

ENVIRONMENTAL NEWS & HIGHLIGHTS

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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 environmental projects regionally and nationally.

Environmental Insurance Industry Mergers & Acquisitions



In a year which is on track to be the busiest year for mergers and acquisition in the insurance industry and when insurers have spent more than \$2 trillion on global M&A deals, two large mergers in the insurance industry have recently been announced: International insurance broker Willis Group Holdings announced its agreement to merge with professional services group Towers Watson. The combined company, to be called Willis Towers Watson, is valued at \$18 billion and will bring in projected revenues of \$8.2 billion. According to officers of the firms, “*The rationale for the merger is powerful – at one stroke, the combination fast-tracks each company’s growth strategy and offers a truly compelling value proposition to our clients,*” and that the move will strengthen Willis’ broking and risk advisory capabilities by leveraging Towers Watson’s “*robust set of analytics and product solutions.*” The all-stock deal – under which Willis will own 50.1% of the company – is expected to close by the end of the year. ACE Ltd. announced it would pay \$28.3 billion to acquire its rival, Chubb Corp., in the largest-ever acquisition in the insurance industry expected to be completed in Q1 2016. ACE shareholders will now own 70% of the new company, which will operate under the Chubb name. According to Insurance Business America, the deal comes as property/casualty insurance companies face diminished interest income on investments. With Chubb, ACE will expand its high-net worth client base in the personal lines business through Chubb’s Masterpiece homeowners’ brand. ACE will also have access to Chubb’s large middle-market commercial lines business.

New Federal Rules for Underground Storage Tanks (USTs)

Although many states already have these requirements in place, new USEPA rules to prevent and detect releases from petroleum USTs were issued in June 2015. These new rules, first proposed in 2011, are the first major revision to the federal UST regulations since 1988. The new requirements: add requirements for secondary containment applicable to new and replaced tanks & piping; establish operator training requirements; add periodic operation & maintenance requirements; remove past deferrals for emergency generator tanks, airport hydrant systems, and field-constructed tanks; add new release prevention and detection technologies; update various codes of practice; and update the requirements for the approval of state programs that incorporate these new UST requirements. The new and strengthened federal rules are intended to ensure that all USTs across the U.S. (including USTs on tribal lands) meet the same release protection standards. The USEPA estimates the annual regulatory compliance costs of its final rule to be on the order of \$160M, but expects annual cost savings on the order of \$310M, primarily as a function of avoided cleanup costs. [Read More.](#)



Vapor Intrusion Assessment & Mitigation: New Technical Guides from USEPA



On June 11, 2015, the USEPA issued two new technical guides dealing with vapor intrusion assessment and mitigation at residential and non-residential contaminated sites. The first guide, *Technical Guide for Assessing & Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air*, is applicable to all sites under evaluation for vapor intrusion risks pursuant to federal land cleanup statutes (e.g., CERCLA and RCRA) by USEPA, other federal agencies, state and tribal governments, and brownfield grant recipients. The companion guide, *Technical Guide for Addressing Petroleum Vapor Intrusion at Leaking Underground Storage Tank Sites*, deals with vapor intrusion related to petroleum contamination released from underground storage tanks. Each guide offers the USEPA's recommendations for identifying, evaluating, and managing vapor intrusion along with flexible technical approaches that accommodate site-specific variability. An interesting aspect of the new guidance is the USEPA's assertion that it has "broad authority" to protect workers from indoor air contamination, and actually advises against using the permissible exposure limits (PELs) set by the Occupational Safety & Health Administration to protect workers from vapor intrusion. [Read More.](#)

USEPA Commits to Voluntary Compliance Auditing Programs

For some time now, the USEPA has maintained formal policies that waive the punitive portions of any enforcement penalties if the violations are: (1) discovered independently by a company through its own environmental management systems and audits; (2) voluntarily disclosed to the USEPA; and (3) corrected promptly. This policy (*Incentives for Self-Policing*) was first issued in April 2000 and was last updated by the Agency in 2008. On June 10, 2015, the USEPA reconfirmed its support for self-auditing and announced implementation changes designed to improve the reporting process. A centralized electronic reporting process, known as the "eDisclosure Portal," was adopted making use of electronic forms and pull-down menus to collect and organize all the information required to determine whether a voluntary disclosure qualifies for penalty mitigation and other incentives. Although the new electronic process offers important efficiencies, there are some tradeoffs in the form of less flexibility in addressing individual circumstances and less certainty in that the Agency, which used to issue a Notice of Determination after the disclosed information was reviewed, will now not rule on the electronically submitted disclosure report until and unless it contemplates an enforcement response vis-à-vis one or more of the disclosed matters. As a result, until there is a response from the Agency or until any statute of limitation expires, the disclosing company's exposure to the disclosed matter(s) remains unresolved and, depending on the circumstances, may need to be viewed (and appear on its books) as a material, contingent, and potential liability. [EPA Link](#)



USEPA Updates Policy on Supplemental Environmental Projects



Increasingly, settlement of federal environmental enforcement actions have entailed agreements by the regulated entities to implement Supplemental Environmental Projects (SEPs). The USEPA defines a SEP as "an environmentally beneficial project or activity that is not required by law, but that a defendant agrees to undertake as part of the settlement of an [administrative or judicial] enforcement action." Effectively, the defendant agrees to undertake a SEP to offset a portion of the monetary penalty that would have otherwise been imposed under the settlement and, in the process, confers an environmental benefit to the affected community. Until recently, USEPA policies and guidance concerning SEPs have not been consolidated in one place or necessarily consistent, which has tended to undermine wider use of SEPs. However, on March 10, 2015, the USEPA's Office of Enforcement and Compliance Assurance issued its *2015 Update to the 1998 USEPA Supplemental Environmental Projects Policy* consolidating and organizing all relevant existing SEP guidance in one resource. Moreover, the *SEP Policy Update* explains and clarifies the Agency's policy on SEPs in ways that should help encourage greater use of this enforcement settlement option. [EPA Link.](#)

Final Clean Water Act Rule on Waters of the United States

On May 27, 2015, the USEPA and the US Army Corps of Engineers finalized the Clean Water Act rule that redefines the geographic scope of “waters of the United States,” which is expected to impact land development across the country. The geographic scope of “waters of the United States” establishes the jurisdictional limits of the Corps of Engineers’ permitting authority under Section 404 of the Clean Water Act. As such, the rule potentially affects land development projects of any type, transportation projects, utility construction, or dredge and fill projects, and also bears upon the National Pollution Discharge Elimination System permitting program and the oil spill prevention and response program under Section 311 of the Clean Water Act. The rule does not create any new permitting requirements for agriculture and all previous exceptions and exclusions are maintained. For example, groundwater, shallow subsurface flows, rills, gullies, and erosional features remain unregulated under this rule. The two agencies claim the rule clarifies the limits of federal permitting jurisdiction, defines the term “tributary,” and establishes that “ditches” are not waters of the United States if they are not constructed in streams and only flow when it rains. Challenges to the rule are expected. [Read More.](#)



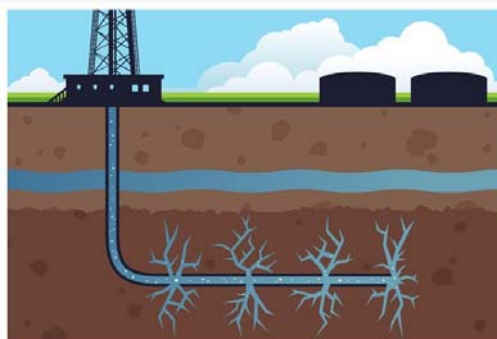
On Threshold of Potential Revisions to the Toxic Chemical Substances Act (TSCA)



The federal law governing the use of chemicals in commerce—the Toxic Substances Control Act or TSCA—was passed in 1976 and is believed to be long overdue for an overhaul. Attempts to revisit the TSCA legislation in 1994, 2005, 2008, 2010, and 2011 were not successful. In March 2014, a new bill was introduced in the Senate known as the Frank R. Lautenberg Chemical Safety for the 21st Century Act. If enacted, the Act will require safety testing for new chemicals; allow the U.S. Environmental Protection Agency (USEPA) more purview in reviewing the health and safety of chemicals; require chemicals in commerce to meet tougher standards to protect vulnerable sub-populations; and will require that the USEPA designate high-priority chemicals for focused evaluation. If passed in its current form, the bill would grandfather in existing and often tougher state laws where they exist, but the federal law would take precedent. [Read More.](#)

USEPA Releases Draft Assessment on Potential Impacts to Drinking Water from Hydraulic Fracturing Activities

On June 6, 2015, the USEPA released its draft assessment on the potential impacts of hydraulic fracturing activities on drinking water resources in the U.S. The assessment uncovered a few specific instances where well integrity and/or wastewater management practices related to hydraulic fracturing activities appear to have impacted drinking water resources, but the frequency of such occurrences was quite small in comparison to the large number of hydraulically fractured wells in service. Nevertheless, potential vulnerabilities in the water lifecycle are identified that represent some prospect for impacting drinking water resources. [Read More.](#)



Revised ISO 14001 Standard Nearing Completion



Revisions to the international environmental management standard (ISO 14001) are one step closer to being completed. Recently, the working group with responsibility for revising ISO 14001 finalized the technical requirements of the new standard, which will contain significant changes in comparison to the 2004 iteration. Areas of emphasis include continued improvement in environmental performance, adopting a life cycle perspective, and extending control and influence through supply chains. The new standard is expected to be published in September 2015, and those organizations accredited under the old ISO 14001 standard will have three years to transition to the new standard. [ISO Link](#).

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