



New York Water Environment Association, Inc.

The Water Quality Management Professionals

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Recent Environmental Legislative, Regulatory and Judicial Developments¹

November 4, 2010 through March 8, 2011

I. NEW YORK

A. Legislation:

Proposed Water-Related Legislation – A separate document on bills we are tracking that are “moving” will be issued.

State Senate Appoints New Committee Chairs.

Newly elected Sen. Mark Grisanti, from the 60th District in Buffalo chairs the Environmental Conservation Committee. On his campaign Web site, Grisanti cited his assistance in passing legislation on a "comprehensive energy program" that pools power to "give an economic boost to business," while also "investing in solar and wind power and home retrofitting" for energy efficiency.

Another Western New Yorker, George D. Maziarz, will continue his chairmanship of the Energy Committee, a position he held as a Republican even when Democrats controlled the Senate. Maziarz represents Niagara, Orleans and Monroe counties in the 62nd District.

Chairing the Agricultural Committee is freshman Senator Patty Ritchie, whose 48th District runs along the St. Lawrence River and the eastern end of Lake Erie.

Charles Fuschillo Jr. (R-Merrick, 8th District, Long Island) is chairman of the Senate Transportation Committee. The committee's areas of oversight include the departments of Transportation and Motor Vehicles, the Metropolitan Transportation Authority, the Port Authority of New York & New Jersey, the New York State Thruway Authority, and other agencies.

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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 and TBCNY is at 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.

Senate Minority Leader John Sampson also announced committee assignments for the Democrats. Among them is Sen. Tony Avella (11th District, Queens) who was named the ranking member on the Environmental Conservation Committee.

Source: Ecopolitics this Week, January 10-14.

B. Regulation and Policy

1. Water

DEC Commissioner Announced that Agency Planned to Start Requiring Manufacturers to Disclose Chemical Contents of Detergents and Common Household Cleaners

On September 9, 2010 DEC announced that it planned to start requiring manufacturers to disclose the chemical contents of detergents and common household cleaners. In a letter to the environmental group Earthjustice, DEC Commissioner Alexander Grannis stated that DEC will begin the process to implement its authority under a 39-year-old state law requiring manufacturers of domestic and commercial household cleansing products to disclose the ingredients of those products. The requirement would comply with Section 35-0107 of the New York Environmental Conservation Law and Section 659.6 of the New York code of Rules and Regulations. The law was first enacted in 1971 to allow DEC to restrict ingredients in household detergent products based on their effects on human health and the environment. According to the letter, the agenda will include an overview of the state's legal authority, key issues associated with the disclosures, the sharing of stakeholder interests and concerns, and an in-depth discussion of the pertinent issues. The letter from Commissioner Grannis to Earthjustice is available at http://www.earthjustice.org/sites/default/files/files/DEC_letter_9_9.pdf.

2. Enforcement and Judicial

ExxonMobil to Pay \$25 Million to Settle Newtown Creek Case

ExxonMobil Corp. has agreed to pay \$25 million to settle a suit brought by New York State and the Riverkeeper environmental group to force the cleanup of areas surrounding the Newtown Creek superfund site in New York City, Attorney General Andrew M. Cuomo (D) announced Nov. 17 (New York v. ExxonMobil Corp., E.D.N.Y., No. 07-CV-2902, proposed consent decree filed 11/17/10). The bulk of the money would be used on projects to benefit the environment in the Greenpoint section of Brooklyn, where refineries and other industrial facilities lined the Newtown Creek waterway for decades. The settlement also would require the company to perform and pay for a comprehensive cleanup of oil spills and related pollution in Greenpoint. A proposed consent decree was submitted Nov. 17 for approval.

The \$25 million payment includes \$19.5 million in projects to benefit the environment in Greenpoint, \$3.5 million for future oversight costs, \$1.5 million for past state cleanup costs, \$250,000 in civil penalties, and \$250,000 in a natural resource damages assessment. The \$19.5 million is the single largest payment for environmental benefit projects in New York history. The settlement calls for hiring an independent outreach coordinator to ensure community participation in identifying priorities for the projects.

Source: Source BNA, Inc. Toxics Reporter, 11/19/10.

The proposed consent decree in New York v. ExxonMobil Corp is available at http://www.ag.ny.gov/media_center/2010/nov/ExxonMobilConsentDecree.pdf.

A related corrective action plan is available at http://www.ag.ny.gov/media_center/2010/nov/ExxonMobilCorrectiveActionPlan.pdf.

CVS Pharmacy Agrees to Pay \$268,900 to Settle Alleged Wastewater Violations

Nationwide drugstore chain CVS Pharmacy Inc. will pay \$268,900 and adopt new environmental practices to settle charges that it violated environmental regulations at its stores in Connecticut related to the improper discharge of wastewater containing pharmaceuticals and photo-developing chemicals.

Under the terms of the settlement agreement, the Rhode Island-based pharmacy chain will pay \$223,900 to the state's general fund and spend \$45,000 to fund a Supplemental Environmental Project (SEP). The SEP funds will be used to study the potential for reducing the amount of stormwater that enters the sewer systems in both New Haven and Bridgeport. CVS has reached an agreement with Connecticut to ensure that its stores follow proper procedures for the disposal of photographic processing chemicals and wastewater generated from its photo processing service and rinsing of certain types of pharmaceuticals. As part of that agreement, the company said it is implementing standard operating procedures, workplace signage, and staff training to ensure the proper disposal of this material. The company said the agreement "does not involve any allegation that prescription pharmaceutical products were improperly poured down the drain."

Source: BNA Environment reporter, 12/3/10. More information about water regulation in Connecticut is available at http://www.ct.gov/dep/cwp/view.asp?a=2719&q=325520&depNav_GID=1654.

Rochester, N.Y., Asbestos Contractor Found Guilty of Clean Air Act Violations

A federal jury in Rochester, N.Y. Nov. 12 found an asbestos removal contractor and his company guilty of violating the Clean Air Act and other charges in connection with the improper removal of asbestos on several projects. A jury in the U.S. District Court for the Western District of New York convicted Keith Gordon-Smith and his company, Gordon-Smith Contracting Inc., of eight counts of violating the Clean Air Act and six counts of failing to provide required notice to EPA. The panel also found Gordon-Smith and his company guilty of making false statements to an inspector of the Occupational Safety and Health Administration. Gordon-Smith faces criminal penalties of up to five years in prison and \$250,000 for each count, while the company faces fines of up to \$500,000 per count.

The charges stemmed from work on several projects in the Rochester area, including demolition of a wing of the Genesee Hospital. Workers at Gordon-Smith Contracting were ordered to remove copper pipes, ceiling tiles, and scrap metal without wearing any protective gear, according to the Justice Department and EPA. The hospital structure contained about 70,000 square feet of asbestos. After receiving complaints from workers, OSHA inspected the hospital site, but reportedly Gordon-Smith falsely told an inspector that workers had not removed any of the materials.

The Justice Department and EPA said Gordon-Smith allowed asbestos to flow from upper floors through drains and holes in containment systems during an abatement project. In addition, large amounts of asbestos were left hidden and were never disposed of at an EPA-approved site. The jury acquitted a former project manager at Gordon-Smith Contracting of one count of illegal asbestos removal and disposal, according to Justice and EPA.

Source: BNA, Inc. Toxics Law Reporter - Latest Developments November 16, 2010 Citing *U.S. v. Gordon-Smith*, W.D.N.Y., No 08-CR-6019, 11/12/10).

3. Non-Water

N.Y. Comptroller Report Finds P3s May Be “Good Option” Amid Budget Shortfalls

A report from the New York Comptroller's office said state officials facing a \$9 billion state budget shortfall and an estimated need of \$250 billion in financing for infrastructure over the next 20 years may need to pair with private-sector partners to address a backlog of public projects. Looking at so-called public-private partnerships, which have been used by a number of other states, “makes good sense” for a state with insufficient funds and an already high debt and tax burden, according to the report issued by State Comptroller Thomas DiNapoli.

Public-private partnerships, also known as P3s, are arrangements between government entities and private businesses that leverage the capital of the private sector for traditional public works projects such as building or improving toll roads, bridges, and airports. Typically, private companies finance, build, operate, and maintain the infrastructure in return for a portion of the revenue generated by the use of the infrastructure. Private sector control or operation of public infrastructure assets, however, still remains controversial in many state houses.

New York's failure to adequately manage its own finances has made it necessary to consider P3s, according to the report.

Since P3s could enable the state to use private financing to get around current debt limits, one solution would be to combine the use of P3 agreements with comprehensive reform of the state's debt and capital financing practices, the report said. While the report sees P3s as a possible solution for the state given its current funding crisis, the report stresses that more analysis needs to be done before the state could make a decision to move ahead with such an initiative.

The report acknowledged that New York would have to “ensure public assets are not squandered and taxpayers are protected” before proceeding with such partnerships. Taxpayers can be protected by properly assessing the value of the public assets held by the partnership, ensuring that the private sector does not use pricing mechanisms that lead to excessive fees and toll increases for taxpayers, ensuring the private entity can deliver on its obligations, and ensuring that short-term fiscal relief does not lead to long-term cost increases and public debt, the report said. Limiting private sector profits is another way of protecting the public, the report said, but it also noted that this tactic can, in turn, eliminate private sector interest.

Source: BNA Infrastructure Investment & Policy Report 1/11/11. The New York comptrollers report on public-private partnerships, can be found at <http://www.osc.state.ny.us/reports/infrastructure/pppjan61202.pdf>.

Carbon Dioxide Emissions Fell by 60.7 Million Tons in RGGI States

Annual carbon dioxide emissions from electricity generators in the 10 states participating in the Regional Greenhouse Gas Initiative (RGGI) were 33 percent lower in 2009 than in 2005, according to a report released Nov. 5. The RGGI states are Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. The report attributed the decline to a lower electricity load; fuel-switching from petroleum and coal to natural gas; and increased use of nuclear, wind, and hydropower.

Source: BNA Environment Reporter, 11/12/20

New York Plan to Lower Greenhouse Gas Emissions by 80 Percent

On November 9, 2010 outgoing Gov. David A. Paterson released a climate action plan to reduce the state's greenhouse gas emissions by 80 percent over the next 40 years. The 600-page plan includes recommendations for emissions reductions in every sector of the economy, including power generation, transportation, buildings, and agriculture. The report is based on the premise that New York can meet both its environmental and its economic goals through investments in clean energy technology. The report is open for public comments until Feb. 7. The state Climate Action Council will then outline a specific strategy for implementing the recommendations and release cost estimates and predicted economic impacts.

The report's main recommendations in the power sector include accelerating the development of zero- and low-carbon sources of power, reducing the state's reliance on petroleum, and upgrading the power grid to increase the use of renewable energy. The report's main recommendations in the transportation sector include the development of low-carbon fuel standards, greater use of electricity-based public transportation, creation of rebates and incentives for the sale of efficient cars and light trucks, and investment in freight and high-speed rail.

Other recommendations in the report include: changing construction codes, appliance standards, and consumer incentives to promote construction of the most energy-efficient and environmentally beneficial buildings; creating sustainable policies in agriculture, forestry, and waste sectors to decrease the amount of waste generated; increasing the use of renewable energy and biomass fuels in agriculture; and helping New York businesses develop low-carbon energy technologies through research and development funding.

Source: BNA Environment Reporter, 11/12/20, citing *The New York State Climate Action Council Climate Action Plan Interim Report* which is available at <http://www.nyclimatechange.us/ewebeditpro/items/O109F24044.pdf>.

New York Lacks Funding and Strategy for Transportation Infrastructure

New York state lacks the revenue to maintain its transportation infrastructure in good repair and has “no credible strategy” for meeting its future transportation needs, according to a Nov. 18 report from Democratic Lt. Gov. Richard Ravitch. The report recommended that the state adopt a “responsibly-sized” five-year plan that prioritizes projects according to safety, security, and need. The report also called for better regional planning among Northeastern states, legislation to allow for design-build contracts, and improved collaboration between the state's transportation, economic development, and environmental agencies. According to the report, the state's proposed \$26 billion five-year capital plan for the state Department of Transportation is \$8 billion short. It would take about \$600 million in annual revenues just to finance the debt, if the state borrowed the \$8 billion, according to the report. The report proposed a number of new revenue sources to fund the transportation system, including the creation of special taxing districts for large infrastructure projects. It also proposed a “coordinated regional tolling strategy that includes all key bridges and statewide roads, especially the parkway system.” The Report also recommended that the state streamline its environmental review requirements for projects that will have a positive environmental impact, such as transit and intercity rail.

Source: Nov. 18 -- BNA, Inc. Infrastructure Investment & Policy Report - Latest Developments The report is available at [http://www.ny.gov/governor/press/pdf/Lt%20 Governor Report Transportation Capital Needs. pdf](http://www.ny.gov/governor/press/pdf/Lt%20Governor%20Report%20Transportation%20Capital%20Needs.pdf).

NY's Environmental Assessment Forms Updated

For the first time in over 20 years, the New York State Department of Environmental Conservation (NYSDEC) has proposed substantive changes to its environmental assessment forms (EAF), which are used by project developers and permitting agencies to assess potential adverse environmental impacts from projects as required by the New York State Environmental Quality Review Act (SEQRA). No state or local agency involved in a project may undertake, fund or approve the project until it has complied with the provisions of SEQRA. The agency with authority to undertake, fund or approve the project, or lead agency if more than one agency is involved, cannot do so until it makes a finding that the project will or will not result in any significant adverse environmental impacts.

From a project sponsor's perspective, the EAFs are the primary means to establish a record of the project's positive environmental attributes as well as how the project sponsor has sought to mitigate any adverse impacts to the greatest extent feasible. Each form consists of three parts:

- Part 1, which must be filled out by the project sponsor, requires that the sponsor provide basic information about the project and environmental conditions.
- Part 2, which must be filled out by the agency, asks a series of questions about a project's impacts to each environmental category to help the agency determine whether the project would result in a small to moderate impact or potentially large impact, or whether such impact can be mitigated by a project change.
- Part 3, which also must be filled out by the agency, requires the agency to describe all potentially large impacts and whether the impacts are important.

NYSDEC has determined that the current Short and Full EAFs are out of date, as they have not been substantially updated since 1987 and 1978, respectively. Accordingly, they do not require that information be provided on many recent trends in project development, such as those involving brownfields and "green" construction, including energy efficiency, climate change, smart growth, pollution prevention and environmental justice.

Reportedly, NYSDEC seeks to remedy these deficiencies with the proposed revamped Short and Full EAFs which are currently available for public comment. Both forms require not only more specific information about environmental issues included in the current EAF, but also additional information about environmental issues currently unrepresented in the EAFs, such as environmental justice, energy efficiency and conservation, brownfields, pollutant air emissions, community services and local land use plans.

In addition, NYSDEC has tried to build in new features to increase the ease of use of the forms, such as grouping similar questions under broad threshold questions, and simplifying Part 2 of the Full EAF by providing for "yes" or "no" responses. Also, certain questions in Part 1 of the Full EAF will be easier and cheaper to answer through hyperlinks within the form to relevant spatial data.

The public comment period on this proposed rule making is the close of business, April 8, 2011. All those interested are encouraged to submit comments to Mr. Robert Ewing, NSYDEC, Department of Environmental Permits, 625 Broadway, Albany, N.Y. 12233-1750.

After consideration of all comments, NYSDEC may publish a final rule to finalize the Short and Full EAFs with modifications to address comments from the public.

Source: Env. 360, March 8, 2011

II. FEDERAL

A. Legislation and Policy

EPA Budget Would Cut Water/Wastewater Loans

The White House on Feb. 14 proposed a budget of just under \$9 billion for the Environmental Protection Agency in fiscal 2012 that cuts \$1.3 billion from fiscal year 2010 levels and includes steep cuts to state sewer and drinking water state revolving loan funds, while House Republicans also proposed slashing water infrastructure funding.

Most of EPA's budget cuts would come from drinking water and wastewater treatment programs, although the agency has proposed zeroing out the diesel emissions retrofit program in the upcoming fiscal year and trimming funds for the Great Lakes Restoration program.

Source: BNA Infrastructure Investment & Policy Report 2/16/11.

Congressional Research Service Report Cites Water Infrastructure Needs, Funding Issues

While the 112th Congress is expected to seek federal spending cuts, it is not yet clear whether clean water and drinking water programs will be among those targeted for cuts or whether infrastructure investments will be seen as supporting economic activity, according to a Congressional Research Service report released Dec. 27. EPA's most recent wastewater needs survey, conducted in 2008 and issued in 2010, estimates that \$322 billion is needed for projects and activities to address water quality or water quality-related public health problems during the next 20 years, the report said. Compared with the previous survey four years earlier, the largest increases in reported needs were for wastewater treatment and stormwater management. EPA's most recent drinking water needs survey, conducted in 2007 and issued in March 2009, covers the period from 2007 through 2026. The survey indicated systems need to invest \$334.8 billion in drinking water infrastructure improvements during the next 20 years to comply with drinking water regulations and ensure safe water, an amount similar to its previous survey. The "needs" documented in these reports do not reflect projects that are ineligible for state revolving loan funding are not reflected; thus, in the drinking water survey, needs for fire flow, dams, and untreated reservoirs are omitted. In addition, neither EPA survey explicitly accounts for infrastructure needs linked to population increases, since growth-related projects are ineligible for funding. The wastewater needs survey also does not include information about privately owned facilities.

Source: BNA Infrastructure Investment & Policy Report: News Archive 01/03/2011 discussing the CSR report which is available at [http://op.bna.com/env.nsf/id/thyd-8cjmbb/\\$File/CRS%20on%20Water%20Infrastructure.pdf](http://op.bna.com/env.nsf/id/thyd-8cjmbb/$File/CRS%20on%20Water%20Infrastructure.pdf)

B. Regulatory

1. Water

EPA Disapproves Lake Champlain TMDL for Phosphorus

EPA has disapproved Vermont's 2002 total maximum daily load (TMDL) for phosphorus in Lake Champlain. In its January 24, 2011, decision, the agency concluded that certain aspects of the TMDL did not satisfy federal requirements. Specifically, EPA found that the TMDL did not

provide sufficient assurance that phosphorus reductions from polluted runoff will be achieved, nor did it provide an adequate margin of safety to account for uncertainty in the analysis.

EPA will now work with the state to prepare a new TMDL for the parts of Lake Champlain addressed in Vermont's 2002 TMDL. Lake Champlain is bordered by Vermont, New York and the Canadian province of Quebec. The lake is 120 miles long, with a surface area of 435 square miles and a maximum depth of 400 feet. The watershed is roughly 8,234 square miles and drains nearly one-half of Vermont's land area. New York's TMDL for phosphorus in the lake was separately approved by EPA and is not affected by this action. According to EPA, it will seek to involve New York in the developmental aspects of Vermont's TMDL.

Source: EPA Press Release. January 24, 2011.

EPA Issues Revisions to Stormwater Waste Load Allocations for NPDES and TMDL Framework

On November 12, 2010, EPA's Offices of Wastewater and Wetlands, Oceans and Watersheds released a memo on stormwater Waste Load Allocations (WLA) in the NPDES and TMDL framework. This memo is an update from the 2002 memo on the same topic. The recently released memo was directed to the EPA Regional Offices and provides an updated view of how stormwater discharges should be permitted and accounted for in the regulatory environment. The changes in policy that are suggested by EPA Headquarters focuses on conditional allowances for numeric water quality based effluent limitations associated with stormwater discharges; disaggregating stormwater sources in the TMDL setting; the use of surrogates, such as runoff volume or flow for pollutants; and the potential expansion of residual authorities granted to regulating agencies on stormwater discharges. While this updated memo does not act as official guidance or policy from EPA, it does provide insight on the continued march towards enhanced regulation of stormwater discharges in EPA's view. WEF's Government Affairs Committee Stormwater Work Group has reviewed this document and is preparing to submit comments.

Source: This Week in Washington, WEF December 10, 2010

Stormwater Runoff, Nutrients Are Major Clean Water Priorities in 2011

Curbing the effects of stormwater runoff, reducing the amount of nutrients that contribute to water pollution, and coping with aging infrastructure in an era of tight budgets will continue to be high priorities in 2011, according to government officials, environmental groups, and congressional staff.

The Environmental Protection Agency is developing a major stormwater rule that would set numeric limits for pollution from construction related to new development and redevelopment. The rule is expected to be proposed in September 2011 and finalized in 2012. Intended to strengthen the national stormwater program under the Clean Water Act, the rule would focus on discharges from developed sites, such as subdivisions, roadways, industrial facilities, and commercial buildings or shopping centers.

Nutrient pollution, which is linked to stormwater runoff from agricultural and municipal sources, is a major problem confronting federal and state regulators. It also has stirred concern from environmental groups. Under a final rule issued in 2010, EPA will issue water quality standards for Florida estuaries and coastal waters by August 2012, marking the first time EPA has stepped in to set numeric nutrient limits for a state. The Florida rulemaking was the result of a federal consent decree that settled a lawsuit filed by environmental groups. Florida officials filed a

lawsuit in December challenging the rule. The state contends that federal control of nutrient loading from predominately non-point sources will intrude on traditional states' rights and responsibilities (Florida v. Jackson, N.D. Fla., No. 3:10-cv-00503-RV, complaint filed 12/7/10). While some states have rules limiting phosphorus or nitrogen, others have no nutrient standards whatsoever. The agency has relied on states to develop water quality standards for nutrients, but a 2009 EPA Office of Inspector General report criticized EPA for not holding states accountable for developing the standards and for not using its authority under the Clean Water Act to issue its own rules. In November EPA sent a memo to regional offices recommending use of numeric water-quality based effluent limits where feasible when issuing permits for stormwater discharges. Agricultural runoff remains a challenge. The Clean Water Act explicitly exempts agricultural stormwater runoff and irrigation return flows from regulatory requirements and the National Pollutant Discharge Elimination System program.

- EPA will propose a rule in March to regulate cooling water intake structures at power plants and manufacturing facilities to protect fish and other aquatic organisms. The structures, used by industrial facilities to draw water from natural water bodies for cooling, can harm and kill small aquatic organisms and fish by entraining and trapping them. EPA plans to issue a final rule in 2012.
- EPA also is considering developing a rule to protect the public from the harmful effects of sanitary sewer overflows, including peak wet weather flows, at municipal wastewater treatment plants. Combined sewer systems already are covered under a policy issued in 1994. Sanitary sewer systems are designed to carry sewage only, while combined sewer systems carry both sewage and stormwater. The National Association of Clean Water Agencies has asked EPA to draft comprehensive guidance to help municipalities deal with growing costs associated with controlling combined sewer overflows, sanitary sewer overflows, nutrient pollution, stormwater runoff, and other problems. NACWA specifically asked EPA to review and update its 1997 guidance on financial capability for combined sewer overflows, which the association said is out of date and insufficient to address the challenges facing municipal wastewater treatment agencies.

Source: BNA Infrastructure Report 1/19/11.

Deadlines Set for Issuing Updated Categorical Standard for Coal-Fired Power Plants

The Environmental Protection Agency intends to propose by July 23, 2012, a rule revising effluent limits for coal-fired power plants under a proposed consent agreement filed in federal court Nov. 8, 2010. The proposed agreement, filed in U.S. District Court for the District of Columbia, would require EPA to finalize a rule for the steam electric power generating plant point source category by Jan. 31, 2014.

Source: BNA Environment Reporter, 11/12/20, citing *Defenders of Wildlife v. Jackson*, D.D.C., No. 1:10-cv-1915, 11/08/10

30 Contaminants Proposed to be added to Drinking Water Monitoring List

EPA is proposing to add 30 unregulated contaminants to the monitoring requirements for public water systems and is looking for public comments on the proposal. The agency says the comment period will allow the public and other stakeholders to provide input on the selection of new contaminants for monitoring, and will help determine the best path forward as it seeks to collect data that will inform future decisions about how best to protect drinking water.

EPA currently regulates more than 90 contaminants in drinking water. To keep drinking water standards up-to-date with emerging science, the Safe Drinking Water Act requires that EPA identify up to 30 unregulated contaminants for monitoring every five years. The current proposal is the third unregulated contaminant monitoring regulation. The proposal includes requirements to monitor for two viruses and 28 chemical contaminants that could be present in drinking water and that do not have health-based standards.

EPA will accept public comments on the proposed list of 30 contaminants until May 2, 2011. The list is scheduled to be finalized in 2012 with sampling to be conducted from 2013 to 2015. All water systems serving more than 10,000 will conduct the sampling, and a representative sampling will take place at water systems serving less than 10,000 people.

Access the proposed list of contaminants at <http://water.epa.gov/lawsregs/rulesregs/sdwa/ucmr/ucmr3/index.cfm>.

All Hazards Risk Assessment and Consequence Analysis Tools for Drinking Water and Wastewater Utilities

The U.S. Environmental Protection Agency (EPA) is releasing two software tools for risk assessment and consequence analysis:

The Vulnerability Self Assessment Tool (VSAT), an upgraded all hazards risk assessment tool
The Water Health and Economic Analysis Tool (WHEAT), a newly developed consequence analysis tool. The release of VSAT and WHEAT will provide drinking water, wastewater, and combined utilities of all sizes with the capability to assess, plan for, and better respond to man-made threats and natural disasters.

VSAT is an interactive desktop software tool that employs a proven methodology to enable users to perform customized risk assessments. The upgraded tool not only evaluates man-made threats but has a new feature that allows users to assess four different natural disaster scenarios: hurricanes, tornadoes, floods, and earthquakes. VSAT has the flexibility for the user to assess other types of natural disasters as well.

WHEAT is an intuitive desktop software tool that assists drinking water utility owners and operators in quantifying public health impacts, utility financial costs, and regional economic impacts of an accidental or adverse event. Currently, WHEAT generates consequence results based on two scenarios for drinking water utilities: 1) release of a hazardous gas and 2) loss of operating assets. There are future plans to develop similar wastewater utility modules.

Source: EPA Water Headlines for the week of November 8, 2010

EPA Issues “Beta” Version of a Web-Based Tool for Accessing Wastewater Pollutant Discharge Information

EPA has released a “beta” version of a new web-based tool for accessing wastewater pollutant discharge information. EPA is seeking comment on how to improve this tool and on the accuracy of the discharge monitoring data supporting it. This new tool also supports the Agency’s Clean Water Act Action Plan, which seeks to improve transparency of information and public knowledge about pollutant releases that may cause water quality impairments.

The new tool allows anyone to search and identify the amount, type, and location of wastewater pollutant discharges and the identity of the discharger. In short, the tool will allow users to search on “who” is discharging “what” and “where.” EPA has designed the tool for two main

audiences: (1) members of the general public (concerned citizens, researchers), and (2) technical users (NPDES permit writers, watershed modelers, and regulatory agencies). The increased access to wastewater pollutant discharge data will allow for better transparency of wastewater pollutant discharges and enhanced utility of the data. EPA suggests that technical users of the new tool can enhance their development of NPDES permit effluent limits, improve their watershed pollution budget plans (Total Maximum Daily Loads, or "TMDLs"), and refine their modeling of watersheds.

EPA is releasing this new tool as a "beta" version to obtain public input on how to improve it. EPA will be accepting comments on the new tool through February 4, 2011. This two-month period will also allow reviewers to submit requests to EPA to correct any data they suspect is in error. The beta version of the tool offers wastewater pollution data from 2007. EPA plans to add data from subsequent years after this public comment period.

To access the "beta" version of the tool go to: <http://www.epa.gov/pollutantdischarges/>.

Source - Carey A. Johnston, P.E, U.S. EPA, Office of Enforcement and Compliance Assurance

EPA Launches Website to Increase Transparency of Regulatory Activity

EPA has launched a new website called *Reg Stat* that will enhance public understanding of its regulatory process and the number, type, and range of regulatory documents developed each year by the agency. This new resource is part of the EPA's continuing efforts to enhance the accessibility and transparency of its regulatory activities. *Reg Stat* provides information on EPA documents published in the Federal Register between 2005 and 2009. It also provides in-depth information on rulemakings likely to be of most interest to stakeholders -- those rules signed by the EPA administrator that substantively amend the Code of Federal Regulations. An analysis of the data featured on *Reg Stat* shows that EPA publishes 1,700 to 1,900 documents in the Federal Register each year. Notices, which provide general information of public interest such as meeting announcements, make up the majority of these documents. Approximately 7 percent, or about 100, of those documents are rules that amend the Code of Federal Regulations and require the administrator's signature; the average time to publish these rules is 974 days. Users will be able to download and sort the data based on categories of interest. Information on *Reg Stat* will be updated annually.

Source: WEF *This Week in Washington* 12/3/10.

Web-based NPDES Permit Writers' Training

EPA's NPDES Permit Writer's Course is a five-day course covering the key elements of NPDES Permit development. The course is taught by experienced EPA staff and contractors and has been one of EPA's most successful courses over the past decade. Because of the popularity of the course, EPA has recorded Web-based presentations covering the material presented in several key modules of the live course. These recorded presentations enable participants who attended the NPDES Permit Writers' Course to review the material on demand in a self-paced environment. The presentations also are useful for those who have not attended a live course, but wish to become familiar with important concepts of the NPDES permits program. Each module includes a quiz. Those "passing" the quiz can print a certificate of completion. EPA will even track these certificates if one requests it to.

Source: <http://cfpub2.epa.gov/npdes/outreach/training/pwtraining.cfm>

2. Judicial and Enforcement

EPA Announces 2010 Enforcement and Compliance Results

EPA announced on December 6 the release of its annual enforcement and compliance results. In fiscal year (FY) 2010, EPA took enforcement and compliance actions that require polluters to pay more than \$110 million in civil penalties and commit to spend an estimated \$12 billion on pollution controls, cleanup, and environmental projects that benefit communities. These actions when completed will reduce pollution by more than 1.4 billion pounds and protect businesses that comply with regulations by holding non-compliant businesses accountable when environmental laws are violated. EPA's civil enforcement actions for violations of the Clean Air Act alone will account for the reduction of an estimated 400 million pounds of air pollution per year. Those reductions will represent between \$6.2 billion and \$15 billion annually in avoided health costs. As a result of water cases concluded in FY 2010, EPA is ensuring that an estimated 1 billion pounds of water pollution per year will be reduced, eliminated or properly managed and investments in pollution control and environmental improvement projects from parties worth approximately \$8 billion will be made. EPA's civil enforcement actions also led to commitments to treat, minimize or properly dispose of more than an estimated 11.8 billion pounds of hazardous waste.

EPA's criminal enforcement program opened 346 new environmental crime cases in FY 2010. These cases led to 289 defendants charged for allegedly committing environmental crimes, the largest number in five years, 198 criminals convicted and \$41 million assessed in fines and restitution. This year's annual results include an enhanced mapping tool that allows the public to view detailed information about the enforcement actions taken at more than 4,500 facilities that concluded in FY 2010 on an interactive map of the United States and its territories. The map shows facilities and sites where civil and criminal enforcement actions were taken for alleged violations of U.S. environmental laws regulating air, water, and land pollution. The mapping tool also displays community-based activities like the locations of the environmental justice grants awarded in FY 2010 and the Environmental Justice Showcase Communities.

Source: This Week in Washington, WEF December 10, 2010

EPA Orders Kansas DOT to Correct Violations of Stormwater Permit at Construction Site

Environmental Protection Agency Region 7 has directed the Kansas Department of Transportation to correct a series of violations of a stormwater permit issued for the U.S. Highway 59 construction site in the state's Douglas and Franklin counties. EPA's administrative compliance order cites failures to install and properly maintain adequate best management practices to control stormwater; failures to develop, properly implement, update and amend a stormwater pollution prevention plan; and failures to adequately document site inspections and comply with site inspection requirements. EPA's inspection of the site found numerous areas where sediment control was inadequate or altogether lacking. Several areas lacked silt fencing, berms, or other equivalent means of controlling sediment moved by stormwater runoff.

EPA inspectors visited the highway construction site in August to evaluate KDOT's management of stormwater and determine whether it was in compliance with permit requirements. The Kansas Department of Health and Environment, as the permitting authority under the Clean Water Act, issued KDOT a National Discharge Elimination System permit for the construction project in June 2007. The compliance order requires KDOT to submit a report to EPA within 30 days, detailing specific actions it has taken to correct the violations.

Source: BNA Infrastructure Investment & Policy December 6, 2010

“Damage” Under 1938 Roadway Permit Includes Toxic Sediment from Stormwater Runoff, Court Rules

Runoff containing hazardous substances is “damage” under an agreement allowing California to operate a roadway on federal property, a federal district court held Feb. 25 (U.S. v. California DOT, N.D. Cal., No. 4:09-cv-00437, 2/25/11). The U.S. District Court for the Northern District of California said that the United States can sue the state to recover cleanup costs even though the parties intended the runoff to go into a lake on the property when they made the agreement. In 1938, the United States granted California a permit to connect Route 1, a state highway, with the Golden Gate Bridge by constructing a road through the Presidio, which was then an Army installation. The permit required California to bear all costs and liabilities associated with the roadway.

California installed several storm drains running from the roadway into Mountain Lake, which lies within the Presidio. As a result, substances contained in highway runoff, including lead, copper, and zinc, are carried through the storm drains and into the lake. The state also built an overflow pipeline system for Mountain Lake. The pipeline allegedly cracked, allowing contaminated water to flow into Lobos Creek, a major water source for the Presidio. In 2009, the U.S. sued California's transportation department (CalTrans), seeking to recover for damage to Mountain Lake and Lobos Creek. The parties cross-moved for summary judgment.

Finding that the U.S. has discretion under the agreement to determine whether its property has been damaged and how that damage should be rectified, the court granted it partial summary judgment.

Full text is available at <http://op.bna.com/txlr.nsf/r?Open=pqun-8ehmp5>.

Source: BNA Toxics Law Reporter 3/2/2011

Nevada-Certified Technician Sentenced In Fraudulent Emissions-Testing Case

A federal trial court Feb. 28 sentenced one of 10 Nevada-certified emissions testers indicted in early 2010 by a federal grand jury on Clean Air Act violations to five months home detention, three years probation, and a \$100 assessment. The individual was the sole fugitive among the 10 emissions testers who were indicted on Jan. 6, 2010, on one felony count for falsifying vehicle emissions test reports in Las Vegas between November 2007 and May 2009, according to EPA.

The Environmental Protection Agency said the defendants engaged in a practice known as “clean scanning” vehicles. According to EPA, the identification number of a vehicle that could not pass the emissions test, or was not even present for testing, was entered into the computer system, but a different car that could pass emissions testing was actually tested. The data were then recorded on the vehicle inspection report so that the substandard car fraudulently passed the test. The cost of getting the fraudulent report was anywhere from \$10 to \$100 more than the usual emissions-testing fee.

Although the nine other defendants were promptly located and charged, this individual failed to surrender to federal law enforcement. He was placed on the EPA fugitive list and was later arrested June 8, 2010, in Las Vegas by special agents after EPA received a tip on his whereabouts.

Source: BNA Toxics Law Reporter, Latest Developments 3/7/2011 citing *U.S. v. DeMatteo, D. Nev.*, No. 2:10-cr-00004-ECR-RJJ, 2/28/11.