



## **The 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>**

**February 2007 through April 2007**

#### **I. NEW YORK**

##### **A. Appointments and Priorities**

###### **Pete Grannis Confirmed as DEC Commissioner**

Governor Eliot Spitzer's nominee for Commissioner of the Department of Environmental Conservation, State Assembly member Pete Grannis, was recently confirmed by the State Senate and has begun serving in the post this month. As a member of the NYS Assembly since 1974, Mr. Grannis championed environmental issues throughout his tenure in the legislature, where he fought for the passage of State Environmental Quality Review Act (SEQRA), the original Bottle Bill, and the cleanup and revitalization of the state's brownfields.

According to the Governor's press release: "Mr. Grannis has championed environmental issues throughout his tenure in the legislature. He was a leader in fighting for the passage of SEQRA, the original bottle bill, and the clean-up and revitalization of the state's brownfields. Mr. Grannis has also played a key role in the enactment of a wide range of environmental legislation, including measures related to acid rain, clean air and water, fluorocarbons and recycling. He chaired the Assembly's first Subcommittee on Toxic Wastes, sponsored legislation on a worker's right to know about hazardous materials in the work place and has worked to regulate the transport, storage and disposal of toxic wastes. Mr. Grannis authored the state's rapid transit noise code and has been at the forefront of the fight to have the NYC MTA convert its polluting diesel bus fleet to clean fuels."

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<http://www.nixonpeabody.com/>

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.

**Source:** <http://www.dec.state.ny.us/index.html> and  
<http://www.ny.gov/governor/press/0125072.html>

### **Deputy Secretary for the Environment**

Judith Enck has been appointed as Deputy Secretary for the Environment. For the past eight years, Ms. Enck has served as a policy advisor to Attorney General Eliot Spitzer. Prior to joining the Attorney General's office, she was a Senior Environmental Associate with the New York Public Interest Research Group (NYPIRG). She has also served as the Executive Director of the Environmental Advocates of New York, a non-profit government watchdog organization dedicated to enforcing laws that protect natural resources and safeguards public health. Ms. Enck received her B.A. from the College of St. Rose.

**Source:** <http://www.ny.gov/governor/press/0125072.html>

### **DEC's Environmental Priorities**

With DEC Commissioner Peter Grannis in place, reportedly the agency's priorities include:

- Regional Greenhouse Gas Initiative (this will support the Governor's Global Warming Initiative.)
- Brownfields
- Recreational use of NYC's watershed land

**Source:** [http://www.nylcv.org/ecopoliticsdaily/20070410\\_to\\_do\\_at\\_dec](http://www.nylcv.org/ecopoliticsdaily/20070410_to_do_at_dec)

## **B. Legislation**

### **1. 2007 Session**

#### **Assembly Passes 16 Bills For Earth Day**

To commemorate Earth Day, the New York State Assembly announced the passage of a 16-bill legislative package to address global warming, reduce solid waste, and to protect public health. This kept with the Assembly's tradition to pass one-house bills en masse in honor of Mother Earth. The newly passed Assembly bills include:

- Collecting the current five cent deposit on the containers of the newer beverage products that did not exist when the first bottle bill law was enacted (aka "Bigger Better Bottle Bill")
- A wetlands bill expanding the jurisdiction of DEC to include wetland areas that are one acre or more,
- Expanding the rights of individuals to challenge State Environmental Quality Review act (SEQR) determinations,
- Instituting the smart growth public infrastructure policy act to promote state spending in a manner consistent with smart-growth principles,

- Requiring DEC to coordinate and supervise the use of volunteer groups in stewardship agreements to preserve, maintain, and enhance the state's natural resources.
- Creating the state Urban Pesticide Board to examine the sale and use of pesticides in urban areas and make recommendations about their control to the governor and the legislature,
- Entering New York state into a compact with other states and Canadian provinces to regulate waters in and outside of the Great Lakes Basin,
- Requiring testing of private wells upon the sale or transfer of real property as well as periodic well testing on properties that are leased,
- Making available a solar energy tax credit for co-ops and condos.

### **Governor Proposes Changes to the Wicks and Local Government Procurement Laws**

On April 30 the Governor announced a legislative proposal to eliminate unnecessary mandates on local governments. This legislation will, among other things, make amendments to the Wicks Law and ease local government procurement procedures. The mandate relief package will include the following provisions:

The Wicks Law legislation will:

- Increase the threshold to \$1,000,000 for Upstate projects and \$2,000,000 for projects in New York City, and annually index these new thresholds to adjust for inflation;
- Strengthen subcontractor protections to ensure that subcontractors are treated fairly in non-Wicks projects; and
- Authorize the use of project labor agreements, which standardize the terms and conditions for labor on public works contracts, in lieu of Wicks separate specifications in certain circumstances.

The Local Government Procurement proposed legislation will facilitate local government procurement processes by:

- Increasing the competitive bidding thresholds for public works contracts from \$20,000 to \$50,000 and for commodities purchases from \$10,000 to \$20,000;
- Allowing local governments to consider “best value” when awarding contracts for services, and;
- Allowing local governments to “piggy-back” on federal information technology procurement contracts.

**Source:** <http://www.ny.gov/governor/press/0429071.html>

## **C. Regulation and Policy**

### **1. Water**

#### **NY and Other States Release Draft Northeast Regional Mercury TMDL**

The Northeast Regional Mercury TMDL is the Federal Clean Water Act mandated document that identifies pollutant load reductions necessary for regional waterbodies to meet and maintain compliance with state and federal water quality standards. The Northeast states have a number of statewide, regional, and waterbody-specific fish consumption advisories as a result of mercury pollution and the overall objective of the TMDL is to reduce mercury in regional waterbodies to the point that fish consumption advisories will no longer be necessary. The TMDL was prepared by the New England Interstate Water Pollution Control Commission (NEIWPCC) in cooperation with the state environmental agencies of New York, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. Existing fish tissue concentrations must be reduced by 65 to 91 percent to achieve the target concentrations. Implementation of the TMDL will be carried out in three phases. Phase I, from 1998 to 2003, has a goal of 50 percent reduction from the 1998 baseline and Phase II, from 2003 to 2010, has a goal of 75 percent reduction. In 2010, mercury emissions, deposition, and fish tissue concentration data will be re-evaluated in order to assess progress and set a timeline and goal for Phase III to make remaining necessary reductions to meet water quality standards. The Daily Load TMDL = (4.75 to 6.29 kg/d) = [WLA (20 to 27 kg/yr) + LA (1,712 to 2,269 kg/yr) + MOS (implicit)] /365. The WLA (the amount allocated to point sources such as POTWs) is defined for this mercury TMDL as 1.2 percent of the TMDL to ensure that water point source mercury loads remain de minimis. The wasteload allocation was determined by keeping the wastewater contribution equal to the same percentage as it was in the total source load. The load allocation was calculated by subtracting the wasteload allocation from the TMDL and then was divided between naturally and anthropogenic sources. Because over 98 percent of the total load is due to atmospheric deposition, reductions focus on the load allocation. Necessary reductions were divided into three phases, 1998-2003, 2003-2010, and 2010 on, and were also allocated between in-region and out-of-region sources. The TMDL calls for an 86.8 to 98.2 percent reduction in order to meet the target fish tissue concentration. However, the TMDL will be implemented adaptively, so that as regional and national controls are implemented, the response in fish tissue as a result of emissions and deposition reductions will be monitored. If necessary, reduction goals will be modified based on the response seen in fish tissue monitoring.

**Written comments will be accepted on the draft TMDL through the close of business  
May 25, 2007**

**Source:** <http://www.dec.state.ny.us/website/dow/mercrytmdl.html>

#### **Proposed Water Quality Standards (WQS) Rule Changes (12/13/06)**

The Department of Environmental Conservation has proposed a number of amendments to its Part 700 rules governing water quality standards. The comment period closed in late February. The complete proposal, including a regulatory impact statement, is available on-line at: .

**Source:** [www.dos.state.ny.us/info/register/2006/dec13/pdfs/Rules.pdf](http://www.dos.state.ny.us/info/register/2006/dec13/pdfs/Rules.pdf). If you would like to receive a copy of Nixon Peabody's Alert on this proposal, please send an e-mail to [lford@nixonpeabody.com](mailto:lford@nixonpeabody.com) or go to [http://www.nixonpeabody.com/publications\\_detail3.asp?ID=1690](http://www.nixonpeabody.com/publications_detail3.asp?ID=1690)

## **New York Issues SPDES Multi-Sector General Permit for Industrial Stormwater Discharges**

On December 27, 2006, the New York Department of Environmental Conservation published a new SPDES Multi-Sector General Permit (MSGP) for Stormwater Discharges Associated with Industrial Activity. The permit will become effective on March 28, 2007. The new permit will be in effect for at least five years, and will cover both new and existing dischargers of stormwater, who will all have to apply for coverage under the new permit.

Source: <http://www.dec.state.ny.us/website/dow/gp0601.pdf>. If you would like to receive a copy of Nixon Peabody's Alert on this proposal, please send an e-mail to [lford@nixonpeabody.com](mailto:lford@nixonpeabody.com). or go to:

[http://www.nixonpeabody.com/publications\\_detail3.asp?ID=1685](http://www.nixonpeabody.com/publications_detail3.asp?ID=1685)

## **2. Non-Water**

### **Air -- NY Proposed Clean Air Interstate Rules (CAIR)**

New York's proposed Clean Air Interstate Rules (CAIR) include Part 243, CAIR NO<sub>x</sub> Ozone Season Trading Program; Part 244, CAIR NO<sub>x</sub> Annual Trading Program; and Part 245, CAIR SO<sub>2</sub> Trading Program. These regulations will establish cap-and-trade programs designed to mitigate interstate transport of NO<sub>x</sub> and SO<sub>2</sub> to help reduce ozone and fine particulate formation and assist states located in the eastern U.S. in attaining ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards (NAAQS). As part of the rulemaking, Part 200 will be amended to update cross references in section 200.9, Referenced Material. Written comments are accepted through 5 pm, May 24, 2007

Source: [http://www.dec.state.ny.us/website/dar/air\\_reg.html#cair](http://www.dec.state.ny.us/website/dar/air_reg.html#cair)

### **NY Proposed Part 200, General Provisions related to National Emissions Standards for Hazardous Air Pollutants**

This proposed rulemaking will update 6 NYCRR 200.10, Table 4 to incorporate by reference each of the new and amended National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations as they were printed in the July 1, 2005 Code of Federal Regulations. This rulemaking is also updating the incorporation by references to the new Emission Guidelines for existing Other Solid Waste Incinerators and the amendments to the Emission Guidelines for Existing Large Municipal Waste Combustors. Written comments are accepted through 5 pm, May 24, 2007.

Source: [http://www.dec.state.ny.us/website/dar/air\\_reg.html#part200neshaps](http://www.dec.state.ny.us/website/dar/air_reg.html#part200neshaps)

### **New York City Launches Pilot Program To Put Recycling Bins in Public Spaces**

A three-month pilot program is being launched by New York City to place recycling receptacles in a variety of public spaces, such as busy commercial streets, parks, and transit facilities.

The city Sanitation Department pilot program, set to begin April 2, was part of an agreement on a 20-year solid waste management plan reached in July 2006 between the Bloomberg administration and the City Council.

Aimed at removing recyclable paper, plastic, and glass from trash receptacles and the waste stream, the pilot program could be expanded to additional locations in the summer, the city said. It includes parks in all five city boroughs, as well as both Staten Island Ferry terminals.

City Sanitation Commissioner John Doherty noted that a recently completed waste characterization study by the city had found that as much as 50 percent of the contents of the city's 25,000 litter baskets could be recycled, especially plastic and glass bottles, aluminum cans, and newspapers.

**Source:** Environment Reporter, BNA, Inc. 4/7/07

## **D. Judicial and Enforcement**

### **NY's Brownfields Rules Challenged**

Two entities, the Superfund Coalition, (an industry group that successfully challenged the state's original superfund program rules) and a group of four environmental organizations -- Citizen's Environmental Coalition, Sierra Club, NYPIRG and Environmental Advocates -- have filed separate challenges to the state's revised superfund/brownfield rules, 6 NYCRR Part 375, which went into effect December 14, 2006. Both challenges were filed in Albany County State Supreme Court.

**Source:** <http://www.bcny.org/inside/env/2007/part375challenges.htm>

## **II. FEDERAL**

### **A. Judicial And Enforcement**

#### **1. General**

### **EPA Reports 23,000 Inspections, 305 Criminal Cases for Fiscal 2006**

In fiscal year 2006, the Environmental Protection Agency's enforcement office conducted more than 23,000 compliance inspections, initiated more than 305 criminal cases, and performed more than 352 civil investigations. EPA's Office of Enforcement and Compliance Assurance also resolved 1,475 voluntary disclosures in fiscal 2006, which ended Sept. 30, 2006.

The report aims to provide results on the entire spectrum of the office's enforcement activities, including compliance assistance, inspections, and environmental justice. As part of civil enforcement settlements, violators in 220 civil cases agreed to implement supplemental enforcement projects worth more than \$78 million, the report said. EPA's enforcement office in fiscal year 2006 obtained private party and federal agency commitments for cleanup and cost recovery that exceeded \$555 million, the report said.

**Source:** Environment Reporter, BNA, Inc. 3/30/07. *The FY 2006 OECA Accomplishments Report and Environmental Results Through Smart Enforcement: Fiscal Year 2002 are available at <http://cfpub.epa.gov/compliance/resources/reports/accomplishment/details.cfm>.*

#### **2. Water**

### **Indictment for Illegally Dumping Untreated Waste Into Detroit Sewer System**

A waste-treatment company and three former employees were charged with illegally dumping raw sewage into the Detroit sewer system. The indictment alleges that the company accepted waste when its tanks did not have the capacity to handle it, and then, to reduce costs and maintain storage space for additional waste, it bypassed treatment processes and discharged waste directly into the sewer.

One ex-employee is charged with conspiracy, a Clean Water Act violation, and obstruction of justice; while another is charged with conspiracy, three Clean Water Act violations, and seven false-statement charges; the third ex-employee is charged with conspiracy and a Clean Water Act violation. The former plant manager reached a plea agreement on charges of unlawfully bypassing treatment equipment and discharging untreated liquid wastes into the sanitary sewer system.

**Source:** *United States v. Comprehensive Environmental Solutions Inc.*, E.D. Mich., No. 2:07-cr-20037, indictment returned, filed 1/24/07

### **Court Says EPA Violated BEACH Act By Failing to Issue Criteria for Bacteria**

The Environmental Protection Agency violated the Clean Water Act by failing to publish either new or revised water quality criteria for bacteria by the October 2005 deadline set by Congress, a federal district court ruled March 21 (*Natural Resources Defense Council v. Johnson*, C.D. Cal., No. 06-cv-4843, 3/21/07). The Court found that EPA violated its "non-discretionary" (mandatory) duty of revising or setting new water quality criteria for waterborne pathogens under Sections 104(v) and 304(a)(9) of the Clean Water Act at 33 U.S.C. §1314(a)(9). The district court also set April 2 as the date for NRDC and EPA to meet and discuss how the agency would go about setting new pathogen criteria or revising existing ones.

**Source:** Environment Reporter, BNA, Inc. 3/30/07. *The ruling is available at [http://docs.nrdc.org/water/wat\\_07032301A.pdf](http://docs.nrdc.org/water/wat_07032301A.pdf).*

### **Minnesota Agency, Contractor Pay Stormwater Fine**

The Minnesota Department of Transportation, Metro Division (MnDOT) and its construction contractor, Granite/McCrossan, agreed to share responsibility for a \$75,000 penalty resulting from stormwater violations on a road reconstruction project between Minnetonka and Eden Prairie, Minn. The alleged violations took place in 2005 and 2006 on an eight-mile stretch of road. The 297-acre project included adding a third lane for traffic in both directions, the replacement of 14 bridges and the reconstruction of two major freeway interchanges.

On July 26, 2004, before construction began, MnDOT and Granite/McCrossan applied for a construction stormwater permit and prepared a plan for how they intended to protect nearby water bodies from dirty stormwater. Among other strategies, the plan called for the installation of silt fences and grass cover on dirt slopes to prevent erosion. While this plan was implemented rigorously, the parties failed to revise the plan when it became clear that certain strategies were not working.

The agreement with MnDOT and Granite/McCrossan cites these parties'

- failure to modify their stormwater pollution prevention plan.
- failure to use more aggressive strategies to stabilize dirt slopes.
- failure to remove construction-related sediment from a wetland.

- failure to maintain temporary or permanent grass cover on steep dirt slopes.

Officials said the violations caused damage to three local water bodies: one of which was included on the state's list of impaired waters.

**Source:** Water and Wastewater Products, April 4, 2007

### **Virginia Man Convicted on Nine Counts of 'Knowingly' Violating Clean Water Act**

The U.S. Court of Appeals for the Fourth Circuit upheld March 28 a criminal conviction for a Virginia man who was charged with "knowingly" polluting U.S. waters (*United States v. Cooper*, 4th Cir., No. 05-4956, 3/28/07). The Fourth Circuit affirmed the ruling of the U.S. District Court for the Western District of Virginia, which convicted D.J. Cooper April 28, 2005, on nine counts of "knowingly discharging a pollutant from a point source into the waters of the United States" in violation of Section 402 of the Clean Water Act. The district court sentenced Cooper, of Bedford County, Va., to 27 months' imprisonment and a \$30,000 fine for each count of conviction. At issue was a sewage lagoon that Cooper had operated between 1993 and 2002 in violation of the terms of his NPDES permit. Beyond 2002, Cooper continued to operate the lagoon without a permit despite receiving multiple notices of violation from the Virginia Department of Environmental Quality. In 2003, EPA's criminal division began investigating Cooper's repeated violations, culminating with a jury conviction in April 2005. Cooper claimed that the district court should have acquitted him for lack of evidence because EPA failed to prove that he "knowingly" discharged pollutants into the waters of the United States. Cooper also claimed he did not know that the creek was a water of the United States.

**Source:** Environment Reporter, BNA, Inc. 4/6/07. The Fourth Circuit's *United States v. Cooper* decision is available at <http://pacer.ca4.uscourts.gov/opinion.pdf/054956.P.pdf>.

### **Refining Co. to Pay \$5.5 Million for Wastewater Violations**

On April 4, Sinclair Tulsa Refining Co. and two company managers were sentenced for manipulating wastewater discharges from the Tulsa Refinery into the Arkansas River. The U.S. District for the Northern District of Oklahoma ordered Sinclair Tulsa Refining Co., a subsidiary of major oil and gasoline producer Sinclair Oil, to pay a \$5 million criminal penalty and to make a community service payment of \$500,000 to the River Parks Authority. Sinclair also was sentenced to two years of probation.

Two former managers, were sentenced to serve six months of home detention and three years of probation each for felony violations of the Clean Water Act (CWA). In addition, one was ordered to pay a \$160,000 fine and to serve 100 hours of community service while the other former manager was ordered to pay an \$80,000 fine and to serve 50 hours of community service.

Sinclair and the former refinery managers had admitted to knowingly manipulating the refinery processes, wastewater flows and wastewater discharges to result in unrepresentative wastewater samplings during mandatory testing required under the National Pollutant Discharge Elimination System (NPDES) permit program. The manipulated samplings were intended to influence analytical testing results reported to the Oklahoma Department of Environmental Quality and EPA. According to the records, on numerous occasions in 2002 and 2003, Sinclair directed employees to limit wastewater discharges in order to manipulate the result of required bio-testing. During monitoring periods, Sinclair, by way of its employees, reduced flow rates of

wastewater discharges to the river, and diverted more heavily contaminated wastewater to holding impoundments, among other means of ensuring that the refinery had passed the tests.

**Source:** Water and Wastewater Products, April 6, 2007.

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

### **EPA Safe Drinking Water Act Determination on 11 Contaminants**

The U.S. EPA has made a preliminary determination not to regulate 11 contaminants on the second drinking water contaminant candidate list (CCL). The agency's preliminary regulatory determination, based on an extensive review of health effects and occurrence data, concludes that the specific contaminants do not occur at levels of public health concern in public water systems. The 11 contaminants include naturally occurring substances, pesticides, herbicides and chemicals used (or once used) in manufacturing. EPA monitored eight of the contaminants during the first round of the unregulated contaminant monitoring program and the remaining three during previous occurrence surveys. While none of the contaminants were found nationally at levels of public health concern, EPA is recommending that health advisories for seven of the contaminants be updated to provide local officials with current health information for situations where the contaminants may occur. The Agency will take comments for 60 days following publication of a notice in the *Federal Register*. The Administrator signed the following notice on April 11, 2007, and EPA is submitting it for publication in the Federal Register

**Source:** The notice and additional information on the preliminary regulatory determinations can be found at [http://www.epa.gov/safewater/ccl/reg\\_determine2.html](http://www.epa.gov/safewater/ccl/reg_determine2.html).

### **EPA Approves Experimental Plan for Underground Sludge Disposal**

The U.S. Environmental Protection Agency recently approved an experimental program to allow the city of Los Angeles to inject treated sewage sludge nearly a mile below the ground in a sandstone formation beneath its Terminal Island Treatment Plant in San Pedro, CA. The permit allows the city, over a five-year period, to pump up to 400 tons of treated sewage per day into the depleted oil field to evaluate potential benefits of using fracture injection technology. The potential benefits of this experiment include safety of disposal, generating significant quantities of methane for future energy use and permanent carbon dioxide sequestration. This project will not affect drinking water supplies. Work is expected to begin in early 2007. The methane could produce enough energy to power 3,500 homes, while the carbon sequestration would cut carbon emissions by 81,000 tons a year.

**Source:** WaterWorld February 2007, see also [http://www.epa.gov/region09/water/groundwater/uic\\_permits.html#la](http://www.epa.gov/region09/water/groundwater/uic_permits.html#la).

### **California Municipalities Look At Turning Biosolids into Fuel**

Sanitation officials will review a new plan to turn biosolids into environmentally friendly fuel. The fuel will be used to fire cement kilns - in place of coal - and the leftover ash will be used in the cement itself. Currently the projected cost is high. The cheapest ways to dispose of Orange County's sludge are composting it into Class A fertilizer, at \$42.08 per ton, or stabilizing it with lime, at \$42.51 per ton. Turning the biosolids into fuel will cost \$72.40 a ton. The proposal was

presented by renewable energy company EnerTech Environmental. The process subjects sludge to extreme heat and pressure until cellular structures rupture. Carbon dioxide gas splits off in a molecular reconfiguration, water is easily removed, and what's left is essentially concentrated carbon. Then it's dried and forms what EnerTech calls "E-fuel." "An environmentally sound method for achieving 100 percent beneficial reuse of biosolids," boasts EnerTech's Web site.

Orange County isn't the only one to sign on. Los Angeles will send about 200 tons of sludge a day to EnerTech once its plant in Rialto is finished next year.

**Source:** Orange County, CA Register, 2-23-07.

### **EPA Revises Water Testing Methods To Give Facilities Greater Flexibility**

The Environmental Protection Agency published a final rule March 12 that modifies a number of water sampling and analysis procedures under the Clean Water Act and Safe Drinking Water Act

- Amends EPA's Sewage Sludge Use and Disposal Regulations at 40 CFR §122 including adding E. coli and Enterococci.
- Amends 40 CFR §136 (NPDES/SPDES and Pretreatment Compliance sampling)
- Amends the Pesticide Chemicals category at 40 CFR §455
- Amends the Pulp, Paper, and Paperboard Point Sources at 40 CFR §430
- Amends the National Primary and Secondary Drinking Water Regulations at 40 CFR §141 and §143.

The final rule took effect April 12.

**Source:** 72 Fed. Reg. 11,200 (March 12, 2007).

### **EPA's Water Chief Asks for Formal Committee To Revise Rulemaking to Detect Pathogens**

Environmental Protection Agency's water office has requested a formal negotiation process among interested parties to revise a rule to control microbial contaminants in drinking water. The committee would comprise stakeholders with diverse interests to develop a consensus for revisions to the Total Coliform Rule (TCR), he said.

Issued in 1989, the TCR is a rule to detect potentially dangerous pathogens in sources of drinking water through monitoring by utilities. EPA decided in 2003 to revise it, in part to reduce the burden on water utilities and because many believe the rule is not an appropriate indicator of water quality in the distribution system.

**Source:** Environment Reporter, BNA, Inc. 4/6/07

## **C. EPA Guidance and Tools**

### **New Manuals To Help Small Public Water Systems Comply With Drinking Water Regulations**

As part of its Simple Tools for Effective Performance (STEP) series, EPA has developed new manuals to help small public water systems understand the Stage 2 Disinfectants and Disinfection Byproducts Rule (Stage 2 DBP) and Long Term 2 Enhanced Surface Water Treatment (LT2) Rules. In addition to providing an overview of the rules, the manuals provide step-by-step guidance on how small systems (those serving fewer than 10,000 people) can comply with the rule. The manuals also provide helpful worksheets and examples of actions

systems might take to comply with the rules. The documents serve as EPA's official compliance guide for small public water systems, as required by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996.

**Source:** EPA Water Headlines, March 13, 2007. The Stage 2 DBP manual is available on the EPA website at <http://www.epa.gov/safewater/disinfection/stage2/compliance.html>. The LT2 manual is available at <http://www.epa.gov/safewater/disinfection/lt2/compliance.html>. Both documents and other STEP guides are also available on EPA's small water systems at <http://www.epa.gov/safewater/smallsys/ssinfo.htm>.

### **Clean Water Mercury Listing Guidance Issued**

EPA has issued information on a voluntary approach for listing waters impaired by mercury mainly from atmospheric sources under Clean Water Act section 303(d). States that have in place a comprehensive mercury reduction program may put their waters impaired by mercury from air sources in a subcategory "5m" of their 303(d) lists and defer development of Total Maximum Daily Loads (TMDLs). According to EPA, the approach uses Clean Water Act tools to encourage state and regional mercury reduction programs, and recognizes early actions by states to address their mercury sources and achieve environmental results sooner.

**Source:** <http://www.epa.gov/water/waternews/2007/070308.html#2>. For more details visit <http://www.epa.gov/owow/tmdl/mercury5m/>.

### **BASINS Program Updated and Made More Available**

EPA has released a new version of its acclaimed watershed management program making it easier to use and more readily available. "Better Assessment Science Integrating Point and Nonpoint Sources" (BASINS) is a multipurpose system that integrates environmental data, analytical tools, and modeling programs. BASINS will help regions, states, and local agencies develop cost-effective approaches to watershed management and environmental protection. BASINS 4.0 is a valuable tool for watershed and water quality-based analyses, including developing total maximum daily load (TMDL) allocations. Unlike earlier releases, BASINS 4.0 runs on non-proprietary, open source, free geographic information system (GIS) software, making the tool universally available to anyone interested in the system. Prior versions required users to purchase costly GIS software to run the BASINS system. Once installed on a personal computer, BASINS 4.0 gives users access to detailed point and non-point source data, which they can use to assess or predict flow and water quality for selected streams or entire watersheds.

**Source:** EPA Water Headlines for April 27, 2007 citing BASINS 4.0: <http://www.epa.gov/waterscience/basins/>

### **New Cost Estimating Tool to Help Small Drinking Water Systems Evaluate Point of Use and Point of Entry Treatment Devices**

EPA is releasing a cost estimating tool to help small drinking water systems and States evaluate cost of Point-of-Use (POU) or Point-of-Entry (POE) treatment devices as a small system compliance strategy. This tool is a companion to EPA's guidance document which was released in June 2006. POU drinking water treatment devices are typically installed under a kitchen sink

and remove contaminants such as arsenic, lead, and radium. POE drinking water treatment devices are usually installed outside the home or business and able to treat an even wider variety of contaminants, as well as viruses and bacteria (microbes) that can cause acute health problems. Depending on the site-specific conditions, the contaminant to be treated and the technology chosen to treat it, these treatment devices offer the potential to significantly reduce costs for small treatment systems. The POU/POE tool and 2006 guidance manual are available on EPA's Safewater web site at <http://www.epa.gov/safewater/smallsys/ssinfo.htm>.

**Source:** <http://www.epa.gov/water/waternews/2007/070413.html#2>

### **EPA Publishes Stormwater Guide for Construction**

An Environmental Protection Agency guide outlines how contractors charged with overseeing construction sites can develop a stormwater pollution prevention plan (SWPPP), which is required under the Clean Water Act's general permits for construction activities. Released in January, *Developing Your Stormwater Pollution Prevention Plan: A Guide for Construction Sites* provides interim guidance to construction site operators that need coverage under National Pollutant Discharge Elimination System permits for their stormwater discharges. According to EPA, "a SWPPP is more than just a sediment and erosion control plan. It describes all the construction site operator's activities to prevent stormwater contamination, control sedimentation and erosion, and comply with the requirements of the Clean Water Act." Stormwater runoff from construction sites can cause significant harm to rivers, lakes, and coastal waters.

**Source:** Environment Reporter, BNA, Inc. 2/9/07. The guide can be accessed at <http://www.epa.gov/npdes/swpppguide/>.

### **Federal Government Issues Guidelines on Disposal of Prescription Drugs**

On Feb. 20, 2007 the federal government issued new guidelines for the proper disposal of unused, unneeded or expired prescription drugs. The White House Office of National Drug Control Policy (ONDCP), the U.S. Department of Health and Human Services (HHS) and EPA jointly released the new guidelines, which are designed to reduce the diversion of prescription drugs, while also protecting the environment.

The new federal prescription drug disposal guidelines urge Americans to:

- Take unused, unneeded or expired prescription drugs out of their original containers.
- Mix the prescription drugs with an undesirable substance, like used coffee grounds or kitty litter, and put them in impermeable, non-descript containers, such as empty cans or sealable bags, further ensuring that the drugs are not diverted or accidentally ingested by children or pets.
- Throw these containers in the trash
- Flush prescription drugs down the toilet only if the accompanying patient information specifically instructs it is safe to do so.
- Return unused, unneeded or expired prescription drugs to pharmaceutical take-back locations that allow the public to bring unused drugs to a central location for safe disposal.

The new federal prescription drug disposal guidelines go into effect immediately. For more information, please visit <http://www.whitehousedrugpolicy.gov>.

**Source:** Environmental Protection On-Line Magazine, 2/28/07

(<http://www.eponline.com/Stevens/EPPub.nsf/frame?open&redirect=http://www.eponline.com/stevens/eppub.nsf/d3d5b4f938b22b6e8625670c006dbc58/91d4753ce78c75f18625728e0052e7aa?OpenDocument>)

### **EPA Issues Guides to Help Small Systems Comply With Microbial, Byproducts Rules**

The two manuals provide an overview of the Long-Term 2 Enhanced Surface Water Treatment Rule (LT2), intended to control microbials, and the Stage 2 Disinfectant and Disinfection Byproducts Rule (Stage 2).

The manuals, *Complying with the Long Term 2 Enhanced Surface Water Treatment Rule: Small Entity Compliance Guide* and *Complying with the Stage 2 Disinfectant and Disinfection Byproducts Rule: Small Entity Compliance Guide*, serve as EPA's official compliance guide for small public water systems as required by the Small Business Regulatory Enforcement Fairness Act of 1996.

**Source:** Environment Reporter, BNA, Inc. 3/23/07 *The LT2 manual is available at <http://www.epa.gov/safewater/disinfection/lt2/compliance.html>. The Stage 2 manual is available at <http://www.epa.gov/safewater/disinfection/stage2/compliance.html>.*

### **New EPA Tool to Accelerate Watershed Planning**

The EPA has released the Watershed Plan Builder, an interactive, Web-based tool to improve efforts by states and local communities in protecting and restoring local water resources. The tool will help local watershed organizations develop integrated watershed plans to meet state and EPA requirements and promote water quality improvements.

Once the data are entered, the tool produces an outline of a comprehensive watershed plan tailored to a specific watershed. The Watershed Plan Builder walks the practitioner through various watershed planning steps.

During the next six months, the Watershed Plan Builder will be available to watershed organizations, federal and state agencies, tribes, universities and local governments to beta test the application and provide feedback. A team of experts from EPA's water programs developed the tool, with input from state, tribal and local agency experts and other local watershed practitioners.

**Source:** EPA Water Headlines for April 20, 2007. EPA will host a Webcast on the Watershed Plan Builder on May 2, 2007, from 1-2:30 p.m. EDT. Watershed Plan Builder can be found at: <http://www.epa.gov/owow/watershedplanning/>