

The Environmental Manager's COMPLIANCE ADVISOR

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SPCC Deadlines Extended Again

For the fifth time, EPA has extended the deadline for compliance with amended federal rules to develop and implement spill prevention, control, and countermeasure (SPCC) plans.

Originally issued in August 2002, EPA's amended SPCC program prompted many objections from industry over both technical requirements and compliance dates.

Following promulgation, industry and EPA negotiated changes to the rules, and based on those changes, compliance dates were extended several times. But the process of amendments, proposed amendments, and anticipated proposed amendments continues, each necessitating revisions of compliance dates. EPA is now considering issuing further amendments to the SPCC program, particularly for oil and natural gas exploration and production facilities, farms, and qualified facilities. (A qualified facility is a facility with a limited oil storage capacity that is eligible for streamlined regulatory requirements.)

Before the current rule, most facilities were required to either make necessary changes to their SPCC plans or implement new plans by October 31, 2007.

The most recent amendments accomplish the following:

- Facilities (other than a farm) that started operations on or before August 16, 2002, must maintain existing SPCC plans and amend and implement the plans no later than July 1, 2009.
- Facilities that began operations after August 16, 2002, through July 1, 2009, must prepare and implement an SPCC plan no later than July 1, 2009.
- Facilities that start operations after July 1, 2009, must prepare and implement SPCC plans before beginning operations.

Also, in December 2006, EPA extended the compliance dates for farms to determine if the agriculture sector warrants specific consideration under the SPCC program. If a farm started operations on or before August 16, 2002, it must maintain its existing SPCC Plan and amend and implement the plan when EPA promulgates a rule specifically for farms. If a farm began operations after August 16, 2002, it must prepare and implement an SPCC plan when EPA promulgates a rule specifically for farms.

EPA's final rule affecting SPCC compliance dates is available at <http://www.blr.com/keyword>. Type in **em688spcc** when prompted.

TRI Dioxin Reporting Amended

Beginning with toxics release inventory (TRI) reports due July 1, 2008 (for releases occurring in 2007), regulated entities must comply with a new format in Form R for reporting releases of dioxin and dioxin-like compounds. The change will provide some indication of the relative toxicity of the 17 dioxin and dioxin-like compounds now reported under TRI.

TRI's current Form R allows reporters to break down or distribute their total dioxin

releases as percentages into 17 dioxin categories. This reporting format does not contain explanations of the toxicity associated with those categories. Concerned that all dioxin releases reported are perceived by the public as being equally dangerous, industry has requested that EPA amend the TRI regulations to show that some releases are less toxic than others.

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In response, the new regulation requires that releases of each dioxin and dioxin-like compound be reported in mass quantities (grams). This form of reporting will allow EPA to calculate the toxic equivalency (TEQ) of the total dioxin releases. TEQs are a weighted quantity measure based on the toxicity of each member of the dioxin and dioxin-like compounds category relative to the most toxic members of the category.

A TEQ is calculated by multiplying the actual grams of weight of each dioxin and dioxin-like compound by its corresponding toxic equivalency factor (TEF) and then summing the results. The two most toxic dioxins have TEFs of 1.0. TEFs for the other 15 substances range from half to one-ten-thousandth of the 1.0 value.

TEQ data reported under TRI will be provided to the public along with the facility-reported data. EPA will also include TEQ data in all EPA publications that contain TRI data on dioxin and dioxin-like compounds.

A new Form R Schedule 1 will be provided specifically to report dioxin releases. EPA says it intends to modify its reporting software, TRI-Made Easy (TRI-ME), to accommodate the new format. A TEQ calculator will be included in TRI-ME so that facilities will be able to see the TEQ values EPA will calculate. The Agency is urging electronic reporting, which will expedite calculation of TEQs.

EPA's final rule amending the TRI format for reporting releases of dioxins and dioxin-like compounds is available at <http://www.blr.com/keyword>. Type in **em688tri** when prompted.

Sectors Excluded From Solvent Rule

Thanks to comments from the regulated community, EPA relaxed requirements it had proposed in August 2006 to limit the emissions of hazardous air pollutants

(HAPs) from facilities engaged in halogenated solvent cleaning. The new requirements are particularly favorable to facilities in the aerospace and narrow tubing sectors, facilities that manufacture specialized products requiring continuous web cleaning, and military depot maintenance facilities.

The final rule is part of the Agency's residual risk program for HAPs emitted by specific industry sectors. Under the CAA, 8 years after EPA issues a standard based on the maximum achievable control technology (MACT) available to a sector, the Agency must determine whether additional standards are required to provide an ample margin of safety to protect public health.

In its initial proposal, EPA set individual annual emissions limits for three solvents: methylene chloride (MC), trichloroethylene (TCE), and perchloroethylene (PCE) from facilities engaged in halogenated solvent cleaning. An annual limit was also proposed for multiple solvents. The proposal contained no exemptions for individual sectors.

In their comments, the four noted sectors said they would probably not be able to meet EPA's proposed limits because of technical and economic difficulties. The CAA allows EPA to consider technical and economic factors when setting residual risk standards. EPA said industry raised numerous technical and economic points the Agency was not aware of when writing the proposal.

Subsequently, in composing the final rule, EPA took note of a variety of new information, including the percent HAP reductions that can be achieved by vacuum-to-vacuum machines; the additional cost of operating and maintaining vacuum-to-vacuum machines; the high cost of carbon adsorption devices; and the number of units in which solvents could actually be switched.

The result of these considerations is that the final residual risk rule increases the annual facilitywide

solvent emissions limit to 60,000 kilograms per year (kg/yr) from the proposed options of either 40,000 or 25,000 kg/yr. Facility emissions of PCE and TCE are weighted according to their carcinogenic potency relevant to that of MC. For military maintenance facilities, EPA is setting a facilitywide emissions limit of 100,000 kg/yr of MC equivalent emissions.

For facilities in the aerospace and narrow tubing sectors and facilities that use continuous web cleaning machines, EPA will require no further emissions reductions beyond the 1994 MACT.

Nonmajor or area sources operating halogenated solvent cleaning machines that are subject to generally achievable control technology (GACT) requirements are also not required to comply with the facilitywide emissions limits.

EPA's final rule on HAP emissions from facilities engaged in halogenated solvent cleaning is available at <http://www.blr.com/keyword>. Type in **em688haps** when prompted.

Species Data from O&G Lessees

Oil and gas (O&G) companies operating on the Outer Continental Shelf (OCS) should review new monitoring and reporting requirements pertaining to information that must be submitted to the U.S. Minerals Management Service (MMS).

Specifically, MMS's final rule applies to environmental, monitoring, and mitigation information contained in exploration plans (EP) and development

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If you have any questions or comments about the content in the *Advisor*, contact Bill Schillaci at bschillaci@blr.com. For all other questions, please contact BLR's Customer Service Department at 1-800-727-5257.

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Compliance Report

Will Water Quality Improve Under Farm Bill?

Cooperation Urged

Congressional completion of the 2007 Farm Bill, which is expected to occur this summer, will not include first-time federal regulation of nonpoint source pollution from agricultural cultivation. Also, it does not appear that a rewrite of the Clean Water Act (CWA) to impose pollutant limits or some other form of regulation on growers is a pressing concern on Capitol Hill.

Instead, with the new Farm Bill, lawmakers will continue to approve many billions of dollars to fund programs intended to reward and assist farmers who voluntarily undertake land conservation and other practices to diminish the impact of agriculture on inland water and coastal water.

While conservation is certainly producing positive results in some areas, studies by government and others indicate that best management practices (BMPs), the catchall phrase covering innumerable conservation activities to control runoff of nutrients and pesticides from farmland, are often avoided by farmers, who find them difficult to adopt and unprofitable. It is therefore believed by many that the best the Farm Bill can do is develop programs that are so attractive in terms of financial and technical assistance that farmers would be unwise to not take advantage of them.

Enduring Problem

In many ways, the problems of nonpoint source pollution from agriculture identified by Congress in 1972 are essentially unchanged. That year, the Senate report to the CWA amendments stated:

“Agricultural runoff, animal wastes, soil erosion, fertilizers, pesticides and other farm chemicals that are part of

runoff ... are major contributors to the Nation's water pollution problems.”

Thirty-five years later, polluted stormwater runoff from agriculture is by far the major contributor to impairment of U.S. waters. According to EPA's 2002 National Assessment Database, which summarizes state water quality reports, agriculture is the primary source of impairment in 45 percent of assessed miles of rivers and streams.

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States similarly identified agriculture as accounting for 30 percent of impairment to the 47 percent of assessed lakes, ponds, and reservoirs as well as the dominant source of impairment for estuaries, primarily in the form of hypoxia (insufficient oxygen). For example, about 74 percent of the nitrate load in the Gulf of Mexico is estimated to be contributed by agriculture.

EPA emphasizes that 19 percent of rivers and stream miles, 37 percent of lakes and ponds, and 35 percent of bays and estuaries have been assessed. Among other things, this means that impairment of nonassessed waters may be lower since states often focus on waters with known or suspected problems.

What to Do About Ethanol

One emerging concern relates to increasing interest in the agricultural community to expanding corn crops to supply the ethanol industry. Ethanol is viewed as America's best alternative to petroleum and a key element to decreasing dependence on foreign oil. However, corn is also a “leaky” crop when it comes to nitrogen discharges.

Some scientists are afraid that any progress in the farming industry to reduce nonpoint source pollution through better implementation of BMPs will be offset by the rush to grow more corn for ethanol.

Recommendations Abound

There are no shortages of opinions on how the new bill can be written to improve the likelihood that America's 2 million farms and 947 million acres of farmland can be better managed to mitigate impacts on water quality. More money, using lessons learned and better technology, and improving cooperation among government agencies and stakeholders will probably improve the results of conservation being conducted by some U.S. farmers. Congressional hearings over the past months have been held to educate lawmakers and the public about the state of agricultural pollution and how a new farm bill can be written to ensure that progress in reducing pollution from farms will occur. Here are several ideas recently proposed at a hearing of the House Subcommittee on Water Resources and Environment.

Cooperation and Partnership

A repeated view at the hearing is that unnecessary energy is expended and results are less than favorable when agencies and stakeholders do not coordinate and combine efforts in the same watersheds.

The U.S. Department of Agriculture (USDA) and U.S. EPA are apparently good examples of how two agencies working toward the same goal can do a better job of communication and collaboration.

For example, EPA notes that it can complement USDA efforts because EPA funding can be used for activities that cannot be covered by USDA. Such activities include water quality monitoring, development of watershed plans that identify priority needs, and retention of a dedicated

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watershed coordinator. EPA believes the 2007 Farm Bill should somehow require or promote better agency coordination.

“EPA water quality programs and USDA conservation programs are most effective when we are able to work together in a concerted and coordinated manner to focus our resources in the same watersheds,” testified Craig Hooks, director of EPA’s Office of Wetlands, Oceans, and Watersheds. “The Administration’s proposal for the forthcoming reauthorization of the Farm Bill will help promote effective collaboration between water quality and agricultural agencies to solve local water quality problems.”

One hearing witness speaking for the city of Waco, Texas, and the American Water Works Association (AWWA) also noted that the 2002 bill created the Partnerships and Cooperation Program to encourage local or regional partnerships to solve natural resource challenges.

However, under the program, USDA has the option to use or not use up to 5 percent of conservation grant funds. AWWA’s proposal is that the 2007 bill *require* that USDA use up to 20 percent of “working lands incentives” (buffer strips, land retirement, etc.) for local or regional partnerships. Water utilities would be specifically listed as eligible to receive grants to lead local or regional partnerships under this program.

The 20 percent commitment was also supported by a spokesperson for Environmental Defense, who stated that grants should be provided to groups of farmers working together to meet local environmental challenges such as cleaning up impaired rivers and lakes.

More Money

A representative of Iowa farmers did not deny that farms contribute to water quality impairment. However, he did not agree that most farmers are not making use of BMPs.

“Most farmers believe they are already using many of the BMPs advocated by various agencies and

institutions,” testified Roger Wolf of the Iowa Soybean Association. “The fact of the matter is that Iowa farmers are using all available state and federal conservation financial assistance to help install practices, and if more funding was available, it would be used.”

Other speakers recommended increased funding for programs that specifically address agricultural nonpoint source pollution. These include:

- CWA’s Section 319 program, which funds BMPs through local conservation districts, government agencies, nonprofits, and universities.
- Environmental Quality Incentives Program, which offers financial and technical help to eligible participants to install or implement structural and management practices on eligible agricultural land.
- Conservation Security Program, which provides financial and technical assistance to promote the conservation and improvement of soil, water, air, energy, and plant and animal life.
- Conservation Reserve Program, which provides technical and financial assistance to address soil, water, and related natural resource concerns on farm land in an environmentally beneficial and cost-effective manner.

Again, it was recommended that benefits would be realized more quickly if groups of farmers, rather than individual farmers in the same watershed, are funded to conduct the same activities.

Water Quality Trading

Water quality trading programs allow facilities facing high pollutant control costs to meet their regulatory obligations by purchasing environmentally equivalent or superior pollutant reductions from another source at lower cost. In the most common type of trade, wastewater treatment plants meet their effluent discharge requirements by paying farmers to decrease their nutrient loadings.

The Water Environment Federation (WEF), a strong proponent of water

quality trading, recommends that the 2007 Farm Bill establish a water quality trading program that provides a mechanism for farmers to aggregate tradable credits on a watershed basis to sell in the marketplace. According to WEF, the program should include the following features:

- Support for qualified public and private entities to become aggregators and brokers for tradable credits,
- Financial and technical support to help farmers enter the market and defray transaction costs,
- Criteria for tradable water quality credits and performance verification measures,
- Ongoing research to provide best practice models and promote continual improvement, *and*
- A water quality trading advisory committee comprising farmers, municipal wastewater treatment agencies, industrial dischargers, and others to serve as advisors on policy and program development issues.

The Wild Card

Returning to ethanol, in the rush to profit, marginal lands that are now serving as pollutant buffers may be converted to corn production. Very few analysts viewing this situation are optimistic about the impact on water quality.

Since federal regulation of agricultural runoff is virtually nonexistent and state rules are inconsistent, Congress will need to exercise its imagination in developing programs that will both satisfy the national craving for ethanol and ensure that the nation’s waters are restored to their intended purposes, as required by the CWA.

The April 19, 2007, testimony to the Subcommittee on Water Resources and Environment on the impact of agriculture on water quality is available at <http://www.blr.com/keyword>. Type in **em688house** when prompted.

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On-Bill Financing

A Tool for Small Business

by Jane E. Obbagy

A number of programs have been created across the United States to help small business engage in energy efficiency to reduce costs and carbon emissions. This article notes several of those programs and examines in more detail on-bill financing, one incentive tool to help small business invest in and install energy-efficient equipment.

On-bill financing has been in place for several years, and the success stories are compelling. However, only a handful of utilities offer it to small business. As the success stories are more widely shared and more pressure is placed on government and the private sector to increase energy efficiency in light of the problems associated with climate change, this incentive program will most likely be further developed and adopted by an increasing number of utilities.

Small Business Energy Statistics

According to the president's *Small Business Agenda: Helping Entrepreneurs Prosper*, small businesses create two out of every three new jobs and account for nearly half of America's overall employment.

In a July 2006 survey by the National Small Business Association (NSBA), 93 percent of respondents said rising energy costs had affected their business (more than 40 percent indicated the impact has been significant). Moreover, 76 percent of respondents indicated that reducing energy costs would increase profitability.

Data from the U.S. Department of Energy's (DOE) Commercial Buildings Energy Survey indicate that if small businesses were to improve energy efficiency, the United States would be in a position to reduce carbon dioxide (CO₂) emissions by 93.8 to 140.7 million tons per year.

Energy-Efficiency Options

Small businesses interested in reducing their energy requirements should initiate the process by first acquiring the energy-efficient technological information relevant to their operations, deciding which of those options can be most practicably adopted, and

then determining which financing opportunities are within reach.

A variety of simple and inexpensive options are available to assist small businesses save money and energy. These include:

- Replacing incandescent lightbulbs with compact fluorescent lamps.
- Changing air filters regularly, especially during peak heating and cooling times.
- Using ceiling fans to increase air movement and comfort levels.
- Tuning-up heating, ventilating, and air-conditioning (HVAC) systems.
- Installing programmable thermostats to automate HVAC systems.

There are other more costly energy-efficient technologies that require financing for most small businesses. Energy-related technologies that provide the best opportunities to reduce costs and carbon emissions for commercial and residential activities are frequently related to *replacement*: lighting; office equipment; HVAC equipment and maintenance; refrigeration; and hot water.

According to some studies, HVAC systems account for more than one-third of the electric energy used in U.S. commercial buildings.

Energy-Efficiency Assistance Programs

A number of programs are available to assist small businesses in overcoming the financial obstacles associated with installing energy-efficient measures and understanding the options made available by government and nongovernment entities.

- EPA's Small Business Energy Star program provides technical support and information. By making resources available, small businesses have the opportunity to explore alternatives in energy-efficient products, services, financing, and tools to calculate the costs and payback periods of various products and updates.
- DOE's Rebuild America program is a network of community partnerships to help small business save money by saving energy. Rebuild America partners have access to energy-efficient products, services, and financing options.
- Utilities across the country have various programs in place. These include posting specific types of

energy savings information on utility websites, printing and distributing brochures outlining the types of assistance available and actions that could be taken to reduce energy costs, offering rebates, and conducting free energy reviews.

The Cost Dilemma

While there is a desire among small businesses to install energy-efficient equipment that offers significant cost savings, acquisition of upfront capital is the main barrier. In fact, according to the NSBA survey, the majority of small businesses indicated that lack of resources and cash flow were the primary obstacles to installing equipment or implementing energy-efficient measures to make their businesses more energy efficient.

Enter On-Bill Financing

On-bill financing is a utility-based method of providing financing through monthly power bills for small business energy-efficiency improvements. With on-bill financing, energy-efficiency projects are accomplished with no upfront capital required of the small business installing a project, and savings are "shared" until the loan is repaid. Although limited in use across the country, existing on-bill financing programs feature common components:

- No up-front out-of-pocket costs and 0 percent financing (sometimes in combination with a modest rebate).
- Loan repayment is based on estimated energy savings.
- Customers pay about the same per month as they did before participating; energy-efficient improvement savings are "shared" with the utility.
- Once improvements are paid off, all savings are reflected in lower monthly bills.

The on-bill financing concept may have originated when the New Hampshire Public Utilities Commission directed the New Hampshire Electric Cooperative and Public Service Company of New Hampshire to develop a pilot energy-efficient products program based on a concept known as Pay As You Save (PAYS). PAYS was an effort to overcome certain market barriers to consumer investment in energy-efficient measures.

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Utility Programs

Utilities who offer on-bill financing programs for small business include the following:

Company	Program Description
Southern California Gas Company— On-Bill Financing Program	The program targets (1) nonresidential customers (including governments); and (2) owners of multifamily units, who do not reside on premises. The program offers 0 percent financing from \$5,000 to \$50,000 for qualifying natural gas equipment: furnaces; heat recovery; incinerators; kilns; ovens; washers; tumblers; tunnels; and greenhouse heaters.
San Diego Gas and Electric—(SDG&E) On-Bill Financing Program	Under SDG&E's program, funds are to be used for the purchase and installation of qualifying energy-efficient measures (e.g., heating and air conditioning, refrigeration). The maximum length of a loan is 5 years. The minimum loan amount is \$5,000; the maximum loan amount is \$50,000. Loans are per meter, per customer. There is a 5-year or better payback based on projected annual energy savings.
United Illuminating— Small Business Energy Advantage	The program works in a step-by-step fashion starting with a no-obligation energy-use evaluation resulting in recommendations for energy savings actions. If action is taken (e.g., installing refrigeration controls that will reduce the run time for compressors, evaporator fans and door heaters on walk-in and reach-in coolers and freezers, or shut-offs for standalone vending machines), qualified customers have up to 30 months of interest-free financing. The monthly amount appears as a line item on the energy bill; however, it is offset by new monthly energy savings. After the loan is paid back, the bill is reduced by the energy savings amount.
Connecticut Light and Power (CL&P)— Small Business Energy Advantage	CL&P's program provides turnkey, energy-saving products and services. There are no up-front customer costs. CL&P will pay substantial incentives for retrofit lighting measures and other eligible energy-efficient measures. The program offers a 0 percent financing option to qualified customers.
National Grid—Small Business Services Program	The program targets lighting, water heating, and refrigeration systems. National Grid pays up to 75 percent-80 percent of the costs of the project. The loan portion of the investment is put on the customer's monthly electric bill. The customer either pays in one lump sum and the amount is discounted by 15 percent, or pays the remainder with up to 24 months' interest free financing.

energy-efficient equipment are meaningful and range from 25 percent to 35 percent. Here are a few examples:

- The owner of Edge of the Woods natural food store in New Haven, Connecticut, reduced his store's electric use by 98,000 kilowatt-hours (kWh) in the first 6 months after installing energy-efficient lighting and refrigeration controls under the Small Business Energy Advantage Program. The reduced energy consumption translated into electric bill savings of \$9,500.
- The Fabric Place in Cromwell, Connecticut, saved more than \$14,000 and 154,430 kWh annually by retrofitting 566 fixtures, installing occupancy sensors, and replacing incandescent lamps with compact fluorescents under CL&P's Small Business Energy Advantage Program.
- National Grid's Small Business Services Program has saved more than 2.5 million megawatt-hours and \$65,700 since 1989. For example, the Fall River Florist Supply in Fall River, Massachusetts, reported annual savings of \$4,584 through the installation of energy-efficient cooler controls that reduced energy usage by 4,341 kWh per month or 52,094 kWh per year.

From Global to Local

Energy is integral to all dimensions of business. Over the next few years there will be a substantial increase in the demand for electricity. This will likely be accompanied by rising energy prices, particularly if the cost of fossil fuel extraction continues to rise. Moreover, there is increasing public pressure on industry to respond to climate change predictions by reducing energy demand through the use of more energy-efficient systems in buildings and operational activities.

Response to changes in energy supply, demand, and use is taking many forms. Public and private funds are being allocated to advance energy efficiency on a global and regional basis. Carbon trading is on the rise, an indication that investors and the public accept the notion of a carbon-constrained world.

On-bill financing is yet another example of efforts being made to move energy efficiency into the mindset of everyday business thinking and decision making. The momentum for on-bill financing programs is growing. States such as Pennsylvania, Nevada, and Oregon have investigated the feasibility of sponsoring programs. Interest is also apparent at the federal level as seen in March 2007 testimony on on-bill financing before the Senate Committee on Small Business and Entrepreneurship.

For busy business managers, on-bill financing provides a relatively easy process to follow and implement. Based on cases seen so far, the gains are real and supportive of investment and policy trends to encourage energy efficiency. The recommendation here is to check with your utility on whether this option is available. If it is, it may help make energy efficiency a more realistic component of business success in our rapidly changing energy landscape.

Success Stories

For small business, cost savings related to reduced energy usage associated with purchasing and installing more

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Ethanol Production Gets Boost

NSR Permitting Waived for Some Plants

In a final rule clearly intended to encourage growth of the ethanol fuel industry, EPA has rewritten the definition of *major source* of emissions to exclude from certain air permitting requirements some plants that produce ethanol through natural fermentation.

According to EPA, the rule may play a role in furthering the nation's progress toward energy independence. As EPA puts it, expansion of the ethanol industry may be hampered by forcing companies to obtain new source review (NSR) preconstruction permits in areas that are in attainment with the national ambient air quality standards (NAAQS), specifically called prevention of significant deterioration (PSD) permits. The primary obstacles to building these plants would be the time it takes to obtain a PSD permit, and, in some cases, the potential costs that may be incurred from having to install emissions controls.

100 to 250 TPY

Under the rule, a new ethanol facility will no longer be classified as a chemical manufacturing facility, which is defined as *major source* if it has the potential-to-emit (PTE) 100 tons per year (tpy) of any pollutant for which the local area is in attainment with the NAAQS.

EPA has decided that ethanol production using natural fermentation is more closely related to food production, to which the 100 tpy threshold does not apply. Therefore, under the rule, any new ethanol facility with a PTE less than 250 tpy will be excluded from the definition of a major source and will not be required to obtain a PSD permit.

According to the Agency, the 100 tpy threshold would result in the construction of more numerous, less economically efficient smaller facilities. Therefore, by raising the threshold to 250 tpy in attainment areas, EPA believes it will encourage facility expansions and construction of larger, more economically efficient plants that

will emit less emissions per gallon of ethanol produced.

Increased Emissions Acceptable

At the same time, the Agency concedes that increases in NAAQS pollutants will occur, a trend with which the Agency appears comfortable. EPA states:

"We conclude that this rule is not likely to result in significant net environmental harm. Nonetheless, even if our consideration of potential environmental consequences understates potential negative environmental consequences, we believe that the potential for other environmental benefits and the desire to support our nation's energy policy objectives outweigh any potential negative environmental consequences that could potentially result from this rule."

Also, the final rule no longer requires facilities that use carbohydrate feedstocks, primarily corn, to produce ethanol to count fugitive emissions (i.e., nonstack emissions of NAAQS pollutants) when determining if they meet or exceed emissions thresholds that trigger requirements for PSD, nonattainment NSR, or Title V permits.

Importantly, the rule does not prohibit states with PSD permitting authority from retaining the 100 tpy threshold in attainment areas for new ethanol plant construction. In addition, any new construction in nonattainment areas would still be subject under federal law to the 100 tpy threshold.

Following its proposal, EPA's plan received resounding support from the ethanol and grain industries. Environmental groups protested that EPA developed the proposal in closed consultations with industry and that the Agency's position that ethanol plants are more like food processing facilities than chemical facilities is without "legal justification or analysis."

More Details

Here are several aspects of the new rule:

- Existing facilities located in attainment areas would be required to maintain their existing permit limits

and other permit requirements unless and until revised through a permitting procedure. New plants must also show that they will not cause or contribute to a violation of the NAAQS. These facilities must continue to count fugitive emissions in the threshold calculation.

- The rule does not alter consent decrees ethanol manufacturers signed with EPA regarding emissions limits. Those facilities must continue to abide by the terms of the decrees until their expiration date. Conditions for termination of the consent decrees are specified in each decree.
- With the exemption for fugitive emissions, EPA estimates that new facilities in attainment areas will be able to expand planned production. According to EPA, volatile organic compound (VOC) and/or carbon monoxide (CO) fugitives account for 13 percent of facilitywide VOC and/or CO emissions, adding up to an additional 33 tpy of VOC and/or CO.
- While the Agency concedes that VOC and/or CO emissions (and other increases in emissions for nitrogen oxides (NO_x) and particulate matter (PM₁₀)) will likely occur, EPA believes the effect of the rule on the environment will be limited given that other emissions requirements continue to apply. These requirements include new source performance standards (NSPS) (e.g., for boilers and steam generating units, grain handling and storage facilities, and leaks from VOC equipment) and HAPs (e.g., miscellaneous organics). NSPSs require application of the best demonstrated system of emissions reductions for affected facilities to control criteria pollutants, and national emissions standards for hazardous air pollutants require the application of maximum achievable control technology to control HAPs.
- The Agency decided that ethanol manufacturing can essentially be viewed as a food production process even though the ethanol process includes denaturing, or the addition of toxic solvents (typically gasoline) to render it unfit for human consumption. According to EPA, the

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“only difference” between the manufacture of ethanol for human consumption and ethanol as fuel is the final step, where “a small amount of denaturant (such as gasoline) is added to render the ethanol unfit for human consumption.”

- This position was vigorously refuted by the Natural Resources Defense Council (NRDC). NRDC says it is a “strong supporter of clean-burning biofuels, including high-blend ethanol fuel.” But NRDC complains, “EPA cannot seriously be contending that Congress would have considered gasoline-laden ethanol to be considered ‘food and kindred products’ rather than a chemical compound.” Among other things, NRDC says the fact that fuel-ethanol production involves the use of gasoline as a denaturant means that the facility

must store, handle, transport, and mix gasoline—all activities that involve emissions of toxic volatile chemicals (not seen at food-ethanol plants), including the chemical benzene. “Given the tight specifications that ethanol must meet to be used as a fuel, the production of fuel-ethanol is, in fact, a unique chemical process and EPA may not decline to treat it as such,” stated NRDC.

Effective Dates

The rule becomes effective 60 days after its publication in the *Federal Register*. However, states with authority to issue PSD, nonattainment NSR, and Title V permits must incorporate the new provisions into their programs before permits under the new regulations can be issued. According to EPA, some states and local or tribal authorities may be able to adopt these changes through a

change in interpretation of the term *chemical process plant* without the need to revise the state implementation plan (SIP) or the Title V program. In such cases, the changes will become effective when the permitting authority publicly announces that it has accepted these changes by interpretation.

However, for states that revise their SIPs or Title V programs to adopt these changes, the changes are not effective until EPA approves the SIP revision or Title V program as meeting all applicable requirements of the CAA.

The EPA’s final rule redefining certain ethanol facilities under the major emitting facility definition is available at <http://www.blr.com/keyword>. Type in **em688nsr** when prompted.

—William C. Schillaci
BSchillaci@blr.com

Most Misunderstood Regs

Exemptions to OSHA’s Chromium Standard

Facilities that have historically employed smart safety practices and good indoor air control equipment are finding they are exempt from OSHA’s standard for occupational exposure to hexavalent chromium (Cr(VI)) because they have *objective data* that demonstrate that releases of Cr(VI) at or above OSHA’s standard cannot occur under any expected conditions. OSHA’s standard carefully defines *objective data* to ensure that there is a sound technical basis and consistency behind claims that the exemption applies.

In February 2006 OSHA issued its final Cr(VI) standard at 0.5 micrograms per cubic meter of air as an 8-hour time-weighted average under “any expected conditions of use,” or any situation that can reasonably be foreseen by the employer.

The Cr(VI) occupational exposure standard potentially covers a very broad range of sectors, including many small and very small businesses. Small business traditionally

has difficulty complying with OSHA regulations to protect employees against exposure to hazardous chemicals. In a guidance document, OSHA listed 25 industry operations or processes associated with occupational exposure to Cr(VI). These include electroplating, painting, welding, printing and ink producers, chemical distributors, producers of glass products, textile dyeing, wood-working, solid waste incineration, and construction.

According to OSHA, *objective data* means “information, other than employee monitoring, that demonstrates the expected employee exposure to Cr(VI) associated with a particular product or material or a specific process, operation, or activity. Information that can serve as objective data includes, but is not limited to, air monitoring data from industrywide surveys; data collected by a trade association from its members; or calculations based on the composition or chemical and physical properties of a material.”

OSHA’s standard further requires that an accurate record be maintained

of all objective data used to comply with requirements. The record-keeping requirement also includes objective data used to substantiate an exemption from the rule.

The record must include, at a minimum, the following information:

- The chromium containing material in question,
- The source of the objective data,
- The testing protocol and results of testing or analysis of the material for the release of Cr(VI),
- A description of the process, operation, or activity and how the data support the determination, *and*
- Other data relevant to the process, operation, activity, material, or employee exposure.

The employer must also ensure that the objective data are maintained and made available in accordance with requirements in the standard.

OSHA’s final standard on occupational exposure to Cr(VI) is available at <http://www.blr.com/keyword>. Type in **em688osha** when prompted.

Washington Watch

Bush Orders CO₂ Rules for Autos

EPA and three other federal agencies were directed by President Bush to develop regulations by 2008 to implement the administration's Twenty In Ten plan.

Announced in the president's last State of the Union address, the goal of the plan is to cut U.S. gasoline consumption by 20 percent by 2017.

The president's directive, contained in an executive order, is also intended to comply with the April 2007 ruling by the U.S. Supreme Court, which informed EPA that CO₂, which is emitted by motor vehicles, is a pollutant regulated by the CAA. EPA had argued otherwise before the court. Unless EPA can present compelling evidence that CO₂ does not contribute to climate change, added the court, the Agency must also include the control of CO₂ in regulations governing emissions from vehicles.

The president instructed EPA to work with the Department of Transportation and DOE to complete the rulemaking. According to the executive order, the agencies must act "with respect to GHG emissions from motor vehicles, nonroad vehicles, and nonroad engines, in a manner consistent with sound science, analysis of benefits and costs, public safety, and economic growth."

President Bush also appealed to Congress to write legislation based on the Twenty In Ten plan.

"The steps I announced today are not a substitute for effective legislation," said the president. "So members of my Cabinet, as they begin the process toward new regulations, will work with the White House, to work with Congress, to pass the 20-in-10 bill."

In a statement, the American Petroleum Institute (API) expressed approval of the president's plan, particularly acknowledgment of the technical challenges ahead.

"API is pleased that the Bush administration has decided to undertake a full

rulemaking and comment approach that recognizes the technological challenges and significant infrastructure hurdles that must be resolved to significantly increase renewable and alternative fuels in the nation's fuel mix," said API.

The Sierra Club also looked favorably on the plan, with several reservations.

"[The president] already enjoys the clear authority to address these problems and he can and should act immediately to do so," said Carl Pope, Sierra Club executive director. "There is no reason to wait until the end of 2008 for federal agencies to act."

Environmentalists are also concerned that the administration has yet to approve plans by 15 states to impose regulations on emissions of CO₂ from motor vehicles. States that want to set vehicles emissions standards that are more stringent than federal standards must receive a waiver from EPA.

The president's executive order on emissions of CO₂ from motor vehicles is available at <http://www.blr.com/> keyword. Type in **em688bush** when prompted.

Audit Policy for New Owners

EPA is considering allowing "tailored incentives" under the federal audit policy to encourage new owners of regulated facilities to participate in the policy. The Agency's review is in its early stages. Should public comment on the idea be favorable, a pilot program will likely be conducted over 3 years to test the workability and advantages of changes.

Under the federal audit policy, facilities that self-discover, disclose, and correct environmental violations may be entitled to a waiver of the gravity-based portion of the federal penalty. The policy does not allow waiver of penalties based on the economic benefit a company accrued as a result of being out of compliance. In practice, EPA rarely levies penalties to account for economic benefit under the audit policy.

The success of the audit policy has been moderate. Since being launched in April 2000, about 3,000 entities have taken advantage of the program. EPA also reports that about half the disclosures have involved paperwork violations, meaning that only half have involved violations that when corrected, result in significant reductions in pollutant releases.

EPA believes that new owners may be particularly well situated and motivated to participate in the audit policy as part of an effort to start business with a clean slate. New owners also tend to have access to new infusions of capital that could enable the sort of improvements that yield significant benefit to the environment.

On the other hand, EPA recognizes that new owners may be hesitant to take possession of a new facility and start reporting violations of rules that they do not fully understand.

In terms of tailored incentives, EPA is considering also waiving the economic benefit portion of the penalty to help motivate new owners, who have not likely benefited from the violations of previous owners.

EPA is requesting comments on the possibility of special audit incentives for new facility owners until July 13, 2007.

Exemption for Biomass Cogenerators

In response to concerns raised by the pulp and paper industry, EPA is proposing to revise regulations to enable certain cogeneration units to be exempt from major air rules.

Cogeneration, or combined heat and power (CHP), is the simultaneous production of electricity and heat. The heat produced from the electricity-generating process (for example, from the exhaust systems of a gas turbine) is captured and utilized for both industrial and domestic purposes.

Because cogeneration achieves high energy efficiencies, EPA exempted

(continued on page 10)

some cogeneration units from compliance with the clean air interstate rule (CAIR), the clean air mercury rule (CAMR), and the model cap-and-trade rules for both these programs. (Proposed regulations for the CAMR model cap-and-trade rule have not been made final.)

However, according to EPA, to qualify for the exemptions under all four rules, cogeneration units must meet a uniform efficiency standard.

The provision is intended to prevent a loophole where a unit might send only a nominal or insignificant amount of thermal energy to a process and not achieve significant efficiency gains through cogeneration.

The pulp and paper industry protested that many cogeneration units in its sector, which burn significant amounts of biomass, would not be able to meet the efficiency standard. Biomass fuels such as wood and black liquor have a moisture content ranging from 40 percent to more than 60 percent.

In comparison, the moisture content of bituminous coal is less than 10 percent. To effectively achieve the required efficiency level, units relying primarily on biomass would need to substantially increase their use of coal.

The unintended effect would be to increase emissions resulting from fossil-fuel combustion, the same emissions that are avoided by burning biomass.

EPA's proposal would remedy the problem by requiring that only fossil fuel combusted in cogeneration units be included in the efficiency calculations needed to qualify for the exemptions.

Thus, large amounts of biomass could continue to be burned for cogeneration without disqualifying units for the regulatory exemptions.

EPA's proposed rule affecting the cogeneration exemption under federal air rules is available at <http://www.blr.com/keyword>. Type in **em688air** when prompted.

Ensuring Open Access to Pipelines

Complaint procedures available to shippers of oil and gas who believe they have been denied open and nondiscriminatory access to a pipeline on the OCS have been proposed by MMS.

The Outer Continental Shelf Lands Act (OCSLA) mandates that every permit, license, easement, or right-of-way granted to a pipeline company for transportation of oil and gas on or across the OCS must require that the pipeline "provide open and nondiscriminatory access to both owner and nonowner shippers." MMS's proposed rule establishes a complaint process and also provides MMS with the tools to ensure that pipeline companies provide access as required by OCSLA.

Among other items, the proposal would identify who is entitled to file a complaint that open access has been denied, the information a complaint must contain, the processing fee for filing (\$7,500 unless a fee waiver or reduction is granted), and how a complaint should be answered.

The proposal also includes provisions for alternative dispute resolution. According to MMS, the "light-handed approach" would involve establishing a hotline to receive allegations of denial of open and nondiscriminatory access, and allow shippers and transporters to informally resolve differences. MMS proposes that the hotline staff would informally seek information from a caller and the pipeline company and would attempt to resolve disputes without formal complaint proceedings.

The requirements for reporting a dispute using the hotline would be kept to a minimum, primarily covering location, pipeline, and a brief explanation of the reason(s) for believing that open access has been denied or that discrimination in access has occurred. In general, industry has been able to resolve on its own all but a very few of the type of complaints the proposal contemplates.

MMS's proposed rule establishing a process for oil and gas shippers to file

complaints that they have been denied open and nondiscriminatory access to OCS pipelines is available at <http://www.blr.com/keyword>. Type in **em687pipelines** when prompted.

Criminal Intent for Prescribed Fires

The U.S. Forest Service (USFS) is proposing to revise its prohibitions section at 36 CFR Part 261 to clarify that a criminal offense resulting from a prescribed fire that runs out of control near a national forest requires criminal intent. USFS also clarifies that for all other fires, criminal intent is not a required element of a criminal offense.

According to USFS, the distinction between failure to maintain control of a prescribed fire (requiring proof of criminal negligence) and another fire (requiring no proof of criminal intent) is necessary to support efforts to reduce hazardous vegetated fuel on properties adjacent to national forests. In implementing the National Fire Plan, USFS and Department of Interior land management agencies increased the amount of prescribed burning on lands under their control. The agencies have also encouraged adjacent landowners to develop integrated fire management plans, including the use of prescribed fire, for the restoration and protection of private lands.

If the prohibition for lighting and failing to maintain a prescribed fire were a strict liability offense (i.e., not requiring proof of criminal intent), adjacent landowners might be discouraged from using prescribed fire as a tool on their lands since prosecutors could cite them for a crime without having to prove landowners acted with criminal intent.

In the proposal, USFS also seeks to define prescribed fire as a "planned and intentionally lit fire allowed to burn within the requirements of federal or state laws, regulations, or permits."

USFS's proposed rule clarifying prohibitions for failing to maintain control of fires that damage national forests is available at <http://www.blr.com/keyword>. Type in **em687fires** when prompted.

From The States

MINNESOTA

E-Waste Recycling Now Mandatory

The state became the fifth in the nation to pass legislation requiring the recycling of electronic products.

E-waste targeted by the law includes computers, televisions, VCRs, stereos, copiers, and fax machines that can be reused, refurbished, or recycled.

One objective of the law is to ensure that electronics manufacturers share the responsibility for managing these materials with local governments and the public.

The legislation requires consumer electronics manufacturers to collect and recycle an amount of devices proportional to the weight of new devices sold during the previous year. The requirements call for collection of an amount of devices in the first year of the program equal to 60 percent of the weight of products sold during the previous year, and 80 percent in years thereafter. Devices collected outside the Twin Cities metro area would count for 1.5 times their actual weight.

In addition, manufacturers would have to pay a base fee of \$5,000 in the first year and \$2,500 in years after that for administrative and operating costs. Also, when poundage requirements are not met, companies must pay a variable fee ranging from 30 cents to 50 cents per pound for each pound below the target.

“This bill also provides strong incentives for private recycling companies to enter into the electronics recycling field as they partner with counties, cities and manufacturers to set up electronics recycling systems which will recycle old electronics properly and in a way that is easier for consumers,” said State Representative Brita Sailer, who sponsored the legislation.

California, Maine, Maryland, and Washington also have programs mandating recycling of e-waste.

NEW YORK

Mirant Closes One Unit

The end of a complex enforcement struggle between the Mirant utility company and the state was announced 4 years after the two parties appeared to settle their differences in a consent decree.

In 2003, the state charged that Orange and Rockland Utilities, which then owned the Lovett coal-fired power plant in Tompkins Cove, had violated federal NSR regulations by making major modifications to the plant without also installing the best available control technology. As the current owner, Mirant was responsible for installing the enhanced pollution controls, said the state.

In April 2003, Mirant agreed to install the new equipment to meet stringent pollutant reduction targets or else shut down the units producing the pollution.

However, Mirant postponed taking action for a number of reasons. Primarily, Mirant said that if it shut down the units the local tax assessment for the company should also be reduced to account for the lowered value of the plant. The Mirant plant pays about \$12 million in property taxes annually.

As the deadline for the plant closing approached, the parties struck an eleventh-hour deal in which Mirant agreed to:

- Shut down Lovett Unit 4 on May 7, 2007,
- Continue to operate Lovett Unit 5 until April 30, 2008,
- Provide \$1 million to fund energy conservation and efficiency projects for North Rockland County, *and*
- Not challenge tax assessments for 2007 and 2008 for the town and village of Haverstraw and the town of Stony Point. This provision is subject to court approval.

OHIO

Energy Efficiency in State Buildings

The state Department of Administrative Services (DAS) announced that it will use EPA's Energy Star Portfolio Manager to assess energy use in state and state-supported buildings.

The announcement follows a recent executive order issued by Governor Ted Strickland calling for a 15 percent energy reduction in state buildings by 2011.

Under the order, DAS must measure and track energy consumption in buildings both owned and leased by the state and calculate each organization's carbon footprint.

EPA's Portfolio Manager is a Web-based program used to measure and track building energy consumption.

The tool rates buildings in comparison to similar type buildings across the country on a 100-point scale. Buildings that score 75 or higher are eligible to earn the Energy Star label denoting superior energy performance and environmental leadership.

EPA recognizes organizations as Energy Star leaders if they achieve a portfolio-wide source energy reduction of 10 percent or more.

“We chose Portfolio Manager because of its simplicity, flexibility, and support,” said Jeff Westhoven, deputy director of DAS. “The state of Ohio has many different agencies and building types, and this software accommodates our diversity and complexity. We also appreciate the free technical support that will be quite valuable as we implement this system across the state.”

Information on EPA's Portfolio Manager is available at <http://www.epa.gov/energy/energy-star/energy-star-portfolio-manager/>. Type in **em688building** when prompted

Federal Register Digest

Part I: Federal Actions of General Applicability

AIR

AMBIENT AIR MONITORING

SO₂: Notice of the designation of a new equivalent method for monitoring sulfur dioxide (SO₂) in the ambient air. **Contact:** Elizabeth Hunike, 919-541-3737. **Reference:** 72 FR 26627 (5/10/07).

ENGINES

Nonroad spark-ignition engines: Proposed rule establishing emissions standards for new nonroad spark-ignition engines. **Contact:** Carol Connell, 734-214-4349. **Reference:** 72 FR 28097 (5/18/07).

PERFORMANCE STANDARDS

Petroleum refineries: Proposed rule amending the standards of performance for petroleum refineries. **Contact:** Robert B. Lucas, 919-541-0884. **Reference:** 72 FR 27177 (5/14/07).

PERMITS

NSR/PSD: Proposed rule revising emissions test rules for electric-generating units subject to new source review (NSR) and/or prevention of significant deterioration (PSD) permitting requirements. **Contact:** Janet McDonald, 919-541-1450. **Reference:** 72 FR 26201 (5/8/07).

TESTING

Performance test: Final rule allowing source owners or operators who are required to conduct initial and subsequent performance tests under the General Provisions for New Stationary Sources, National Emissions Standards for Hazardous Air Pollutants (NESHAP), and NESHAP for Source Categories to petition EPA for an extension in the event of circumstances beyond their control. **Contact:** Lula Melton, 919-541-2910. **Reference:** 72 FR 27437 (5/16/07).

TRIBAL LANDS

FIP: Final rule promulgating a source-specific Federal Implementation Plan (FIP) to regulate emissions from the Four Corners Power Plant on the Navajo Indian Reservation near Farmington, New Mexico. **Contact:** Rebecca Rosen, 415-947-4152. **Reference:** 72 FR 25698 (5/7/07).

EPCRA

REPORTING

Dioxin and dioxin-like compounds: Final rule revising the reporting requirements for the dioxin and dioxin-like compounds category. **Contact:** Daniel R. Bushman, 202-566-0743. **Reference:** 72 FR 26544 (5/10/07).

HUMAN HEALTH

PESTICIDES

Bacillus thuringiensis Vip3Aa19: Final rule establishing an extension of the temporary exemption from the requirement of a tolerance for residues of the *Bacillus thuringiensis Vip3Aa19* protein applied/used as a plant-incorporated protectant. **Contact:** Alan Reynolds, 703-605-0515. **Reference:** 72 FR 26300 (5/9/07).

Clethodim: Final rule establishing tolerances for combined residues of clethodim. **Contact:** Sidney Jackson, 703-305-7610. **Reference:** 72 FR 26310 (5/9/07).

Fenpyroximate: Final rule establishing a time-limited tolerance for combined residues of fenpyroximate. **Contact:** Stacey Groce, 703-305-2505. **Reference:** 72 FR 26317 (5/9/07).

Flufenacet: Final rule establishing pesticide tolerance for combined residues of flufenacet and its metabolites. **Contact:** Jim Tompkins, 703-305-5697. **Reference:** 72 FR 26304 (5/9/07).

Foramsulfuron: Final rule establishing an exemption from the requirement of a tolerance for residues of foramsulfuron. **Contact:** Shaja R. Brothers, 703-308-3194. **Reference:** 72 FR 26322 (5/9/07).

OSHA

WORKER PROTECTION

PPE: Notice of proposed rule revising the personal protective equipment (PPE) sections of general industry, shipyard employment, longshoring, and marine terminal standards. **Contact:** Kevin Ropp, 202-693-1999. **Reference:** 72 FR 27771 (5/17/07).

RCRA

USTS

Inspection grants: Notice of availability of the underground storage tank (UST) inspection grant guidelines in their entirety. **Contact:** Tim R. Smith, 703-603-7158. **Reference:** 72 FR 26359 (5/9/07).

State compliance: Notice of availability of the UST grant guidelines for state compliance reports in their entirety. **Contact:** Steven McNeely, 703-603-7164. **Reference:** 72 FR 26367 (5/9/07).

TSCA

GUIDANCE DOCUMENTS/REPORTS

Alternative methods: Notice of availability of the draft report "Comparison of the Alternative Asbestos Control Method and the NESHAP Method for Demolition of Asbestos-Containing Buildings." **Contact:** Stephen Watkins, 202-564-3744. **Reference:** 72 FR 26816 (5/11/07).

WATER

CLEAN WATER ACT

Recognition awards: Notice of availability of application and nomination information for the 2007 Clean Water Act Recognition Awards. **Contact:** William Hasselkus, 202-564-0664. **Reference:** 72 FR 26632 (5/10/07).

GUIDANCE DOCUMENTS/REPORTS

Toxicity data: Notice of availability of the Great Lakes Initiative Toxicity Data Clearinghouse to be used by states, tribes, and other interested parties. **Contact:** Brian Thompson, 312-353-6066. **Reference:** 72 FR 25756 (5/7/07).

OIL POLLUTION ACT

SPCC: Final rule extending the deadline to amend and implement Spill Prevention, Control, and Countermeasure (SPCC) Plans to July 1, 2009. **Contact:** Vanessa Rodriguez, 202-564-7913. **Reference:** 72 FR 27443 (5/16/07).

PERMITS

CAFOs: Proposed rule extending certain compliance dates in the National Pollutant Discharge Elimination System (NPDES) permitting requirements for concentrated animal feeding operations (CAFOs). **Contact:** Rebecca Roose, 202-564-0758. **Reference:** 72 FR 26582 (5/10/07).

Part II: Federal Actions Affecting Individual States

AIR—PERMIT PROGRAMS

ALASKA

Order on petition: Notice of final order denying a petition to object to a state operating permit issued to BP Exploration (Alaska), Inc.'s, Gathering Center, Prudhoe Bay, Alaska. **Contact:** Natasha Greaves, 206-553-7079. **Reference:** 72 FR 26813 (5/11/07).

AIR QUALITY

ARIZONA AND NEVADA

NESHAP delegation: Direct final rule amending 40 CFR 63 to reflect the current delegation status of NESHAP in Arizona and Nevada. **Contact:** Mae Wang, 415-947-4124. **Reference:** 72 FR 25980 (5/8/07).

IOWA, KANSAS, AND MISSOURI

OSWI: Direct final rule approving the other solid waste incineration (OSWI) negative declarations submitted by Iowa, Kansas, and Missouri. **Contact:** Heather Hamilton, 913-551-7039. **Reference:** 72 FR 25978 (5/8/07).

AIR QUALITY ATTAINMENT

INDIANA

Ozone: Proposed redesignation of the Indiana portion of the Louisville area (Clark and Floyd counties) to attainment for the national 8-hour ozone standard. **Contact:** Steven Rosenthal, 312-886-6052. **Reference:** 72 FR 26057 (5/8/07).

MICHIGAN

Ozone: Final rule approving the redesignation of the following areas to attainment for the 8-hour ozone standard: Flint, Grand Rapids, Kalamazoo-Battle Creek, Lansing-East Lansing, Muskegon, Benton Harbor, and Benzie, Cass, Huron, and Mason counties. **Contact:** Kathleen D'Agostino, 312-886-1767. **Reference:** 72 FR 27425 (5/16/07).

OHIO

Allen and Stark: Final rule approving the redesignation of Allen and Stark counties to attainment for the 8-hour ozone standard. **Contact:** Steve Marquardt, 312-353-3214. **Reference:** 72 FR 27647 (5/16/07).

Belmont: Final rule approving the redesignation of Belmont County to attainment for the 8-hour ozone standard. **Contact:** Steve Marquardt, 312-353-3214. **Reference:** 72 FR 27643 (5/16/07).

Jefferson: Final rule approving the redesignation of Jefferson County to attainment for the 8-hour ozone standard. **Contact:** Jennifer Dunn, 312-353-5899. **Reference:** 72 FR 27639 (5/16/07).

Washington: Final rule approving the redesignation of Washington County to attainment for the 8-hour ozone standard. **Contact:** Steve Marquardt, 312-353-3214. **Reference:** 72 FR 27651 (5/16/07).

PENNSYLVANIA

Ozone: Proposed redesignation of Tioga County to attainment for the national 8-hour ozone standard. **Contact:** Rose Quinto, 215-814-2182. **Reference:** 72 FR 26046 (5/8/07).

WEST VIRGINIA

Ozone: Final rule approving the redesignation of the Parkersburg, West Virginia, portion of the Parkersburg-Marietta, West Virginia-Ohio, area to attainment for the national 8-hour ozone standard. **Contact:** Amy Caprio, 215-814-2156. **Reference:** 72 FR 25967 (5/8/07).

AIR—STATE IMPLEMENTATION PLANS

ARIZONA

Maricopa County: Direct final rule approving a State Implementation Plan (SIP) revision concerning particulate matter (PM-10) emissions from open burning. **Contact:** Al Petersen, 415-947-4118. **Reference:** 72 FR 25973 (5/8/07).

CALIFORNIA

South Coast redesignation: Final rule granting California's request to redesignate the South Coast from nonattainment to attainment for the carbon monoxide standard. **Contact:** David Jesson, 415-972-3961. **Reference:** 72 FR 26718 (5/11/07).

DELAWARE

EGUs: Proposed rule approving a revision to the Delaware SIP concerning emissions limits of nitrogen oxide (NOx) and sulfur dioxide (SO₂) from large electric-generating units (EGUs). **Contact:** Rose Quinto, 215-814-2182. **Reference:** 72 FR 27787 (5/17/07).

IOWA

CAIR: Proposed approval of SIP revisions implementing the Clean Air Interstate Rule (CAIR) requirements in Iowa. **Contact:** Michael Jay, 913-551-7460. **Reference:** 72 FR 26040 (5/8/07).

NSR: Final rule approving revisions to the Iowa SIP concerning the federal NSR regulations. **Contact:** Heather Hamilton, 913-551-7039. **Reference:** 72 FR 27056 (5/14/07).

KENTUCKY

Boyd County redesignation: Proposed rule approving Kentucky's 8-hour ozone redesignation request for Boyd County, which is the Kentucky portion of the bistate Huntington-Ashland 8-hour ozone nonattainment area. **Contact:** Heidi LeSane, 404-562-9074. **Reference:** 72 FR 26759 (5/11/07).

MISSOURI

Interstate transport: Direct final rule approving SIP revisions prohibiting interstate transport of air pollutants. **Contact:** Heather Hamilton, 913-551-7039. **Reference:** 72 FR 25975 (5/8/07).

NEVADA

PM: Direct final rule approving SIP revisions concerning PM emissions from fugitive dust sources in Washoe County. **Contact:** Jerald S. Wamsley, 415-947-4111. **Reference:** 72 FR 25969 (5/8/07).

Visible emissions and PM: Final rule approving SIP revisions concerning visible emissions and PM. **Contact:** Julie A. Rose, 415-947-4126. **Reference:** 72 FR 25971 (5/8/07).

PENNSYLVANIA

Lancaster: Proposed rule approving the Pennsylvania Department of Environmental Protection request to redesignate the Lancaster 8-hour ozone nonattainment area to attainment. **Contact:** Ellen Wentworth, 215-814-2034. **Reference:** 72 FR 27265 (5/15/07).

WEST VIRGINIA

Weirton: Final rule approving a request by West Virginia to redesignate the Weirton, West Virginia, portion of the Steubenville-Weirton 8-hour ozone nonattainment area to attainment. **Contact:** Amy Caprio, 215-814-2156. **Reference:** 72 FR 27060 (5/14/07).

Wheeling: Final rule approving the West Virginia Department of Environmental Protection request to redesignate the West Virginia portion of the Wheeling, WV-OH, 8-hour ozone nonattainment area to attainment. **Contact:** Amy Caprio, 215-814-2156. **Reference:** 72 FR 27247 (5/15/07).

WATER

IDAHO

NPDES: Notice of availability of final NPDES general permit for groundwater remediation discharges. **Contact:** Robert Rau, 206-553-6285. **Reference:** 72 FR 26114 (5/8/07).

PUERTO RICO

Water quality: Proposed rule establishing water quality standards for Puerto Rico. **Contact:** Wayne Jackson, 212-637-3807. **Reference:** 72 FR 27789 (5/17/07).

News (continued from page 2)

and production plans (DPP). Both types of plans must be approved by MMS before exploration or production can commence on the OCS.

According to MMS, preexisting regulations required lessees to submit information on effects or potential effects of

exploration and production on aquatic life and the mitigation measures the lessees would undertake to protect the species. MMS needs these data to usher EP and DPP applications through required consultations with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (the Services). However, according to MMS, the preexisting regulations were

not clear regarding how the information and mitigation measures directly involved federally listed endangered species and marine mammals.

MMS believes that the explicit statements in the revised regs linking biological reports, monitoring, mitigation measures, and environmental

(continued on page 14)

impact analysis to endangered species and marine mammals as defined in the Endangered Species Act and the Marine Mammals Protection Act will expedite the movement of EPs and DPPs through consultations.

Following a consultation, the Services issued a biological opinion that includes “reasonable and prudent” measures and terms and conditions to protect species, which MMS must include in its permits for the exploration or production activity.

Despite MMS’s claim that the revisions impose no new requirements, industry has expressed uncertainty. The differences will likely remain unresolved until lessee applications begin to move through the approval process and the information submitted is reviewed by MMS and the Services.

MMS’s final rule on species information that must be submitted by OCS lessees is available at <http://www.blr.com/keyword>. Type in **em688species** when prompted.

Testing Plant-Incorporated Protectants

Companies that test plant-incorporated protectants (PIP) in the field must comply with federal rules to ensure that PIPs lacking a tolerance (maximum pesticide residue allowed on food) do not migrate into the food chain. In a new pesticide registration (PR) notice, EPA provides guidance to researchers on complying with the PIP regulations applicable to field tests.

A PIP is a pesticide intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of the PIP. PIP transfer can occur through cross-pollination with surrounding crops or inadvertent mixing of seeds or other plants or food/feed material after harvest.

Depending on the specific circumstances of a field trial (e.g., biology of the crop, location of the trial), the PR notice urges researchers to consult early with EPA to ensure that appropriate physical and/or biological controls are in place to restrict the flow of genetic material, including seeds, from field tests.

During this consultation, EPA says it may recommend confinement measures to ensure that residues of the tested PIPs do not enter the food supply.

EPA says it would consider field trials of less than 10 acres to have sufficient physical or biological controls if they are conducted under authorization of the Animal and Plant Health Inspection Service (APHIS) and are in compliance with APHIS requirements.

As part of the consultation, EPA may also recommend measures to destroy affected crops or prevent commingling of seeds or other plant material if the crop is to be held and used only for future research purposes.

In some cases, EPA says it may recommend that the developer seek a temporary tolerance or an experimental use permit.

If there is a reasonable expectation that residues of a PIP being tested could enter the food supply through any route, all crops affected by such tests must either be destroyed, kept from the food/feed supply while additional studies using the crop are conducted, or have a tolerance determination made for any size field test. It is the responsibility of the company and/or researcher to ensure that all studies comply with this regulatory requirement, states EPA.

EPA’s PR Notice 2007-2, *Guidance on Small-Scale Field Testing and Low-Level Presence in Food of PIPs*, is available at <http://www.blr.com/keyword>. Type in **em688pips** when prompted.

Implementing the PM_{2.5} NAAQS

Specific deadlines by which states must attain the NAAQS for fine particles (PM_{2.5}) and associated requirements have been spelled out in a new EPA rule.

On April 5, 2005, PM_{2.5} nonattainment designations became effective for 39 areas with a total population of 90 million. By April 5, 2008, each state with a nonattainment area must submit to EPA an attainment demonstration and adopted regulations ensuring that the area will attain the standards as expeditiously as practicable, but no later than 2015.

The final rule describes the framework and requirements that state, local, and tribal governments must meet in developing their PM_{2.5} implementation plans.

An implementation plan includes rules and programs to reduce emissions and a demonstration that the area will meet the air quality standard within the time provided in the CAA.

The plan must include supporting technical analyses and any adopted state regulations as needed. Implementation plans must be reviewed and approved by EPA.

The rule includes:

- Guidelines by which states must demonstrate that they have adopted all reasonably available control measures and reasonably available control technologies for nonattainment areas.
- Guidance on the required elements of an attainment demonstration, the recommended analytical process to identify the most expeditious attainment date for an area, and guidance on air quality modeling.
- Policies for evaluating PM_{2.5} emissions as well as the four main precursors to the formation of PM_{2.5} (sulfur dioxide, NO_x, ammonia, and VOC).

EPA says it believes that the implementation rule allows states to tailor attainment plans based on the specific facts and circumstances of each nonattainment area.

EPA’s final PM_{2.5} implementation rule is available at <http://www.blr.com/keyword>. Type in **em688pm** when prompted.

Climate Change and Submerged Pipelines

The repercussions of climate change in unexpected places is seen this time in a new study on the danger underwater pipelines pose to vessels.

Published by the Pipeline and Hazardous Materials Safety Administration (PHMSA), *Study on Burial of Submerged Pipelines* is the latest effort by PHMSA to assess risks associated with pipelines that may not be sufficiently buried in underwater sediments, particularly in waters less than 15 feet deep.

In 1990, following a number of accidents in which deaths occurred after vessels struck and ruptured underwater gas pipelines, the National Transportation Safety Board (NTSB) recommended that PHMSA take action to ensure that submerged pipelines are buried and maintained at a depth that is protective of vessel traffic.

PHMSA responded by issuing regulations requiring operators to identify and conduct periodic inspections of submerged pipelines in shallow waters of the Gulf of Mexico.

Also, PHMSA notes that pipeline operators are now required to develop integrity management programs to assess and ensure that pipelines do not present an unacceptable risk to high consequence areas, which include crossings of inland navigable waters throughout the nation.

However, NTSB commented that PHMSA did not address offshore submerged pipelines outside the Gulf of Mexico.

The current study found that since 1990 there have been 59 reported instances of vessels or vessel equipment striking a pipeline. Of those incidents, 58 were in the Gulf of Mexico and 1 was in other waters.

Also, the study cited data showing that 64 pipelines were reported to be uncovered or a hazard to navigation. All those pipelines are in the Gulf of Mexico.

For offshore and inland waters less than 15-feet deep outside the Gulf of Mexico area, the study found one incident and no reports of exposed pipelines.

Despite existing regulations and the low incidents outside the Gulf of Mexico, PHMSA acknowledges that possible changes in the offshore environment exacerbated by climate change may adversely affect the offshore pipeline infrastructure by causing shifts in weather patterns, water depth, or vessel traffic.

PHMSA says it is working with the Federal Energy Regulatory Commission, which approves the siting of liquefied natural gas pipelines, to ensure adequate protection of such lines in light of potential shifts in the offshore environment.

MACT Update

❖ Source Categories: Surface Coating of Automobiles and Light-Duty Trucks and Surface Coating of Plastic Parts and Products

Action: Final Amendments

Key Considerations: This action clarifies the interaction of regulations under the two source categories. The original MACTs for both categories were published in April 2004.

When EPA issued the regulations, it believed that no applications of top coats to plastic auto/light truck body parts was occurring at plastic or composites molding facilities.

The Agency subsequently learned that this type of application is occurring, potentially making plastic and composite molding facilities subject to the MACT for surface coating of automobiles and light-duty trucks.

The final action eliminates this possibility by amending the plastics MACT to state that the auto/light

truck MACT is not triggered as long as three conditions are met:

- All the body parts topcoated at the plastic/composites facility for use in new autos or light trucks are fabricated at that facility or at another plastics or composites molding facility with the same owner or operator.
- None of the new vehicles in which these body parts are used are assembled at the plastic or composites molding facility.
- The plastics or composites molding facility does not topcoat all the body parts for any single new automobile or new light-duty truck.

The amendments also clarify that screen printing done on plastic is subject to the printing and publishing MACT, not the plastic parts MACT.

Read the Final Rule: Go to <http://www.blr.com/keyword>. Type in **em688mact** when prompted.

PHMSA's *Study on Burial of Submerged Pipelines* is available at <http://www.blr.com/keyword>. Type in **em688phmsa** when prompted.

Preventing Pipeline Corrosion

PHMSA has also issued new regulations intended to reduce internal corrosion in gas transmission pipelines.

The final rule is, in fact, the third part of a three-part PHMSA response to NTSB recommendations following the August 2000 gas transmission explosion near Carlsbad, New Mexico, in which 12 people were killed.

In its first two actions, PHMSA responded to NTSB recommendations that operators be required to ensure that their internal corrosion control programs address water and other contaminants in the corrosion process and also that PHMSA inspections ensure adequate assessments of pipeline operator safety programs.

The intent of the third action is to require that new and replaced gas transmission pipelines be designed and constructed with features to mitigate internal corrosion. Unless an operator can show that it is impracticable or unnecessary to do so, each new transmission line or replacement of a line pipe, valve, fitting, or other line component must:

- Be configured to reduce the risk that liquids will collect in the line,
- Have effective liquid removal features whenever the configuration would allow liquids to collect, *and*
- Allow use of devices for monitoring internal corrosion at locations with significant potential for internal corrosion.

PHMSA's final rule on design and construction standards to reduce internal corrosion in gas transmission pipelines is available at <http://www.blr.com/keyword>. Type in **em688corrosion** when prompted.

Enforcement

Messy Citations for Clean Harbors

Clean Harbors Arizona, which operates a hazardous waste treatment, storage, and disposal facility, agreed to pay a \$45,000 penalty for hazardous waste violations at the company's south Phoenix facility.

The Arizona Department of Environmental Quality (ADEQ) alleges that in July 2005, inspectors found that hazardous waste was being mishandled at the facility. Specific violations included failure to conduct daily inspections of tanks, failure to transfer hazardous waste from a leaking or compromised container, failure to amend the contingency plan, and failure to minimize the possibility of fire, explosion, or release of hazardous waste.

According to ADEQ, two of these violations were repeat violations initially discovered during an inspection of the facility in 2004.

With operations in 36 states, six Canadian provinces, Mexico, and Puerto Rico, Clean Harbors is one of the nation's largest hazardous waste management and disposal firms. The company has 49 waste management facilities, including nine landfills, six incineration locations, and six wastewater treatment centers.

Company Found Lacking SPCC Plan

Peter Nugent Motor Company faces a penalty of up to \$157,500 for alleged violations of federal SPCC regulations at the company's Colebrook, New Hampshire, facility. The company sells vehicles, stores gasoline on-site, and also stores heating fuel for sale.

According to EPA's New England office, inspectors found that Nugent did not have an SPCC plan in place, as required by the federal program. Inspectors also reported that the company had not constructed adequate secondary containment around its aboveground storage tanks, truck off-loading area, and loading rack, leading to the risk of a spill to surface waters in the event of discharges during transfer operations or from equipment failure. EPA further asserts that Nugent failed to conduct integrity inspections on tanks that are more than 50 years old.

A spill at the tank farm could contaminate the Connecticut River, which is near the facility, states EPA. The facility is also located within the well radius of Colebrook's sole source public drinking water supply.

EPA claimed that following the inspection, Nugent did not respond to requests for additional information.

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Coming Up

- Constructing Green Buildings
- Climate Law and the 'Safety Valve'
- O&G Reporting for Endangered Species
- Most Misunderstood Regs: Observational Research Involving Pesticides