>] On Behalf Of SRRRA

Sent: Thursday, January 19, 2017 2:23 PM

To: srra@listserv.state.nj.us

Subject: [SRRRA]: Technical Guidance Update

Thus far, twenty four final technical guidance documents have been posted on Site Remediation Waste Management Program's (SRWMP's) Guidance Library and eleven of these documents have been previously updated. The guidance document committee chairs are currently evaluating whether these documents need to be updated. The committee chairs will be contacting committee members for input. If you have identified problems or revisions for a particular guidance document, and are not on the committee, please contact the designated committee chair to provide comment. The list of committee chairs can be found by visiting www.nj.gov/dep/srp/srra/stakeholder/tech_guidance_committee.pdf and www.nj.gov/dep/srp/srra/stakeholder/tech_guidance_committee_rd_2.pdf.

In addition, SRWMP will soon be starting the next round of technical guidance development. Stakeholder input is being solicited for new technical guidance topics. (Some of the topics previously submitted in 2012 included DNAPL, green/sustainable remediation, land use permitting, field sampling procedures, hot spot removal, and well searches.) Please submit topics by February 3, 2017 to Sana Qureshi (Sana.Qureshi@dep.nj.gov). Based on input from stakeholders and DEP staff, a topic will be selected and the process of forming a guidance committee will begin.

If you are interested in receiving updates on technical guidance and/or would like to participate in the technical guidance development process, please email the information below to Sana Qureshi (Sana.Qureshi@dep.nj.gov), by February 3, 2017:

Name

Title

Email

Daytime phone number

Company and other affiliation (e.g., Environmental Organization, LSRPA, Builders Association, Chemistry Council, other RP group, etc.)

Thanks.

**Site Remediation Program Comprehensive Report
Traditional and LSRP Cases
November 2016**

Total Number of Active Cases in SRP	14,292
Total Number of Active LSRP Cases in SRP	11,370
Total Number of Active Other Cases in SRP	2,021
Total Number of Active UHOT Cases in SRP	901
Number of Active LSRP Cases with LSRP Retained	9,210

	November 2016	Total
Total Number of Licensed Site Remediation Professionals	0	642
Number of LSRPs submitting Documents (includes Temporary LSRPs)	207	638

Total Number of Cases Initiated in SRP	388	N/A
Total Number of LSRP Cases Initiated	98	17,566
Total Number of Other Cases Initiated	7	N/A
Total Number of UHOT Cases Initiated	283	49,226

Total Number of Cases in SRP Closed	390	N/A
Total Number of LSRP Cases Closed	78	5,423
Total Number of Other Cases Closed	2	N/A
Total Number of UHOT Cases Closed	310	48,133

Total Number of RIR Documents	70	6,374
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Total Number of RAO Documents	158	9,052
Average Number of Days to Submit RAO Documents	917.15	618.65
Number of RAOs Withdrawn by LSRP	7	287

Documents with DEP Administrative Check, Inspection and Review in Progress	614	6,243
Documents with DEP Administrative Check, Inspection and Review Completed	362	31,557
Number of RAOs where DEP Inspection and Review Completed	103	6,853
Number Of Documents awaiting LSRP response	63	4,128
Number Of RAOs Invalidated	0	9

Average Number of Days for LSRP Submission to be Administratively Complete	16.55	21.95
Average Number of Days for DEP to Inspect LSRP Submission	215.02	75.00
Average Number of Days for DEP to Review LSRP Submission	93.17	48.55
DEP Total Process Time	236.52	99.58

**Site Remediation Program Comprehensive Report
Remedial Action Permits
November 2016**

Total Number of Active RAP	2,631
Total Number of Active Ground Water RAP	1,046
Total Number of Active Soil RAP	1,585

GW	November 2016	Total
Total Number RAP Applications Received	39	1,751
Total Number RAP Issued	37	1,386
Number of Permit Applications awaiting LSRP Response	3	61

Soil		
Total Number RAP Applications Received	29	2,133
Total Number RAP Issued	34	1,809
Number of Permit Applications awaiting LSRP Response	5	173

General		
Average Number of Days for Application to be Administratively Complete	54.77	41.86
Average Number of Days for Application to be Technically Complete	167.32	104.89
Average Number of Days for DEP Total Process Time	160.14	102.29
Average Number of Days for Permits to be Issued	205.85	141.81

Total Number RAP Documents Status - Withdrawn	5	195
Total Number RAP Documents Status - Denied	1	2



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NJ Senator Says ExxonMobil Deal Lacked Analysis, Outreach

By Jeannie O'Sullivan

Law360, New York (December 8, 2016, 6:30 PM EST) -- A New Jersey state senator on Wednesday continued his fight to overturn Exxon Mobil Corp.'s \$225 million payout to the state to settle natural resource damages from its refineries and gas stations, arguing that a recent contamination case ruling highlights the need for more analysis in the instant case.

In a letter brief filed with the Appellate Division, state Sen. Ray Lesniak, D-Union, invoked the court's Nov. 2 decision in *Cumberland Farms Inc. v. New Jersey Department of Environmental Protection* to make a case for his stance that last year's ExxonMobil settlement — which was hailed by officials as historic and panned by environmentalists as inadequate — fell short of enough environmental assessment and public outreach.

Approved by a Superior Court judge in August 2015, the ExxonMobil settlement breaks down as \$220 million for wetlands damages caused by the Linden and Bayonne refineries, \$1 million for a refinery in Paulsboro in Gloucester County and \$4 million for smaller natural resource damages claims at 16 other sites and methyl tertiary-butyl discharges at the gas stations. Lesniak and environmental groups have filed briefs with the Appellate Division in hopes of reversing the approval.

In the **Cumberland Farms case**, the appeals court defeated the gas station chain's attempt to compel the DEP to release it from contamination settlements, finding that the agreements were invalid because the settlement terms weren't published for 33 of the 55 sites at issue.

Although the identities and locations of the ExxonMobil sites were provided to individuals and groups wanting to weigh in during the public comment period prior to the settlement's approval, the DEP only publicly disclosed the natural resource damages assessment for one of the 16 and none of the 1,768 retail service stations, Lesniak said.

The Cumberland court observed that in order for there to be a valid settlement, DEP must undergo a very iterative process involving repeated rounds of analyses by the agency's Office of Natural Resource Restoration, DEP management teams and the Division of Law, Lesniak said. That process includes garnering public input, according to the letter.

"The Cumberland Farms case makes it clear that the opportunity for the public to comment on each one of the sites that are included in a Spill Act settlement is considered a material condition of the settlement process, without which there can be no valid and enforceable settlement," Lesniak said.

Echoing the chief arguments environmentalists such as the New Jersey Sierra Club and

other environmental groups have invoked, Lesniak has repeatedly emphasized that a state expert originally pegged the damage from ExxonMobil at \$8.9 billion. The senator claims the damages from refineries in Linden and Bayonne impacted the heart of his constituency.

In an 81-page opinion approving the settlement, Superior Court Judge Michael J. Hogan ruled, among other things, that the settlement was substantively and procedurally fair.

Noted for championing environmental causes during his private practice, Lesniak in February told the Appellate Division that he has standing to intervene in the case and that it wouldn't violate the separation of powers doctrine, even though he's a politician.

A representative for the New Jersey Office of the Attorney General declined to comment and ExxonMobil attorneys didn't immediately respond to a request for comment Thursday.

The state is represented by acting Attorney General John Hoffman and Allan Kanner, Elizabeth Petersen and Allison Shipp of Kanner & Whiteley LLC.

Exxon Mobil is represented by Theodore V. Wells Jr., John F. Baughman, Daniel J. Toal and Jaren Janghorbani of Paul Weiss Rifkind Wharton & Garrison LLP and Marc A. Rollo and Arthur H. Jones Jr. of Archer & Greiner PC.

Lesniak is representing himself.

The case is New Jersey Department of Environmental Protection v. ExxonMobil Corp., A-000688-15T1, in the Superior Court of New Jersey, Appellate Division.

--Editing by Orlando Lorenzo.

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EPA Finalizes Rule To Boost Safety At Chemical Facilities

By **Christine Powell**

Law360, New York (December 21, 2016, 5:53 PM EST) -- A rule has been finalized to strengthen requirements that chemical facilities develop and implement risk management programs in an effort to minimize accidental releases and improve emergency responses when they do occur, the U.S. Environmental Protection Agency announced on Wednesday.

The agency said it had concluded revisions to its so-called Risk Management Program regulations that are intended to improve chemical process safety, help local emergency authorities plan for and respond to accidents and bolster public awareness about chemical hazards.

"This rule is based on extensive engagement with nearly 1,800 people over the last two and a half years," said EPA's Assistant Administrator for the Office of Land and Emergency Management Mathy Stanislaus said in a statement. "These changes are intended to protect the lives of emergency responders and the public, while preserving information security."

According to the EPA, in the past 10 years more than 1,500 accidents were reported by Risk Management Program, or RMP, facilities and were responsible for causing nearly 60 deaths, roughly 17,000 people to be injured or seek medical treatment, almost 500,000 people to be evacuated or sheltered-in-place, and more than \$2 billion in property damages.

The Accidental Release Prevention regulations under section 112(r) of the Clean Air Act, also called the RMP regulations, mandate covered facilities to develop and implement a risk management program, the agency said, noting that it shares RMP information with state and local officials so they can prevent and plan for accidents.

The updates to the regulations are a key action item under President Barack Obama's executive order regarding the improvement of chemical facility safety and security, according to the EPA.

President Obama signed that executive order in August 2013, after several "catastrophic" chemical facility incidents took place, the agency said, citing specifically a deadly explosion in April of that year at a fertilizer plant in West, Texas.

The finalized amendments include requiring the consideration of safer technologies and alternatives; requiring third-party audits and root cause analysis; and enhancing emergency planning and preparedness requirements to help ensure coordination between facilities and local communities, among other things.

EPA Administrator Gina McCarthy signed the final rule on Dec. 21 and the agency said it

had submitted it for publication in the Federal Register, the federal government's official journal. It will become effective 60 days after its publication there.

--Additional reporting by Juan Carlos Rodriguez. Editing by Joe Phalon.

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Wednesday, December 7, 2016

EPA moves to ban aerosol de-greasers, spot removers

The U.S. Environmental Protection Agency today announced that it is proposing to ban certain use of the chemical trichloroethylene (TCE) due to health risks when used as an aerosol de-greaser and as a spot removal agent in dry cleaning.

The proposed rule was issued under section 6(a) of the Toxic Substances Control Act, as amended by the **Frank R. Lautenberg Chemical Safety for the 21st Century Act**.

Specifically, EPA is proposing to prohibit the manufacture (including import), processing, and distribution in commerce and to prohibit commercial use of TCE for aerosol degreasing and for spot cleaning in dry cleaning facilities.

EPA is also proposing to require manufacturers, processors, and distributors, except for retailers, to provide downstream notice of these prohibitions throughout the supply chain, and to keep limited records. Comments on the proposed rule must be received 60 days after date of publication in the Federal Register.

Last week, EPA announced the inclusion of TCE on the list of the first ten chemicals to be evaluated for risk under TSCA. That action will allow EPA will evaluate the other remaining uses of the chemical. Today's action only proposes to ban certain uses of the chemical.

Read the press release.
Read the proposed rule.

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DEP ACCEPTS PLAN TO CURB TOXIC CHEMICAL IN NJ'S DRINKING WATER

JON HURDLE | JANUARY 11, 2017

Surveys have shown the presence of PFNA in New Jersey's public water systems is much higher than the national rate



New Jersey is on the way to implementing a tough new standard on the presence of a toxic chemical in drinking water, adopting the

recommendation of a state scientific panel for the first time in more than six years.

Department of Environmental Protection Commissioner Bob Martin has accepted a proposal by the Drinking Water Quality Institute to establish a Maximum Contaminant Limit (MCL) of 0.013 parts per billion for perfluorononanoic acid (PFNA), said DEP spokesman Bob Considine, some 20 months after the panel made the recommendation.

PFNA, which was used in textile coatings, stain repellants, and food packaging, has been linked to some cancers in humans and to reproductive and developmental problems in animals.

The new standard is stricter than the DEP's existing "guidance" level of 0.02 parts per billion, and follows recent surveys showing the presence of PFNA in New Jersey's public water systems is much higher than the national rate.

"Commissioner Martin already accepted the recommendation and directed staff to work up a proposal

for a MCL for PFNA,” Considine said on Tuesday, in response to a question from NJ Spotlight about the status of the measure.

Martin’s acceptance of the proposed health standard, which has been long-awaited by clean-water campaigners, was made last year but not announced because the DEP doesn’t announce every stage of a rulemaking, Considine said.

The measure is now going through the regulatory process, which includes consultation with stakeholders, a public-comment period and then a hearing, all of which will take 12-18 months, Considine said.

When the process is complete, water companies will have to comply with the new rule by installing carbon filtration or other technologies in water sources where the chemical exceeds the limit. They may also have the option of blending water with cleaner sources or simply shutting wells that don’t meet the new standard.

A study by the DWQI released in April 2015 found the chemical in 2.5 percent of the public water systems tested was at levels that exceeded the guidance standard. That compared with just 0.2 percent nationwide.

An earlier study by the DEP found PFNA and related chemicals in 67 percent of 31 municipal systems tested in 20 counties during 2009 and 2010. The highest level of PFNA – about seven times the new standard – was found near the South Jersey town of Paulsboro where Solvay Specialty Polymers manufactured the chemical between 1985 and 2010.

Environmentalists welcomed the DEP’s acceptance of the new standard, and said the move was unexpected.

“That is news to me,” said Tracy Carluccio, deputy director of the Delaware Riverkeeper Network, which has campaigned for PFNA and other PFCs to be regulated by New Jersey. “It is, of course, what we’ve been advocating for but there has not been a public announcement.” She called the DEP’s decision “great news.”

The DEP’s move marks its first acceptance of a DWQI recommendation since 2010 when the panel stopped meeting for almost four years, a break that critics called a shutdown by the Christie administration. When it restarted with new members and a new chairman in 2014, it began work on PFNA and made its recommendation in April 2015.

The panel, consisting of government officials, academics, and water company executives, is now finalizing its work on PFOA, another chemical in the PFC family.

Dr. Keith Cooper, a Rutgers University toxicologist who chairs the panel, said he has not been involved in the policy process on PFNA, and noted that the DWQI’s work is strictly scientific.

Doug O’Malley, director of Environment New Jersey, welcomed the DEP’s move. “This is the first time the DEP has accepted the recommendation of its own scientists in its seven years in office,” he said.

The technology that will allow water companies to comply with the new regulation is available and not too costly,

O'Malley said. "It's not going to break the bank," he said. "This is a problem that we can start to solve."

Jon Hurdle is a writer based in Philadelphia. He often covers environmental issues.



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Ending the 'Surprise' Factor in Medical bills


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After Paulsboro criticism, railroads adopt federal standards for chemical spill response

Updated: DECEMBER 6, 2016 — 3:45 PM EST



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📷 (ALEJANDRO A. ALVAREZ/STAFF PHOTOGRAPHER)

For the chemical spilled in Paulsboro in 2012, vinyl chloride, railroad standards called for a half-mile evacuation in case of fire. Federal guidelines said the evacuation should be double that, a mile.

by **Jonathan Tamari** [@JonathanTamari](https://twitter.com/JonathanTamari) (<http://twitter.com/JonathanTamari>)

WASHINGTON -- Freight railroads have agreed to rely exclusively on federal safety response recommendations, rather than their own guidelines for accidents involving dangerous chemicals, drawing praise from New Jersey lawmakers who sought that change after a Conrail derailment caused a toxic spill in Paulsboro in 2012.

The shift, the lawmakers said, will help eliminate confusion that might result from differences in federal recommendations and railroad protocols, and ensure that federal standards are used in the event of spills. The guidelines give emergency responders information about fire risks, immediate steps to respond to a spill and evacuation distances, among other information.

“When a train accident happens and every second counts, it makes no sense to have two sets of emergency response information on board — especially if that information is contradictory,” said Sen. Bob Menendez (D., N.J.). “At best, it’s confusing for first responders. At worst, less protective information could result in serious consequences for public health and human life.”

Menendez and U.S. Rep. Donald Norcross (D., N.J.) had co-sponsored a bill to require railroads to follow the federal guidelines. Sen. Cory Booker (D., N.J.) also hailed the changes. Though the measure has not passed, the railroads voluntarily took that step this summer.

The Association of American Railroads, which represents major freight carriers, voted in August to discontinue its Hazardous Materials Emergency Response Database and rely instead on the federal Emergency Response Guidebook, hoping to erase any discrepancies, according to a new Government Accountability Office report. The inconsistencies in federal guidelines and the railroads’ own protocols had drawn criticism from the National Transportation Safety Board in the aftermath of the Paulsboro spill, and led the agency to recommend that rail guidelines be at least as protective as the federal standards, which are not mandated.

The GAO said those changes will also trickle down to smaller freight railroads that depended on the industry’s database.

While the two standards provided mostly similar guidance in the case of spills, in some cases there were differences.

For example, for the chemical spilled in Paulsboro, vinyl chloride, railroad standards called for a half-mile evacuation in case of fire. Federal guidelines said the evacuation should be double that, a mile.

Nearly 700 Paulsboro residents were eventually evacuated from their homes.

The GAO found inconsistent response recommendations for eight of the 72 chemicals it reviewed.

"Adoption of this safety measure provides uniformity for first responders on scene when rail emergencies happen," Norcross said in a statement issued by Menendez's office.

A spokesman for the Association of American Railroads, the freight group, wrote in an email that it made the change to "eliminate any potential discrepancies" between the federal guidebook and their own supplemental information. "The U.S. freight rail industry is continuously looking for ways to be even safer and stay in step with local first responders," wrote spokesman Ed Greenberg.

You can follow Tamari on [Twitter \(https://twitter.com/JonathanTamari\)](https://twitter.com/JonathanTamari) or email him at [jtamari@phillynews.com \(mailto:jtamari@phillynews.com\)](mailto:jtamari@phillynews.com).



Published: December 6, 2016 — 3:05 PM EST | **Updated:** December 6, 2016 — 3:45 PM EST

The Philadelphia Inquirer

Concerns over oil pipeline persist amid lack of plans

Scott Fallon, Staff Writer, @NewsFallon Published 11:14 a.m. ET Dec 21, 2016 | Updated 11:28 a.m. ET Dec. 21, 2016



(Photo: Amy Newman/northjersey.com)

Plans for an oil pipeline that would pump millions of gallons daily between Albany, N.Y., and Linden have still not been filed with New Jersey regulators a year after the small company behind the controversial project said they would.

While New York officials have received permit applications and are beginning a review of Pilgrim Pipeline, opponents of the project in New Jersey have been left wondering where things stand with a pipeline that would go through some of the most environmentally sensitive areas in the state.

"It's a bit of a mystery right now," said Mahwah Council President John Roth who, like many officials in the pipeline's presumed path, fears it could threaten the town's drinking water. "We're at a wait and see

approach with Pilgrim. They made a number of predictions that have not come true and that's fine with me."

A lot has changed since Pilgrim, a Connecticut-based startup, announced its project three years ago as a safer alternative to the oil barges and freight trains that carry millions of gallons of crude oil down the Hudson River corridor each day.

The source of the oil – the Bakken region of North Dakota – has seen a steady decline in production. Major pipeline proposals like Keystone XL from Canada and the more recent Dakota Access Pipeline have received public backlash over environmental concerns. But despite a recent report that the company closed its New York field office and laid off staff, a Pilgrim spokesman said the project is still underway and making progress towards submitting its plans.

WASHINGTON: [Obama blocks oil and gas drilling off New Jersey \(/story/news/environment/2016/12/20/obama-blocks-oil-and-gas-drilling-off-new-jersey/95667880/\)](/story/news/environment/2016/12/20/obama-blocks-oil-and-gas-drilling-off-new-jersey/95667880/)

TRENTON: [Environmental funding, Highlands protections move ahead \(/story/news/state/2016/12/19/environmental-funding-highlands-protections-move-ahead/95608548/\)](/story/news/state/2016/12/19/environmental-funding-highlands-protections-move-ahead/95608548/)

What's known so far is that Pilgrim wants to build dual underground pipelines that would deliver crude oil 178 miles from Albany possibly to the Bayway Refinery in Linden or nearby terminals for transfer onto ship. It would send refined fuel, like gasoline and heating oil, back to New York, a total of 16.8 million gallons daily.



The yellow line shows a proposed route of Pilgrim Pipeline from Albany, N.Y., to Linden. (Photo: .)

The pipeline's route in New Jersey has not been finalized but preliminary maps show it going through the heart of the Highlands in Bergen, Passaic and Morris counties before eventually heading east to Union County.

More than 40 New Jersey municipalities along with five counties and the legislature in a bi-partisan act have passed resolutions against Pilgrim. Still, most observers say the decision on the pipeline will likely come down to New York Gov. Andrew Cuomo and Gov. Chris Christie, who has refused to comment on the project.

A spokesman for the Department of Environmental Protection confirmed this week that it has not received any documentation from Pilgrim despite the company saying it would file by the end of 2015.

The last significant action taken by Pilgrim in New Jersey came in March when contractors surveyed land at Ramapo Valley Reservation park, Bergen County's largest park, for a possible pipeline route over the objections of environmentalists.

Paul Nathanson, Pilgrim's spokesman, would not say why the company is taking so long or what activities it conducted in New Jersey over the past year. He would only say that the permit applications take "a great deal of time to prepare" since it requires information on environmental, geological and archaeological impacts. "We have learned from past experience to avoid publicly setting time horizons whenever possible," he said.

Nathanson downplayed a Bloomberg News article in November that said Pilgrim had shut down its New York field office and laid off staff. The office was closed after surveyors assigned to it completed their work mapping out a route in New York and submitting permit applications last year, Nathanson said.

A group of 15 towns that have banded together to fight Pilgrim believe the project is still a threat despite the lack of action. "I don't think they would have filed in New York if they weren't serious," said John Scagnelli, an environmental lawyer hired by the group.

Weighing pipeline risks

Pipelines have fewer accidents than trains and trucks hauling oil. But when pipeline spills occur, they're usually very large. A pipeline rupture in North Dakota this month released about 176,000 gallons of crude into a nearby creek.

While Pilgrim filed more than 1,000 pages of permit applications to New York authorities 16 months ago, little has happened since. The plans show the pipeline veering down the side of the New York Thruway, going through Orange and Rockland counties before entering Mahwah in a protected area that provides drinking water for millions. New York regulators determined in September that the project would cause "multiple significant adverse environmental impacts from [its] construction, operation and maintenance."

It was first step in a long process that requires an "extended" public comment period followed by an often lengthy study by Pilgrim called an environmental impact statement.

Opponents have drawn parallels to the Dakota Access Pipeline, a proposed oil pipeline through the Upper Midwest that faced considerable opposition especially from the Standing Rock Sioux whose reservation is located near the pipeline's path. The Pilgrim Pipeline could pass near or even through the longtime home of the Ramapough Lenape tribe in of Mahwah and Ringwood.

"We consider these mountains sacred so this is a legitimate threat," Ramapough Chief Dwaine Perry said. "It affects drinking water so it really affects everyone."

Another problem for Pilgrim is that the owners of the Bayway refinery have repeatedly said they are not interested in partnering with the company. A spokesman for Phillips 66 said that the company's position remains the same.

"Phillips 66 has no plans to make a shipping commitment on the proposed pipeline nor are we involved in otherwise sponsoring the project," said Dennis Nuss, a company spokesman.

When asked about Phillips 66's position, Nathanson said Pilgrim is receiving interest from those looking to do business with the company. There are a number of oil terminals in Linden, which could temporarily store the crude sent from Pilgrim before transferring it to a refinery-bound ship.

"We are pleased with the robust response from the industry and we have moved the project forward based on these commitments," Nathanson said.

He declined to name the companies.

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EPA Has Revised Hazardous Waste Regulations

Who is affected by this rule change?

Hazardous Waste Generators, Transporters, Treatment Storage and Disposal Facilities, and Environmental Consultants will be impacted by this rule change.

Why is DEP issuing this advisory?

The EPA Administrator signed the final Hazardous Waste Generator Improvements Rule on October 28, 2016, and it was published in the Federal Register on November 28, 2016. The rule will become effective on May 30, 2017. According to the EPA, the goal of this update is to make the rules easier to understand, facilitate better compliance, provide greater flexibility in how hazardous waste is managed, and close gaps in the regulations. The EPA further states that this rule will:

- Allow some generators to avoid higher generator status when generating episodic waste;
- Allow Very Small Quantity Generators to send its hazardous waste to a Large Quantity Generator under control of the same entity;
- Enhance safety of facilities, employees, and the general public by improving hazardous waste communication and ensuring emergency management requirements meet today's needs; and
- Reorganize the regulations so that they are all in one place.

What compliance assistance is available?

General rule information:

<https://www.epa.gov/hwgenerators/final-rule-hazardous-waste-generator-improvements>

Rule as posted in the Federal Register:

<https://www.federalregister.gov/documents/2016/11/28/2016-27429/hazardous-waste-generator-improvements-rule>

Listen to a webinar:

https://clu-in.org/conf/tio/hwgenerators_113016/

Fact sheet:

<https://www.epa.gov/hwgenerators/fact-sheet-about-hazardous-waste-generator-improvements-final-rule>

Frequently Asked Questions:

<https://www.epa.gov/hwgenerators/frequent-questions-about-hazardous-waste-generator-improvements-final-rule>

COMPLIANCE ADVISORY

Who should I contact with questions?

USEPA

Office of Resource Conservation and Recovery

1200 Pennsylvania Ave., NW (5305P)

Washington DC 20460

<https://www.epa.gov/hwgenerators/forms/contact-us-about-hazardous-waste-generators>

Bret Reburn

Bureau of Hazardous Waste Compliance and Enforcement

9 Ewing Street

Trenton, NJ 08625

(609) 292-4862

Bret.Reburn@dep.nj.gov

Where can I get more information?

Hazardous Waste Training Opportunities: <http://www.state.nj.us/dep/enforcement/cetraining.html>

Hazardous Waste Enforcement Webpage: <http://www.state.nj.us/dep/enforcement/hw.html>

Contact NJDEP: <http://www.nj.gov/cgi-bin/dep/contactdep.pl>

DEP Data Miner: <http://www.nj.gov/dep/opra/online.html>

To comment on this advisory: <http://www.nj.gov/dep/enforcement/survey.html>

In addition, DEP's Compliance and Enforcement Program is on [Facebook](#). Our goal is to provide our stakeholders and the regulated community a new way to connect and share relevant and useful compliance assistance topics, upcoming training, regulatory updates and recent advisories on a regular basis. Click on <https://www.facebook.com/NJDEPComplianceandEnforcement> and "Like" our page to receive up-to-date information as soon as it is available.



Please note this advisory is intended to be a summary explanation of a department initiative. It does not include all potentially applicable requirements. If you have any questions related to compliance with this initiative, please contact the Enforcement number listed above.



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EPA Inks \$5.6M Deal For NJ Superfund Cleanup

By Adam Lidgett

Law360, New York (November 16, 2016, 7:43 PM EST) -- The U.S. Environmental Protection Agency has inked a \$5.6 million deal with Shieldalloy Metallurgical Corp. requiring the company to pay for the cleanup of soil, sediment and groundwater contamination at a New Jersey Superfund site, the agency announced Wednesday.

The EPA said the proposed deal is for cleanup of contaminated soil, sediment, surface water and groundwater at the Shieldalloy Metallurgical Corp. Superfund site in Newfield and Vineland, N.J., saying the site is contaminated with substances including hexavalent chromium and volatile organic compounds that can lead to serious health defects. The cleanup measures at parts of the site being required by the EPA include capping soil, removing contaminated sediment and using non-hazardous additives to treat groundwater and break down contaminants, the agency said.

"Unfortunately this property is contaminated with toxic chemicals that can damage people's health and the environment," Judith A. Enck, EPA regional administrator, said in a statement. "This agreement is an important step in getting this site cleaned up. It is an example of how Superfund is designed to work - those responsible for the contamination pay for the work, not the taxpayers."

The EPA said it is restricting future construction on the site to commercial use. The agency is requiring the removal of 9,800 cubic yards of sediment contaminated with heavy metals be removed from a stream bottom and that 1.3 acres of soil at the area be capped with a one-to-two-foot cap.

The EPA said that ore and metal processing that took place at the site from 1955 to 2006 resulted in groundwater there being contaminated with the volatile organic compounds and hexavalent chromium.

However, the EPA said that the contaminated groundwater at the facility doesn't pose an immediate threat because wells in the area are not in use, adding that residents have since been connected to a municipal water source.

The settlement is not finalized, as it is required to be approved by a U.S. District Court judge. The EPA said the public is encouraged to submit comments on the proposed settlement.

Not all were happy with the settlement, however. Jeff Tittel, New Jersey Sierra Club director, called the deal a "sell-out," saying the EPA has failed to propose a real cleanup and that the plan hurts both the environment and the residents of Vineland.

"Instead of cleaning up the site they are capping it, leaving tons of toxic material that will affect the groundwater and community around the Shieldalloy facility," He said in a

statement. "This is one of the most contaminated sites in New Jersey. Instead of cleaning it up they are just capping it, not removing the contaminated or radioactive material. Eventually the caps will fail, allowing hazardous materials to pollute the groundwater and community around this site,"

Representatives for Shieldalloy were not immediately available for comment Wednesday.

The federal government is represented by Peter Kautsky of the U.S. Department of Justice and U.S. Attorney Paul J. Fishman.

Shieldalloy is represented by Mary M. Judge of Flaster Greenberg PC.

The case is United States v. Shieldalloy Metallurgical Corporation, case number 1:16-cv-08418, in the U.S. District Court for the District of New Jersey.

—Editing by Joe Phalon.

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News Releases from Region 02

EPA Funds Projects to Support Water Conservation and Prevent Chemical Pollution from New Jersey Businesses During Flooding

EPA Provides \$399,358 in Grants to Rowan University, the College of New Jersey And the New Jersey Department of Environmental Protection

12/05/2016

Contact Information:

John Martin (martin.johnj@epa.gov)
212-637-3662

(New York, N.Y. – December 5, 2016) The U.S. Environmental Protection Agency has awarded \$399,358 to organizations in New Jersey to fund projects that will help businesses reduce chemical pollution and conserve water. These grants, which were awarded to Rowan University, the College of New Jersey and the New Jersey Department of Environmental Protection, are part of the approximately \$5 million in grants the EPA awards each year to prevent pollution across the nation.

"New Jersey is facing its worst drought conditions in years, while many low-lying areas of the state remain under threat of flooding," said EPA Regional Administrator Judith A. Enck. "These pollution prevention grants will help businesses conserve water and reduce the use of toxic chemicals, protecting people's health throughout the state."

The EPA awarded the Sustainability Institute at the College of New Jersey \$197,023 to provide technical assistance to businesses located in flood-prone areas of the state. The technical assistance will focus on strategies to reduce the use of hazardous chemicals and ensure the safety of chemical storage and use by businesses in areas at risk of flooding. The College of New Jersey will also develop a best management practices manual, and will provide training to businesses and local governments at three locations throughout the state. Results of this training and outreach effort will be disseminated statewide through the College of New Jersey's Sustainable Jersey certification program.

With the help of a \$104,000 EPA grant, the New Jersey Department of Environmental Protection will train high school students in Cape May County in water conservation techniques. The students will then provide technical assistance to thirty businesses in the cities of Wildwood and Ocean City on water conservation practices and products, focusing on businesses that cater to the county's large influx of summer tourists each year, such as restaurants and hotels. Increased water demand in Cape May County has significantly reduced its aquifers, causing its aquifers and residential wells to be threatened by saltwater intrusion.

Rowan University will use a \$98,335 EPA grant to provide pollution prevention technical assistance to a Nestlé Corporation facility in Freehold, New Jersey. Rowan University will implement green engineering strategies at this facility to reduce water use, energy consumption, and waste generation, thereby lowering operating costs for the manufacture of coffee. Using this facility as a case study, Rowan will then hold a seminar on pollution prevention practices for personnel at other Nestlé facilities and in other areas of the food manufacturing sector. Rowan will also share this case study and best management practices at professional conferences and in trade publications.

For more information on the EPA's pollution prevention program, visit <http://www2.epa.gov/p2>.

Follow EPA Region 2 on Twitter at <http://twitter.com/eparegion2> and visit our Facebook page, <http://facebook.com/eparegion2>.

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EPA Says It Can't Pay For Gold King Mine Spill Claims

By Andrew Westney

Law360, New York (January 17, 2017, 3:39 PM EST) -- The U.S. Environmental Protection Agency on Friday said that it can't pay for any tort claims against it for its role in triggering the 2015 Gold King Mine disaster, despite the agency's long-standing assertion that it would take full responsibility for handling the spill.

The EPA faces federal court litigation brought by the Navajo Nation and the state of New Mexico for its role in the August 2015 spill, when the agency and a contractor accidentally breached a dam and allowed more than 3 million gallons of heavy metal-laden water to rush into a tributary of the Animas River in Colorado.

An EPA claims officer, with guidance from the U.S. Department of Justice, concluded that the agency is "not legally able to pay compensation" for any administrative claims related to the spill under the Federal Tort Claims Act, according to an EPA statement on Friday. The FTCA only covers discretionary actions by federal agencies, which require the exercise of judgment on the part of an agency, the EPA said.

"Because the agency was conducting a site investigation at the Gold King Mine under the Comprehensive Environmental Response, Compensation and Liability Act, the agency's work is considered a 'discretionary function' under this law," the EPA said. "Therefore, the circumstances surrounding the Gold King Mine incident unfortunately do not meet the conditions necessary to pay claims."

New Mexico's two Democratic senators, Tom Udall and Martin Heinrich, and Rep. Ben Ray Lujan, D-N.M., slammed the EPA's decision in a joint statement on Friday, saying that they were "outraged at this last-ditch move by the federal government's lawyers to go back on the EPA's promise to the people of the state of New Mexico — and especially the Navajo Nation — that it would fully address this environmental disaster."

The lawmakers said that they will continue to promote legislation to hold the agency accountable for the spill.

The Aug. 5, 2015, incident occurred when EPA workers assessing a leak at the Colorado mine accidentally destroyed a dam holding back water contaminated with arsenic, mercury, cadmium, iron and copper. Mustard-hued water flowed into Cement Creek, a tributary of the Animas River, which turned orange after the breach.

The Animas River flows into the San Juan River and the Colorado River, and the effect of the more than 3 million-gallon spill was felt as far away as Arizona, New Mexico and Utah and affected the reservations of the Navajo Nation and the Southern Ute Indian tribe.

The EPA has repeatedly said that it would take full responsibility for cleaning up and monitoring the effects of the spill, and in a report on Jan. 3 on the metals released by the disaster said that the water quality in the river system affected by the spill had quickly returned to the same levels as before the incident.

The agency reiterated in its statement on Friday that it has assumed responsibility for the spill, including **providing financial support**, water treatment and monitoring, and putting a permanent remedial plan in place for the mining area.

The EPA said that those who have filed claims that were denied may challenge the agency's decision within six months in U.S. district court.

Navajo Nation Council Speaker LoRenzo Bates said in a statement on Friday that the council was "very disappointed" with the EPA's decision and urged federal lawmakers from Arizona and Utah as well as New Mexico to demand that the agency "provide full compensation to the many Navajo people who sustained extensive losses due to the spill."

Udall, Heinrich and Lujan said in their statement that the Navajos "have been the victims of terrible and deadly environmental injustice over many years" and have "good reason to be skeptical now of the government's honesty about environmental quality."

Although the federal courts will ultimately decide whether the EPA is liable under the FTCA, the federal government has a "moral obligation," whatever the outcome of such litigation, to pay back those hurt by the spill and fully pay back local and tribal governments for their costs in responding to the spill, the lawmakers said.

In May, New Mexico hit the EPA with a suit in federal court over environmental and economic damage to the state from the Gold King Mine spill.

In August, the Navajo Nation sued the EPA and its contractor Environmental Restoration LLC over the spill for contaminating Navajo farms and water supply, and also went after former mine owner Gold King Mines LLC, subcontractor Harrison Western Corp. and nearby Sunnyside Mine owners Sunnyside Gold Corp., Kinross Gold Corp. and subsidiary Kinross Gold USA.

In December, the Navajo government asked the federal government for more than \$162 million under the FTCA to cover its damages and costs following the spill.

--Editing by Stephen Berg.

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Department of
Environmental
Conservation

Emergency Adoption and Proposed Rule: 6 NYCRR Part 597

Hazardous Substances Identification, Release Prohibition, and Release Reporting

Emergency Adoption: Effective April 25, 2016
Public comment period on proposed rule making
ended July 8, 2016

Fourth Re-Adoption: Effective January 12, 2017 for
an additional 60 days

The New York State Department of Environmental Conservation (DEC) filed a Notice of Emergency Adoption and Proposed Rule Making to classify perfluorooctanoic acid (PFOA-acid), ammonium perfluorooctanoate (PFOA-salt), perfluorooctane sulfonic acid (PFOS-acid), and perfluorooctane sulfonate (PFOS-salt) as hazardous substances at the request of the New York State Department of Health (NYSDOH). This rule making also provides time for facilities storing firefighting foam containing one or more of these newly listed hazardous substances to properly dispose of it and provides time for firefighting operations to find replacement foams. This proposal also corrects the tables of hazardous substances by providing units for reportable quantities.

The temporary emergency rule was effective April 25, 2016 while DEC finalizes the proposed amendments to 6 NYCRR Part 597, *Hazardous Substances Identification, Release Prohibition, and Release Reporting*. Subsequently, the fourth re-adoption of the emergency rule allows the amendments to continue to be effective as of January 12, 2017 for an additional 60 days. DEC prepared an Assessment of Public Comment (link provided below) to address the comments received during the public comment period and at the three public hearings held in June 2016. The Part 597 amendments become permanent upon adoption by DEC and filing the Notice of Adoption with the New York State Department of State (DOS). Subsequent Notices of Emergency Adoption will be filed with DOS until the proposed rulemaking is completed.

DEC has concluded that these substances meet the definition of a hazardous substance based upon the conclusion of NYSDOH that the combined weight of evidence from human and experimental animal studies indicates that prolonged exposure to significantly elevated levels of these compounds can affect health and, consequently, pose a threat to public health in New York State when improperly treated, stored, transported, disposed of or otherwise managed. NYSDOH scientists have concluded that it is essential to list these chemicals as hazardous substances.

Once substances are determined to be hazardous substances, DEC regulates their handling and storage and has authority to remediate sites contaminated with them. The Chemical Bulk Storage regulations (6 NYCRR 596-599) provide standards for the proper handling and storage of bulk



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quantities of hazardous substances to prevent spills and releases to the environment, prohibit the release of hazardous substances to the environment, and require the reporting of certain releases of hazardous substances to DEC. Certain facilities that store hazardous substances must apply to DEC for a registration certificate to operate.

A new provision, paragraph 597.4(a)(3), will allow entities with firefighting foam the time necessary to determine if stored foam contains one or more of PFOA-acid, PFOA-salt, PFOS-acid or PFOS-salt. If the stored foam contains one of these substances, the facility would not be allowed to use the foam for firefighting after April 25, 2017. It may be used for firefighting until then but not for any other purpose such as training. Foam that is prohibited for use after April 25, 2017 should be safely disposed in accordance with federal, state, and local requirements. DEC's recommended method of disposal is described in the fact sheet on "Storage and Use of Firefighting Foam" (link provided below). Replacement foam may not contain a hazardous substance at a concentration that would result in the release of the reportable quantity (one pound) or more when used as a firefighting foam.

Regulatory Documents

- Express Terms - 6 NYCRR Part 597
- Assessment of Public Comment Summary - 6 NYCRR Part 597
- Assessment of Public Comment (Full Text) - 6 NYCRR Part 597 (PDF) (172 KB)
- Regulatory Impact Statement Summary - 6 NYCRR Part 597
- Regulatory Impact Statement (Full Text) - 6 NYCRR Part 597 (PDF) (60 KB)
- Regulatory Impact Statement (Full Text with NYSDOH letter attached) - 6 NYCRR Part 597 (PDF) (216 KB)
- Regulatory Flexibility Analysis for Small Businesses and Local Governments Summary - 6 NYCRR Part 597
- Regulatory Flexibility Analysis for Small Businesses and Local Governments (Full Text) - 6 NYCRR Part 597 (PDF) (49 KB)
- Rural Area Flexibility Analysis - 6 NYCRR Part 597
- Job Impact Exemption Statement - 6 NYCRR Part 597
- State Environmental Quality Review (SEQR) Documents - 6 NYCRR Part 597 (PDF) (374 KB) - Negative Declaration, Short Environmental Assessment Form, Coastal Assessment Form.

Storage and Use of Firefighting Foam Under New Hazardous Substance Regulations

- Storage and Use of Firefighting Foam - Fact Sheet

Public Hearings

DEC held legislative public hearings on June 27, 28, and 30, 2016 to receive public comment on the proposed amendments to Part 597. Oral statements made during these hearings and written comments submitted to DEC during the public comment period have equal weight. See link provided above for the Assessment of Public Comment.

Document Repositories

The proposed Part 597 amendments and supporting rule making documents may also be inspected at the following DEC offices (call the noted contact for an appointment):

- Central Office, 625 Broadway, Albany, NY 12233, Attention: Russ Brauksieck (518) 402-9553
- Region 1, SUNY, Building #40, Stony Brook, NY 11790, Attention: Karen Gomez (631) 444-0320
- Region 2, Hunters Point Plaza, 47-40 21st Street, Long Island City, NY 11101, Attention: Leszek Zielinski (718) 482-6455
- Region 3, 21 South Putt Corners Road, New Paltz, NY 12561, Attention: Ed Moore (845) 256-3137
- Region 4, 1150 North Westcott Road, Schenectady, NY 12306, Attention: Lynn Winterberger (518) 357-2374
- Region 5, 1115 NYS Route 86, Ray Brook, NY 13601, Attention: Russ Huyck (518) 897-1242
- Region 6, State Office Building, 317 Washington Street, Watertown, NY 13601, Attention: Gary McCullouch (315) 785-2513
- Region 7, 615 Erie Boulevard West, Syracuse, NY 13204, Attention: Dick Brazell (315) 426-7523
- Region 8, 6274 East Avon-Lima Road, Avon, NY 14414, Attention: Pete Miller (585) 226-5427
- Region 9, 270 Michigan Avenue, Buffalo, NY 14202, Attention: Andrea Skalski (716) 851-7220

More about Emergency Adoption and Proposed Rule: 6 NYCRR Part 597 :

Express Terms - 6 NYCRR Part 597 - Text of emergency regulation - addition of materials to list of hazardous substances.

Assessment of Public Comment Summary - 6 NYCRR Part 597 - This summary reflects the responses of DEC to the main comments submitted by the public regarding the adoption of amendments to 6 NYCRR Part 597.

Regulatory Impact Statement Summary - 6 NYCRR Part 597 - Brief summary of authority, benefits, costs and potential impacts of the regulation.

Regulatory Flexibility Analysis for Small Businesses and Local Governments Summary - 6 NYCRR Part 597 - Information about the effects of the regulation, minimizing adverse impact on small business and local government.

Rural Area Flexibility Analysis - 6 NYCRR Part 597 - Information about compliance with the regulations; costs; minimizing adverse impacts; and rural area participation.

Job Impact Statement - 6 NYCRR Part 597 - Statement that the regulations are not expected to create a substantial adverse impact on employment opportunities.

Storage and Use of Fire Fighting Foams - Fact Sheet - Information about new hazardous substance regulation requirements.



Department of
Environmental
Conservation

For Release: Tuesday, December 20, 2016

DEC's Independent Analysis Finds EPA's Hudson River Cleanup Fails to Protect Human Health and the Environment

New Report Challenges Effectiveness of EPA's Remedy for PCB Cleanup

DEC calls on EPA to expand PCB investigation to Lower Hudson, renews call for additional sampling to ensure legitimate Hudson River PCB cleanup

The New York State Department of Environmental Conservation (DEC) today released an independent report on the U.S. Environmental Protection Agency's (EPA) review of the cleanup of Polychlorinated Biphenyl (PCB) contamination in the Hudson River (PDF, 221 KB). Using EPA's guidance, DEC finds the cleanup is not protective of the public or the environment. In an effort to improve the cleanup, New York State sent a letter with the report to EPA (PDF, 248 KB) prior to EPA's anticipated release of its Five Year Review in 2017.

Using EPA criteria for the agency's five year Superfund reviews, DEC determined that high concentrations of PCBs remain in fish in portions of the Hudson River resulting in human health and ecological risks in excess of EPA's acceptable risk range. DEC also found that, as highlighted in a previous Five Year Review, higher than anticipated sediment concentrations will remain after dredging, indicating that the targeted reductions in fish PCB concentrations will not be achieved in the time frames EPA relied upon when choosing the remedial plan for the Hudson River.

"It's simple. DEC is calling on the EPA to finish the job and hold GE accountable for cleaning up the Hudson River," said DEC Commissioner Basil Seggos. "If EPA won't do the job and protect New Yorkers and the environment, DEC is ready to step in and lead."

DEC developed the report using EPA's basis for selecting the remedy and the data and information gathered during the dredging project, which reveal cancer and non-cancer health risks well above the acceptable risk range for people who ate fish from both the Upper Hudson River (between Hudson Falls and Troy) and the Lower Hudson River (from Troy south to Manhattan). Risks to ecological receptors such as fish-eating animals were also above EPA's acceptable range.

In addition, DEC considered EPA's rationale for selecting the dredging remedy. EPA chose the dredging remedy, under which significant amounts of PCBs would be removed from the sediments of the Upper Hudson, primarily because of the time estimated to achieve targeted fish PCB concentrations. Specifically, EPA stated that a delay of 10 years in reaching target fish concentrations of 0.4 mg/kg within 5 years of the completion of dredging and 0.2 mg/kg within 16 years of the completion of dredging was unacceptable. This delay formed the basis for EPA's rejection of alternative

remediation methods. Based on data collected to date, it is clear that the dredging performed will not meet these targeted fish PCB concentrations, and EPA will not be able to deliver on the projected benefits to public health and the environment from this cleanup unless additional actions are undertaken.

EPA's current five year review must thoroughly quantify the rates of decline in PCB concentrations based on all available fish, water, and sediment data, and make reasonable and conservative assumptions regarding future trends. Recent analysis by the National Oceanic and Atmospheric Administration (NOAA) and others illustrates that recovery rates for fish in the Lower Hudson may be far longer than EPA anticipated. With the significant amount of contamination left behind, New York State cannot find the remedy effective.

DEC recently called on EPA to perform additional sampling in order to complete a detailed evaluation of the dredging, including increasing the sampling of sediment and fish tissue to the scale and frequency necessary to optimize the remedy through further remedial work in order to achieve the targeted fish PCB reductions originally identified.

DEC also recommends that EPA expand the investigation of remedial efficacy to include the portion of the site between the Federal Dam at Troy and the Battery in New York City. This work is necessary to determine the nature and extent of PCB contamination in the sediments, water, and biota of the Lower Hudson, and to evaluate remedial alternatives to address the currently uncontrolled and unacceptable risks to human health and the environment. Until these recommendations are acted upon, EPA must not conclude that the remedy is protective of human health and the environment.

In a November 14 letter to EPA Regional Administrator Judith Enck (PDF, 266 KB), DEC identified the need to expand the analysis of sediments by more than 1,400 samples in the Upper Hudson River in order to determine the effectiveness of the dredging. The expanded sampling is critical to gauge whether the project will meet its goals. EPA recently responded to DEC's request indicating that it has no intent to conduct additional sampling. DEC will conduct the additional sampling as it is clear that EPA does not intend to base critical environmental decisions on sound science.

EPA currently plans to collect only 375 samples, or fewer than 10 samples for every mile of river. DEC has concluded that at least 1,800 samples are needed to have the statistical power to draw timely, science-based conclusions from the sampling results.

Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the National Contingency Plan (NCP), EPA is required to monitor effectiveness of the remedy to affirm that it is meeting the goals set by the Record of Decision (ROD). In March, EPA committed to perform a five year review of the remedy, which it expects to issue in the spring of 2017. EPA must take additional remedial action if the remedy fails to meet the goals required by the ROD, including reducing PCB levels in fish within the timeframe EPA originally anticipated.



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Pa. Frack Spill Ruling Could Dent DEP's Negotiating Power

By Dan Packel

Law360, Philadelphia (January 13, 2017, 5:18 PM EST) -- A recent Pennsylvania appellate court ruling that state law does not authorize ongoing penalties for a single waterway leak could dramatically weaken the Pennsylvania Department of Environmental Protection's negotiating power when punishing future spills, but the fate of the case likely rests with a reshuffled state Supreme Court lacking a clear record on environmental matters.

Ruling on a case brought by natural gas producer EQT Production Co., the Pennsylvania **Commonwealth Court on Wednesday rejected** the DEP's "continuing violation theory" of penalties under the state's Clean Streams Law. The DEP had argued that it could impose a penalty for each day a violation of the law continues, and it aimed to use this interpretation to push a minimum \$1.2 million penalty on EQT.

The company resisted the department's interpretation, saying that it subjected them and other alleged violators to "never-ending and unquantifiable liability."

The DEP launched an appeal to the Supreme Court on Friday, but if the decision stands, the agency would lose a favored tool for punishing violators.

"It's been common for them to inform alleged violators about how high a penalty could be and then use that to anchor a high settlement offer," explained Saul Ewing LLP Andy Bockis.

In the case at hand, which stems from a 2012 leak at a gas well pad in Tioga County, the DEP in 2014 proposed a \$1.2 million settlement to resolve the matter. But after EQT elected to litigate the matter, the DEP filed a complaint with the state's Environmental Hearing Board seeking a \$4.5 million penalty under the law. In another court filing, the DEP asserted that it was entitled to seek more than \$81 million for violations that occurred until September of that year and even more for continuing violations.

The tactic is especially effective when a purported violator doesn't have the stomach for protracted litigation, unlike Pittsburgh-based EQT.

"When you have a client who's less willing to pursue this via the EHB and the court system, that sets the parameters of their negotiations with DEP," said Manko Gold Katcher Fox LLP partner Todd Kantorczyk.

The record of the protracted fight between EQT and the DEP reveals the degree that the agency looked to the penalties to smack polluters. At the same time, they were litigating the question of the "continuing violations" theory in the Commonwealth Court, the DEP was pushing the EHB to approve the \$4.5 million penalty. The agency went as far as to

subpoena the company's tax records, and it ultimately looked to U.S. Securities and Exchange Commission filings to argue that the fine would have a minimal effect on the bottom line of a company that had an operating income of \$563 million in 2015.

"They are looking for ways to — in the board's words — 'hit them where it hurts,'" Bockis said.

Several attorneys who represent industry clients voiced concern about this abiding philosophy.

"Isn't the real thing that the agency needs to achieve cleanup?" asked David Mandelbaum, the co-chair of the environmental practice at Greenberg Traurig LLP.

"There's only so much money. I'd rather have that money spent on cleanup and overseeing industrial procedure rather than slapping around people for things they're done in the past," he added. "I understand point of general deterrence, but — in a world where enforcement resources are being shrunk — penalties seem to me to be a secondary issue."

Buchanan Ingersoll & Rooney PC shareholder Robert Burns said the ruling would push the DEP to focus more on the reality of cleanups. In the case at hand, EQT took steps to remediate the spill shortly after discovering the leaks, but the DEP said the presence of continued contamination prompted the ongoing penalties.

"I think it's really something that restores a bit of the purpose of the Clean Streams Law. Some cleanups take time, especially with a groundwater situation," he said. "Most want these things to be evaluated via science, and this [decision] takes the thumb off the scales, as far as that goes."

The DEP could, alternatively, resort to other measures to crack down on polluters. Bockis said the agency might respond to extreme situations by imposing more onerous cleanup or compliance plans. These can lead to orders that, if ignored, prompt their own continuing penalties.

Or the agency could look to other statutes, like the federal Resource Conservation or Recovery Act or the Comprehensive Environmental Response, Compensation and Liability Act. But these laws are not always applicable.

"They're certainly creative enough, but that becomes a factual point depending on what the alleged action was," Burns said.

And unlike the federal Clean Water Act, which only covers surface water, the state law offers a broad remedy for spills.

"From a DEP perspective, the beauty of the Clean Streams Law is that it covers not only surface waters but ground waters," Kantorczyk said.

For the agency, the most desirable outcome is likely securing a reversal from the Pennsylvania Supreme Court. Since the case originated in the Commonwealth Court, DEP does not need to petition the high court to hear the matter, but instead has an appeal "as of right." The court has already **ruled on the case** once, addressing a procedural issue rather than the substance of the Clean Streams Law. In January 2016, the high court ruled that EQT could challenge the DEP's interpretation of the law before the Commonwealth Court instead of waiting for the administrative proceeding before the EHB to conclude.

When the case returns, it will come before a court that has added four new justices in the last 13 months and one that has yet to establish a clear profile on environmental law matters.

"It would be one of their first litmus tests as to how they would approach some of these issues," Kantorczyk said.

Taking the case would also give the court the opportunity to address how the Clean Streams Law relates to present-day Pennsylvania, which in 2015 produced more natural gas than all but one other state. Gas was a much smaller part of the state's economy in the 1980s and 1990s, when, according to Bockis, many of the key appellate court rulings on the law were decided. But the law also applies to a wide range of industries, including construction, mining and municipal and private sewage facilities.

"It would be a chance to settle in the court's analysis or set a new tone for how they view the statutory language," he said.

--Editing by Christine Chun and Philip Shea.

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Commonwealth News Bureau
Room 308, Main Capitol Building
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FOR IMMEDIATE RELEASE
01/6/2017

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Neil Shader, DEP
717-787-1323

DEP Offers Funding for Stormwater Management Projects
Program to promote best management practices

Harrisburg, PA – The Pennsylvania Department of Environmental Protection (DEP) is offering grants up to \$200,000 to local entities in the Chesapeake Bay watershed for stormwater management projects that implement best management practices (BMP) to reduce the amount of nutrients and sediment pollution in local waterways.

The program is available to counties, cities, boroughs, townships, incorporated towns and municipal authorities. Stormwater projects must be located in Blair, Cumberland, Dauphin, Franklin, Lackawanna, Lancaster, Lebanon, Luzerne, Lycoming and York counties.

“The department continues to work toward one of the top goals of this administration: improving local water quality and ultimately cleaning up the Chesapeake Bay,” said DEP Acting Secretary Patrick McDonnell. “This grant program achieves that by offering financial assistance to local governments that share in that goal and they are encouraged to apply as we work together in this important environmental initiative.”

Some examples of eligible projects include: raingardens, bio-swales, urban nutrient management/tree planting, vegetated open channels/roofs and wet ponds and wetland preservation. The projects can be located on public or private property.

Applicants can be eligible for grants of up to \$200,000, and no local matching funds are required. Funding for the projects is competitive and the department will apply a scoring system when awarding the grant money. The application must include a description of the project and timetable for the work. Grant applications are due by March 3, 2017.

Please visit <http://www.elibrary.dep.state.pa.us/dsweb/View/Collection-12545> for application instructions and eligibility. Other parties that wish to obtain funding for a stormwater project are encouraged to approach the eligible local entity where the project would be located and offer to assist with the project application and management.

The grant program is federally funded by the Environmental Protection Agency and administered by the department.

Grant monies will be awarded on September 1, 2017.

###

COMMONWEALTH OF PENNSYLVANIA**Dept. of Environmental Protection**

Commonwealth News Bureau
Room 308, Main Capitol Building
Harrisburg PA., 17120

FOR IMMEDIATE RELEASE

01/4/2017

CONTACT:

Neil Shader, DEP
717-787-1323

DEP Developing Enhanced Eligibility Standards for Expedited Review of Erosion and Sediment Control General Permits

Harrisburg, PA – The Pennsylvania Department of Environmental Protection (DEP) has begun revising eligibility standards for expedited review of Erosion and Sediment permit applications related to oil and gas drilling.

The Erosion and Sediment Control General Permits (ESCGP-2) are for earth disturbance of more than 5 acres for oil and gas projects. Under the general permit, projects that meet objective criteria are eligible for a 14-day permit review.

The revisions follow an internal review of two years of permit authorizations, conducted to analyze the consistency and effectiveness of the program from when it began in February 2014 through January 2016. The review revealed that the expedited process has limited application because of the technical deficiencies in almost 60 percent of the permit applications submitted.

As a result of the internal review, DEP staff are developing revisions for eligibility for the expedited review, including objective and clear standards for eligibility, return of applications, removal of applications from the expedited process, improved training for staff and industry applicants, and regular evaluation of the program.

“This review concluded that the expedited review process is very challenging for DEP to implement and has not resulted in higher quality applications nor consistency in environmental protections statewide,” said Acting DEP Secretary Patrick McDonnell. “Through this internal review, we’ve learned that this program only works when DEP receives technically sound and complete application materials at the outset, and we will revise our eligibility requirements accordingly.”

During the review period, DEP received 624 applications for standard review, and 1,054 for expedited review. 59 percent of the expedited review applications were disqualified because

they were administratively incomplete or technically deficient, and 436 permits were issued.

DEP's internal reviewers randomly sampled 23 permits proposing earth disturbance activities of 15 acres or more, and found that only 4 met all the applicable regulatory requirements at the outset. Of the 23 approved applications, 16 had been inspected at least once, and 6 were never constructed, and 1 is under construction currently and has been inspected. Inspections of the reviewed project sites reveal one E&S violation of the expedited permit issued.

The review can be found [here](#), or at <http://files.dep.state.pa.us/OilGas/BOGM/BOGMPortalFiles/DEP%20Expedited%20Review%20Evaluation%2012.30.16.pdf>.

###

[GOVERNOR WOLF](#)[MENU](#)

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Governor Wolf Announces New Methane Rules to Improve Air Quality, Reduce Industry Loss

January 19, 2016

Harrisburg, PA– Governor Tom Wolf today announced a nation-leading strategy to reduce emissions of methane, a greenhouse gas that contributes to climate change, and has been implicated in health risks. The plan is designed to protect the environment and public health, reduce climate change, and help businesses reduce the waste of a valuable product by reducing methane leaks and emissions from natural gas well sites, processing facilities, compressor stations and along pipelines

"Pennsylvania is the second-largest producer of natural gas in the nation behind Texas," said Governor Wolf. "We are uniquely positioned to be a national leader in addressing climate change while supporting and ensuring responsible energy development, creating new jobs, and protecting public health and our environment. These are commonsense steps that Pennsylvania can take to protect our air and reduce waste for industry. The best companies understand the business case for reducing methane leaks, as what doesn't leak into the atmosphere can be used for energy production."

Methane, the primary component of natural gas, has been identified by the U.S. Environmental Protection Agency as the second-most prevalent greenhouse gas emitted in the United States from human activities. It has more than 28 to 36 times more warming power than carbon dioxide, according to data from the federal government.

With federal estimates that the natural gas and oil industries account for a quarter of U.S. methane emissions, reducing methane leaks from the oil and gas sector is one of the essential steps needed for government to work with industry to reduce global greenhouse gas emissions and reduce the impacts of climate change.

GOVERNOR WOLF

MENU

Industry reported more than 5 million mcf (thousand cubic feet) – almost 115,000 tons — of methane emissions from unconventional wells and mid-stream operations in Pennsylvania in 2014. This is considered a low estimate, since fugitive emissions are difficult to quantify.

“As the basis for our methane strategy, we’ve identified measures that the best companies in the industry are already employing, or that are required by the Federal government, or other states. These measures will pay for themselves in recovering saleable product that is otherwise lost,” said Department of Environmental Protection Secretary John Quigley.

Pennsylvania will reduce emissions during development and gas production, processing, and transmission by requiring leak detection and repair (LDAR) measures, efficiency upgrades for equipment, improved processes, implementation of best practices, and more frequent use of leak-sensing technologies.

The four-point plan:

1. To reduce leaks at new unconventional natural gas well pads, DEP will develop a new general permit for oil and gas exploration, development, and production facilities, requiring Best Available Technology (BAT) for equipment and processes, better record-keeping, and quarterly monitoring inspections.
2. To reduce leaks at new compressor stations and processing facilities, DEP will revise its current general permit, updating best-available technology requirements and applying more stringent LDAR, other requirements to minimize leaks. A new condition will require the use of Tier 4 diesel engines that reduce emissions of particulate matter and nitrous oxide by about 90%.
3. To reduce leaks at existing oil and natural gas facilities, DEP will develop a regulation for existing sources for consideration by the Environmental Quality Board.
4. To reduce emissions along production, gathering, transmission and distribution lines, DEP will establish best management practices, including leak detection and repair programs.

For more information and technical details on the plan, DEP has prepared an [explanatory white paper \(http://www.dep.pa.gov/Business/Air/Pages/Methane-Reduction-Strategy.aspx#.Vp6a0vkrJhE\)](http://www.dep.pa.gov/Business/Air/Pages/Methane-Reduction-Strategy.aspx#.Vp6a0vkrJhE).

DEP has scheduled a webinar for Wednesday, January 20 at 11:30 am to discuss these nation-leading measures. For more information, click [here](https://copa-events.webex.com/mw3000/mywebex/default.do?nomenu=true&siteurl=copa-events&service=6&rnd=0.2122890656402613&main_url=https%3A%2F%2Fcopa-events.webex.com%2Fec3000%2Feventcenter%2Fevent%2FeventAction.do%3FtheAction%3Ddetail%26confViewID%3D1754961407%26%26EMK%26), and to register, [click here \(https://copa-events.webex.com/mw3000/mywebex/default.do?nomenu=true&siteurl=copa-events&service=6&rnd=0.2122890656402613&main_url=https%3A%2F%2Fcopa-events.webex.com%2Fec3000%2Feventcenter%2Fevent%2FeventAction.do%3FtheAction%3Ddetail%26confViewID%3D1754961407%26%26EMK%26\)](https://copa-events.webex.com/mw3000/mywebex/default.do?nomenu=true&siteurl=copa-events&service=6&rnd=0.2122890656402613&main_url=https%3A%2F%2Fcopa-events.webex.com%2Fec3000%2Feventcenter%2Fevent%2FeventAction.do%3FtheAction%3Ddetail%26confViewID%3D1754961407%26%26EMK%26)



OSHA News Release – Region 2

U.S. Department of Labor

Jan. 9, 2017

OSHA cites New York contractor for exposing workers to excavation hazards at high school construction site **Contractor faces \$197K in fines after complaint leads to inspection**

VERONA, N.J. - Acting on a complaint in June 2016, the U.S. Department of Labor's Occupational Safety and Health Administration found employees of one of the area's largest general contractors working in an unprotected 10-foot deep excavation at a suburban New Jersey high school, in violation of federal safety and health laws. OSHA announced today it has issued citations for nine violations - one willful and eight serious - to The Landtek Group Inc., a New York-based general contractor that specializes in sports facility design and construction. The company faces \$197,752 in fines as a result.

The citations - issued on Dec. 20, 2016 - follow an OSHA inspection at Verona High School in Verona on June 22, 2016, where the agency found that Landtek allowed its workers to enter and work in an unprotected, 10-foot deep excavation that had no protective systems in place, as required. Landtek is the general contractor for site improvements at Verona High School, including the construction of new tennis courts and synthetic turf fields.

"Without needed protections in place, an excavation can quickly become a grave as thousands of pounds of soil collapse upon workers below ground. The Landtek Group must re-examine its safety procedures and take all available precautions - including installing shoring or other means - to prevent unexpected movement or collapses of the soil that can lead to disaster," said Kris Hoffman, director of OSHA's Parsippany Area Office.

The contractor was cited with a willful violation for exposing workers to cave-in hazards because the excavation lacked proper cave-in protection or safeguards.

OSHA cited serious violations related to Landtek's failure to prevent employee exposures to fall, atmospheric and explosion hazards. The company also failed to:

- Have a competent person inspect the excavation.
- Have a written permit space program.
- Train employees on safely performing their job duties and the hazards associated with them.
- Coordinate rescue and emergency services for workers entering a sewer manhole.
- Provide mechanical retrieval equipment in case of an emergency.

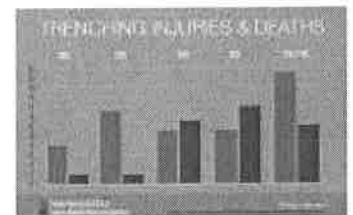
The citations can be viewed at https://www.osha.gov/ooc/citations/TheLandTekGroupInc_1158268.pdf

The employer has 15 business days from receipt of its citations and proposed penalties to comply, request a conference with OSHA's area director or contest the findings before the independent Occupational Safety and Health Review Commission.

OSHA has a national emphasis program on trenching and excavations. The trenching standards require protective systems on trenches deeper than 5 feet, and soil and other materials kept at least 2 feet from the edge of trench.

To ask questions; obtain compliance assistance; file a complaint; or report amputations, eye loss, workplace hospitalizations, fatalities or situations posing imminent danger to workers, the public should call OSHA's toll-free hotline at 800-321-OSHA (6742) or the agency's Parsippany office at 973-263-1003.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to ensure these conditions for America's working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit <http://www.osha.gov>.





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Inspection Detail

Case Status: VIOLATIONS UNDER CONTEST

Note: The following inspection has not been indicated as closed. Please be aware that the information shown may change, e.g. violations may be added or deleted. For open cases, in which a citation has been issued, the citation information may not be available for 5 days following receipt by the employer for Federal inspections or for 30 days following receipt by the employer for State inspections.

Inspection: 1151337.015 - Imtt- Bayonne Llc

Inspection Information - Office: Parsippany

Nr: 1151337.015	Report ID: 0214200	Open Date: 05/17/2016
Imtt- Bayonne Llc 250 East 22nd Street Bayonne, NJ 07002		Union Status: Union
SIC: NAICS: 493190/Other Warehousing and Storage Mailing: 250 East 22nd Street, Bayonne, NJ 07002		
Inspection Type:	Planned	
Scope:	Complete	Advanced Notice: N
Ownership:	Private	
Safety/Health:	Safety	Close Conference: 11/15/2016
Emphasis:	N:Chemnep, P:Chemnep	Close Case:

Case Status: VIOLATIONS UNDER CONTEST

Violation Summary

	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	8					8
Current Violations	8					8
Initial Penalty	\$99,768					\$99,768
Current Penalty	\$99,768					\$99,768
FTA Amount						

Violation Items

#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
1.	01001	Serious	19100119 C01	11/15/2016	12/29/2016	\$12,471	\$12,471	\$0	12/08/2016	-
2.	01002	Serious	19100119 D03 I	11/15/2016	12/29/2016	\$12,471	\$12,471	\$0	12/08/2016	-
3.	01003	Serious	19100119 D03 I B	11/15/2016	12/29/2016	\$12,471	\$12,471	\$0	12/08/2016	-
4.	01004	Serious	19100119 E01	11/15/2016	12/29/2016	\$12,471	\$12,471	\$0	12/08/2016	-
5.	01005	Serious	19100119 E03 V	11/15/2016	12/29/2016	\$12,471	\$12,471	\$0	12/08/2016	-
6.	01006	Serious	19100119 J02	11/15/2016	12/29/2016	\$12,471	\$12,471	\$0	12/08/2016	-

7.	01007	Serious	19100119 J04 I	11/15/2016	12/29/2016	\$12,471	\$12,471	\$0	12/08/2016	-
8.	01008	Serious	19100119 L01	11/15/2016	12/29/2016	\$12,471	\$12,471	\$0	12/08/2016	-



**UNITED STATES
DEPARTMENT OF LABOR**

Occupational Safety and Health Administration
200 Constitution Ave., NW
Washington, DC 20210
☎ 800-325-8742 (OSHA)
TTY:
www.OSHA.gov

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Inspection Detail

Case Status: PENDING ABATEMENT OF VIOLATIONS, PENDING PENALTY PAYMENT

Note: The following inspection has not been indicated as closed. Please be aware that the information shown may change, e.g. violations may be added or deleted. For open cases, in which a citation has been issued, the citation information may not be available for 5 days following receipt by the employer for Federal inspections or for 30 days following receipt by the employer for State inspections.

Inspection: 1152126.015 - Jrc Construction

Inspection Information - Office: Parsippany

Nr: 1152126.015	Report ID: 0214200	Open Date: 05/04/2016
Jrc Construction		
Soho West801 Jersey Avenue		Union Status: NonUnion
Jersey City, NJ 07310		
SIC:		
NAICS: 238130/Framing Contractors		
Mailing: 660 Oradell Avenue, Oradell, NJ 07649		
Inspection Type:	Referral	
Scope:	Complete	Advanced Notice: N
Ownership:	Private	
Safety/Health:	Safety	Close Conference: 05/04/2016
Emphasis:	L:Fall, L:Localtarg	Close Case:
Related Activity:	Type	ID
	Referral	1098153
		Safety
		Health

Case Status: PENDING ABATEMENT OF VIOLATIONS, PENDING PENALTY PAYMENT

Violation Summary

	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	2	1				3
Current Violations	2	1				3
Initial Penalty	\$13,718	\$62,355				\$76,073
Current Penalty	\$13,718	\$62,355				\$76,073
FTA Amount						

Violation Items

#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
1.	01001	Serious	19260416 E01	10/04/2016		\$4,988	\$4,988	\$0		Z - Issued
2.	01002	Serious	19261052 C01 II	10/04/2016	10/17/2016	\$8,730	\$8,730	\$0		Z - Issued
3.	02001	Willful	19260501 B01	10/04/2016	10/17/2016	\$62,355	\$62,355	\$0		Z - Issued



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Inspection Detail

Case Status: PENDING ABATEMENT OF VIOLATIONS

Note: The following inspection has not been indicated as closed. Please be aware that the information shown may change, e.g. violations may be added or deleted. For open cases, in which a citation has been issued, the citation information may not be available for 5 days following receipt by the employer for Federal inspections or for 30 days following receipt by the employer for State inspections.

Inspection: 1190213.015 - Burlington County Roads & Bridges Section 2

Inspection Information - Office: Nj Safety (Trenton)

Nr: 1190213.015 Report ID: 0253420 Open Date: 11/09/2016
 Burlington County Roads & Bridges Section 2
 1182 Florence Columbus Road Union Status: NonUnion
 Columbus, NJ 08022
 SIC:
 NAICS: 561210/Facilities Support Services
 Mailing: P.O. Box 6000, Mount Holly, NJ 08060
 Inspection Type: Planned
 Scope: Complete Advanced Notice: N
 Ownership: LocalGovt
 Safety/Health: Safety Close Conference: 11/09/2016
 Emphasis: S:Workzone, P:Workzone Close Case:

Case Status: PENDING ABATEMENT OF VIOLATIONS

Violation Summary

	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	8			6		14
Current Violations	8			6		14
Initial Penalty	\$38,000			\$6,000		\$44,000
Current Penalty	\$38,000			\$6,000		\$44,000
FTA Amount						

Violation Items

#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
1.	01001	Serious	19100022 D01	11/28/2016	02/07/2017	\$5,000	\$5,000	\$0		Z - Issued
2.	01002	Serious	19100023 C01	11/28/2016	02/07/2017	\$5,000	\$5,000	\$0		Z - Issued
3.	01003	Serious	19100023 E02	11/28/2016	02/07/2017	\$4,000	\$4,000	\$0		Z - Issued
4.	01004	Serious	19100023 E05 I	11/28/2016	02/07/2017	\$4,000	\$4,000	\$0		Z - Issued
5.	01005	Serious	19100106 G03 III	11/28/2016	02/07/2017	\$5,000	\$5,000	\$0		Z - Issued
6.	01006	Serious	19100303 G02 I	11/28/2016	12/30/2016	\$5,000	\$5,000	\$0		Z - Issued
7.	01007	Serious	19100305 B01 II	11/28/2016	12/30/2016	\$5,000	\$5,000	\$0		Z - Issued

8.	01008	Serious	N.J.S.A. 34:6A-33(A)	11/28/2016	12/30/2016	\$5,000	\$5,000	\$0		Z - Issued
9.	02001	Other	19100037 A04	11/28/2016	12/30/2016	\$1,000	\$1,000	\$0		Z - Issued
10.	02002	Other	19100132 D01	11/28/2016	12/30/2016	\$1,000	\$1,000	\$0		Z - Issued
11.	02003	Other	19100145 C03	11/28/2016	12/30/2016	\$1,000	\$1,000	\$0		Z - Issued
12.	02004	Other	19100157 E03	11/28/2016	12/30/2016	\$1,000	\$1,000	\$0		Z - Issued
13.	02005	Other	19100157 G01	11/28/2016	12/30/2016	\$1,000	\$1,000	\$0		Z - Issued
14.	02006	Other	N.J.A.C. 12:100-7.8(A) (OPTION	11/28/2016	12/30/2016	\$1,000	\$1,000	\$0		Z - Issued



UNITED STATES DEPARTMENT OF LABOR

Occupational Safety and Health Administration

200 Constitution Ave., NW

Washington, DC 20210

☎ 800-371-6742 (OSHA)

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OSHA Regional News Brief – Region 3

U.S. Department of Labor

December 1, 2016

OSHA fines USPS \$342K after inspectors find workers exposed to bloodborne pathogen hazards at Brooklyn, Maryland, annex

Employer name: U.S. Postal Service LLC, doing business as Brooklyn South Carrier Annex

Inspection site: 1500 Cherry Hill Road, Brooklyn, Maryland

Citations issued: On Nov. 22, 2016, the U.S. Department of Labor's Occupational Safety and Health Administration issued citations to the postal service for one serious, two willful, and three repeat health violations.

Investigation findings: OSHA began the inspection on May 24, 2016, in response to a complaint alleging employee exposure to blood and other potentially infectious bodily fluids while handling packages labeled as containing biological infectious materials.

The willful violations relate to the employer's failure to have an implemented written bloodborne pathogens exposure control plan, including performing an exposure determination and offering exposed employees the Hepatitis B vaccine. Additionally, the USPS failed to implement a hazard communication program. The employer did not properly train workers for bloodborne pathogen protection or provide them with properly-sized gloves, resulting in the other violations.

Quote: "Exposure to bloodborne pathogen hazards can result in serious or life-threatening illnesses. To reduce or eliminate these hazards at USPS's Brooklyn facility, an exposure control plan must be implemented to protect employees and provide a safe and healthy workplace," said Nadira Janack, director at OSHA's Baltimore Area Office.

Proposed penalties: \$342,059

The citation can be viewed at: https://www.osha.gov/ooc/citations/USPostalService_1150333.pdf

The employer has 15 business days from receipt of its citations and proposed penalties to comply, request a conference with OSHA's area director or contest the findings before the independent Occupational Safety and Health Review Commission.

To ask questions; obtain compliance assistance; file a complaint; or report amputations, eye loss, workplace hospitalizations, fatalities or situations posing imminent danger to workers, the public should call OSHA's toll-free hotline at 800-321-OSHA (6742) or the agency's Baltimore Area Office at 410-865-2055.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to ensure these conditions for America's working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit <http://www.osha.gov>.

###

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Release Number: 16-2238-PHI (osha 16-139)

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OSHA News Release – Region 2

U.S. Department of Labor

November 14, 2016

BOS-2016-174

OSHA: Training could have prevented tree service worker's death ***Albany-based Countryside Tree Service cited for willful, serious safety violations***

ALBANY, N.Y. - A wood chipper and an Upstate New York employer's failure to provide safety training combined to make a 23-year-old worker's first day on the job his tragic last, an investigation by the U.S. Department of Labor's Occupational Safety and Health Administration has found.

The worker - Justus Booze - died on May 4, 2016, after a wood chipper pulled him into the machine as he worked for Countryside Tree Service at a job site in Guilderland. OSHA inspectors determined that his employer, Tony Watson - who does business as Countryside - exposed Booze and other coworkers to the danger of being caught in the machine's rotating parts and failed to train them in the safe operation of wood chippers. The agency also found the employer did not ensure workers used safe operating procedures when feeding materials into the chipper, exposing them to deadly hazards.

"A young man's life ended tragically and needlessly," said Robert Garvey, OSHA's Albany area director. "Countryside Tree Service bears responsibility to ensure that all phases of tree trimming, tree felling and tree removal work is performed safely. Putting employees to work with potentially dangerous machines with no safety training is unacceptable. Tree service companies must train workers - climbers, trimmers and ground crew - properly. These workers must also be instructed in safe work practices and use of equipment including chain saws, cutters and especially hand-fed wood chippers that cut and grind branches and logs into pulp."

OSHA cited the Albany-based Countryside for a willful violation for the lack of training, which resulted in untrained employees using unsafe practices to feed the wood chipper. It also cited the company for three serious violations for:

- Exposing employees to laceration and amputation hazards while operating chain saws during tree removal at three separate locations. Employees did not wear leg protection while trimming branches.
- Failing to train each employee to use personal protective equipment.
- Exposing employees to eye hazards during tree removal including wood dust, flying wood pieces, and being struck by branches during tree trimming and feeding wood into a chipper.
- Failing to ensure employees wear a protective helmet when working in areas where the potential exists for head injuries from falling objects.

The proposed fines for these violations total \$141,811. The citations can be viewed [here](#).

Wood chippers are one of the most dangerous machines used in the tree service industry. Since 2011, industry workers have suffered a six-fold increase nationally in the number of amputations - from 0.5 per 10,000 workers to 3.3 per 10,000 workers. Since 2015, OSHA has received 19 severe injury reports related to wood chippers with injuries including amputations and head trauma. Of those, five occurred because the chipper pulled fingers or arms directly into the blades, and four occurred when a machine's belt or pulley caught a body part and pulled it in. The last available report on wood chipper safety shows - from 1996 through 2005 - 39 workers died in wood chipper incidents. Of those fatalities, 78 percent saw workers caught in the chipper and most of the remainder resulted from "struck-by" accidents.

OSHA recommends employers protect workers from being caught by the chipper feed mechanism by doing the following:

- Test and verify all safety devices and controls, such as emergency shut-off before using the chipper.
- Train workers in safe work procedures, including operating wood chipper safety devices and safety controls in their native language. Use the manufacturer's recommendations for each machine to explain the procedures.
- Keep at least two workers in close contact with one another when operating a chipper.
- Ensure workers wear close-fitting, tucked-in clothing; gloves and trousers without cuffs; and skid-resistant work shoes.
- Ensure that workers keep hands and feet outside the chipper's infeed hopper.
- Instruct workers to feed the wide-end of brush and limbs into the infeed hopper first.

- Position workers feeding material at the side of the machine for quick access to the emergency shut-off device and to reduce greatly the risk of branching entangling workers. Consult the manufacturer's operating manual for guidance on safe feeding as some disc-type chippers requires the worker to be on the machine's right side.
- Ensure that workers walk away once the feed mechanism has grabbed the material.
- Instruct workers to lay short material on top of longer material that is feeding or use a longer branch to push it through the infeed hopper.
- Have workers put small, raked-up material such as twigs and leaves directly into the chip truck or in trash cans or bags instead of feeding it into the chipper.
- Keep the work area around the wood chipper free of tripping hazards.
- Ensure workers wear hard hats, eye protection and hearing protection.

To ask questions, obtain compliance assistance, file a complaint, or report amputations, eye loss, workplace hospitalizations, fatalities or situations posing imminent danger to workers, the public should call OSHA's toll-free hotline at 800-321-OSHA (6742) or the agency's Albany office at 518-464-4338.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to ensure these conditions for America's working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit www.osha.gov.

#


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Release Number: 16-2171-NEW

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UNITED STATES DEPARTMENT OF LABOR

Occupational Safety and Health Administration
 2012 Constitution Ave., NW
 Washington, DC 20210
 ☎ 800-321-6742 (OSHA)
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OSHA Regional News Brief – Region 3

U.S. Department of Labor

October 31, 2016

OSHA inspection finds Dollar General in Jonestown blocked emergency exit again, proposes \$215K penalty

Employer name: Dollar General, doing business as Dollar General Store #13229

Inspection site: 507 Jonestown Road
Jonestown, Pennsylvania

Citations issued: On Oct. 18, 2016, the U.S. Department of Labor's Occupational Safety and Health Administration issued citations for one willful and two repeat safety violations.

Inspection findings: OSHA initiated an inspection on April 18, 2016, after receiving an employee complaint. The agency cited a willful violation after inspectors found the discount retailer barricaded an emergency exit door in the back room with a metal bar.

The repeat violations involved blocked electrical panels and the company's failure to maintain a clear path to an emergency exit door.

Quote: "Dollar General continues its pattern of failing to maintain safe exit routes at its stores. Despite receiving more than 100 safety and health violations at stores nationwide since 2010, which carried more than \$1 million in proposed fines, the company has still failed to take corrective actions," said Dave Olah, area director of OSHA's Harrisburg Area Office.

Proposed penalties: \$215,578

The citations can be viewed at: https://www.osha.gov/ooc/citations/DollarGeneral_1141463.pdf

Headquartered in Goodlettsville, Tennessee, Dollar General operates more than 12,500 stores in 43 states and employs about 100,000 workers. In fiscal 2015, the retailer recorded sales of \$20.4 billion.

The employer has 15 business days from receipt of its citations and proposed penalties to comply, request a conference with OSHA's area director or contest the findings before the independent Occupational Safety and Health Review Commission.

To ask questions; obtain compliance assistance; file a complaint; or report amputations, eye loss, workplace hospitalizations, fatalities or situations posing imminent danger to workers, the public should call OSHA's toll-free hotline at 800-321-OSHA (6742) or the agency's Harrisburg Office at 717-782-3902.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to ensure these conditions for America's working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit <http://www.osha.gov>.

#

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Release Number: 16-2085-PHI (osha 16-130)

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OSHA News Release – Region 8

U.S. Department of Labor

November 15, 2016

**OSHA finds Boulder sporting goods manufacturer retaliated against worker
who reported concerns about climbing, zip-line equipment safety
*Head Rush Technologies to pay \$125K in back wages, damages to former employee***

DENVER - An U.S. Department of Labor's Occupational Safety and Health Administration investigation found a Denver company violated federal law when it terminated an employee for insubordination after the worker reported safety concerns about a product being manufactured by the company.

OSHA has ordered TruBlue, LLC - doing business as Head Rush Technologies - to pay the former employee more than \$125,000 in back wages and damages, and take other corrective actions. The Boulder-based company retaliated against the employee in violation of the Consumer Product Safety Improvement Act after the worker suggested to the company's chief executive officer that more safety research be conducted on zip-line equipment. Head Rush develops and manufactures products used for climbing, zip-line, free-fall and other recreational activities.

"An employee should feel and be free to exercise their rights under the law - especially when it comes to safety -without fear of retaliation by their employer," said Gregory Baxter, regional OSHA administrator in Denver. "Our investigation and action on behalf of this worker underscores the agency's commitment to take vigorous action to protect workers' rights at Head Rush and elsewhere."

The company and the former employee may file objections or request a hearing, within 30 days of receipt of the agency's order, before the department's Office of Administrative Law Judges.

OSHA enforces the whistleblower provisions of the CPSIA and 21 other statutes protecting employees who report violations of various airline, consumer product, environmental, financial reform, food safety, health care reform, nuclear, pipeline, public transportation agency, railroad, maritime and securities laws.

Employees who believe that they have been retaliated against for engaging in protected conduct may file a complaint with the secretary of labor. More information is available online at <http://www.whistleblowers.gov/index.html>.

#

Editor's note: *The U.S. Department of Labor does not release names of employees involved in whistle-blower complaints.*

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Release Number: 16-2162-DEN

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OSHA National News Release

U.S. Department of Labor

November 17, 2016

OSHA issues final rule updating walking-working surfaces standards and establishing personal fall protection systems requirements

WASHINGTON - The U.S. Department of Labor's Occupational Safety and Health Administration today issued a final rule updating its general industry Walking-Working Surfaces standards specific to slip, trip, and fall hazards. The rule also includes a new section under the general industry Personal Protective Equipment standards that establishes employer requirements for using personal fall protection systems.

"The final rule will increase workplace protection from those hazards, especially fall hazards, which are a leading cause of worker deaths and injuries," said Assistant Secretary of Labor for Occupational Safety and Health Dr. David Michaels. "OSHA believes advances in technology and greater flexibility will reduce worker deaths and injuries from falls." The final rule also increases consistency between general and construction industries, which will help employers and workers that work in both industries.

OSHA estimates the final standard will prevent 29 fatalities and more than 5,842 injuries annually. The rule becomes effective on Jan. 17, 2017, and will affect approximately 112 million workers at seven million worksites.

The final rule's most significant update is allowing employers to select the fall protection system that works best for them, choosing from a range of accepted options including personal fall protection systems. OSHA has permitted the use of personal fall protection systems in construction since 1994 and the final rule adopts similar requirements for general industry. Other changes include allowing employers to use rope descent systems up to 300 feet above a lower level; prohibiting the use of body belts as part of a personal fall arrest system; and requiring worker training on personal fall protection systems and fall equipment.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to ensure these conditions for America's working men and women by setting and enforcing standards, and providing training, education, and assistance. For more information, visit www.osha.gov.

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Release Number: 16-2193-NAT

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[OSHA News Release - Table of Contents](#)



General Electric Company: Docket No. FAA-2016-9167; Directorate Identifier 2016-NE-20-AD.

(a) Comments Due Date

We must receive comments by January 23, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to General Electric Company (GE) GE90-76B, GE90-85B, GE90-90B, GE90-94B, GE90-110B1, and GE90-115B turbofan engines with a fuel/oil lube/servo cooler ("main heat exchanger") part number (P/N) 1838M88P11 or 1838M88P13, with a serial number listed in paragraph 1.A of GE Service Bulletin (SB) GE90-100 SB 79-0034, Revision 03, dated August 05, 2016; or SB GE90 SB 79-0058, Revision 02, dated August 05, 2016.

(d) Subject

Joint Aircraft System Component (JASC) Code 7921, Engine Oil Cooler.

(e) Unsafe Condition

This AD was prompted by an engine and airplane fire. We are issuing this AD to prevent failure of a main heat exchanger, which could result in an engine fire.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Required Actions

Within 12 months after the effective date of this AD, replace the main heat exchanger with a part eligible for installation.

(h) Definition

For purposes of this AD, a part eligible for installation is a main heat exchanger with a P/N and serial number not listed in paragraph (c) of this AD or a main heat exchanger repaired in accordance with the Accomplishment Instructions, paragraphs 3.C.(2) through 3.C.(7), of GE SB GE90-100 SB 79-0034, dated December 3, 2014; Revision 01, dated August 14, 2015; Revision 02, dated November 6, 2015; or Revision 03, dated August 5, 2016; or GE SB GE90 SB 79-0058, dated August 18, 2015; Revision 01, dated December 10, 2015; or Revision 02, dated August 05, 2016.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: ANE-AD-AMOC@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Related Information

(1) For more information about this AD, contact John Frost, Aerospace Engineer, Engine Certification Office, FAA, 1200

District Avenue, Burlington, MA 01803; phone: 781-238-7756; fax: 781-238-7199; email: john.frost@faa.gov.

(2) For service information identified in this AD, contact General Electric Company, GE-Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215, phone: 513-552-3272; email: aviation.fleetsupport@ge.com.

(3) You may view this referenced service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781-238-7125.

Issued in Burlington, Massachusetts, on November 16, 2016.

Colleen M. D'Alessandro,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2016-28667 Filed 12-6-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA-2016-0014]

RIN 1218-AD 08

Prevention of Workplace Violence in Healthcare and Social Assistance

AGENCY: Occupational Safety and Health Administration (OSHA), DOL.

ACTION: Request for Information (RFI).

SUMMARY: Workplace violence against employees providing healthcare and social assistance services is a serious concern. Evidence indicates that the rate of workplace violence in the industry is substantially higher than private industry as a whole. OSHA is considering whether a standard is needed to protect healthcare and social assistance employees from workplace violence and is interested in obtaining information about the extent and nature of workplace violence in the industry and the nature and effectiveness of interventions and controls used to prevent such violence. This RFI provides an overview of the problem of workplace violence in the healthcare and social assistance sector and the measures that have been taken to address it. It also seeks information on issues that might be considered in developing a standard, including scope and the types of controls that might be required.

DATES: Submit comments on or before April 6, 2017. All submissions must bear a postmark or provide other evidence of the submission date.

ADDRESSES: Submit comments and additional materials by any of the following methods:

Electronically: Submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Facsimile: OSHA allows facsimile transmission of comments and additional material that are 10 pages or fewer in length (including attachments). Send these documents to the OSHA Docket Office at (202) 693-1648. OSHA does not require hard copies of these documents. Instead of transmitting facsimile copies of attachments that supplement these documents (for example, studies, journal articles), commenters must submit these attachments to the OSHA Docket Office, Technical Data Center, Room N-3653, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. These attachments must identify clearly the sender's name, the date, subject, and docket number OSHA-2016-0014 so that the Docket Office can attach them to the appropriate document.

Regular mail, express mail, hand delivery, or messenger (courier) service: Submit comments and any additional material (for example, studies, journal articles) to the OSHA Docket Office, Docket No. OSHA-2016-0014 or RIN 1218-AD 08, Technical Data Center, Room N-3653, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; telephone: (202) 693-2350. (OSHA's TTY number is (877) 889-5627.) Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express mail, hand delivery, and messenger service. The hours of operation for the OSHA Docket Office are 10 a.m. to 3:00 p.m., e.t.

Instructions: All submissions must include the Agency's name and the docket number for this Request for Information (OSHA-2016-0014). OSHA will place comments and other material, including any personal information, in the public docket without revision, and these materials will be available online at <http://www.regulations.gov>.

Therefore, OSHA cautions commenters about submitting statements they do not want made available to the public and submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

If you submit scientific or technical studies or other results of scientific research, OSHA requests (but is not

requiring) that you also provide the following information where it is available: (1) Identification of the funding source(s) and sponsoring organization(s) of the research; (2) the extent to which the research findings were reviewed by a potentially affected party prior to publication or submission to the docket, and identification of any such parties; and (3) the nature of any financial relationships (e.g., consulting agreements, expert witness support, or research funding) between investigators who conducted the research and any organization(s) or entities having an interest in the rulemaking and policy options discussed in this RFI. Disclosure of such information is intended to promote transparency and scientific integrity of data and technical information submitted to the record. This request is consistent with Executive Order 13563, issued on January 18, 2011, which instructs agencies to ensure the objectivity of any scientific and technological information used to support their regulatory actions. OSHA emphasizes that all material submitted to the record will be considered by the Agency if it engages in rulemaking.

Docket: To read or download submissions or other material in the docket, go to: <http://www.regulations.gov> or the OSHA Docket Office at the address above. The <http://www.regulations.gov> index lists all documents in the docket. However, some information (e.g., copyrighted material) is not available publicly to read or download through the Web site. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT:

Press Inquiries: Frank Meilinger, Director, OSHA Office of Communications, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: 202-693-1999; email: Meilinger.Francis2@dol.gov.

General and technical information: Lyn Penniman, OSHA Directorate of Standards and Guidance, Room N-3609, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: 202-693-2245; email: Penniman.lyn@dol.gov.

SUPPLEMENTARY INFORMATION:

Copies of this Federal Register notice: Electronic copies are available at: <http://www.regulations.gov>. This Federal Register notice, as well as news releases and other relevant information,

also are available at OSHA's Web page at <http://www.osha.gov>.

References and Exhibits (optional): Documents referenced by OSHA in this request for information, other than OSHA standards and Federal Register notices, are in Docket No. OSHA-2016-0014 (Prevention of Workplace Violence in Healthcare). The docket is available at: <http://www.regulations.gov>, the Federal eRulemaking Portal. For additional information on submitting items to, or accessing items in, the docket, please refer to the Addresses section of this RFI. Most exhibits are available at <http://www.regulations.gov>; some exhibits (e.g., copyrighted material) are not available to download from that Web page. However, all materials in the dockets are available for inspection and copying at the OSHA Docket Office, Room N-3653, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC.

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I. Overview

OSHA is considering whether to commence rulemaking proceedings on a standard aimed at preventing workplace violence in healthcare and social assistance workplaces perpetrated by patients or clients. Workplace violence affects a myriad of healthcare and social assistance workplaces, including psychiatric facilities, hospital emergency departments, community mental health clinics, treatment clinics for substance abuse disorders, pharmacies, community-care facilities, residential facilities and long-term care facilities. Professions affected include physicians, registered nurses, pharmacists, nurse practitioners, physicians' assistants, nurses' aides, therapists, technicians, public health nurses, home healthcare workers, social and welfare workers, security personnel, maintenance personnel and emergency medical care personnel.

OSHA's analysis of available data suggest that workers in the Health Care and Social Assistance sector (NAICS 62) face a substantially increased risk of injury due to workplace violence. Table 1 compiles data from the Bureau of Labor Statistics' (BLS) Survey of Occupational Injuries and Illnesses (SOII). In 2014, workers in this sector experienced workplace-violence-related injuries at an estimated incidence rate of 8.2 per 10,000 full time workers, over 4 times higher than the rate of 1.7 per 10,000 workers in the private sector overall (BLS Table R8, 2015). Individual portions of the healthcare sector have much higher rates. Psychiatric hospitals have incidence rates over 64 times higher than private industry as a whole, and nursing and residential care facilities have rates 11 times higher than those for private industry as a whole. The overall rate for violence-related injuries in just the social assistance subsector was 9.8 per 10,000, and individual industries, such as vocational rehabilitation with rates of 20.8 per 10,000 full-time workers are higher. In 2014, 79 percent of serious violent incidents reported by employers in healthcare and social assistance settings were caused by interactions with patients (BLS, 2015, Table R3, p. 40).



**Occupational
Safety and Health
Administration**

www.osha.gov

Small Entity Compliance Guide

for the Respirable Crystalline
Silica Standard for Construction





Occupational Safety and Health Act of 1970

“To assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health.”

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This information will be made available to sensory-impaired individuals upon request. Voice phone: (202) 693-1999; teletypewriter (TTY) number: 1-877-889-5627.

This publication provides a general overview of a particular standards-related topic. This publication does not alter or determine compliance responsibilities which are set forth in OSHA standards and the *Occupational Safety and Health Act*. Moreover, because interpretations and enforcement policy may change over time, for additional guidance on OSHA compliance requirements the reader should consult current administrative interpretations and decisions by the Occupational Safety and Health Review Commission and the courts.

Small Entity Compliance Guide

for the Respirable Crystalline
Silica Standard for Construction

**Occupational Safety and Health Administration
U.S. Department of Labor**



OSHA 3902-10 2016

This guidance document provides an overview of OSHA's Respirable Crystalline Silica Standard for Construction. It is advisory in nature and informational in content. It is not a standard or regulation, and it neither creates new legal obligations nor alters existing obligations created by the Occupational Safety and Health Administration (OSHA) standards or the *Occupational Safety and Health Act of 1970* (OSH Act). Pursuant to the OSH Act, employers must comply with safety and health standards and regulations issued and enforced either by OSHA or by an OSHA-approved state plan. In addition, the Act's General Duty Clause, Section 5(a)(1), requires employers to provide their workers with a workplace free from recognized hazards that are causing or likely to cause death or serious physical harm.

In addition, Section 11(c)(1) of the Act provides that "No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act." Reprisal or discrimination against an employee for reporting an incident, injury, or workplace violation, for participating in medical surveillance, or because of the results of medical surveillance would constitute a violation of Section 11(c) of the OSH Act.

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Morning Mix

One by one, 3 utility workers descended into a manhole. One by one, they died.

By **Samantha Schmidt**

January 18, 2017 at 6:57 AM

3 dead after utility workers overcome by fumes in Fla.

▶ **Play Video** 2:37

Three utility workers were killed after being overcome by poisonous fumes in a manhole in Key Largo, Fla. A firefighter who attempted to save the men is in the hospital. (Local10.com/WPLG)

When a utility worker in Key Largo, Fla., noticed that a section of a paved street was not settling properly, he decided to remove a manhole cover and descend into the earth.

Moments later on Monday morning, the 15-foot-deep hole went silent. Sensing the man was trapped, a fellow utility worker climbed into the drainage hole to rescue him. When he, too, stopped responding, a third worker entered the same hole.

All three men died, overcome by poisonous fumes underground, the Monroe County Sheriff's Office said in a [statement](#). A Key Largo firefighter who made a desperate attempt to save the men also became unconscious within seconds. The firefighter, Leonardo Moreno, an eight-year veteran of the department, was flown to a hospital and was in critical condition Tuesday.

The hole, just wide enough to fit a body, was filled with hydrogen sulfide and methane gas created from years of rotted vegetation, the Miami Herald reported. None of the four men wore masks or carried the air packs that could have likely saved their lives. Moreno descended into the hole without his air tank because he could not fit through the hole with it, according to Monroe County Sheriff Rick Ramsay.

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#UPDATE Officials now say 3 utility workers in Keys have died after being overcome by fumes bit.ly/2jBBEvo
11:08 AM - 16 Jan 2017
41 7

A colleague was able to wear his gear and pull Moreno out. Firefighters also retrieved two of the workers, who were confirmed dead at the scene, and

treated a fourth utility worker at the scene. The third deceased worker's body was recovered from the hole Monday afternoon.

The men worked for private construction contractor Douglas N. Higgins and were responding to neighbor complaints of sewage backup in the area, Ramsay said. They were identified as 34-year-old Elway Gray of Fort Lauderdale, 49-year-old Louis O'Keefe of Little Torch Key and 24-year-old Robert Wilson of Summerland Key.

Related: [3 dead after Keys workers overcome by fumes](#)

Monday's tragedy left the Key Largo community shaken, locals said in messages on social media. "It's been a very difficult day," Ramsay said.

One towing company posted a message on Facebook reaching out to the families of the men who were killed.



"While visitors might see Monroe County as a collection of tropical resorts and tourist getaways, to locals, our little island is a small town like any other," the company wrote. "We all know someone, or the families of someone, who was lost today. To say our hearts break for them is an understatement. Nobody can bring our friends and neighbors back."

Related: ['This could have been life and death': Utility workers find signs children lived in sewers near Seattle](#)

Three white crosses were left at the 106-mile marker on Long Key Road where the deaths occurred.

A woman who lives near the manhole told [Local 10 News](#) that the area has smelled for the past couple of months.

“It smells like rotten eggs,” Barbara Guerra said. “It was out here again this morning, and I’m used to it because they’ve been a whole year already.” She said she knew the workers from walking by the area every morning, and would often wave at them and bring them water.

Three sheriff’s deputies who were exposed to fumes were also taken to a hospital for treatment. Five households in the area were evacuated for part of the day Monday, as a Miami-Dade County hazmat team performed tests at the scene. Their tests revealed there was both methane gas and hydrogen sulfide gas coupled with low levels of oxygen in the pipe, the sheriff’s office said in the statement.

The Occupational Safety and Health Administration is responding to the

The Washington Post
The Daily 202

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NJ DEPARTMENT of ENVIRONMENTAL PROTECTION
AIR QUALITY, ENERGY AND SUSTAINABILITY
DIVISION OF AIR QUALITY

Notice of Rule Proposal

Air Pollution Control, N.J.A.C. 7:27; and State Implementation Plan (SIP) for New Jersey's Control and Prohibition of Air Pollution by Volatile Organic Compounds and Control and Prohibition of Air Pollution by Oxides of Nitrogen

PUBLIC NOTICE

Take notice that the NJ Department of Environmental Protection is proposing amendments to the Air Pollution Control Rules, N.J.A.C. 7:27, that pertain to reasonably achievable control technology (RACT) requirements for VOCs and for oxides of nitrogen (NOx). The proposed rules constitute a revision to New Jersey's SIP for Control and Prohibition of Air Pollution by Volatile Organic Compounds and Control and Prohibition of Air Pollution by Oxides of Nitrogen.

VOC RACT

The proposed new and amended rules address VOC RACT by incorporating recommendations from four Control Techniques Guidelines (CTGs) issued by the U.S. Environmental Protection Agency (EPA) for source categories that are present in New Jersey: Industrial Cleaning Solvents; Paper, Film, and Foil Coatings; Miscellaneous Metal and Plastic Parts Coatings; and Fiberglass Boat Manufacturing Materials. The VOC emission limitations in the proposed new rules and amendments are equivalent to the limits recommended in the EPA's CTGs, with certain limited exceptions discussed in the proposal.

NOx RACT

The proposed rules address NOx RACT requirements by establishing new limits on NOx emissions from existing simple cycle combustion turbines combusting natural gas and compressing gaseous fuel at major NOx facilities (compressor turbines) and stationary reciprocating engines combusting natural gas and compressing gaseous fuel at major NOx facilities (compressor engines).

The proposal is scheduled to be published in the New Jersey Register dated January 3, 2017. A copy of the proposal is available from the Department's website at <http://www.nj.gov/dep/rules/proposals/20170103a.pdf>; the Department's Bureau of Evaluation and Planning (phone 609-292-6722); and LexisNexis free public access to the New Jersey Register (www.lexisnexis.com/njoal).

A public hearing concerning the proposal is scheduled as follows:

February 13, 2017 at 10:00 A.M.
New Jersey Department of Environmental Protection
Hearing Room, 1st Floor
401 East State Street
Trenton, New Jersey 08625



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EPA Won't Relax Vehicle Emission Standards for 2022-25

By **Juan Carlos Rodriguez**

Law360, New York (November 30, 2016, 8:24 PM EST) -- The U.S. Environmental Protection Agency said Wednesday that it won't reduce standards on greenhouse gas emissions for cars and light trucks for the years 2022 to 2025, dealing a blow to manufacturers who said the standards are too tough to meet.

As part of the rule-making that established corporate average fuel economy and greenhouse gas standards for vehicles from 2017 to 2025, the EPA conducted a midterm evaluation of longer-term standards for 2022 to 2025 to decide whether those standards, established in 2012, are still appropriate. EPA Administrator Gina McCarthy said leaving the original standards in place will nearly double fuel economy, cut carbon pollution, maintain regulatory certainty and save consumers money.

"Given the auto industry's importance to American jobs and communities and the industry's need for certainty well into the future, EPA has reanalyzed these clean car standards and sought further input," McCarthy said in a statement. "It's clear from the extensive technical record that this program will remain affordable and effective."

In making its midterm assessment, the EPA said it looked at factors including the market penetration of fuel-efficient technologies, whether consumers are accepting fuel-efficient technologies, and trends in fuel prices and the vehicle fleet.

In July, the EPA, the National Highway Traffic Safety Administration and the California Air Resources Board — which is usually heavily involved in automotive-related regulatory affairs — jointly issued a **draft** technical assessment report that found that carmakers and suppliers have developed technologies to improve fuel economy and reduce greenhouse gas emissions more quickly than the agencies had anticipated.

The report also determined that the 2022 to 2025 standards can be met largely with more efficient gasoline-powered cars; only a modest penetration of hybrids and electric vehicles is needed.

Still, the Alliance of Automobile Manufacturers, which comprises 12 major automakers — including BMW Group, Ford Motor Co. and Toyota Motor Corp. — **slammed** the EPA's decision.

"This extraordinary and premature rush to judgment circumvents the serious analysis necessary to make sure the [corporate average fuel economy and greenhouse gas] standards appropriately balance fuel efficiency, carbon reduction, affordability and employment. The evidence is abundantly clear that with low gas prices, consumers are not choosing the cars necessary to comply with increasingly unrealistic standards. Wishing this

fact away does no one any favors, and getting this wrong has serious implications," the AAM said in a statement.

The group said it intends to lobby President-elect Donald Trump's administration to reach a different result.

The AAM said the report overestimated the growth of fuel-efficient technologies and the cost of implementation of those technologies on manufacturers and consumers. The group said the study also failed to take into account the current impact of low fuel prices.

The group did not respond to a request for comment Wednesday.

Environmental groups cheered the EPA's move. Luke Tonachel, director of the Natural Resources Defense Council's Clean Vehicles and Fuels Project, called the standards common sense.

"They're protecting our health and climate from dangerous pollution, saving billions of gallons of fuel and saving car owners an average of nearly \$4,000 over the life of the vehicle," Tonachel said in a statement. "There's no evidence we should slow down. Loosening standards would only cost consumers more, increase our dependence on oil and put Americans at greater risk from a changing climate."

The California Air Resources Board released its own statement of support.

"This action provides solid support for continuation of the single national program to produce a new generation of clean vehicles to address the air quality challenges facing California and other states," board Chairwoman Mary Nichols said in a statement.

--Additional reporting by Melissa Daniels and Matthew Guarnaccia. Editing by Sara Ziegler.

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States Fight EPA Cross-State Air Pollution Rule Revamp

By **Juan Carlos Rodriguez**

Law360, New York (November 30, 2016, 8:51 PM EST) -- Five states are challenging the U.S. Environmental Protection Agency's recent incorporation of 2008 national ozone standards into the agency's cross-state air pollution rule, which would require several upwind U.S. states to reduce nitrogen oxide emissions from power plants.

Wisconsin, Alabama, Arkansas, Ohio and Wyoming filed a D.C. Circuit petition for review of the **ozone update rule** on Nov. 23. The petition contains no explanation or argument. But in a press release, Wisconsin Attorney General Brad Schimel said that power plant sources in his state contribute very little nitrous oxide to downwind states. Further, the EPA has admitted that the ozone update rule would fail to ensure Wisconsin is in compliance with the 2008 ozone National Ambient Air Quality Standards, he said.

"In Wisconsin, we value our natural resources and take appropriate steps to ensure our citizens can enjoy clean air and water," Schimel said. "However, emissions from other states are causing Wisconsin to fall out of compliance with EPA regulations. As a result, we must take appropriate legal actions to defend Wisconsin from potential penalties and costly mandates."

The EPA's ozone update rule affects upwind U.S. states that emit nitrogen oxide that travels to downwind states that currently are not meeting the ozone NAAQS.

The U.S. Supreme Court had revived the CSAPR — which forces states to reduce sulfur dioxide and nitrogen oxide emissions from their power plants that cause downwind states to fall short of federal air quality standards — in 2014 after it was struck down by the D.C. Circuit two years earlier.

The EPA's ozone update rule adopts federal implementation plans to reduce nitrogen oxide emissions from 22 states in the eastern half of the U.S. that contribute to downwind areas' inability to meet the 2008 NAAQS for ground-level ozone of 75 parts per billion and have not yet submitted satisfactory state implementation plans.

States can meet their goals by having power plants use pollution controls or switch to cleaner fuels. The EPA said the update would help slash summertime nitrogen oxide emissions from power plants in the eastern U.S. by 80,000 tons in 2017, or a 20 percent reduction from 2015 levels.

The ozone update rule also sets statewide emissions budgets and establishes two nitrogen oxide emissions allowance trading programs.

The states are represented by their attorneys general.

The EPA is represented by Chloe H. Kolman and Amy J. Dona of the U.S. Department of Justice.

The case is Wisconsin et al. v. U.S. Environmental Protection Agency et al., case number 16-1406, in the U.S. Court of Appeals for the District of Columbia Circuit.

--Additional reporting by Keith Goldberg. Editing by Edrienne Su.

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European Commission Floats Climate Policy Overhaul

By **Stan Parker**

Law360, New York (November 30, 2016, 4:21 PM EST) -- The European Commission on Wednesday unveiled a sweeping set of climate and energy proposals aimed at cutting carbon dioxide emissions by 40 percent by 2030 and implementing regulatory and market changes for investor certainty and consumer fairness.

The commission said that the package, titled Clean Energy for All Europeans, will help the European Union "lead the clean energy transition, not only adapt to it." The proposals cover energy efficiency, renewable energy, electricity market design, energy reliability and governance rules for the Energy Union.

"Our proposals provide a strong market pull for new technologies, set the right conditions for investors, empower consumers, make energy markets work better and help us meet our climate targets," EC Commissioner for Climate Action and Energy Miguel Arias Cañete said in a statement.

In addition to cutting greenhouse gas emissions, the proposals call for a binding, 30 percent energy efficiency target and sets a goal for the continent to collectively reach a share of at least 27 percent renewables in the final energy consumption by 2030.

As part of its governance overhaul, the EC proposed changes that promise to cut down the administrative burden required of member states. The proposals would slash dozens of piecemeal reporting, planning and monitoring obligations and replace them with a comprehensive approach, according to commission materials.

As part of the governance change proposal, the commission said that for the first time, member states would get the opportunity to comment on other countries' plans before they are finalized, providing opportunities for regional coordination.

The 10-year national plans would also undergo revisions only once to ensure transparency and certainty for investors. For plans from 2021 to 2030, member states would be able to finalize those updates in 2024.

The timelines for updating and integrating the national plans are designed to align with the five-year review cycle in the Paris Agreement, according to commission materials.

The EC also proposed market changes aimed at maintaining a "level playing field" for all technologies, and the development of wholesale markets to allow for shorter-term trading to reward flexibility in the marketplace.

"Today's package will boost the clean energy transition by modernising our economy.

Having led the global climate action in recent years, Europe is now showing example by creating the conditions for sustainable jobs, growth and investment," EC Vice-President for Energy Union Maroš Šefčovič said in a statement.

--Editing by Edrienne Su.

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1
Wednesday, January 4, 2017

Planning a 'post-Christie' clean-energy agenda in NJ



Energy advocates are beginning to push for more renewable energy, looking into decoupling the power sector, and deploying charging stations for e-vehicles

Tom Johnson writes for *NJ Spotlight*:

With only a year left in Gov. Chris Christie's term, lawmakers and clean-energy advocates will likely focus on promoting more ambitious policies for renewable energy over the next 12 months.

The emerging agenda, under discussion among stakeholders and Sen. Bob Smith (D-Middlesex), the chairman of the Senate Environment and Energy Committee, aims to lay the framework for overhauling the state's energy policies when a new governor takes office a year from now.

Some of the issues, like ramping up the state's reliance on solar and other types of renewable energy, have been kicking around the Legislature for a few years. Others, like dramatically changing the business model of the state's gas and electric utilities, have been debated in the past, but have eluded compromises that satisfy both industry and consumers,

The Legislature also is expected to explore ways to develop energy-grid storage, a technology now recognized as crucial to expanding and making intermittent-power sources, such as wind and solar, more reliable and pervasive.

The objectives run counter to some of the policies embraced by the Christie administration and contrary to the energy policies anticipated to be advanced by President-elect Donald Trump. But proponents argue the efforts to fight climate change will likely be led by states over the next four years.

ASSEMBLY, No. 441

STATE OF NEW JERSEY

217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

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District 38 (Bergen and Passaic)

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

Assemblyman ANDREW ZWICKER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

SYNOPSIS

Establishes solar power incentive program.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 1/11/2017)

1 AN ACT concerning solar power incentives.

2

3 **BE IT ENACTED** by the Senate and General Assembly of the State
4 of New Jersey:

5

6 1. This act shall be known and may be cited as the "Solar Power
7 Incentive Program."

8

9 2. a. As used in this section:

10 "Board" and "electric public utility" shall have the same
11 meaning as provided in section 3 of P.L.1999, c.23 (C.48:3-51).

12 "Solar panel system" means an elevated panel or plate, or a
13 canopy or array thereof, that captures and converts solar radiation to
14 produce power, and includes flat plate, focusing solar collectors, or
15 photovoltaic solar cells and excludes the base or foundation of the
16 panel, plate, canopy, or array.

17 b. The board shall establish the Solar Power Incentive Program
18 to provide financial incentives to owners of solar panel systems and
19 to reduce electric grid congestion.

20 c. The board, in consultation with electric public utilities, shall
21 designate five strategic zones in this State that would benefit from
22 reduced electric grid congestion through the installation of solar
23 panel systems.

24 d. For solar panel systems installed on or after the effective
25 date of P.L. , c. (C.) (pending before the Legislature as this
26 bill) in strategic zones, as designated by the board pursuant to
27 subsection c. of this section, the board shall reimburse an owner of
28 a solar panel system 15 percent of the cost to install the solar panel
29 system and \$1.50 per watt of energy produced by the solar panel
30 system, in a manner determined by the board. The Solar Power
31 Incentive Program shall be limited to solar panel systems having an
32 installed capacity equal to or less than 25 kilowatts for residential
33 systems and 200 kilowatts for non-residential systems.

34 e. The board shall establish an application process and
35 standards for the Solar Power Incentive Program and make this
36 information available on its Internet website.

37 f. The board shall use funds collected from the societal
38 benefits charge that is imposed pursuant to section 12 of P.L.1999,
39 c.23 (C.48:3-60) to fund and administer the Solar Power Incentive
40 Program.

41

42 3. This act shall take effect immediately and shall expire three
43 years thereafter.

STATEMENT

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This bill establishes the Solar Power Incentive Program (program). The purpose of the program is to provide financial incentives to owners of solar panel systems and to reduce electric grid congestion.

Under the bill, the Board of Public Utilities (board), in consultation with electric public utilities, is to designate five strategic zones in this State that would benefit from reduced electric grid congestion through the installation of solar panel systems. For solar panel systems installed in strategic zones after the bill's effective date, the board is to reimburse an owner of a solar panel system 15 percent of the cost to install the solar panel system and \$1.50 per watt of energy produced by the solar panel system. The Solar Power Incentive Program is to be limited to solar panel systems with an installed capacity equal to or less than 25 kilowatts for residential systems and 200 kilowatts for non-residential systems. The bill requires the board to use funds collected from the societal benefits charge that is imposed pursuant to section 12 of P.L.1999, c.23 (C.48:3-60) to fund and administer the Solar Power Incentive Program.

The Solar Power Incentive Program is to expire three years after the bill's effective date.

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Wednesday, December 28, 2016

Largest military solar energy project in NE launched in NJ



Air Force and state officials helped break ground Dec. 20 on a 98-acre solar farm at Joint Base McGuire-Dix-Lakehurst.

The 16.5 megawatt solar energy project will be the largest military solar installation in the Northeast and will include more than 50,000 solar panels when it's completed in 2017.

Once completed, the solar array will produce more than 21,000 megawatt-hours of renewable energy every year – enough to power more than 2,500 homes.

"Solar power is one of the most efficient and affordable energy alternatives today," said Adjutant General of New Jersey Brig. Gen. Michael Cunniff said.

"Whether you're interested in solar power because of its economic or environment impact, during these times of budgetary constraints on the federal side and the state side, I think we can all agree this joint solar project could not happen at a greater time. "

Affiliates of Starwood Energy Group and Energy Management, Inc. developed the project, which is located on a capped landfill. The project is part of the Air Force's Enhanced Use Lease program that helps create mutually beneficial commercial projects on Air Force land.

"New Jersey's leadership in solar energy policies is creating a healthier environment, greater energy independence and more stable energy costs for the region," said Jim Gordon, EMI president.

More than 15,000 metric tons of carbon dioxide emissions is expected to be reduced, an equivalent of 3,000 cars removed from the road.

True Green Capital and affiliates will build, own and operate the solar array in partnership with the Conti Group.

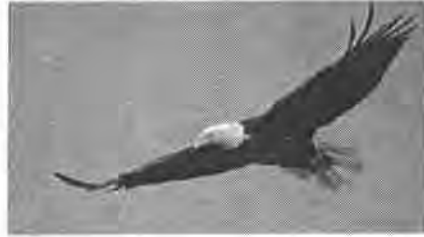
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3
Wednesday, December 14, 2016

Final federal wind-turbine rule not good news for eagles



Matthew Daily reports for the Associated Press:

The Obama administration on Wednesday finalized a rule that lets wind-energy companies operate high-speed turbines for up to 30 years - even if means killing or injuring thousands of federally protected bald and golden eagles.

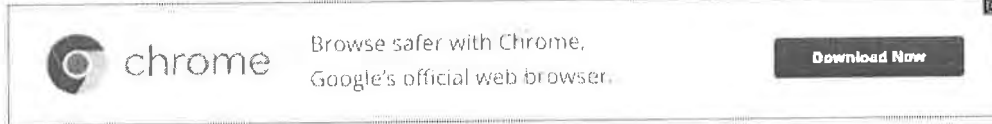
Under the new rule, wind companies and other power providers will not face a penalty if they kill or injure up to 4,200 bald eagles, nearly four times the current limit. Deaths of the more rare golden eagles would be allowed without penalty so long as companies minimize losses by taking steps such as retrofitting power poles to reduce the risk of electrocution.

The new rule will conserve eagles while also spurring development of a pollution-free energy source intended to ease global warming, a cornerstone of President Barack Obama's energy plan, said Fish and Wildlife Service Director Dan Ashe.

"No animal says America like the bald eagle," Ashe said in a statement, calling recovery of the bald eagle "one of our greatest national conservation achievements." The new rule attempts to build on that success, Ashe said, adding that the Fish and Wildlife Service is trying to balance energy development with eagle conservation.

Wind power has increased significantly since Obama took office, and wind turbines as tall as 30-story buildings are rising across the country. The wind towers have spinning rotors as wide as a passenger jet's wingspan, and blades reach speeds of up to 170 mph at the tips, creating tornado-like vortexes.

Forbes



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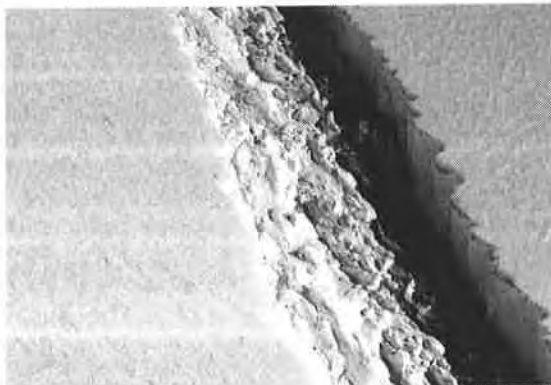
Trevor Nace Contributor

I cover geology, earth science, and natural disasters.

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SCIENCE 1/08/2017 @ 12:23PM | 31,738 views

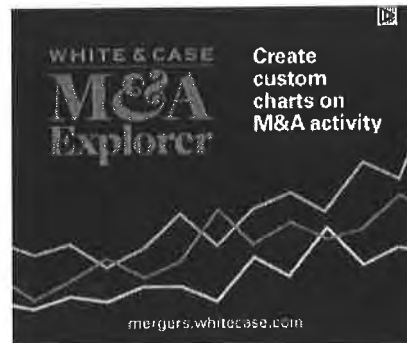
An Iceberg The Size Of Delaware Is About To Break From Antarctica



The Larsen C rifting is approximately 100m wide and estimated to be half a kilometer deep. (Credit: NASA)

One of the largest icebergs ever recorded is about to cleave off of Antarctica and drift to sea. The Larsen C iceberg is approximately the size of Delaware and has been separating from Antarctica at an amazing pace, with the canyon between the two growing by 18 km since mid-December 2016.

The Larsen C iceberg has been rifting from Antarctica for decades but appears to be hastening its departure in the recent months. In fact, the iceberg only has a 20 km long stretch of intact ice holding it in place until it fully calves. The 5,000-square kilometer iceberg comprises just a portion of the Larsen C ice sheet, which is roughly twice the size of the big island of Hawaii. This specific iceberg will cleave off about 10 percent of the ice sheet. Larsen C is roughly 350 m thick and floats on the seas to the edge of West Antarctica.



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Rifting development of the Larsen C ice sheet (Credit: MIDAS/Swansea University/Aberystwyth University)

While this is an incredible amount of ice breaking off, somewhat more important is the role the Larsen C iceberg played in maintaining the competency of the entire ice sheet. The Larsen C iceberg acts to hold back encroaching land-based glaciers and limits the disintegration of the entire ice sheet. The Larsen C iceberg won't increase sea level as was already floating on the ocean while attached to the larger ice sheet. However, removing the barrier to flow will leave the entire shelf vulnerable and allow for the much larger Larsen C ice sheet to flow into the sea over time. This, in total, could lead to a 3.9-inch sea level rise. That may not seem significant but compare it to the 2.6-inch sea level rise that we've witnessed over the past 20 years.

Despite general ties of increased Antarctica ice sheet melting to climate change and a warming planet, there are no specific and direct lines of evidence that this is a climate change event. Icebergs will calve off continental masses during both times of increasing and decreasing ice mass (glacial to interglacial and vice versa). However, the speed at which we've seen significant iceberg calving in the recent past points to a global tie of melting ice on Earth's poles.

In fact, when Larsen C iceberg fully breaks off of Antarctica it will be the third in a little over two decades to do so. In 1995 Larsen A collapsed followed by Larsen B collapsing just a few years later in 2002. Scientists believe Larsen C iceberg to follow the trend in the coming months based on the recent accelerated calving.



Aerial view of the Larsen C calving (Credit: NASA)

“The eventual consequences might be the ice shelf collapsing in years to decades,” Professor Adrian Luckman told the [BBC News](#).

Trevor Nace is a geologist, Forbes contributor, and adventurer. Follow him on Twitter [@trevornace](#)

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New
Jersey
Department of
Environmental
Protection

COMPLIANCE ADVISORY ENFORCEMENT ALERT

Making You Aware of Incentives and Compliance Assistance Opportunities

Compliance & Enforcement

Issued: December 6, 2016

#2016-13

Reminder about Mandatory Change to Submit Pollutant Discharge Elimination System Discharge Monitoring Reports Data Electronically as of December 21, 2016

Who is affected by this initiative?

Facilities with New Jersey Pollutant Discharge Elimination System (NJPDES) permits who discharge Stormwater or discharge to Surface waters and who currently submit paper Discharge Monitoring Reports (DMR).

Why is DEP issuing this advisory?

The DEP is implementing the U.S. Environmental Protection Agency's (EPA) Electronic Reporting Rule, which was published on October 22, 2015. This rule requires the electronic reporting and sharing of Clean Water Act NJPDES program data.

Starting with the monitoring periods beginning January 1, 2017, the DEP will no longer be sending paper DMR forms to affected permittees and **will no longer be accepting paper DMR forms from affected permittees. Paper DMRs submitted after that date may result in permit violations for non-submission of data.**

All facilities required to submit their DMRs electronically will also have to submit any other monitoring report forms required under that permit (i.e. WCR's, RTR's, etc.) electronically. Revisions to any previously submitted paper monitoring reports will also need to be submitted electronically.

What is DEP doing?

The Division of Water Quality Permit Administration Section has notified the affected permittees about this new requirement, provided links for further information, and supplied a copy of the NJDEPS Agreement for Electronic Submission of Monitoring Report Forms (MRFs).

The Division of Land Use and Water Enforcement may issue enforcement actions for reporting violations that result from failure to register for or implement electronic DMR reporting by the deadline. This enforcement action can result in the assessment of penalties of up to \$50,000 per DMR.

What should I do?

- 1) Register for the NJPDES MRF Electronic Submission Service. Directions on how to register are available at http://www.nj.gov/dep/dwq/pdf/NJPDES_MRF_Submission_Service_Registration_Steps.pdf
- 2) Complete, sign and send the NJPDES Agreement for Electronic Submission of MRFs, http://www.nj.gov/dep/dwq/pdf/NJPDES_agreement_form.pdf, **prior to December 21, 2016** to:

NJDEP Permit Administration Section
Mail Code 401-02B
P.O. Box 420
401 East State Street
Trenton, NJ 08625-0420

Who should I contact with questions?

Please contact the Division of Water Quality, Permit Administration Section at (609) 984-4428 with any questions.

Where can I get more information?

For an overview of the electronic MRF submission service:

http://www.nj.gov/dep/dwq/pdf/NJPDES_MRF_Submission_Service_Overview.pdf.

For the electronic MRF submission service reference manual:

http://www.nj.gov/dep/dwq/pdf/NJPDES_MRF_Submission_Service_Reference_Manual.pdf.

For training videos on the electronic MRF submission service:

<http://www.nj.gov/dep/dwq/mrf.htm> and scroll to the bottom of the webpage.

To comment on this advisory:

<http://www.nj.gov/dep/enforcement/survey.html>

In addition, DEP's Compliance and Enforcement Program is on [Facebook](#). Our goal is to provide our stakeholders and the regulated community a new way to connect and share relevant and useful compliance assistance topics, upcoming training, regulatory updates and recent advisories on a regular basis. Click on <https://www.facebook.com/NJDEPComplianceandEnforcement> and "Like" our page to receive up-to-date information as soon as it is available.



This advisory is intended to be a summary explanation of a department initiative. It does not include all potentially applicable requirements. If you have any questions related to compliance with this initiative, please contact the number listed above.



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18 States Sue To Block ESA Habitat Rules

By **Juan Carlos Rodriguez**

Law360, New York (November 29, 2016, 9:09 PM EST) -- Texas and 17 other states on Tuesday sued the federal government to stop new rules that they say "broadly expand" the definition of critical habitats for wildlife listed as endangered or threatened under the Endangered Species Act.

In February, the U.S. Fish and Wildlife Service and National Marine Fisheries Service promulgated **two final rules** overhauling how they implement critical habitat designation requirements under the ESA. One of them revised the definition of "destruction or adverse modification" of habitat, and the other clarified the procedures and standards used for designating critical habitat. But the states said the rules go too far.

The states said the rules would allow the federal government to designate areas as "occupied" critical habitat that contains physical and biological features "essential to conservation," even when the areas aren't occupied or don't contain those features.

And they said the rules give the services authority over areas where there is only "indirect or circumstantial evidence" that a protected species ever lived there, and that under that interpretation of the ESA, the government could designate "entire states or even multiple states" as habitat.

"This is nothing more than yet another end run around Congress by a president who is desperate to establish his environmental legacy by any means necessary before his time in office ends in less than 60 days," Texas Attorney General Ken Paxton said in a statement. "The Obama administration is hiding behind bogus rules to perpetrate land grabs, kill energy projects and block economic development."

In February, the services said the "destruction or adverse modification" of habitat rule reflected the fact that the previous regulatory definition had been declared invalid by courts, and that the revised definition is consistent with the ESA, its legislative history and circuit court opinions, and merely codifies the approach the services have employed since 2004.

The rule focused on procedures and standards for designating critical habitat only made minor changes to the regulations "to better describe the scope and purpose of critical habitat, and clarify the criteria for designating critical habitat," the services said at the time it was finalized.

But the states said the rules pose a greater threat to their sovereignty than the services let on.

"If allowed to stand, the final rules would allow the services to exercise virtually unlimited power to declare land and water critical habitat for endangered and threatened species,

regardless of whether that land or water is occupied or unoccupied by the species, regardless of the presence or absence of the physical or biological features necessary to sustain the species, and regardless of whether the land or water is actually essential to the conservation of the species," they said in their complaint.

The states are asking the court to vacate and set aside both rules in their entirety.

The plaintiff states are: Alabama, Arkansas, Alaska, Arizona, Colorado, Kansas, Louisiana, Michigan, Montana, Nebraska, New Mexico, Nevada, North Dakota, South Carolina, Texas, West Virginia, Wisconsin, and Wyoming.

New Mexico is represented by its Department of Game and Fish; the other states are represented by their attorneys general.

Counsel information for the federal government was not available Tuesday.

The case is State of Alabama et al. v. National Marine Fisheries Service et al., number 1:16-cv-00593 in the U.S. District Court for the Southern District of Alabama.

--Editing by Kelly Duncan.

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BREAKING: High Court To Review 6th Circ.'s Water Rule Jurisdiction

By **Juan Carlos Rodriguez**

Law360, New York (January 13, 2017, 3:27 PM EST) -- The U.S. Supreme Court on Friday agreed to review the Sixth Circuit's finding that it has jurisdiction to hear challenges to the U.S. Environmental Protection Agency and Army Corps of Engineers' controversial Clean Water Rule.

The rule aims to clarify federal permitting jurisdiction under the Clean Water Act by defining what are "waters of the United States," but opponents including states and industry groups have challenged it at both the district and appellate court levels. The appellate-level challenges were consolidated at the Sixth Circuit, which said in a **2-1 ruling** in February that the district courts don't have jurisdiction to consider the matter.

The National Association of Manufacturers and several other groups **have asked** the Supreme Court to overturn the Sixth Circuit and send the cases back to the district courts, while the EPA and Corps have urged the justices to leave the matter at the appellate court.

"The Sixth Circuit's decision put challengers to the EPA rule in an untenable position — if that court does not actually have jurisdiction to hear the case, any action it takes could thereafter be overturned on appeal, without even considering the merits of the challenge, and we would have to start the case over at the trial court level," NAM general counsel Linda Kelly said in a statement Friday.

Kelly said it would be a "tremendous waste of resources" if that were to happen.

NAM said courts have disagreed over the interpretation of two categories of agency action specified in the Clean Water Act that trigger automatic circuit court review: actions "approving or promulgating any effluent limitation or other limitation" under certain provisions of the CWA, spelled out in Section 509(b)(1)(E), and actions "issuing or denying any permit" under the act's National Pollutant Discharge Elimination System, highlighted in Section 509(b)(1)(F).

The Sixth Circuit panel that decided the jurisdictional question was badly fractured, with one of the two majority judges saying he actually thought the decision was wrong but that he was bound by precedent to rule that the challenges belong at the appellate level.

The EPA and Corps said the Sixth Circuit got it right and that having lower courts decide individual challenges would be a mistake. **The agencies said** the Clean Water Act vests federal appeals courts with exclusive original jurisdiction to review certain categories of EPA decisions implementing the act, such as approving or promulgating any effluent or other limitations, and issuing or denying any permits.

According to the agencies, appellate jurisdiction is proper under the construction of Section 509(b)(1) that the Supreme Court adopted in its 1977 decision in *E.I. du Pont de Nemours & Co. v. Train*, and its 1980 decision in *Crown Simpson Pulp Co. v. Costle*.

The EPA and Corps said that in those decisions the high court considered the CWA's structure and objectives and concluded that Section 509(b)(1) should be read broadly to give the circuit courts original jurisdiction over EPA actions that directly affect Clean Water Act permitting decisions.

The Tenth and Eleventh circuits are also entertaining challenges to jurisdictional rulings made at the district court level. Those appellate-level cases have been stayed.

The U.S. Department of Justice declined to comment Friday.

The National Association of Manufacturers is represented by Timothy S. Bishop, Michael B. Kimberly, Chad Clamage and Jed Glickstein of Mayer Brown LLP, and Linda E. Kelly, Quentin Riegel and Leland P. Frost of Manufacturers' Center for Legal Action.

The EPA and Army Corps of Engineers are represented by J. David Gunter II and Robert J. Lundman of the U.S. Department of Justice.

The case is *National Association of Manufacturers v. U.S. Department of Defense et al.*, number 16-299, in the Supreme Court of the United States.

--Additional reporting by Stan Parker. Editing by Mark Lebetkin.

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Nationwide Permits

Nationwide General Permits within the New York District

It is possible that a project may qualify for authorization under one or more nationwide general permits, in accordance with Title 33 of the Code of Federal Regulations, Part 330 and the Federal Register notice dated February 21, 2012. An activity is authorized under nationwide general permit(s) only if that activity and the permittee satisfy all of the terms and conditions. Unless a nationwide general permit contains a condition requiring the applicant to notify the Corps prior to undertaking the proposed activity, a written authorization is not necessary. Activities that do not qualify for authorization under a nationwide general permit may still be authorized by an individual or regional general permit.

Public Notice announcing the reissuance of the Nationwide Permits in the Federal Register dated January 6, 2017

Joint New York District and Buffalo District Public Notice dated June 16, 2016 announcing the proposal by the U.S. Army Corps of Engineers to reissue the Nationwide Permits in the Federal Register dated June 1, 2016, including New York State Regional Conditions.

Philadelphia District Public Notice dated June 16, 2016 announcing the proposal by the U.S. Army Corps of Engineers to reissue the Nationwide Permits in the Federal Register dated June 1, 2016, including New Jersey State Regional Conditions.








Public Notice announcing Final 2012 Nationwide Permit Regional Conditions for New York
New York State DEC Water Quality Certification Letter

New York State DOS Coastal Zone Concurrence Letter

Public Notice announcing Final 2012 Nationwide Permit Regional Conditions for New Jersey
New Nationwide Permits announced by Federal Register dated February 21, 2012, becoming effective

March 19, 2012
Public Notice announcing the reissuance of the Nationwide Permits in the Federal Register dated February 21, 2012

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EPA Nets \$6B In Penalties From Enforcement Actions In 2016

By Stan Parker

Law360, New York (December 19, 2016, 7:51 PM EST) -- The U.S. Environmental Protection Agency's enforcement efforts during 2016 raked in nearly \$6 billion in civil penalties and required companies to put more than \$13.7 billion toward pollution control investments, the agency said in its annual enforcement report on Monday.

The agency's whopping \$5.8 billion in fines dwarfed the \$207 million that it achieved in **fiscal year 2015**, thanks to the record \$5.6 billion Clean Water Act penalty assessed against BP Exploration and Production Inc. for the Deepwater Horizon oil spill. The agency also noted that the \$13.7 billion that companies must invest in pollution control actions doesn't include the numbers from its partial settlement agreement with Volkswagen over the company's emissions test scandal — which would have added nearly \$15 billion to that figure — because due to the settlement's timing it will appear in the EPA's fiscal year 2017 numbers.

Paying Up

Enforcement actions by the EPA in 2016 resulted in a total of:

- Compliance Investments:** \$13.7 billion
- Environmental Projects:** \$32 million
- Judicial Penalties:** \$5.75 billion
- Superfund Cleanup:** \$1 billion

"EPA's enforcement work continues to hold violators accountable and deliver investments to reduce pollution in our communities," Cynthia Giles, assistant administrator for EPA's Office of Enforcement and Compliance Assurance said in a Monday statement. "The American public depends on EPA to enforce the law, protect our communities from pollution and help ensure a level playing field for responsible companies."

Pointing to its enforcement highlights from 2016, the agency touted its enforcement action against Volkswagen, in which it garnered a \$14.7 billion commitment from the company to settle allegations that it used "defeat devices" to cheat emissions tests and deceive customers. **That settlement** includes compensation for consumers and a promise to buy back nearly 500,000 cars sold or leased in the U.S., at a price tag of around \$10 billion, plus another \$4.7 billion to mitigate pollution and invest in greener technologies.

The agency also got Enbridge to put at least \$110 million into implementing **oil pipeline safety improvements** meant to prevent spills across nearly 2,000 miles of pipe in the

Great Lakes region, on top of \$62 million in fines for oil spills in Michigan and Illinois in 2010.

In another notable enforcement action, Tesoro Corp. and Par Hawaii Refining must spend \$403 million to **control air pollution** at six refineries and put \$12 million toward public health projects in communities affected by the pollution.

On the criminal side, the agency said it attained \$775,000 in court-ordered environmental projects, pegged defendants with \$207 million in fines and garnered 93 years' worth of incarceration for various defendants.

In one of those cases, the agency was able to get **30-day prison sentences** for the two owners of chemical processing company Freedom Industries in connection with a 2014 chemical spill in West Virginia's Elk River that left 300,000 people without usable water for days.

According to agency numbers, inspections and evaluations continued a downward trend, coming in at just over 13,500 — compared to the nearly 20,000 in fiscal year 2012. The agency attributed that decline to a decreasing budget.

The agency's 2016 enforcement actions will also require companies to reduce releases of pollution by 324 million pounds per year. That figure also reflects a downward trend, something the agency attributes to focusing its efforts on toxic pollution, which comes in smaller volumes than conventional pollution emissions from coal-fired power plants and municipal wastewater systems.

--Editing by Orlando Lorenzo.

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Enforcement

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Enforcement Annual Results for Fiscal Year 2016

Overview

[Case Map](#)[Numbers at a Glance](#)[Regional Results](#)[Analysis and Trends](#)

EPA's 2016 annual enforcement and compliance results demonstrate continued progress implementing Next Generation Compliance technologies and creative solutions in high-impact enforcement cases to reduce pollution, level the playing field for responsible companies and protect public health in communities across the country, including those disproportionately affected by pollution.

EPA's enforcement accomplishments include:

- **More than \$13.7 billion** in investments by companies in actions and equipment to control pollution. In addition, a case against Volkswagen lodged in June and entered just after the end of fiscal year 2015 adds up to \$14.7 billion to remedy Clean Air Act violations.
- **More than \$1 billion** in commitments from responsible parties to clean up Superfund sites.
- **\$6 billion** in combined federal administrative, civil judicial penalties and criminal fines.
- **93 combined years** of incarceration for sentenced defendants.
- **\$31.6 million** for supplemental environmental projects that provide direct benefits to local communities across the country.


Enforcement Highlights

In a landmark settlement, [Volkswagen](#) agreed to spend up to \$14.7 billion to settle allegations of using "defeat devices" to cheat emissions tests and deceive

customers. Volkswagen will offer consumers a buyback and lease termination for nearly 500,000 model year 2009-2015 2.0 liter diesel vehicles sold or leased in the U.S., and provide additional compensation to consumers, at a cost of up to \$10 billion. In addition, Volkswagen will spend \$4.7 billion to mitigate the pollution from these cars and invest in green vehicle technology. Together, these actions will restore clean air protections and make our auto industry cleaner for generations of Americans to come.

Enbridge, which owns and operates one of the world's largest oil pipeline systems, is spending at least \$110 million on implementing a series of state-of-the-art leak detection and monitoring measures to prevent spills, improve operations and protect communities across nearly 2,000 miles of its pipeline system in the Great Lakes region. Enbridge is also paying \$62 million in penalties for oil spills in Michigan and Illinois in 2010.

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Tesoro Corp., one of the largest fuel refiners in the U.S., and Par Hawaii Refining will improve public health protections by spending \$403 million on advanced pollution control equipment to reduce air pollution at six refineries and \$12 million on projects to improve public health in local communities previously impacted by pollution.

Sears will implement a comprehensive, corporate-wide program to ensure its contractors minimize lead dust from home renovation activities to protect the health of children and other vulnerable communities from exposure to lead-based paint.

Under a settlement with BP Exploration & Production, Inc., the company agreed to pay \$5.5 billion in penalties for Clean Water Act violations stemming from the April 20, 2010 Deepwater Horizon blowout and subsequent oil spill. This is the largest penalty ever for a Clean Water Act settlement. The settlement returned over \$20 billion to Gulf communities to restore the environment and strengthen resilience.

EPA is working closely with local governments and utilities in communities such as Salt Lake County, Utah, Greenville, Miss. and the city of Rockford, Ill. to cut discharges of raw sewage and contaminated stormwater through integrated

planning, green infrastructure and other innovative approaches.

A settlement with national grocery store chain [Trader Joe's Company](#) will reduce potent greenhouse gas emissions from refrigeration equipment at 453 stores nationwide and sets a high bar for the grocery industry for detecting and fixing coolant leaks.

EPA's criminal program secured \$775,000 in court-ordered environmental projects, generated \$207 million in fines and restitution and sentenced defendants to a combined 93 years of incarceration. The two owners of [Freedom Industries](#), a chemical processing company, were each sentenced to 30 days in prison and a \$20,000 fine for a chemical spill that contaminated the Elk River and drinking water for 300,000 people and vulnerable communities in Charleston, W.Va., and in surrounding areas.

EPA ensures companies and federal facilities take responsibility and clean up toxic pollution they create while EPA conserves and recovers federal funds. This year, settlements will result in more than \$1 billion in commitments from responsible parties to clean up Superfund sites, and return \$55 million to the Superfund trust.

EPA completed more than [100 enforcement actions](#) that require entities like renovation contractors, landlords and property managers to protect communities and public health from exposure to lead. Collectively, the settlements require violators to pay more than \$1 million in penalties in addition to returning to compliance with federal lead-based paint rules.

EPA also finalized a rule for National Pollutant Discharge Elimination Systems (NPDES) that allows regulated entities to submit information electronically, increasing compliance rates and improving transparency. This rule will save an estimated \$22.6 million annually.

Progress on our National Enforcement Initiatives:

- [Reducing Air Pollution from the Largest Sources](#)
- [Cutting Hazardous Air Pollutants](#)
- [Ensuring Energy Extraction Activities Comply with Environmental Laws](#)
- [Reducing Pollution from Mineral Processing Operations](#)
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DEP Launches Mobile Application for Reporting of Non-Emergency Environmental Incidents

Who is affected by this advisory?

Members of the public with smartphones or other mobile devices who want to report non-emergency environmental incidents electronically.

Why is DEP issuing this advisory?

The Department of Environmental Protection has launched a pilot mobile application that will enhance protection of public health and the environment by enabling the public to use smartphones and other mobile devices to conveniently report non-emergency environmental incidents. The app utilizes GPS technology for pinpoint location of environmental incidents and also allows users to submit photos as part of their reports to the DEP.

What should I do?

The pilot app can be downloaded through Google Play, the Apple app store and the Microsoft app store. Enter WARN NJDEP in the search bar. Once the app has been downloaded, it can be used to report non-emergency environmental incidents. The types of non-emergency incidents that may be reported through the application include improper storage or disposal of waste and other materials, odor complaints, sewage leaks, smoke and dust complaints, underground storage tank incidents, and wetlands or stream encroachment issues. **The app is not intended to report life-threatening and/or environmental emergencies. These should be reported by calling 9-1-1, local police or the DEP's hotline.**

What is DEP doing?

The Department is committed to engaging the public as partners in strong environmental protection. The application utilizes the latest technology to enhance protection of the environment by making it convenient for people to report incidents that can negatively impact New Jersey communities.

Where can I get more information?

For Apple Devices: <https://itunes.apple.com/us/app/warn-njdep/id1133675885?mt=8>

For Android Devices: <https://play.google.com/store/apps/details?id=com.nicusa.NJI.WARNNJDEP>

For Windows Devices: <https://www.microsoft.com/en-us/store/p/warn-njdep/9nblggh4v0px>



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Chief Tanker Engineer Gets 8 Months For Hiding Oil Dump

By **Juan Carlos Rodriguez**

Law360, New York (November 21, 2016, 7:46 PM EST) -- A high-ranking engineer on an Italian oil tanker on Monday was sentenced to eight months in prison for his role in a scheme to flush waste oil from the ship's sewage system into the ocean and hide it from the U.S. Coast Guard, New Jersey federal prosecutors said.

Girolamo Curatolo, the chief engineer aboard the M/T Cielo di Milano, owned by D'Amico Shipping Italia SpA, in August **pled guilty** to one felony count of conspiring to violate the Act to Prevent Pollution from Ships. Prosecutors alleged that Curatolo and other crew members got rid of the oily waste that accumulated in the machinery rooms of the tanker by pumping it through hoses into a sewage holding tank and then dumping it at sea.

The Cielo di Milano visited ports in New Jersey several times, as well as ports in Maryland and Florida, prosecutors said. Curatolo admitted that the crew had intentionally bypassed required pollution prevention equipment and that he falsified the vessel's oil record book, a required log regularly inspected by the U.S. Coast Guard.

"Curatolo admitted he made false statements to the Coast Guard during its inspection of the M/T Cielo di Milano in January 2015, instructing lower-level crew members to make false statements and destroying the vessel's sounding log — which records the contents of storage tanks aboard the vessel, including those containing oily waste — by ripping the pages out and burning it in the vessel's boiler after the Coast Guard had boarded the vessel," the U.S. Attorney for the District of New Jersey's office said in a statement Monday.

In addition to the prison term, U.S. District Judge Susan D. Wigenton sentenced Curatolo to one year of supervised release and ordered him to pay a \$5,000 fine.

According to court documents, large vessels normally produce that kind of oily residue and oil mixtures in machine rooms, but the waste is supposed to go through a pollution-control device called an oily water separator. Only wastewater containing minimal amounts of oil can be dumped at sea.

Curatolo, as the chief engineer, was supposed to keep accurate records of everything that happened to the oil in an oil record book on the M/T Cielo di Milano.

Danilo Maimone, the ship's first assistant engineer, has also pled guilty to an information charging him with conspiring to obstruct justice. Maimone admitted concealing the discharge of oily waste, as well as causing a false oil record book to be presented to the Coast Guard during its inspection of the vessel, prosecutors said. He also admitted making false statements and instructing lower-level crew members to do the same during the

January 2015 Inspection.

Maimone is scheduled for sentencing on Jan. 18.

The U.S. is represented by Kathleen Patricia O'Leary, Kelly Graves and Brandy Parker of the U.S. Department of Justice.

Curatolo is represented by Michael G. Chalos of K&L Gates LLP.

The case is USA v. Curatolo, case number 2:16-cr-00363, in the U.S. District Court for the District of New Jersey.

--Additional reporting by Stan Parker. Editing by Catherine Sum.

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Environmental Enforcement Under Trump: 5 Open Questions

By **Juan Carlos Rodriguez**

Law360, New York (November 10, 2016, 10:21 PM EST) -- Environmental enforcement priorities at the U.S. Environmental Protection Agency and Department of Justice are likely to shift when President-elect Donald Trump takes office, although it's too early to know exactly how. Here are five questions experts are asking.

Will the fossil fuel industry get a break?

Doug Parker, the recently retired head of the EPA's Criminal Investigation Division, now at Earth & Water Group, said the EPA always has had national enforcement priorities and national enforcement initiatives, and that those areas, particularly on the civil enforcement side, are where a Trump administration can redirect resources and energy.

"Take conduct in the energy extraction sector. You have to ask if that will be as significant an area of focus in a Trump administration as it was in an Obama administration," he said.

And Parker said air pollution and air toxics — a continual area of focus and enforcement at the Obama EPA — could be another enforcement area that a Trump agency could back off from.

Paul Welland, a partner at Nossaman LLP who worked in the Law and Policy Section of the Justice Department's Environment and Natural Resources Division, agreed that in contrast to the Obama administration, which has focused on oil and gas extraction facilities, a Trump EPA may take a more business-friendly approach.

"I think it's likely that under the Trump administration, the conventional or traditional energy sector will be looking for regulatory relief, and that will include the rulemaking side but also the enforcement side, in terms of how that issue is approached and prioritized," he said.

Will day-to-day functions stay out of the political spotlight?

Much of the EPA and Environment and Natural Resources Division's work goes on below the public's radar, said Jim Rubin, a partner at Dorsey & Whitney LLP and a 15-year veteran of the ENRD who worked through both Republican-to-Democrat and Democrat-to-Republican transitions.

"The division is largely nonpolitical. It's not driven by any particular ideology and most of the work is not discretionary — in other words, most of the work the ENRD does is defensive. So there's not a lot of picking and choosing," he said.

Weiland said "run-of-the-mill" Clean Air Act or Clean Water Act violations don't attract a lot of political attention, so a new administration isn't likely to force a huge shift on that front.

But Rubin noted that even routine enforcement can get more or less aggressive depending on who's in charge, and in years past Congress has investigated both the EPA and the DOJ for not enforcing enough.

"They can be very reactive though," Rubin said of the ENRD. "Take the Deepwater Horizon and Volkswagen cases. They didn't go after those cases; those cases found them. A lot of these big cases come up because something bad happens. And it's expected that if there's a significant harm to the environment the DOJ will take an aggressive action."

What will be the priorities of the new leadership teams?

It's difficult to begin to guess how the Trump EPA and ENRD will restructure and reprioritize enforcement initiatives, because it's not known yet who'll be leading those agencies, said David Goldston, the Natural Resources Defense Council's director of government affairs.

"There are obviously concerns when someone may bend over backwards to help industry no matter what their behavior," he said. "But there have also been conservative administrations that, precisely because they're not interested in promoting any new regulations, actually focus more on enforcement. It's just one more thing to be watching for, both in terms of who he nominates and what they do once in office."

J. Michael Showalter, a partner at Schiff Hardin LLP, said it's difficult to draw any conclusions even looking at Trump's campaign language.

"Trump's environmental and energy agenda remained relatively vague up until a month or two ago, and it was mostly him saying, as conservatives do, we need less regulation," Showalter said.

Parker said a Trump administration may take a less aggressive posture toward enforcement.

"If you take President-elect Trump at his word, he is generally not at all supportive of EPA's mission. I think that could certainly trickle down to enforcement decisions on the civil and administrative sides," Parker said.

Will the EPA face further resource tightening?

The EPA has been struggling for years with shrinking budgets and resources. That trend will probably continue under Trump, Rubin said. He said the agency only has so many investigators, and it has to prioritize them.

"You can certainly see a world where the agency is strapped financially or politically, where they do fewer investigations," he said. "In terms of initiatives, those can change dramatically within EPA. So you might have an agency doing less referrals in a particular area or overall, and that reduces the amount of enforcement actions, at least on the civil side, that DOJ takes."

He said the criminal side at DOJ has some ability to bring its own actions or work with the U.S. attorney's offices, but that even in those cases, the criminal investigators at the EPA do a lot of the work, so fewer of them will have an impact on criminal investigations as well.

Weiland also said based on Trump's few comments about EPA administration on the

campaign trail, it's easy to believe there will be a "whittling away" of resources.

"The less enforcement resources that EPA or ENRD has, the more they have to pick and choose cases, and the fewer they can move forward," he said.

Will states get more responsibility?

Showalter said the EPA may shift more enforcement down to the state level, which could result in businesses facing widely varying enforcement regimes across the country. He noted the shift is already in the works, partly due to the EPA's dwindling resources, and pointed to its recent coal combustion residue, or coal ash, rule that leaves enforcement up to citizen suits or states.

The same will probably be true for Clean Water Act jurisdictional issues, he said.

"If statutes stay the same and EPA is less vigorous for whatever reason, you could see states having a little bit more freedom to implement statutes," he said.

And Parker said there may be more of a push to let states enforce at the civil level. But he said that could result in less environmental protection.

"Sometimes that makes sense, but I can tell you from my experience that there are times that means nothing, materially, is going to get done. It's a philosophical issue, but it's not a one-size-fits-all approach in terms of states can do this and the federal government shouldn't. It's got to be done in a more thoughtful way than just a binary choice," he said.

--Editing by Mark Lebetkin and Jill Coffey.

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