

# ENVIRONMENTAL NEWS & HIGHLIGHTS

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Presented by:  
**EXCALIBUR GROUP, LLC**

*Environmental Consultants, Engineers & Liability Management Experts*  
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This latest EXCALIBUR bulletin presents several emerging developments and in-progress initiatives potentially significant to regulated industries and environmental projects regionally and nationally.

### **North Carolina Intends to Test Residents For GenX Compounds Near Chemical Plant**



North Carolina and federal health officials were quoted by Insurance Journal that they seek to test whether neighbors of a chemical company are carrying little-understood man-made GenX industrial chemical compounds in their bodies. North Carolina's Department of Health and Human Services said Tuesday it is working with the U.S. Centers for Disease Control and Prevention and Bladen and Cumberland county health departments to test dozens of volunteers living around a Chemours Co. plant south of Fayetteville. Officials plan to check the blood and urine of up to 30 residents for GenX and 16 related chemicals. The state health agency says the results will allow comparisons to levels detected in people elsewhere but won't clarify whether GenX and related chemicals have specific health effects. Test results will be shared with the adults and children participating. Read more [here](#).

### **USEPA Declines Expanding SPCC Plan Requirements Beyond Oil to Also Include Hazardous Substances**

The EPA in the June 25th Federal Register notice states that it will establish no additional regulatory requirements under the Clean Water Act 311(j)(1)(C) for hazardous substances discharge prevention (See 83 Fed. Reg. 29499). The JD

Supra article articulated that the June 19th determination reverses a decision by EPA during the Obama Administration to initiate a rulemaking to impose Spill Prevention, Countermeasure and Control ("SPCC") requirements for hazardous

**Oil Spill Prevention  
SPCC Plans**

substances. By way of background, the Clean Water Act previously required that by 1972 (and from time to time thereafter) regulations should be issued consistent with maritime safety and with maritime navigation laws. EPA had in place for decades, SPCC regulations addressing oil and petroleum products. However, the agency has never promulgated final rules applicable to “hazardous substances.” The SPCC requirements for oil and petroleum storage address facilities that have the capacity to store a certain volume in aboveground storage tanks (“ASTs”) (1,320 gallons) or underground storage tanks (42,000 gallons). Various requirements have been promulgated to ensure the containment of the oil such as preparation of what are referred to as “SPCC Plans” along with maintenance, facility security, training, review by a registered Professional Engineer, etc. Such plans must be periodically updated. EPA decided not to promulgate regulations for hazardous substances. The agency states that this decision is based on a review of existing regulations and an analysis of the frequency and impacts of reported Clean Water Act hazardous substances discharges. Read the article [here](#).

### **USEPA Denies Extension Request for UST Rule Revisions**



Legislative members and the trade associations argued that portions of the 2015 UST Rule Revisions, including extensive UST equipment testing requirements (e.g., containment sumps), imposed financial or strategic burdens on fuel retailers, particularly small businesses, by requiring excessive labor and infrastructure investments over a short period of time reported by JD Supra. A potential shortage of relevant contractors to implement the requirements was also noted. The Petroleum Marketers Association of America’s (PMAA’s) July 27, 2018 memorandum states that EPA denied the request for a three-year compliance deadline extension. The federal agency is stated to have denied the request because of its belief that it had already provided significant cost saving concessions and flexibility. Such concessions/flexibility were stated to include an initial three-year compliance deadline during the original rulemaking process. EPA is stated to have further contended that an additional three-year extension would generate lawsuits by a number of environmental groups and state UST program authorities. Further, it said a deadline extension would create an unfair playing field for UST owners because it would only apply to the 12 states without program authority that are bound by federal regulations. EPA is stated to have indicated that while it will not extend the compliance deadline, it will delay its enforcement in the event there is a shortage of contractors or equipment. The federal agency is also stated to have indicated that enforcement discretion would be given to those UST owners showing a “good faith effort” to comply by the deadline but are unable to do so due to equipment or contractor shortage. Evidence of a good faith effort is stated to include having a contract for compliance work in place by the October 13, 2018, deadline. Read more [here](#).

## NJ Files First Lawsuits in 10 Years for Natural Resources Damages

In the announcement by the NJ, Office of Attorney General, calling it a “new day” for environmental enforcement in New Jersey, the filing of six separate lawsuits aimed at recovering damages for the harm caused by pollution to properties, groundwater, and waterways across the state, and to recover the costs the State has paid in conducting environmental clean-ups. In three of the six cases, the State of New Jersey is seeking payment for damages to the State’s natural resources, known as “Natural Resource Damage” cases, or NRDs. Until today, the State had not initiated a new NRD case since 2008. These cases, which in the past have been worth millions of dollars, involve claims for the loss to the value and use of natural resources, including surface and ground water, sediments, and wetlands. And these cases involve efforts by the State of New Jersey to recover taxpayer money that was spent addressing contaminants and are known as “cost recovery cases.” These lawsuits seek compensation from the parties responsible for pollution at each site. Read more [here](#).



## EPA Rolls Back Coal Ash Handling Restrictions



In mid-July, the EPA reduced Obama-era restrictions on how states and industry officials handle coal ash, the Washington Post reported. This is the first rule signed by acting administrator Andrew Wheeler, who took over following Scott Pruitt’s resignation on July 5. Under the new rule, states can suspend groundwater monitoring in certain cases and state officials can certify whether utilities’ coal ash facilities meet adequate standards, according to the Washington Post. Although the EPA has responsibility for regulating coal ash sites, EPA signaled last year that they wanted to give states more flexibility on handling them. A second rule related to coal ash recycling is expected to come from the EPA next year, according to the Post. Read the article [here](#).

## Parts Per Trillion Drinking Water Standards Established in New Jersey for PFAS

The New Jersey Department of Environmental Protection (“NJDEP”) “adopted amendments to the New Jersey Safe Drinking Water Act (SDWA) rules to establish a maximum contaminant level (MCL) for perfluorononanoic acid (PFNA) of 0.013 micrograms per liter (ug/l, or 13 parts per trillion). The rule requires public water systems to begin monitoring for PFNA during the first quarter of 2019. In their article, Manko Gold Katcher & Fox noted that industry comments in opposition to the rule questioned both the science behind the conclusion that PFNA poses a human health risk, and the MCL adopted to address any such risk, potentially setting up a challenge to the new rule. Meanwhile, in 2017, NJDEP’s Site Remediation Program launched a webpage dedicated to “Contaminants of Emerging Concern” which requires LSRPs and parties conducting site-wide remediations to evaluate emerging contaminants generally and PFAS in particular. PFNA was added to New Jersey’s Ground Water Quality Standards (“GWQS”) list and New Jersey’s list of Hazardous Substances in January of 2018. On September 4, NJDEP increased the GWQS for PFNA from 0.01 ug/l to 0.013 ug/l to conform with the new MCL for PFNA. Other states, including Pennsylvania, are looking to EPA to provide guidance on the regulation of PFAS. Read more [here](#).



## Vapor Intrusion Risks Cause Unprecedented NPL Listing



On September 13, 2018, the USEPA took the final, unprecedented step of adding a contaminated site to the Superfund National Priorities List (“NPL”) based solely on the risk to human health posed by indoor air vapor intrusion at the site. Jenner & Block’s article, the newly designated site, which consists of the former Rockwell International Wheel & Trim facility and its surrounding 76 acres (the “Site”), is located in Grenada, Mississippi. The Site has an extensive history beginning in 1966, the Rockwell facility operated as a wheel cover manufacturing and chrome plating plant. After chrome plating operations ceased in 2001, the facility was used for metal stamping until approximately 2007. Historical operations resulted in multiple releases of trichloroethene, toluene, and hexavalent chromium into the surrounding soil and adjacent wetland. While EPA’s decision to list the Site based on risks from indoor air contamination is unprecedented, the move is not all together surprising, given EPA’s recent rulemaking actions. In May 2017, EPA passed a final rule expanding the list of factors the agency is allowed to consider when designating NPL sites to specifically include risks to human health from impacted indoor air. EPA’s designation of the Site should alert potentially responsible parties that vapor intrusion issues may result in an increased chance of a site becoming listed on the NPL. In addition, parties relying on engineering controls to maintain compliant indoor air vapor levels should note the potential

for EPA to deem such actions insufficient as long-term site remedies. Read the entire article [here](#).

### **EPA Defines Unacceptable Exclusions & SIR for UST Insurance Policies**

Underground storage tank (UST) insurance provides a critical role in providing financial responsibility (FR) for UST owners and operators in many states and Indian Country. To ensure owners are buying and retaining appropriate coverage for their UST systems, it is important that they understand and be attentive to the underlying language, terms, and conditions of their UST insurance policies. 1) Some exclusions, such as non-payment for claims to pay a state fine for non-compliance meet the federal FR requirements of 40 CFR 280. Exclusions for payments for voluntary tank removals and voluntary tank site investigations do not meet the FR requirements. There is no standard voluntary tank removal or voluntary site investigation insurance language. The definitions of voluntary tank removal and voluntary investigation are unique to each insurance carrier. If a tank removal or tank site investigation reveals contamination from an UST release, the UST insurance policy must **not** exclude insurance coverage for the cleanup of the release or any third-party damages that may result. If such an exclusion is part of the insurance policy, the insurance policy does not meet the federal FR requirements of 40 CFR 280, Subpart H. 2) The federal UST regulation requires insurance providers pay first dollar coverage for deductibles without waiting for the insured to pay that amount. The insurance provider may then collect the deductible from the owner. The reason is so corrective action is not delayed. However, since self-insured retentions are not part of the policy coverage limits, they are not covered by the protection of the first dollar coverage provision. 3) The federal UST regulation at 40 CFR 280, Subpart H requires owners or operators to keep a signed certificate of insurance. This certificate, when signed by the insurance provider, verifies that the insurance policy provides the required first dollar coverage and extended reporting period. However, the certificate of insurance form in 40 CFR 280 does not show whether the policy is subject to a self-insured retention or any exclusions. Owners must have the actual policy or declarations statement to determine if the policy is subject to payment of a self-insured retention or contains any exclusions. Owners and operators must verify that an insurance policy used to comply with FR requirements contains only acceptable exclusions. An EPA or state inspector may require an owner to submit the policy and document acceptable financial responsibility. USEPA recommends their web site for additional information



[here](#).



## Study Finds Small Business Employees Are Happier


SMALL  
BUSINESS **BIG**  
**IMPACT**

A recent study released by Robert Half Intl. shines light on some of the characteristics that are pervasive among the happiest companies. For starters, the survey found that the happiest workplaces were small businesses with less than 10 employees. The unhappiest workplaces, on the other hand, had at least 10,000 employees. The study found that happy organizations share seven common traits including: 1. Employees take pride in their organization; 2. Everyone is treated with respect; 3. Compensation is competitive and fair; 4. Employees can work autonomously; 5. Work is interesting and meaningful; 6. Employees get along with one another; and 7. There are ample opportunities for career development. How does your company stack up? Read the entire [article here](#).

## PFAS Now Found in Drinking Water Supply Causing New Michigan State of Emergency

The Environmental Leader reported in their August 1, 2018 edition Michigan declared a state of emergency for communities whose drinking water is contaminated with perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA); these commercial chemicals were once widely used but are no longer manufactured in the US. The state's Department of Environmental Quality (DEQ) discovered the contamination on July 26 in Parchment, a city in southwestern Michigan, according to Chemical & Engineering News. Parchment is draining and flushing its water supply pipes with water from nearby Kalamazoo. In the meantime, residents are being provided with bottled drinking water. Contamination was also discovered in Cooper Township. Tests on water from the two communities showed levels of PFOS more than 20 times higher than EPA recommendation, writes the Detroit Metro Times. Kalamazoo County is one of 34 sites that have been identified as contaminated since a state-wide initiative to test all of the state's public drinking water supplies was launched in March. Other areas of contamination include Ann Arbor and the Battle Creek area, according to CNN. The EPA says PFOS and PFOAs have been linked to health issues like cancer, liver and kidney problems, and immune system disruptions. Michigan is exploring a suit against 3M for compensation for past clean-ups of the chemicals. The state is also suing Wolverine World Wide, a Michigan shoe manufacturer that was found to have disposed of tannery wastes containing the chemicals. Read [more here](#).





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