



# New York Water Environment Association, Inc.

*The Water Quality Management Professionals*

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## Recent Environmental Legislative, Regulatory and Judicial Developments<sup>1</sup>

May 2007 through October 25, 2007

### I. NEW YORK

#### A. Legislation

##### 1. 2007 Session

#### **New York Senate Approves Great Lakes Protection Plan**

The Great Lakes-St. Lawrence River Basin Water Compact, a plan to protect the world's largest source of fresh water from outsiders, was passed by the New York State Senate. The St. Lawrence River drainage basin extends south to include all of Lake George and parts of Saratoga, Warren and Washington counties, including South Bay near Whitehall. The compact aims to join seven U.S. states and two Canadian provinces. So far only New York and Minnesota have passed the act -- Pennsylvania, Ohio, Michigan, Illinois, Indiana and Wisconsin are still deliberating. For the compact to take effect, all eight states and Congress must approve it by 2011.

**Source:** Eco Politics Daily, 07/19/07

#### **Governor Vetoes Measure to Prohibit Siting of Hazardous Waste Landfills**

Gov. Eliot Spitzer (D) vetoed a bill Aug. 15 that would have prohibited the siting of commercial hazardous waste landfills in the Great Lakes region of the state, saying the bill was too broad and could have had an unintended negative impact on the environment (Veto No. 123).

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The NYWEA GAC thanks Nixon Peabody LLP for its on-going support of this newsletter. It also thanks WEF's Government Affairs Staff, The Business Council of New York and NACWA for much of the information in this newsletter. If you are not already a member of one or all of these organizations, visit their web pages and consider becoming a member. The WEF web page can be reached through the NYWEA web page at <http://www.nywea.org/index.htm>; the NACWA web page is at [www.nacwa.org](http://www.nacwa.org) and TBCNY is at [bcnys.org](http://bcnys.org). NYWEA gratefully acknowledges the following sources of the information contained in this newsletter: BNA Environmental Reporter, EPA Administrative Law Reporter, Water On-Line, Pollution On-Line and Environmental Protection E-News: these are excellent resources for the environmental manager, attorney or consultant.

Spitzer said the hazardous waste bill (A. 248) was overly broad because the Great Lakes ecosystem covers some 40 percent of the state and 24 counties. He also said the bill would have driven up the costs of disposal and, therefore, limited some remedial efforts.

## **B. Regulation and Policy**

### **1. Water**

#### **CT Governor Declares All of State's Waters In Long Island Sound 'No Discharge Area'**

Connecticut Gov. M. Jodi Rell (R) July 26 declared all of Connecticut's waters in Long Island Sound as a "no discharge area," making it illegal for boaters to discharge sewage from their vessels anywhere in Connecticut's portion of the sound. Rell's decision makes Connecticut the third state in the nation to designate its entire coastline a no discharge area, along with Rhode Island and New Hampshire. Other no discharge areas include Lake Champlain in New York.

**Source:** Environment Reporter; BNA, Inc. 8/3/07; *Further information about Connecticut's no discharge area program is available at <http://www.ct.gov/dep/cwp/view.asp?a=2705&q=323816>.*

#### **EPA Extends Waiver for New York City To Avoid Filtration Over Next 10 Years**

Doubling the five-year term of previous extensions, the Environmental Protection Agency July 30 granted New York City's Catskill-Delaware system a 10-year waiver of a federal rule requiring filtration of drinking water from surface sources. A revised city watershed protection plan calls for a 10-year commitment of \$300 million for land acquisition in the Catskill-Delaware watershed, which supplies 90 percent of the city water supply and is the world's largest unfiltered water system. The other 10 percent is supplied by the city's Croton system, which is the subject of a court order requiring construction of a filtration plant.

**Source:** Environment Reporter, BNA, Inc. 8/3/07; *For more information from EPA, go to <http://www.epa.gov/Region2/water/nycshed>.*

### **2. Non-Water**

#### **New York Clean Air Interstate Rule (CAIR)**

The federal Clean Air Interstate Rule (CAIR) established emission budgets for nitrogen oxides (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>) for each participating state, together with an optional emission trading program targeted at power plants. The New York State Environmental Board recently approved new rules implementing the CAIR in New York: (1) Part 243, Ozone Season Trading Program; (2) Part 244, CAIR NO<sub>x</sub> Annual Trading Program; and (3) Part 245, CAIR SO<sub>2</sub> Trading Program. In each case, the rules cap emissions of the regulated pollutant and assign allowances to each affected facility in accordance with a specified formula. Facilities must hold allowances equal to their emissions or face stringent penalties. They may achieve compliance either by reducing their own emissions or buying allowances. In a related development, EPA recently proposed to approve a revision to New York's state implementation plan (SIP) incorporating DEC's new CAIR rules. Incorporating the state's rules into the SIP will allow EPA to withdraw federal rules implementing the CAIR program in New York.

## **Nonattainment New Source Review (NSR) and Prevention of Significant Deterioration (PSD) Regulations (6 NYCRR Part 231)**

DEC has repropose new PSD/nonattainment NSR regulations. The regulations incorporate controversial revisions to the federal rules governing PSD/nonattainment NSR applicability adopted in December 2002. DEC's revised draft regulations are stricter than the federal regulations in various respects:

- ***Baseline actual emissions:*** The federal regulations allow facilities to select any 24-month period in the 10 years prior to project commencement when establishing baseline emissions. DEC has proposed to reduce the baseline period from 10 to 5 years. DEC also has dropped a provision that allows facilities to use a different baseline period for each contaminant.
- ***Routine maintenance, repair and replacement:*** Like the federal regulations, the state regulations exclude RMRR from the definition of modification. However, the proposed state regulations include a strict definition of RMRR that classifies only very minor projects as RMRR.
- ***Significant net emission increase:*** Under DEC's proposed regulations, facilities with a net emission increase below the applicable thresholds must obtain a permit that limits projected actual emissions and comply with emission reduction credit and monitoring, reporting and recordkeeping requirements.
- ***Changes that do not result in significant net emission increase:*** Facilities undertaking modifications that are not projected to result in significant emission increases must maintain records and comply with any other applicable requirements. In a new twist, DEC also proposed to require facilities undertaking certain modifications that are not projected to result in significant emission increases to keep records, perform monitoring and submit annual reports.

The changes will affect newly constructed major sources or major sources that undertake modifications (i.e., physical or operational changes that result in emission increases). Comments must be submitted to DEC by **November 26, 2007**. A public hearing has been scheduled at DEC Headquarters in Albany on **November 15, 2007** at 2:00 p.m. (Additional hearings will be held in Avon and Long Island City.)

**Source:** Information about the proposed rule can found on DEC's website at: [www.dec.ny.gov/regulations/37748.html](http://www.dec.ny.gov/regulations/37748.html).

### **Five-Year Inspection of Plastic Tanks**

DEC issued Program Policy DER-16, *Five-Year Inspection of Plastic Tanks*, which provides guidance on the evaluation of homogeneous plastic tank systems used to store chemicals regulated under New York's Chemical Bulk Storage (CBS) program. The policy was developed to satisfy the five-year inspection requirements in 6 NYCRR § 598.7(d) until an acceptable consensus code or practice for inspecting plastic tanks is developed. The chart includes recommended inspection requirements that differ depending on tank size (less than 5,000 gallons, 5,000 to 10,000 gallons, or 10,000 gallons or more) and whether the tank meets impermeable barrier and remote impounding requirements. It includes specific guidance on inspection preparation, conducting external (visual and physical) and internal inspections, performing various tests, tank failure indicators, and recordkeeping requirements. It also includes

tank installation guidance and a sample visual inspection checklist. The policy is potentially relevant to facilities storing chemicals listed in 6 NYCRR Part 597 in homogeneous plastic aboveground tanks with a capacity of 185 gallons or greater. The policy took effect September 11, 2007.

**Source:** The policy can be found on DEC's website at: [www.dec.ny.gov/regulations/38102.html](http://www.dec.ny.gov/regulations/38102.html).

### **C. Enforcement and Judicial Decisions**

#### **\$5 Million Landfill New York Cleanup Agreement**

Nearly \$5 million has been obtained from 77 corporations, governments, and other entities that disposed of hazardous waste at a municipal landfill in Orange County in upstate New York. The settlement covering the Orange County Landfill, a state superfund site, was one of New York's largest cost recoveries for hazardous contamination of a municipal landfill, the state officials said. The funds will be used for hazardous waste cleanup at other contaminated sites, they added. After the Department of Environmental Conservation (DEC) placed the site on the state Registry of Inactive Hazardous Waste Sites, the county entered into an agreement to investigate the site, cap it, and vent gases from the property, the officials said. The cleanup was completed in the late 1990s, and the county continues to monitor the site for additional pollution impacts, they said. The proposed settlement was filed in the U.S. District Court for the Southern District of New York. The settling defendants included Amerada Hess Corp., the U.S. Military Academy at West Point, Waste Management of New York LLC, International Paper Co., Browning-Ferris Industries, Georgia-Pacific Corp., and 41 municipalities.

**Source:** Toxics Law Reporter, BNA, Inc. 5/24/07 citing (*New York v. Amerada Hess*, S.D.N.Y., No. 07-715, *proposed consent decree filed 5/17/07*).

#### **General Electric Co. Agrees to Reduce PCB Exposure in Hudson River Flood Plain**

The Environmental Protection Agency reached an agreement with General Electric Co. that requires the company to reduce exposure to polychlorinated biphenyls in four flood plain areas along the Upper Hudson River where elevated PCB levels could harm public health and the environment. The work is being conducted on about a dozen public and private properties in the towns of Fort Edward, Northumberland, and Greenwich, and in the village of Schuylerville, N.Y. The agency said it would oversee GE's work, and the agreement requires GE to reimburse EPA for the oversight costs. Under the administrative settlement, GE will be required to install warning signs, cover soils to prevent exposure to PCBs, and periodically monitor the areas and maintain them. The flood plain measures are separate from the plan to dredge the Hudson River that currently is being implemented under a consent agreement with EPA.

**Source:** Environment Reporter, BNA, Inc. 7/20/07; *In re Hudson River PCBs Superfund Site*, EPA, No. 02-2007-2008, 7/11/08.

#### **New York Sues ExxonMobil for Discharges Of Oil, Other Pollutants Into Newtown Creek**

New York filed a lawsuit against ExxonMobil Corp., claiming the company is liable for discharging more oil at a New York facility than was spilled during the 1989 Exxon Valdez accident. Filed in the U.S. District Court for the Eastern District of New York, the complaint

claimed that ExxonMobil, a subsidiary, and their predecessors "spilled, leaked, released, discharged or otherwise discarded at least seventeen million gallons of various petroleum products and other non-petroleum pollutants from certain oil refining and storage facilities in Greenpoint, Brooklyn, New York, into the surrounding environment," including into the surface water of Newtown Creek. The state wants ExxonMobil to clean up the spill, including the soils, subsurface soils, groundwater, wetlands, and the vapors in the soil and air. In its complaint, the state also is seeking the cleanup of Newtown Creek, as well as "all available penalties and natural resource damages" from Exxon arising from the alleged contamination. The state is suing ExxonMobil under the Resource Conservation and Recovery Act; Clean Water Act; Comprehensive Environmental Response, Compensation, and Liability Act; Oil Pollution Act; the state Navigation Law; and the state's Environmental Conservation Law, according to the complaint. The attorney general's office said that ExxonMobil spilled at least 17 million gallons of oil at or near Greenpoint.

**Source:** Environment Reporter, BMA, Inc. 7/20/07; (*New York v. ExxonMobil Corp.*, E.D.N.Y., No. 07-civ-2902, filed 7/17/07).

## **II. FEDERAL**

### **A. Legislation**

#### **Legislation Prepared for House, Senate To Assert U.S. Jurisdiction Over All Waters**

Sen. Russ Feingold (D-Wis.) and Reps. James Oberstar (D-Minn.) and Vernon Ehlers (R-Mich.) plan to introduce companion bills in the Senate and the House of Representatives that would "restore" Clean Water Act jurisdiction over all waters of the United States, including geographically isolated wetlands, instead of only "navigable waters." Sponsors of the Clean Water Authority Restoration Act say recent Supreme Court rulings on wetlands jurisdiction have "confused" 30 years of settled precedent over which waters are covered under the Clean Water Act. The bill would adopt the regulatory definition of "waters of the United States" in Environmental Protection Agency rules at 40 C.F.R. 122.2 and U.S. Army Corps of Engineers rules at 33 C.F.R. 328.3. It would delete the word "navigable" from the Clean Water Act to clarify that the law is principally used to protect the nation's water from pollution, not to maintain navigability, according to the sponsors. It also would assert constitutional authority over the nation's waters, including "isolated waters," headwater streams, small rivers, ponds, lakes, and wetlands. This latter provision is one which many other organizations are very concerned about.

**Source:** BNA, Inc., Environment Reporter 05/11/07

#### **Funding Boosts For EPA**

The House Appropriations Committee on June 7 adopted a \$27.6 billion spending measure that includes \$8.1 billion for EPA, \$361 million more than appropriated in 2007 and \$887 million above the president's fiscal year 2008 request. The Interior and Environment bill, which includes funding for EPA, the Department of the Interior, and related agencies, is \$1.9 billion above the president's fiscal year 2008 request. The Department of the Interior would receive \$10.2 billion, \$257 million above fiscal year 2007 and \$450 million above the president's request. Within EPA's budget, the bill includes \$1.1 billion for the Clean Water State Revolving Fund - \$437

million above the president's FY 2008 request and \$41 million above the 2007 appropriation. EPA's budget also includes \$140 million for sewer and water grants to local communities, which was not funded in 2007 and is roughly half of the 2006 level. Technical assistance for rural drinking water and waste water treatment plants would be funded at \$16 million; \$174 million would go toward cleaning up nationally significant waters like the Chesapeake Bay, the Great Lakes, Long Island Sound, and Puget Sound; and the National Estuary Program would receive \$17 million. A summary of the bill is available at <http://appropriations.house.gov/>.

**Source:** BNA, Inc., Environment Reporter 05/11/07

## **B. Judicial And Enforcement**

### **1. Water**

#### **EPA Releases Enforcement Focuses Through 2010 – Wet Weather Tops the Water Priorities**

EPA's enforcement priority for water is to ensuring compliance with Clean Water Act requirements by addressing four environmental challenges that are exacerbated by wet weather. Wet weather discharges contain bacteria, pathogens and other pollutants that can cause illnesses in humans and lead to water quality impairment, including beach and shellfish bed closures and harm our nation's water resources.

These four environmental challenges are:

- Concentrated Animal Feeding Operations
- Combined Sewer Overflows
- Sanitary Sewer Overflows
- Storm Water

**Source:** <http://www.epa.gov/compliance/data/planning/priorities/cwa.html>

#### **EPA Implementation Of Municipal Stormwater Permitting Has Been Slow**

A new report from the Government Accountability Office finds the Environmental Protection Agency has made slow progress implementing stormwater pollution requirements for urban communities. According to the report, issued May 31, nearly 11 percent of municipal storm sewer systems have not received permits as of December 2006--even though the federal application deadline for large communities occurred in 1993 and deadline for small communities was in 2003. The report said one case in particular significantly delayed the permit process. In 2003, the U.S. Court of Appeals for the Ninth Circuit ruled that small municipalities covered under the Phase II stormwater rule must make their compliance plans publicly available with an opportunity for comment (*Environmental Defense Center v. EPA*, 9th Cir., 57 ERC 1039 (2003)). GAO found other factors, such as budget constraints, also have contributed to state and federal delays in issuing stormwater permits.

**Source:** Environment Reporter, BNA, Inc., 6/8/07. *The report, Clean Water: Further Implementation and Better Cost Data Needed to Determine Impact of EPA's Storm Water Program on Communities (GAO-07-479), is available at <http://www.gao.gov/new.items/d07479.pdf>.*

*EPA's Municipal Separate Storm Sewer System (MS4) Program Evaluation Guidance is available at [http://cfpub.epa.gov/npdes/docs.cfm?program\\_id=6&view=allprog&sort=name#ms4\\_guidanc](http://cfpub.epa.gov/npdes/docs.cfm?program_id=6&view=allprog&sort=name#ms4_guidanc).*

### **Washington State Fines Transit Authority, Contractor for Water Quality Violations**

The Washington Department of Ecology (Ecology) fined the Central Puget Sound Regional Transit Authority (Sound Transit) and PCL Construction Services \$79,000 for water quality and permit violations. Ecology staff documented numerous violations from October 2006 through March of this year along the Tukwila portion of the Central Link light rail line under construction between Sea-Tac Airport and Seattle. The most significant of these, which accounted for \$40,000 of the penalty, concerned the project's lack of an adequate stormwater pollution prevention plan. The penalty is the fourth one Ecology has issued for similar violations of the project's construction stormwater permit along the 15.6-mile route. Two of the three earlier fines -- \$66,000 last October and \$4,000 in October, 2005 -- also applied to the Tukwila segment, which drains into Gilliam Creek and the Duwamish River. The third penalty -- \$4,000 in March of this year -- related to work by a different contractor that violated an order by resuming construction work along part of the project's Martin Luther King Way segment in Seattle prior to meeting the terms of the order.

**Source:** BNA Environmental Report.

### **Settlement Calls for Multi-Year Strategy to Upgrade Sewage Systems in Allegheny County**

In a landmark settlement with federal, Pennsylvania, and county authorities, the Allegheny County Sanitary Authority (ALCOSAN) agreed to a comprehensive plan to greatly reduce the annual discharge of billions of gallons of untreated sewage into local waterways. The proposed consent decree calls for a multi-year strategy to upgrade the sewage systems serving Pittsburgh and 82 surrounding municipalities. The settlement also requires ALCOSAN to pay a \$1.2 million penalty for past Clean Water Act violations, and to undertake \$3 million in environmental projects. The settlement requires ALCOSAN to submit a wet weather plan to EPA that would resolve a majority of the untreated discharges from the sewer systems by 2026. The \$3 million in environmental projects will include stream restoration work and other projects to better control harmful storm water runoff. The \$1.2 million penalty will be shared equally by the federal government, Pennsylvania and Allegheny County. The judicial settlement with ALCOSAN complements a 2003 voluntary agreement by the 83 municipalities to monitor flow throughout the regional sewer system and to work with ALCOSAN to identify and implement controls to avoid sewage overflows into local waters. The settlement with ALCOSAN and the 2003 voluntary agreement with the municipalities together represent one of the nation's largest settlements of a Clean Water Act case involving sewage overflows, in terms of the number of municipalities affected and the extensive nature of the sewer system upgrade.

**Source:** Water and Wastewater June 1, 2007. A copy of the consent decree will be available on the U.S. Department of Justice Web site at [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html)

### **St. Louis Developers to Pay Hefty Penalty for Polluting Waterways**

Several St. Louis-area developers responsible for polluting streams and lakes with runoff from three construction sites will pay one of the largest environmental penalties of its kind in Missouri history under a consent decree. The consent decree, filed on July 12 in federal district court in St. Louis ordered defendants to pay a civil penalty of \$590,000, adhere to a strict compliance

program at future construction projects and clean up past pollution. Half of the penalty will go to the federal government, and the other half will go to the state. In addition, the defendants will implement remedial plans for the pollution caused by the runoff and reimburse more than \$52,000 to the state of Missouri and the city of Wildwood for their costs of investigation and enforcement.

**Source:** Water and Wastewater News, 7/18/07.

### **San Diego Agrees to Spend About \$1 Billion To Upgrade Sewage System Over Six Years**

A consent decree requiring the city of San Diego to spend approximately \$1 billion on sewage system upgrades through 2013 was lodged in federal court July 31. The agreement reached between San Diego Baykeeper, San Diego Surfrider, EPA, and San Diego must be approved by the U.S. District Court for the Southern District of California. The cost of compliance to the city would average \$108 million in annual capital improvements and \$45.6 million each year for operation and maintenance. Costs associated with the consent decree will be met through residential water and wastewater rate increases approved by the City Council Feb. 26. Rates will rise 8.5 percent in fiscal year 2007, another 8.5 percent in 2008, and by 7 percent in both 2009 and 2010. The largest possible fine would be \$20,000 for each repeated sewage spill in the same location.

**Source:** Environment Reporter, BNA, Inc. 8/3/07 discussing *United States v. San Diego*, S.D. Cal., No. 01CV050550, filed 7/31/07. *The final consent decree is available at <http://www.epa.gov/region09/water/npdes/pdf/san-diego-sewage-consent-decree.pdf>.*

### **Hamilton Sundstrand to Pay \$1 Million Fine, \$5.6 Million on Waste Water Collection**

Hamilton Sundstrand Corp. was sentenced to five years of probation and ordered to pay a \$1 million fine in U.S. District Court for the District of Connecticut May 17 after pleading guilty earlier in the year to two violations of the Clean Water Act. In addition to the fine, the company has agreed to spend at least \$5.6 million on waste water collection and treatment upgrades and to make a \$3 million contribution to the Connecticut Statewide Supplemental Environmental Project Account under the terms of a plea agreement entered Feb. 7. The company admitted that from 2001 to 2003, a portion of its waste water treatment system failed to meet limits under its National Pollutant Discharge Elimination System (NPDES) permit for hexavalent chromium on a consistent basis. The government also charged the company with failure to report the violations and knowingly submitting monthly reports that presented data which concealed the violations.

**Source:** Toxics Law Reporter, BNA, Inc. 5/24/07; (*U.S. v. Hamilton Sundstrand Corp.*, D. Conn., 3:07-cr-23, 5/17/07).

### **New York City DEP Employee Charged With Falsifying Drinking Water Records**

An employee of the New York City Department of Environmental Protection has been charged with making false entries in the city's drinking water monitoring records.



The defendant was arraigned June 6 on four felony counts in U.S. District Court for the Southern District of New York. He is the third DEP employee with drinking water monitoring duties to be charged in the past two years with falsifying records at the city's Catskill Lower Effluent Chamber (CLEC) facility.

The tests the defendant was accused of falsifying are used to measure turbidity, or cloudiness, in the drinking water, a long-standing problem in Catskill/Delaware water. On four occasions in February and March 2005, prosecutors said, the defendant made false log entries purporting to show results of monitoring tests that, in fact, he had not performed. He was caught after videotapes showed him leaving the chamber sampling site less than a minute after entering it.

**Source:** Environment Reporter. BNA, Inc, 6/8/07. United States v. Miritello, S.D.N.Y., docket number unavailable, arraignment 6/6/07.

### **New Jersey Indicts Meat Waste Processor**

A Newark, N.J., meat waste processing facility and its owner were indicted on criminal charges related to alleged violations of state air and water pollution control laws Berkowitz Fat Co. Inc and its owner were charged with a single violation of the Water Pollution Control Act and three counts of violating the Air Pollution Control Act, all third-degree offenses. The defendants are charged with violating the facility's industrial pretreatment permit issued by the Passaic County Sewerage Commissioners by discharging untreated fat-contaminated wastewater into the sewer system and failing to monitor the discharges. Allegedly, the wastewater was not pretreated as required by the permit and was channeled to bypass the required sampling point, according to the indictment. The defendants were also charged with violating the state's air pollution control law by operating the facility from Oct. 16, 2006, through May 1, 2007, while a scrubber that was damaged in a fire was inoperative. In addition, the plant emitted foul odors over a two-year period, interfering with the quality of life in the neighborhood and sickening DEP inspectors who visited the site, according to the indictment. Finally, the defendants were charged with a third count of violating the air pollution control law for allegedly refusing to allow DEP inspectors to enter the facility on Jan. 29. A state court ordered the immediate shutdown and cleanup of the Berkowitz facility June 8, finding that it had not made improvements and operational changes ordered by the court three weeks earlier to address compliance issues raised by the DEP in a civil lawsuit filed May 10, 2007. In its civil lawsuit, the DEP said the facility's air pollution control equipment was inoperable or disconnected, its boiler was fired by grease rather than fuel oil, and improperly stored meat waste caused odor and rodent problems. The state agency is seeking to recover cleanup costs from the defendants as well as more than \$2 million in pollution-related civil penalties assessed during the past two years.

**Source:** BNA Environment Reporter, 7/27/07, Discussing (*New Jersey v. Berkowitz*, N.J. Super. Ct. Law Div., No. 07-07-00097-S, 7/23/07). *Text of the indictment is available at <http://www.nj.gov/oag/newsreleases07/berkowitz-indict-7.23.07.pdf>*

### **Fujicolor Processing Pleads Guilty to Environmental Crime**

Fujicolor Processing has agreed to pay a \$200,000 criminal fine for discharging excessive amounts of silver-tainted photo processing waste to a Texas wastewater treatment plant. Fujicolor pleaded guilty to one count of negligently violating a requirement of its pretreatment permit at its photo-processing facility in Terrell, Texas. Based on an internal investigation, Fujicolor discovered that from 1999 through July 2002 employees were selectively reporting to

the city only test results that fell within permit limits. Industrial facilities report results to local agencies for permit compliance purposes. Employees would send part of a sample to a laboratory for screening and, if the sample met permit limits, it would be submitted to the city. If a sample did not meet the silver limit, employees would keep collecting samples until they found one that fell within allowable limits. Fujicolor discovered similar problems at its facilities in New Britain, Conn., and Tukwila, Wash. In July 2002, the city of Terrell fined the facility \$105,725 for exceeding its monthly limit for silver, based on samples submitted by the facility. Fujicolor disclosed the findings of its investigation to federal and local officials. The company has since taken action to address the environmental problems, including firing employees responsible for violations and putting safeguards in place to prevent additional violations.

**Source:** USEPA Press release Thursday, Sept. 6, 2007

### **EPA Lacks Effective Oversight of Compliance With NPDES Permits, Inspector General Says**

The Environmental Protection Agency is not providing effective oversight of compliance with clean water permits at major facilities because it cannot be sure of the reliability of records for facilities it has deemed to be in significant noncompliance, the agency's Office of Inspector General said in a report released May 15. The report said EPA and state agencies did not keep complete and accurate records of National Pollutant Discharge Elimination System (NPDES) compliance and enforcement actions, which the OIG said represents "a management control weakness." The report also said the agency did not consistently apply guidance defining timely formal enforcement actions by EPA and the states. EPA also did not provide meaningful direction to agency regional offices and the states on what constitutes "appropriateness of actions" toward facilities that were in significant noncompliance with the terms of their NPDES permits.

**Source:** BNA Inc. Toxics Law Reporter, 5/24/07 discussing The EPA Report, *Better Enforcement Oversight Needed for Major Facilities with Water Discharge Permits in Long-Term Significant Noncompliance*, is available at <http://www.epa.gov/oig/reports/2007/20070514-2007-P-00023.pdf>.

### **Massachusetts Municipality to Pay \$250,000 Fine for Alleged Water Violations**

The town of Billerica, Mass., will pay a \$250,000 penalty and undertake two supplemental environmental projects to settle charges that it violated state and federal clean water laws. According to a civil complaint filed jointly with a consent decree in the U.S. District Court for the District of Massachusetts by EPA, the town discharged pollutants directly into the Concord River and its tributary from its water treatment plant without a National Pollutant Discharge Elimination System (NPDES) or state surface water discharge permit. EPA said the town violated its discharge permit for its wastewater treatment plant because it exceeded permitted effluent limits for phosphorus, fecal coliform bacteria, pH, and ammonia nitrogen. EPA alleged that Billerica also failed to submit discharge monitoring reports, failed to comply with monitoring requirements, and failed to submit infiltration and inflow reporting. On top of the \$250,000 fine, the town will implement two supplemental environmental projects at a cost of \$50,000. Under the first project, Billerica will test for lead in school drinking water and take measures to address elevated lead levels, if they are detected. The second project calls for the

town to evaluate whether a disinfectant by-product (called N-nitrosodimethylamine or NDMA) is present in the water supply and factors affecting its formation.

**Source:** BNA Environmental Reporter, 6/6/07 discussing United States v. Town of Billerica, D. Mass., No. 07-cv-11015 RWZ, complaint and consent decree filed 5/31/07.

### **Company Fined \$3.8 Million for Clean Water Act Violations**

Acuity Specialty Products Inc. was fined \$3.8 million and ordered to serve three years probation after pleading guilty on June 29 to violating the Clean Water Act. The allegations arise out of wastewater discharges from an Acuity chemical blending facility in Atlanta, Ga. Within the facility are different plants, each of which produces a different type of detergent or cleaning product, including liquids, aerosols, powders and acids used for industrial and domestic purposes. In its plea, Acuity admitted that from at least September 1998 until November 2002, while inspectors from the city of Atlanta Watershed Department were conducting sampling at the Acuity facility, company employees altered the wastewater flow in order to render the sampling inaccurate. As a result of the investigation, Acuity's former director of environmental compliance, pleaded guilty to conspiracy to violate the Clean Water Act, in February 2006. He is awaiting sentencing. The company also admitted that on numerous occasions, Acuity had failed to report accurate wastewater flow data, phosphorus concentrations and pH results in reports that were submitted to the city. Additionally, Acuity stated that on two occasions, it had failed to report discharges to Atlanta officials, including a 10,000 gallon phosphorus discharge in 2000 and an acid spill in March 2002.

**Source:** Water and Wastewater News, July 5, 2007.

### **Chemical Company to Spend \$124 Million To Control Pollution at Plants in Four States**

A Houston-based petrochemical company will spend more than \$124 million on pollution controls and equipment to address environmental violations at seven petrochemical plants in Texas, Illinois, Iowa, and Louisiana under a proposed settlement agreement, federal prosecutors said July 18. The proposed agreement lodged in U.S. District Court for the Northern District of Illinois requires the company, Equistar LP, to invest in comprehensive measures expected to significantly reduce air, water, and hazardous waste pollution from the seven manufacturing facilities, according to the Department of Justice. "Equistar will be the first in the petrochemical industry to adopt these stricter environmental measures, many of which will go beyond what the regulations would require. Equistar has invested more than \$250 million over the past five years to upgrade its facilities to meet or exceed regulatory requirements and to reduce volatile organic compounds (VOC) emissions, the company said. Included are more than \$70 million in environmental programs and projects that go beyond regulatory compliance. During the first 18 months of the settlement, Equistar must conduct several separate environmental audits of its operations to identify any additional problems, report the findings and proposed corrective measures to EPA and state regulators, and fix the problems. In addition Equistar has agreed to monitor and fix leaks of volatile organic compounds (VOCs) and hazardous air pollutants such as benzene from process units; to change equipment that uses ozone-depleting substances; and to reduce the flaring of VOCs. The company also will pay stipulated penalties for flaring based on the amount of pollution released to the atmosphere. Under the proposed consent agreement, Equistar will install a wastewater treatment system that will reduce harmful air emissions by at least 26 tons annually. In addition, the company will eliminate the land disposal of an estimated

150,000 tons of benzene-contaminated hazardous waste annually. In addition the company will pay a \$2.5 million civil penalty to be divided equally among the federal government and participating states, and spend \$6.56 million on federal and state supplemental environmental projects. These include a system to capture hazardous air emissions from process vents at the Channelview, Texas, facility. State projects include the purchase of emergency response equipment and newer, cleaner school buses; funding for the Mississippi River Tourism Center; and hazardous waste cleanup activities in the wake of Hurricanes Katrina and Rita.

**Source:** Environment Reporter, BNA, Inc. 7/20/07. *United States v. Equistar Chemicals LP*, N.D. Ill., docket number unavailable, *proposed settlement filed* 7/18/07.

### **Icicle Seafoods Agrees to \$900,000 Fine To Settle Wastewater Discharge Violations**

Seattle-based Icicle Seafoods has agreed to pay \$900,000 to settle a Clean Water Act complaint concerning accumulated fish waste beneath one of the company's processor vessels. It is the largest fine for a National Pollution Discharge Elimination System (NPDES) permit violation ever assessed on a seafood processor regulated by EPA's Region 10. The complaint concerns discharges from the Northern Victor, a processing vessel that is anchored most of the year in Alaska's Udagak Bay, off the west side of Unalaska Island, EPA said. The complaint stemmed from Icicle's failure to clean up the waste pile that was left over from the previous operator of the Northern Victor, as had been mandated in an enforcement action taken in 2003. The fine was calculated based on a formula that considers numbers of days of violation, number of violations. That waste pile--which ranged in thickness from about a foot to about seven feet--created a dead zone sprawling more than an acre on the sea floor beneath the Northern Victor. While Icicle holds an NPDES permit to dispose of seafood waste, that permit had been contingent on cleanup of the waste pile. Once a civil lawsuit was filed against the company last November, Icicle did begin cleaning up the waste pile, she said. That cleanup was completed in March 2007. Preliminary monitoring shows that the ecological recovery is already occurring at the site, Young said. Icicle spent about \$1.1 million on the cleanup

**Source:** Environment Reporter, BNA, Inc. 9/28/07. *United States v. Icicle Seafoods Inc.*, D. Alaska, No. 3:06-cv-268, 9/18/07.

### **U.S. Supreme Court Declines to Review How to Apply Rapanos Jurisdiction Ruling**

The U.S. Supreme Court Oct. 9 declined to review how a prior Supreme Court split ruling over which wetlands are protected by the Clean Water Act should be implemented (*Johnson v. United States*, U.S., No. 07-9, 10/9/07). The Supreme Court's ruling leaves intact a decision by the U.S. Court of Appeals for the First Circuit that found more fact-finding by a trial court was necessary to determine whether the Environmental Protection Agency has jurisdiction under the act over Massachusetts cranberry farmers' wetlands. The First Circuit ruled in October 2006 that the U.S. District Court for the District of Massachusetts must determine whether the wetlands constitute "waters of the United States" subject to regulation under either the narrow standards set out by the plurality opinion of *Rapanos v. United States* or under the broader standard proposed in Justice Anthony Kennedy's concurring opinion. The First Circuit concluded that any situation that qualified under either the plurality or concurring opinion would be subject to Clean Water Act regulation because the dissent agreed with the finding of jurisdiction for such wetlands. Charles Johnson, Genelda Johnson, Francis Johnson, and Johnson Cranberries LLP asked the

Supreme Court June 28 to rule on which jurisdictional test is controlling--the narrow plurality, the broader concurrence, or whether either is sufficient to establish jurisdiction. The Johnsons also challenged the First Circuit's decision to aggregate the dissent with the concurrence to form a majority agreement test.

**Source:** Environment Reporter, BNA, Inc. 10/12/07, discussing *Johnson v. United States*, U.S., No. 07-9, 6/28/07, 467 F.3d 56, 63 ERC 1289 (1st Cir. 2006)

### **PIRG Report Finds Most Major Facilities Violated Clean Water Permits at Least Once**

A report released Oct. 11 shows that more than half of major industrial and municipal facilities violated their discharge permits in 2005 by releasing pollutants at least once into the nation's waters. The report, by the U.S. Public Interest Research Group, also found that the 3,600 major facilities exceeding their permit limits reported more than 24,400 violations of their Clean Water Act permits between Jan. 1, 2005, and Dec. 31, 2005. The report also stated the 10 U.S. states with the most violations of NPDES permits were Maine, Massachusetts, Rhode Island, New Hampshire, Ohio, Connecticut, New York, North Dakota, California, and West Virginia. Between 68 percent and 81 percent of the facilities in these states exceeded their permits at least once during 2005, the report said. The report, however, did not provide data on what types of "major" facilities were responsible for these violations.

**Source:** Environment Reporter, BNA, Inc. 10/12/07, discussing The U.S. PIRG report, *Troubled Waters: An Analysis of 2005 Clean Water Compliance*, is available at [http://www.uspirg.org/html/troubledwaters07/troubled\\_waters07.pdf](http://www.uspirg.org/html/troubledwaters07/troubled_waters07.pdf).

### **District Court Claims Jurisdiction in Case About Cooling Water Intake Tower Rules**

A federal court in New York has rejected a motion by the Environmental Protection Agency to dismiss a lawsuit by environmental groups over the agency's alleged failure to issue adequate rules to protect fish from being trapped in cooling systems at industrial plants such as offshore oil and gas facilities. The U.S. District Court for the Southern District of New York Sept. 21 ruled against EPA, which had claimed the district court lacked jurisdiction to hear the lawsuit by Riverkeeper and other organizations. Although Judge P. Kevin Castel held that the district court had jurisdiction to hear the case, he certified the decision for immediate appeal to the U.S. Court of Appeals for the Second Circuit. The certification means that the environmental groups and federal regulators may take a threshold jurisdictional issue immediately to the appellate court in an effort to learn which court decides whether EPA failed in its most recent effort to regulate cooling water intake towers. EPA wants to continue existing standards for existing cooling water intake structures using a case-by-case, best professional judgment review by the state permitting authority that the fish are protected. The so-called Phase III cooling water regulations, which were before the district court, concern intake structures at offshore oil and gas facilities and other industrial plants not covered by earlier rules. EPA adopted regulations for new structures under Phase III, but not for existing structures. The environmental groups claimed this EPA effort was inadequate to meet the requirements of Section 316(b) of the Clean Water Act, which they say requires the agency to promulgate cooling water rules for existing facilities. Meanwhile, another challenge to EPA over the same Phase III action is being briefed before the U.S. Court of Appeals for the Fifth Circuit. Many of the same environmental groups are also

parties in the Fifth Circuit case (*Riverkeeper Inc. v EPA*, 5th Cir., No. 06-60942, cases consolidated 10/17/06).

**Source:** Environment Reporter, BNA, Inc. 10/12/07. *Riverkeeper Inc. v. EPA*, S.D.N.Y., No. 06-12987, 9/21/07.

### **C. EPA and Other Regulatory/Policy**

#### **EPA Extends Deadline for Compliance with Oil Spill Prevention Rule**

On May 11, the U.S. Environmental Protection Agency (EPA) released a new deadline extension to comply with the oil spill prevention rule. The final rule gives facilities until July 1, 2009 to prepare, amend, and implement oil spill prevention plans required under the December 2006 revised regulations. EPA claimed the revisions “appropriate” as they would allow the regulated facilities more time to adjust to further revisions to the Spill Prevention, Control and Countermeasure Rule (SPCC), which the Agency plans to propose this year and promulgate by the end of summer 2008. Facility owners and operators will also have more time to digest the SPCC Guidance for Regional Inspectors, which the agency intends to propose to reflect any new requirements set prior to 2009. This new deadline is the fifth extension since the 2002 SPCC rules were published. Under the rules, all facilities with an above-ground storage capacity of 1,320 gallons or underground capacity over 42,000 gallons are required to develop and implement professionally certified oil spill prevention plans. For more information about EPA’s oil program and the SPCC regulations, visit <http://epa.gov/oilspill>. (MB)

**Source:** This Week in Washington Water Environment Federation 5/18/07

#### **Proposed Amendments to the Spill Prevention, Control, and Countermeasure (SPCC) Rule**

On October 1, 2007, EPA issued a proposed rule to amend the Spill Prevention, Control, and Countermeasure (SPCC) rule at 40 CFR part 112. With these proposed changes, EPA intends to provide clarity, tailor requirements, and streamline requirements as appropriate in order to encourage greater compliance with the SPCC regulations . Under the proposed rule:

##### **Facilities (other than farms) operating: Must:**

Before 7/1/09	Maintain the facility's existing Plan. Amend and implement the Plan no later than 7/1/09.
Between 8/16/02 - 7/1/09	Prepare and implement Plan no later than 7/1/09.
After 7/1/09	Prepare and implement Plan before starting operations.

**Source:** [http://www.epa.gov/oilspill/pdfs/SPCC10\\_1\\_07.pdf](http://www.epa.gov/oilspill/pdfs/SPCC10_1_07.pdf) To view fact sheets with additional information, go to [http://www.epa.gov/oilspill/spcc\\_oct07.htm](http://www.epa.gov/oilspill/spcc_oct07.htm) **Comment deadline 12/14/07.**

#### **Flexible Air Permitting Rule**

Based on the results of a pilot permit program, EPA recently proposed to revise various regulations (40 CFR Parts 51, 52, 70, and 71) to authorize “flexible” permit options under the Title V operating permit and new source review (NSR) programs. Flexible permits allow certain changes in emission sources in advance, enabling sources to make the changes without obtaining a formal permit modification. Under the Title V operating program, EPA is proposing changes intended to define and clarify the use of so-called “alternative operating scenarios” (AOS) and

specifically authorize use of “approved replicable methodologies” (ARM). AOS are scenarios authorized by a Title V permit that involve a physical or operational change for a particular emissions unit that either impose a new applicable requirement or render a previously applicable requirement inapplicable. ARMs, by comparison, are protocols for assessing compliance with an applicable requirement that produce replicable results that can be used to determine the applicability of a particular requirement to a particular change. EPA also is proposing to revise the NSR program to authorize advance approval of certain future changes through the use of a new “Green Group” permit option – advance approval of changes to emissions points ducted to a common air pollution device that satisfies certain strict pollution control requirements. EPA is accepting comments on the proposed rule until **November 13, 2007**.

**Source:** September 12, 2007 Federal Register at: [www.epa.gov/fedrgstr](http://www.epa.gov/fedrgstr).

### **Emergency Response and Preparedness, Request for Information**

The Occupational Safety and Health Administration (OSHA) is requesting feedback from the public concerning **possible changes to the rules governing emergency response and preparedness**. OSHA is requesting information and comment from the public to evaluate what action, if any, the agency should take to address emergency response. The notice addresses five general topics and seeks responses to specific questions under each topic. The topics are: (1) the scope of emergency response; (2) personal protective equipment; (3) training and qualifications; (4) medical evaluation and monitoring; and (5) safety.

The request for information can be found in the September 11, 2007 Federal Register at: [www.gpoaccess.gov/fr/index.html](http://www.gpoaccess.gov/fr/index.html).

The deadline for submitting information closes **December 10, 2007**

**Source:** 72 Fed. Reg. 51735 (Sept. 11, 2007).

## **D. EPA Guidance and Tools**

### **1. Water**

#### **EPA Offers Online Clearinghouse of Toxicity Data for Great Lakes Watershed**

On May 7, EPA announced the availability of an online resource for information on toxicity data and other supporting documents used in developing water quality standards in the Great Lakes watershed. The Great Lakes Initiative (GLI) Clearinghouse contains information relevant to regulatory and nonregulatory programs. It can be used to help establish water quality criteria, permit discharge limits, total maximum daily loads, remedial action plans and lakewide management plans within the Great Lakes Basin. The clearinghouse relies on state environmental agencies to provide data, usually in the form of water quality standards fact sheets, to EPA. The online resource contains data provided by Indiana, Minnesota, New York, Ohio and Wisconsin. Michigan chose not to provide facts sheets, but information from the state can be obtained from the Department of Environmental Quality. Illinois and Pennsylvania do not have fact sheets for their Great Lakes Basin waters, as these two states have limited numbers of discharges to such waters. Should the need arise for water quality criteria, these states may choose to generate criteria according to their regulations and in that event fact sheets may be available. The clearinghouse will be updated as states and tribes revise or adopt new criteria and

provide data to EPA; however there may be a lag between the publication of new or revised criteria and the uploading of new data into the online resource.

**Source:** Water & Wastewater Products May 9, 2007. To access the clearinghouse go to <http://www.epa.gov/gliclearinghouse>.

### **Researcher Examines Link Between Premature Births, Pesticides in Water**

Growth in the premature birth rate in the United States appears to be associated with increased use of pesticides and nitrates, according to work conducted by Paul Winchester, M.D., professor of clinical pediatrics at the Indiana University School of Medicine. He reported his findings on May 7 at the Pediatric Academic Societies' annual meeting, a combined gathering of the American Pediatric Society, the Society for Pediatric Research, the Ambulatory Pediatric Association and the American Academy of Pediatrics. Winchester and colleagues found that preterm birth rates peaked when pesticides and nitrates measurements in surface water were highest (April to July) and were lowest when nitrates and pesticides were lowest (August to September).

**Source:** Water & Wastewater products May 9, 2007

### **Guidance on Peak Wet Weather 'Blending'**

A policy document regarding federal jurisdiction over blending of partial and fully treated wastewater during heavy rains have been undergoing White House review for months, but it is uncertain when it will be released. The blending guidance was submitted to the White House Office of Management and Budget in June 2006. The "peak weather flows" policy spells out when wastewater utilities can blend partially and fully treated wastewater.

**Source:** BNA, Inc., Environment Reporter 05/11/07

### **EPA, WEF, and Utilities to Promote Water Performance Measures for Utilities**

EPA has signed a statement of support with six national associations to promote recommended utility performance measures and encourage the use of these tools and 10 management attributes by utilities around the country. The "10 Attributes of Effectively Managed Water Sector Utilities" provide a reference point for utilities seeking to improve performance. They are:

- product quality
- customer satisfaction
- employee and leadership development
- financial viability
- infrastructure stability
- operational resilience
- community sustainability
- water resource adequacy
- operational optimization
- stakeholder understanding and support.

The statement and supporting strategies formalize a comprehensive effort among EPA, the Association of Metropolitan Water Agencies, the American Public Works Association, the American Water Works Association, the National Association of Clean Water Agencies, the



National Association of Water Companies and Water Environment Federation to encourage effective utility management. These associations, with about 80,000 members, represent some of the largest utilities in the country.

**Source:** EPA Water Headlines, May 10, 2007.

For more information: <http://www.epa.gov/waterinfrastructure/bettermanagement.html>

### **Water Infrastructure Security Sector-Specific Plan Released**

The Department of Homeland Security, in coordination with EPA, recently released the Sector-Specific Plan (SSP) for Critical Water Infrastructure Protection. In order to better protect the Nation's critical infrastructure and key resources, Homeland Security Presidential Directive 7 (HSPD-7) identified 17 critical infrastructure and key resources sectors and designated Federal Government Sector-Specific Agencies (SSAs) for each of the sectors. EPA is the Federal lead for the Drinking Water and Wastewater (Water) Sector's critical infrastructure protection activities. The Water SSP includes information on goals, identifying assets, assessing risk, prioritizing infrastructure, developing and implementing protective programs, measuring progress, research and development, and SSA responsibilities. It was developed under the Department of Homeland Security's National Infrastructure Protection Plan and was produced by EPA in coordination with Water Sector security partners which includes our Water Sector Coordinating Council and Government Coordinating Council.

**Source:** EPA Water Headlines for June 8, 2007: For more information about the SSP visit <http://cfpub.epa.gov/safewater/watersecurity/legislation.cfm>. The Actual Plan is at [http://www.epa.gov/safewater/watersecurity/pubs/plan\\_security\\_watersectorspecificplan.pdf](http://www.epa.gov/safewater/watersecurity/pubs/plan_security_watersectorspecificplan.pdf)

### **EPA Pushes States to Adopt Numeric Water Quality Standards for Nutrients**

On May 25, EPA released a memo urging states to develop and adopt numeric water quality standards for nutrients. Categorizing nutrient pollution as a "national problem," EPA urged states to speed up their efforts and strongly recommended that priority waters, those water bodies at the greatest risk of nutrient pollution, be addressed first. According to EPA, numeric standards will lead to easier and faster development of TMDLs, quantitative targets to support trading programs, increased effectiveness in evaluating the success of nutrient runoff minimization programs, and measurable, objective water quality baselines. In the memo, EPA stated that nutrient criteria should address "causal (both nitrogen and phosphorus) and response (chlorophyll-a and transparency) variables" and encouraged the adoption of standards for all four parameters. The EPA "Nutrient Pollution and Numeric Water Quality Standards" memo is available by sending a request to [sthomas@wef.org](mailto:sthomas@wef.org).

**Source:** WEF This Week in Washington, June 1, 2007.

### **EPA Renews Federal Advisory Committee to Examine Detection and Quantitation Approaches in CWA Programs**

EPA announced on May 29 that it is renewing the Charter for the Agency's Federal Advisory Committee on Detection and Quantitation Approaches and Uses in Clean Water Act (CWA) Programs (FACDQ) for another two years to allow the committee to complete its work. The purpose of the FACDQ is to provide advice and recommendations to the Administrator on policy

issues related to detection and quantitation and on the scientific and technical aspects associated with monitoring and reporting chemical pollutants under the Clean Water Act. The announcement is at [www.epa.gov/fedrgstr/EPA-WATER/2007/May/Day-29/w10234.htm](http://www.epa.gov/fedrgstr/EPA-WATER/2007/May/Day-29/w10234.htm).

**Source:** WEF This Week in Washington, June 1, 2007.

### **EPA and Corps of Engineers Issue Joint Guidance on Wetlands and Intermittent Streams**

Wetlands and streams that either flow intermittently or are linked indirectly to traditional navigable waters will be evaluated by EPA and the U.S. Army Corps of Engineers (Corps) on a case-by-case basis to determine Clean Water Act jurisdiction, according to joint guidance issued by the two agencies on June 5. In the guidance, the Corps and EPA identify which waters of the U.S. are subject to federal jurisdiction under Section 404 of the Clean Water Act. Using the guidance, the agencies will determine whether a "significant nexus" exists in each instance between traditional navigable waters and intermittent, non-navigable tributaries, wetlands adjacent to such tributaries, and wetlands separated from relatively permanent tributaries by uplands, dikes, or berms. In the guidance, the agencies clarified that swales, small washes characterized by infrequent flow, and ditches, including roadside ditches and uplands that do not carry a large volume of water, are not covered under Section 404. Both agencies will retain federal jurisdiction over navigable waters that are defined as those engaged in interstate commerce and subject to the ebb and flow of the tide, as well as wetlands and streams adjacent to traditional navigable waters. The guidance has been published in the *Federal Register*.

**Source:** WEF This Week in Washington 6/8/07

### **EPA Missed Two Key BEACH Act Deadlines**

The Environmental Protection Agency has made progress in complying with most of the provisions in the Beaches Environmental Assessment, Cleanup, and Health Act of 2000, but it missed two "critical" deadlines under BEACH, according to a Government Accountability Office report. EPA did not complete pathogen and human health studies by October 2003 and failed to publish either new or revised water quality criteria for bacteria by October 2005--two critical statutory deadlines set by Congress under the BEACH Act (Pub. L. No. 106-284), GAO said in a report released May 24. The BEACH Act required EPA to study human illnesses caused by polluted beach water by October 2003 and to promulgate revised water quality criteria by October 2005. Instead of revising the criteria, however, EPA has been recommending that states use 1986 bacteria criteria to develop water quality standards.

**Source:** Environment Reporter, BNA, Inc. 6/8/07

### **Experts Release Report on the Science of Recreational Water Quality Criteria**

The March 2007 Experts Scientific Workshop provided a forum where 44 U.S. and international experts discussed critical research and science needs for developing new or revised recreational ambient water quality criteria in the near-term. The report summarizing the experts' conclusions in seven topic areas is available on the Office of Water's web site. Designed to protect swimmers from illnesses due to exposure to pathogens in recreational waters, the existing criteria are more than 20 years old. Since then, scientists have learned much about molecular biology, virology, and analytical chemistry. This new information will help build a stronger scientific foundation for up-to-date recreational water quality criteria. Near-term needs were defined as specific

research and science activities that could be accomplished in 2 to 3 years to support development of new or revised criteria by 2012.

**Source:** EPA Water Headlines for July 2, 2007. The report is available on EPA's web site at <http://www.epa.gov/waterscience/criteria/recreation/>.

### **EPA Launches Pharmaceutical and Personal Care Products Website**

EPA recently launched a website about the occurrence of pharmaceuticals and personal care products (PPCPs) in the environment at [www.epa.gov/ppcp](http://www.epa.gov/ppcp). The site incorporates commonly asked questions about pharmaceuticals in the environment, completed and on-going scientific work, and research bibliographies from a website originally managed by EPA's Office of Research and Development. The White House policy on proper drug disposal, on-going federal research and initiatives, and related scientific literature are also included. EPA defines PPCPs as "any product used by individuals for personal health or cosmetic reasons or used by agribusiness to enhance growth or health of livestock."

**Source:** *Water Environment Federation This Week in Washington*

### **Water Quality Trading Toolkit for Permit Writers**

EPA has issued a new publication as part of its effort to support innovative, market-based approaches to water quality trading. The Water Quality Trading Toolkit for Permit Writers: Interim Technical Guide provides National Pollutant Discharge Elimination System (NPDES) permitting authorities with the tools they need to incorporate trading provisions into permits. The Toolkit also serves as EPA's first "how-to" manual on designing and implementing trading programs consistent with EPA's 2003 National Water Quality Trading Policy and will be valuable to all stakeholders. This Toolkit will aid in improving the quality of and providing national consistency among trading programs. The Toolkit is focused on trading nitrogen and phosphorus, although, based on the Trading Policy, other pollutants may be considered for trading on a case-by-case basis. The Toolkit first discusses the fundamental concepts of designing and implementing trading programs including the relevant geographic scope, effluent limitations, and trade ratios. EPA is interested in public comment on the Toolkit. Comments received through the document's website will be considered for future updates.

**Source:** E-Mail from EPA 8/8/07. The Toolkit is a web-based document available at: <http://www.epa.gov/waterqualitytrading/WQTToolkit.html>

### **Final EPA Revised Lead, Copper Rule Targets Monitoring, Treatment, Education**

The Environmental Protection Agency announced a final drinking water rule Sept. 26 that aims to reduce human exposure to lead in drinking water and reassure the public that its water does not contain dangerous levels of the toxic metal. The rule strengthens the existing Lead and Copper Rule of 1991, making seven changes in the areas of monitoring, treatment processes, public education, customer awareness, and lead service line replacement. The revised rule makes seven rule changes that address:

- requirements for the minimum number of samples a utility must take;
- definitions for "compliance" and "monitoring periods";
- reduced monitoring criteria;
- advance notification and approval requirements for water systems that intend to make any long-term change in water treatment or add a new source of water;
- requirements to provide a consumer notice of lead tap water monitoring results to consumers who occupy homes or buildings that are tested for lead;
- public education requirements; and
- reevaluation of lead service lines that are classified as "replaced" through testing.

The rule will take effect 60 days after publication in the Federal Register. It applies to the approximately 170,000 public drinking water systems in the United States.

**Source:** Environment Reporter, BNA, Inc. 9/28/07

#### **EPA Update of NEPA Procedures Includes Review Exemption for Some Water Permits**

The Environmental Protection Agency has amended its procedures for implementing the National Environmental Policy Act (NEPA) to include environmental review exemptions for certain types of Clean Water Act permits. The final rule published creates a new NEPA "categorical exclusion" that would allow EPA to reissue National Pollutant Discharge Elimination System (NPDES) permits for new sources of pollution without first conducting an environmental analysis. The categorical exclusion would allow EPA to reissue those NPDES permits after five years, without conducting a new NEPA analysis. The categorical exclusion only applies to states where EPA issues NPDES permits: Alaska, Idaho, Massachusetts, New Hampshire, and New Mexico. Permits issued by state regulatory agencies are not subject to NEPA requirements. The final rule also creates a new categorical exclusion for certain EPA grants approved by Congress. Grants that are intended "solely for reimbursement" of projects that have already been completed would not have to undergo a NEPA analysis.

**Source:** Environment Reporter, BNA, Inc. 9/28/07 citing 72 Fed. Reg. 53,652 September 19, 2007.

#### **New Fundamentals of Urban Runoff Management Document Now Available**

A second edition of "Fundamentals of Urban Runoff Management: Technical and Institutional Issues" was recently published by the North American Lake Management Society (NALMS). This document revises an earlier 1994 edition and was prepared with support from EPA's Office of Wastewater Management and the Nonpoint Source Control Branch in EPA's Office of Wetlands, Oceans and Watersheds. The update is important because of the tremendous amount of new information available as well as the significant shift in stormwater program direction from the historic mitigation-based approach to a more source-based approach.

**Source:** EPA's Water Headlines - October 9, 2007. Copies of the document are posted in pdf format at: <http://www.nalms.org/>

## 2. Non-Water

### **House Committee Raises Concerns about EPA's Screening Program for Endocrine Disruptors**

In a letter to EPA Administrator Stephen Johnson, the House Committee on Oversight and Government Reform expressed concerns about EPA's failure to implement a screening program for endocrine disruptors and requested that the agency respond to a list of 27 specific questions. The September 20 letter was co-signed by Chairman Waxman (D-CA), along with Reps. Tom Davis (R-VA), Elijah Cummings (D-MD), Chris Van Hollen (D-MD), Wayne Gilchrest (R-MD), Jim Moran (D-VA), and Delegate Eleanor Holmes Norton (D-DC). In the letter, the committee members expressed "serious concerns over the agency's inability to assure the Committee that it is taking adequate and timely steps to protect the American public from dangerous endocrine-disrupting chemicals. To date, EPA's efforts in this area have been characterized by missed deadlines, prolonged delays, and inadequate incorporation of public input." The 1996 Food Quality Protection Act (FQPA) required EPA to establish a program to screen pesticides for possible endocrine disrupting effects by August 1999. In addition, the Safe Drinking Water Act Amendments of 1996 included a provision authorizing EPA to screen drinking water contaminants for possible endocrine disrupting properties. "Today, more than ten years after these laws were passed and eight years after the FQPA deadline, EPA has not tested a single chemical for endocrine-disrupting effects according to the 1996 provisions," the letter stated.

**Source:** Provided by the Water Environment Federation, The letter is available at <http://oversight.house.gov/documents/20070920162537.pdf>

### **EPA Announces Chemicals for First Phase of ToxCast Program**

On August 2, EPA's National Center for Computational Toxicology released a list of 340 chemicals that will be evaluated under Phase I of the ToxCast research program. ToxCast is a program to help the agency set priorities for toxicity testing of environmental chemicals. Under Phase I of ToxCast, the chemicals will be examined in hundreds of different rapid computer tests referred to as high throughput screening (HTS) bioassays. Phase I will be used to create chemical signatures of compounds that will then be compared to known toxicity data. EPA expects patterns will emerge that are predictive of compounds that could cause harm to people and the environment. Results of Phase I are expected in 2008. Phase II will involve a larger, more diverse set of chemicals to test the predictability of patterns identified in Phase I. In Phase III, ToxCast will expand the list to thousands of environmental chemicals, "delivering an affordable, science-based system for decision-makers," according to an EPA press statement.

When complete, the ToxCast Program will allow EPA to test thousands of environmental chemicals quickly for harmful effects.

**Source:** BNA Environmental Reporter. Additional information on ToxCast is available at [www.epa.gov/ncct/toxcast/news.html](http://www.epa.gov/ncct/toxcast/news.html).

### **EPA Releases Draft Report on the Environment**

On August 3, EPA released the draft *2007 Report on the Environment (ROE): Highlights of National Trends* for public comment. First issued in 2003, ROE is designed to help the average citizen follow national trends in the condition of the air, water, and land. ROE includes a subset

of findings from the more comprehensive report, EPA's *2007 Report on the Environment: Science Report*, which was released in May 2007 as a draft for public comment. The final 2007 ROE report will consist of both the science and highlights documents.

**Source:** *Water Environment Federation This Week in Washington*. The draft ROE is available at [www.epa.gov/roe/](http://www.epa.gov/roe/).