

# 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.

## Declining Federal Spending on Federal Superfund Program Sites



A report from the U.S. Government Accountability Office shows that annual federal spending on the USEPA's Superfund Program declined from approximately \$2 billion in 1999 to just over \$1.1 billion in 2013. Cleanup spending on non-federal National Priorities List (NPL) sites also declined from \$0.7 billion to \$0.4 billion over the same period. Even though the number of non-federal NPL sites increased from 1,054 to 1,158 sites over this period (an average of approximately 1,100 sites per year), the number of remedial action project completions

declined by approximately 37 percent, and the number of construction completions declined by approximately 84 percent. [Complete Report.](#)

## Insurance Policy Renewals Must Offer Terms Similar to the Original Deal

In its decision *Indian Harbor Ins. Co. v. F&M Equipment Ltd.*, the 3rd US Circuit Court of Appeals ruled that if an insurance policy contains an offer for renewal, the language and terms in the renewed policy must be effectively the same as in the original. The ruling in this case applies only in Pennsylvania, New Jersey, and Delaware—the states in the jurisdiction of the 3rd US Circuit Court of Appeals. [Full Article.](#)



### Growth in the Bio-Based Solvents Market



According to a new report from Allied Market Research, the global market for the use of bio-based solvents is expected to reach \$13B (3.3 million tons) by 2020. Applications of these bio-based solvents in painting and coating applications is expected to account for the largest share of the market, but the greatest compound annual growth is expected in the industrial and domestic cleaners market. Market growth is seen to be driven by volatility in crude oil prices, lower volatile organic compound content, lesser

environmental impacts, and rising environmental awareness among consumers. [Read More.](#)

### USEPA Sets Biofuel Volumes for 2016

The USEPA has set biofuel volume requirements under the Renewable Fuel Standard (RFS) program for 2014, 2015, and 2016. These requirements will increase the volume of renewable fuels that must be blended into gasoline sold in the U.S. (e.g., 18 billion gallons in 2016), but represents a step back from the 22.25 billion gallons of renewable fuel that had been set for 2016 under the 2007 rule.



The biotechnology industry has said the new biofuel volume requirements do not go far enough, while organizations like the American Petroleum Institute maintain the new volume requirements mandate unrealistic increases in the sale of even higher ethanol fuel blends although most cars cannot use these higher ethanol fuel blends. [Read More.](#)

### Overhaul of the Toxic Substances Control Act Passes Senate



The nearly 40-year old Toxic Substances Control Act (TSCA) is the last of the earliest major federal environmental laws to be subject to an overhaul. Recently, the U.S. Senate passed the *Frank R. Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act* aimed at

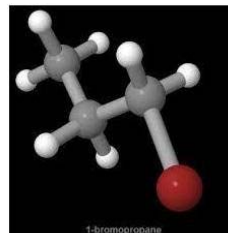
initiating that overhaul against a backdrop of varying restrictions imposed at the state level and in the private marketplace. The new bill gives the USEPA more authority and funding to regulate chemicals, and provides the chemicals industry with new protections against state-level regulations. Now, the Senate bill goes to a conference committee to be reconciled with the chemical safety

reform bill passed by the U.S. House of Representatives earlier this year. The two bills differ significantly in the prioritization of chemicals, with the Senate bill requiring the USEPA to designate “high priority” and “low priority” chemicals. The Senate bill is also more definitive in how it directs the USEPA’s future actions with respect to chemical safety regulation, e.g., ten high priority and ten low priority chemicals are to be designated within 180 days of enactment, and the USEPA must complete or have in process 20 high priority chemical risk assessments within 3 years. [Senate Bill Text](#)

### 1-Bromopropane Added to Toxics Release Inventory (TRI) Chemical List Reporting

A new USEPA rule requires facilities using 1-bromopropane to add that chemical to their annual TRI reporting by 7/1/17. This chemical is used as a solvent, degreaser, adhesive, and chemical intermediate in pharmaceuticals, pesticides, flavors, and fragrances.

[Read More.](#)



### Proposed Rules Seek to Update the Federal Hazardous Waste Generator Regulations



On 9/25/15, the USEPA published proposed rules intended to increase the flexibility and efficiency of the federal regulations pertaining to generators of regulated hazardous wastes (the “Hazardous Waste Generator Improvements Rule”). In addition to a significant reorganization of the federal hazardous waste generator regulations, the proposed rule: (a) clarifies the definitions of the various generator categories; (b) dictates when and how often a

generator must perform and document its determinations as to whether a given waste qualifies as hazardous; (c) allows a conditionally-exempt small-quantity generator (which will now be called very small-quantity generators) to consolidate waste at a large-quantity generator facility under the same control; (d) permitting a generator’s temporary exceedance of the monthly waste quantity threshold to not bump that generator up to complying with the requirements of the next most stringent generator category; (e) imposes re-notification requirements on small- and large-quantity generators; (f) modifies various aspects of the requirements applicable to satellite and central waste accumulation areas; (g) augments the emergency planning and preparedness procedures; and (h) distinguishes between the enforcement implications of violating requirements applicable to all generator categories versus violating requirements that must be met to qualify for a waste storage permitting requirement. [Proposed Improvements](#)

### Scientific Advisory Board (SAB) Panel Considers Recommending that the USEPA Revise its Draft Fracking Impacts Study

The SAB panel reviewing the USEPA's draft analysis of the potential impacts of hydraulic fracturing on drinking water is considering whether to recommend the draft report's "no evidence of widespread systemic impacts" conclusion be revised. The panel has suggested that the USEPA did not previously define what would constitute "widespread" and "systemic" impacts, did not establish its methodology upon which such a determination would be made, or specify what data would be required to make that determination. Some panel members have also suggested there wasn't sufficient data upon which to base any conclusion. [Complete Article.](#)



### Oil & Gas Companies in Pennsylvania Able to Use Treated Mine Water for Hydraulic Fracking



A bill signed into law in Pennsylvania allows permitted coal mine wastewater discharges that meet regulatory standards to be used by oil & gas companies as fracking water as an alternative to the use of fresh water. The law defines when the liability for treated water from an active or closed coal mine is passed from the coal company to the oil and gas company that makes use of that treated water in a fracturing operation. The law protects coal

companies from responsibility for the costs and damages associated with using the treated mine water, and the oil and gas companies from responsibility to treat the mine drainage before it is received. [Senate Bill Details.](#)

### USEPA and U.S. Army Corps of Engineers Resume Use of Prior "Waters of the United States" Definition for Now

On 6/29/15, the U.S. Army Corps of Engineers (USACE) and the USEPA issued a new rule and a new definition of "waters of the United States" (WOTUS) aimed at resolving an intricate and complicated history of defining the scope of federal permitting jurisdiction under the Clean Water Act. However, before the new rule could take effect, it was suspended nationwide by a ruling from the 6<sup>th</sup>



U.S. Circuit Court of Appeals. Some observers contended the new WOTUS rule would have created greater, not less uncertainty about the WOTUS definition. Not only did the new rule add the concept of "adjacent waters" to the prior "significant nexus" term applied to determine Section 404 permitting jurisdiction after a 2006 U.S. Supreme Court decision, it added the concept of "neighboring waters" in determining which areas are "adjacent" to WOTUS and, therefore, where permits would be required. The new rule also established distance criteria of 1,500 feet and 4,000 feet as a basis for determining "significant nexus," and also extended jurisdiction to isolated waters such as vernal pools in California and Prairie potholes. Consequently, under the new



rule, physical breaks in a drainage would not necessarily limit federal Clean Water Act jurisdiction under Section 404. In the joint memorandum issued on 11/16/15, the USEPA and USACOE indicated that in light of the stay, the prior WOTUS definition adopted back in 1984 and the “significant nexus” guidance documents issued after the 2006 Supreme Court decision (*Rapanos v. United States*) would continue to be applied. [Read More.](#)

### Cross-State Air Pollution Targeted in New USEPA Rule



The USEPA has issued proposed updates to its Cross-State Air Pollution Rule to address interstate air quality impacts for achieving compliance with the ozone air quality standards. Under the Clean Air Act’s “good neighbor” provision, states or, if necessary, the USEPA must address interstate transport of air pollution that affects a downwind state’s ability to attain and maintain compliance with air quality standards. Usually, it is up to the state to control the effects of its interstate emissions through its State Implementation Plan (SIP), but the USEPA is required to act—through the development of a Federal Implementation Plan (FIP)—if a given state fails to submit an approvable SIP. Under the proposed rule, states can elect to control their emission sources under a FIP rather than develop a SIP, but the rule also indicates FIPs would be adopted in any case where a state does not submit an approvable SIP. A particular focus of the new rule is seeking nitrogen oxide emissions from power plants in 23 states in the eastern U.S., which are believed to contribute to ozone air quality problems in the downwind states. [EPA Summary.](#)

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