

# ENVIRONMENTAL NEWS & HIGHLIGHTS

March 2018

Presented by:

**EXCALIBUR GROUP, LLC**

*Environmental Consultants, Engineers & Liability Management Experts*



This latest EXCALIBUR bulletin presents several emerging developments and in-progress initiatives potentially significant to regulated industries and environmental projects regionally and nationally.

## **Bloomberg Report Shows Renewables Supply at All-Time High of 18% of U.S. Energy Generation**



Analysis by Bloomberg New Energy Finance, reported by Mintz Levin Cohn Ferris Glovsky and Popeo PC, finds that roughly 18% of U.S. energy generation is supplied by renewable sources. The details can be found in the 2018 edition of the [Sustainable Energy in America Factbook](#).

Bloomberg's dive into the country's energy mix and evaluation of how various renewable energy industries are faring. Increases in wind, solar, and hydro-power generation brought the overall renewable energy supply from 15% to 18% in just one year. The large jump was attributed to the 2016 construction boom and new clean energy installations that year, as well as the easing of drought conditions in the West, which boosted hydro-power generation. Still, other big picture trends are driving the adoption of renewables: corporations are increasingly demanding clean energy, signing new deals for 2.9 gigawatts worth of off-site renewable capacity in 2017; U.S. clean energy investment remained stable at \$57 billion, but was focused more on wind deployment and energy smart technologies; and there was a prevalence of climate-protecting and emissions-reducing commitments from sub-national and private sector actors. [Read more.](#)

## **USEPA Seeking Public Comment Ahead of Data Collection on RCRA Solid Waste Exclusions**

According to Anthony B. Cavender, on February 26 the USEPA published a Federal Register notice that USEPA intends to submit to OMB an information collection request regarding the operation of four final 2015 revisions to the definition of solid waste regarding in particular: (a) the “generator-controlled exclusion”; (b) the “verified recycler exclusion”; and (c) the manufacturing exclusion; and (d) the revised speculative accumulation requirement. USEPA reportedly seeks this information to help ensure that entities operating under these exclusions are held accountable to the applicable requirements, state inspectors can verify compliance, and hazardous secondary materials exports for recycling are actually handled as commodities abroad. Before submitting its request to OMB to collect this information, USEPA is soliciting public comments on its information gathering initiative. Comments should be submitted to EPA on or before April 27, 2018. [Read more.](#)



### **Proposed Revisions to PA’s UST Program Require Sump Testing & Redefine “Release” - Spike in Reports of New Releases Expected**



Pennsylvania’s Environmental Quality Board (EQB) unanimously approved the adoption of proposed changes to the Storage Tank and Spill Prevention Program regulations found at 25 Pa. Code Chapter 245. Many of the proposed changes were prompted by EPA’s July 15, 2015 revisions to the federal storage tank regulations at 40 CFR Part 280, which must be implemented at the state level (in authorized states) within three years. The Pennsylvania Department of Environmental Protection (PADEP) published the revised regulations for a 30-day public comment period in February of 2018. The proposed changes to Chapter 245 are intended to strengthen the Underground Storage Tank (UST) requirements by increasing the emphasis on properly operating and maintaining spill prevention, overfill prevention, and release detection equipment through increased inspection and testing. The new requirements that have been proposed for UST systems include: A visual inspection of spill prevention equipment and release detection every 30 days; A visual inspection of containment sumps and hand held release detection devices annually; Testing of spill prevention equipment every three years; Inspection of overfill prevention equipment every three years; Testing of containment sumps used for interstitial monitoring every three years; Annual testing of release detection equipment; Mandatory release detection for emergency generator USTs. Previously, emergency generator USTs were deferred from having to meet release detection requirements; and Prohibit flow restrictors (ball float valves) as an option for overfill prevention in new UST systems. Significantly, the proposed regulations also add additional clarifying language to the regulatory definition of the word “release”. The additional

language specifies that releases of regulated substances to containment structures are considered to pose an immediate threat of contamination of environmental media, and therefore are required to be reported except under specific circumstances. This proposed change, if adopted, is likely to result in substantially increased reporting of releases from the estimated 12,600 storage tank facilities in Pennsylvania. [Read more here.](#)

### **USEPA Mandated UST Sump Testing Complications**

The December 2017 edition of the L.U.S.T. Line publication, Bulletin #83 provides several articles related to the upcoming underground storage tank (UST) regulations listed in the 2015 revisions to the federal UST rules that take effect in October 2018. The lead article presents the challenges associated with testing containment sumps for UST systems. The 2015 rule amendments require both annual visual inspection and triannual testing of containment sumps that are part of a piping interstitial monitoring system that are subject to the



triannual testing requirements. Containment sumps include those installed below fuel dispensers, fill ports for USTs, submersible turbine pump (STP) sumps, and containment sumps at the submersible pump end of the double contained fuel conveyance piping. Testing is not required if the sump is double-walled and periodically monitored. The 2015 amendments defer to one of the following: i) manufacturer requirements; or ii) a code of practice developed by a nationally recognized organization; or iii) requirements determined by the implementing agency to be no less protective of human health and the environment than manufacturer or industry code of practice requirements. The 2015 rule specifically references *PEI RPI1200, Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities*. And describes that water is added to the sump and the water level is measured to the 1/16 of an inch using a measuring stick. An hour later the water level measurement is repeated. If the water level has changed by less than 1/8 of an inch, the test passes. Obvious concerns for UST owners is the volume of water required that could potentially become contaminated with petroleum; some equipment was not meant to be submerged; isolating dispenser sumps can be a challenge (e.g., more labor); STP sump penetrations must be sealed as well, the more sump penetration tested, the more likely the test will fail; and how does one find the leak. More information can be found [here.](#)

### **Small Business Advantages**

## SMALL BUSINESS **BIG IMPACT**

An article by Lyve Alexis Pleshette explores the many benefits of small business service providers and keys in on 8 key advantages: (1) Faster response time to customer needs; (2) Accessibility to handle client questions or concerns immediately, including off-hours, weekends and holidays; (3) Personalized touch with client contacts; (4) Expertise provided at reduced cost; (5) Lower overhead than big business passed along to clients in more reasonable prices; (6) More nimble and flexible without being overly bound by big business policies and procedures; (7) Innovative and quick to react to changing market conditions; (8) More responsive to customer feedback. More information can be found at the- [Article Link](#).

### **USEPA Proposes Adding Site to CERCLA NPL Solely Based on the Risk Posed by Vapor Intrusion**

In an article prepared by Beveridge & Diamond, it's described that the National Priorities List (NPL) is designed to identify the contaminated sites that pose the highest risk to human health or the environment so that EPA can focus its efforts on these sites. On January 18, 2018, EPA proposed to list a site based solely on the risk to human health from subsurface intrusion to indoor air, also known as vapor intrusion. The site is Rockwell International Wheel & Trim in Grenada, Missouri. The public comment period on this proposed listing closed on March 19, 2018. Sites were added to the NPL using



the Hazard Ranking System (HRS) and included risks to exposure to contaminated soil, surface water, groundwater, and ambient air. Effective May 2017, this list was expanded by adding the risk of exposure to indoor air impacted by subsurface intrusion. In the final rule adding subsurface intrusion to the HRS, EPA stated: "Without an evaluation of threats posed by subsurface intrusion contamination, the HRS is not a complete assessment because it omits a known pathway of human exposure to contamination." The Rockwell site was the location of a chrome plating facility from 1966 to the early 2000s and is currently the location of a metal stamping operation. Based on the site narrative, wastes containing trichloroethylene (TCE), toluene, and metals such as chrome were released. The HRS score for the Rockwell site is 50 based solely on subsurface intrusion, which is well above the threshold for listing of 28.5. The site's HRS score is based largely on the results of indoor air sampling that show TCE and other VOCs in indoor air in the manufacturing facility on-site, which is occupied by employees 24 hours a day, 7 days a week. While there are contaminants in other media, including the presence of VOCs in surface water at levels that caused the state agency to issue a no contact order, and VOCs and chromium

contamination in groundwater, these were not included in the HRS score. It is not clear to what extent the addition of vapor intrusion to the HRS score will increase the number of sites proposed for or added to the NPL. However, potentially responsible parties should anticipate that vapor intrusion issues will continue to play a more prominent role in all phases of the Superfund program from listing decisions to investigation and cleanup to site closure. [Read more here.](#)

### **EPA Nixes Decades-Old Policy on Toxic Air Pollution**

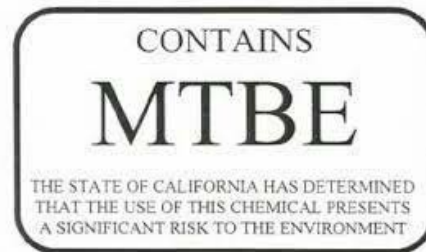


In an article written by Greenberg Traurig LLP, the U.S.EPA announced at the end of January 2018 in guidance ("Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act," Memorandum from William L. Wehrum, EPA (January 25, 2018)) that it was abandoning its "once-in-always-in" (OIAI) policy that branded stationary air pollution sources as "major sources" in perpetuity for purposes of compliance with the Clean Air Act's "maximum available control technology" (MACT) standards. Under the OIAI policy, set out in a 1995 EPA memorandum a stationary source with the potential to emit (PTE) hazardous air pollutants (HAPs) in excess of the major source threshold (10 tons per year (TPY) of a single HAP or 25 TPY of any combination of HAPs) was required to "comply permanently with the MACT standard," even if the source subsequently took enforceable steps to limit its PTE below major source thresholds. Under the new guidance, major sources that reduce their PTE below the threshold will become "area sources," subject to reduced permitting requirements and less stringent pollution controls. The agency and supporters of the changed policy claim it will remove the OIAI policy's intrinsic disincentive to reduce emissions. Critics charge, however, that the new approach will result in increased HAP emissions, with potential adverse effects on low-income or minority communities adjacent to the sources. Only time will tell what effect this change will have on toxic emissions. In the meantime, now may be a good time for operators of HAP sources to reassess their pollution controls and permit status in light of the new policy. [Read the article here.](#)

### **New Jersey Settles MTBE Pollution Cases for \$200M**

Remember MTBE? New Jersey Settles Natural Resource Damages Claims with three Oil Companies for \$200mm. Methyl Tertiary Butyl Ether (MTBE) was once widely used as an oxygenate additive to gasoline, replacing "leaded" gas to increase octane levels. Although not classified as a carcinogen, long term exposure studies have resulted in central nervous system (CNS) effects, respiratory irritation, and liver and kidney effects.

Its high-water solubility and noxious odor and taste has made it a notorious water supply contaminant. Hundreds of lawsuits are still pending for MTBE water contamination. Natural resource damages are recoverable under the Superfund federal law as well as most states' versions of hazardous substance release laws. PFOA and PFOS have replaced MTBE in the headlines and we will soon see the flood of Natural Resource Damage for those emerging contaminants as we have in Minnesota. Liability for hazardous substances release, including natural resource damage are covered claims in environmental insurance policies. [Read the entire paper here.](#)



### **Property/Casualty Insurance Underwriting Loss for 2017 Exceeds \$23 Billion**



The Insurance Journal reported that the U.S. property/casualty industry recorded a net underwriting loss of \$23.5 billion for year-end 2017, according to preliminary results from A.M. Best. That was \$18 billion bigger than the underwriting loss in 2016. For this Best's Special Report, "First Look – 2017 Property/Casualty Results," the analysts used data from companies' 2017 annual statutory statements received as of 3/9/18, representing an estimated 96% of the total P/C industry's net premiums written. The 2017 underwriting loss was mainly due to an estimated \$52.9 billion paid out for catastrophes, more than double what P/C insurers handled the previous year, according to the A.M. Best analysts. The industry's combined ratio for the year came in at 103.8, a three-point deterioration versus what it was in 2016. The 103.8 ratio was the worst of the last five years. A.M. Best estimates that the catastrophe losses account for 10.0 points on the P/C industry's combined ratio, up from an estimated 4.9 catastrophe points in the prior year. The \$52.9 billion estimate of 2017 P/C industry catastrophe losses is a 109.8% increase over 2016 and dwarfs A.M. Best's previous industry record for estimated insured losses of \$41.9 billion recorded in 2011. The figure for 2011 included losses from the Tohoku earthquake and subsequent tsunami in Japan, an active tornado season in the U.S. and flooding in Thailand. Net income for the P/C industry was \$40.8 billion, down 1.7% from 2016. [Read more here.](#)

## Mandatory TSCA Reporting Deadlines Approach for Manufacturers, Importers and Users of Chemicals

The Toxic Substances Control Act (TSCA) inventory reset process is now taking place as described by Sidley Austin LLP in their article. The reporting deadline for chemical manufacturers and importers is Feb. 7, 2018, and the deadline for all other companies that use chemicals is Oct. 5, 2018. Meeting these deadlines is important because a chemical will not be legal for use in the United States if it is not identified, reported (or subject to an exemption) and included in the “active” TSCA inventory. Right now, industry needs to comply with the first step in the process, known as the “inventory reset.” EPA maintains a list, known as the TSCA Inventory, of all chemicals that were either in existence when TSCA was enacted or approved since that time. If a chemical is not on that list, it cannot legally be used in the United States. EPA is in the midst of determining which chemicals on the inventory are still in active commerce, referred to as the inventory reset. Chemical manufacturers or importers need to report to EPA any chemical manufactured or imported during the 10-year period prior to June 21, 2016. The reporting was to be completed by Feb. 7, 2018. EPA would then compile a preliminary list and give chemical processors — defined as any other entity that uses chemicals — an opportunity to report chemicals not previously identified. That reporting period closes Oct. 5, 2018.



[Read the full article here.](#)



**EXCALIBUR** manages and mitigates environmental risks and liabilities with clients' business objectives in mind. **EXCALIBUR** develops better solutions more compatible with its customer's operations and budgets. Clients hire **EXCALIBUR** again and again because it is loyal, innovative, resourceful, and results-oriented. In our business, best ideas lead to client advocacy wins. Read what our customers say at [Customer Commendations](#). For more information on **Excalibur**, visit [www.excaliburgrpplc.com](http://www.excaliburgrpplc.com) or email us at [info@excaliburgrpplc.com](mailto:info@excaliburgrpplc.com).