

## Federal Agencies Withdraw Wetlands Rulemaking

President Bush, the Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) recently announced that there would not be a new rule addressing federal regulatory jurisdiction over isolated wetlands. In 2001, the U.S. Supreme Court ruled in *Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. Army Corps of Engineers* that Clean Water Act (CWA) regulations do not extend to isolated wetlands and overturned the Corps' assertion of federal jurisdiction over certain isolated wetlands based on the presence of migratory birds. Further, the Court ruled that jurisdictional decisions should be made based on the traditional concepts of navigability or the presence of a significant nexus to navigable waterways. EPA and the Corps responded by issuing revised guidance to their field offices, while reaffirming federal jurisdiction over the majority of wetlands not impacted by the decision. After soliciting public comment to determine if further regulatory clarification was needed, the EPA and the Corps have decided to abandon the rulemaking and not redefine the federal government's current authority to protect wetlands.

The decision has been criticized by developers, builders and landowners who desire a clear definition of isolated wetlands and a clarification of the federal government's jurisdiction in such areas. The National Association of Home Builders has called for such a definition to eliminate inconsistency in enforcement in various parts of the country.

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### Permit Application Data Available On-Line

As part of its Environmental Justice program, DEC has made available on its website a database of permit applications. Detailed information on all environmental permit applications processed by the Department under the Uniform Procedures Act can be accessed, including applications issued, denied or currently under review. This database can be searched by location, permit type, and date range, and the results can be further sorted by applicant name, facility name and application status. The database can be accessed at <http://www.dec.state.ny.us/apps/envapps/>.

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## FEDERAL NEWS

### EPA Proposes Industrial Wipe Exclusion

EPA recently proposed a rule that would exclude from regulation as hazardous waste solvent-contaminated industrial wipes provided the generator complies with certain rules governing on-site management and transportation. The rule would exempt disposable industrial wipes going for disposal from the definition of "hazardous waste". Reusable wipes that are sent to an industrial laundry for cleaning and reuse would be exempt from the definition of "solid waste" (and, by extension, from the definition of hazardous waste). The proposal follows almost two decades of debate regarding the appropriate strategy for managing these materials under the federal hazardous waste regulations.

The existing regulations do not expressly address solvent-contaminated industrial wipes and rags. Shortly after the original hazardous waste regulations were enacted, EPA received petitions from various industries seeking to exempt disposable and laundered wipes from the definition of hazardous and solid waste, respectively. EPA ultimately issued a policy that deferred determinations concerning the status of such materials to the states, resulting in varying schemes for managing industrial wipes. With this proposal, EPA intends to clarify the regulatory status of these materials and increase consistency between the states.

Both of the proposed exclusions (for disposable and laundered wipes) apply to wipes that exhibit a hazardous characteristic due to use with solvents and to wipes containing any listed hazardous waste solvents (F001 - F005) and corresponding P or U-listed commercial chemical products when spilled. With respect to disposable wipes, EPA proposes to exclude solvent-contaminated wipes that are disposed or combusted from the definition of hazardous waste provided they meet certain conditions. The proposed regulations contemplate two disposal options for disposable wipes. Under the first option, generators could send disposable wipes to municipal or other non-hazardous landfills provided: (1) the wipes do not contain one of ten solvents determined to pose a potential threat if land disposed; and (2) the wipes are "dry" (i.e., contain less than 5 grams of solvent). Under the second option, generators could dispose of wipes

at a municipal waste combustion unit or send them to an intermediate handler for further processing to remove solvents. In this case, the generator must ensure that the wipes contain "no free liquids" before they are shipped (i.e., no liquid solvent can drip from the wipes when sent off-site and no free liquids can be present at the bottom of the container). If free liquids are discovered, the receiving facility must remove the solvent and manage it appropriately or return the shipment to the generator.

With respect to reusable wipes, EPA proposes to exclude solvent-contaminated wipes that are laundered or cleaned for reuse from the definition of solid waste provided they meet the conditions described in the rulemaking. EPA's decision to exclude reusable wipes from the definition of solid rather than hazardous waste reflects the Agency's belief that reusable solvent-contaminated industrial wipes are handled as commodities rather than as waste and that companies have an incentive to manage them in ways that minimize potential environmental risks. The proposal also contains requirements applicable to the facilities handling, receiving and processing the reusable wipes.

As discussed in a previous issue of the *Environmental Cable*, DEC recently issued a policy entitled *Regulatory Status of Laundered Industrial Rags and Soiled Clothing* (DSH-HW-02-09) that allows qualifying shop towels, industrial rags, and soiled clothing to be sent to an industrial laundry (or laundered on-site) as non-hazardous waste provided certain conditions are met. The policy differs from EPA's proposal in several respects: (1) it requires wipes to be managed as non-exempt hazardous waste until they are loaded onto a vehicle that will initiate delivery of these items to an off-site laundry or until they are laundered on-site; (2) it requires facilities to make a one-time notice under the land disposal restrictions; and (3) it explicitly allows the formation of liquids in containers *after* they are loaded onto trucks for transport to the laundry. DEC has no exemption for solvent-contaminated wipes that are disposed rather than laundered.

If EPA adopts the recent proposal, DEC may decide to revise its regulations to conform to the federal standard. In the alternative, DEC may

impose stricter requirements on certain industrial wipe management activities.

EPA is accepting comments on the proposal until **February 18, 2004**. A copy of the regulations can be found in the November 20,

2003 Federal Register at: <http://www.epa.gov/fedrgstr>. For a copy of DEC's industrial rag policy, use the QUIK-REPLY form.

### EPA Conducts Public Dialogue on TRI Reporting

EPA has initiated an on-line stakeholder dialogue on ways to reduce the effort associated with reporting releases under the Toxics Release Inventory (TRI) program. The TRI requires certain facilities to report annually on releases and other waste management activities (e.g., quantities released to air, water, disposed on land, recycled, etc.) for numerous chemicals. In the past, EPA has implemented several measures to simplify the TRI reporting process, including developing a simplified Form A Certification Statement for facilities with low annual reportable amounts. In 2002, EPA solicited comment on ways to improve the reporting, collecting, processing and annual release of TRI data. With this current initiative, EPA is focusing on reducing the burden associated with the TRI reporting process.

Specific options under review include: (1) establishing higher reporting thresholds for "small businesses" and defining who should be covered; (2) modifying the reporting thresholds for categories of facilities and/or classes of chemicals with small reportable amounts (e.g., identifying industry sectors or categories that could be subject

to a higher reporting threshold because the majority of facilities in that sector/category do not report significant releases and waste management quantities); (3) expanding eligibility for the Form A Certification Statement (and devising ways to compensate for the detailed information that would be lost if the eligibility requirements for Form A were expanded); (4) creating a new "no significant change" certification statement for use when TRI reporting does not change when measured against a designated baseline year; and (5) allowing use ranges when completing Section 8 of Form R. EPA also is asking stakeholders to suggest other burden reduction options in addition to those specifically listed above, as well as possible enhancements to EPA's existing TRI reporting software. EPA is accepting comments on its TRI burden reduction initiative until **January 5, 2004**. Instructions for participating in the on-line dialogue are posted on EPA's TRI web site at: <http://www.epa.gov/tri/programs/stakeholders/outreach.htm>.

### EPA Proposes to Delete EGBE from List of HAPs

EPA recently proposed to remove ethylene glycol monobutyl ether (EGBE), otherwise known as 2-butoxyethanol, from the group of glycol ethers identified as hazardous air pollutants (HAPs) regulated under Section 112 of the Clean Air Act (CAA). The American Chemistry Council petitioned EPA to delete EGBE from the glycol ethers list. After determining that the petition was complete, EPA undertook a thorough review of available emissions data and information concerning the environmental and health impacts of exposure to EGBE and solicited input from the public. Based on that review, EPA determined that "there are adequate data on the health and environmental effects of EGBE to determine that emissions, ambient concentrations, bioaccumulation or deposition of EGBE may not

reasonably be anticipated to cause adverse effects to human health or adverse environmental effects." EPA is accepting comments on the deletion proposal until **January 20, 2004**. A copy of the proposal can be found in the November 21, 2003 Federal Register at: <http://www.epa.gov/fedrgstr>. Assuming the rule is adopted, EGBE will not be included in the list of glycol ethers and thus will no longer need to be considered in determining whether a source is major for HAP emissions and therefore required to implement Maximum Achievable Control Technology (MACT) under CAA § 112. EPA also will not be required to develop MACT standards for sources of EGBE.

## EPA Seeks Insurers of Underground Tanks

EPA's RCRA, Superfund & EPCRA Call Center is currently assisting the Office of Underground Storage Tanks (OUST) in updating EPA's List of Known Insurance Providers for USTs (EPA510-F95-008). OUST developed this list of known insurance providers as a service to owners of underground storage tanks who were seeking the names of potential insurance providers. This

information is being updated to reflect current contact information for existing insurance providers and to identify additional insurance providers for UST owners and operators. To be included in this publication, insurers should notify the Call Center at [epacallcenter@bah.com](mailto:epacallcenter@bah.com) or by phone at 800-424-9346.

## STATE NEWS

### DEC Issues Draft Hazardous Waste Facility Siting Plan

DEC recently published its draft *New York State Hazardous Waste Facility Siting Plan*. This document examines hazardous waste management trends in New York between 1991 and 2000 and uses that information to assess available hazardous waste management capacity, with the goal of assuring that the state has adequate capacity available. The plan concludes that while the state's only hazardous waste landfill will reach capacity for its current disposal unit by 2005, hazardous waste is now managed on a regionwide/nationwide basis and adequate capacity exists nationwide.

Among the highlights of the plan are:

**1. Current status of hazardous waste management in New York.** The number of commercial, captive and on-site TSDFs in New York has decreased in the last 10 years. Of the 25 commercial TSDFs in existence as of 2000, 12 were storage-only facilities and provided no treatment or disposal services. During this period, New York State imported more hazardous waste than it exported. The state currently has only one permitted commercial hazardous waste landfill (the Chemical Waste Management facility in Model City). That landfill is expected to reach capacity by 2005 for its currently permitted disposal unit.

**2. Hazardous waste generator data and waste reduction trends.** The plan concludes that the hazardous waste generation rate per unit of production has decreased in New York as a result of hazardous waste reduction activities. However, the total quantity of hazardous waste generated in

the state has increased, because of an increase in the production of goods and industry within the state. According to the plan, the quantities and types of waste generated vary significantly from year to year, making it "impossible to project accurate future trends."

**3. Projections for new or expanded hazardous waste TSDFs.** The plan concludes that hazardous waste treatment and disposal needs must be evaluated on a national-regional scale rather than a statewide-regional scale. According to DEC, "proximity to generation in many cases is not the defining factor in determining to which commercial facility a generator will ship a particular waste." The plan goes on to conclude that while the number of facilities in New York has been decreasing, national capacity remains available to handle waste generated in New York. With respect to the possible closure of New York's only hazardous waste landfill in 2005, the plan notes that the nearest permitted land disposal facility is in Michigan and "may not represent an economically viable option for treated hazardous waste disposal for the northeast" and that additional landfill capacity in the region may be needed by 2005. It does not, however, indicate where this additional capacity may come from.

The plan notes that there is adequate national capacity for hazardous waste through 2013 and that EPA assesses national capacity needs biennially. The plan also notes that recent Supreme Court decisions have barred states from discriminating against out-of-state waste. Based on these and other factors, DEC concludes that state and national capacity must be considered together and that there is "no discernible need to

update the Hazardous Waste Facility Siting Plan until the current situation changes.” However, DEC will continue to compile the State’s Annual Hazardous Waste Report.

DEC is accepting comments on the draft siting plan until **January 19, 2004**. Public hearings

have been scheduled in each DEC region on January 7, 2004. A copy of the draft plan can be obtained from DEC’s web site at: <http://www.dec.state.ny.us/website/dsh/index.html> under the Division of Solid and Hazardous Materials’ “What’s New” section.

## CALENDAR OF EVENTS

**January 9, 2004:** Capital District Environmental Breakfast Club 7:30 am, Holiday Inn Turf, Wolf Rd. Colonie. Topic: Legislative Update. Speakers - Richard Morse, Executive Director, Legislative Commission on Toxic Substances and Hazardous Wastes, NYS Assembly and Darren Suarez, Program Associate for the Majority, NYS Senate. \$12 pre-registered, \$14 day of event. 518/438-9907 ext. 240 or e-mail [bpopolizio@youngsommer.com](mailto:bpopolizio@youngsommer.com)

**January 14:** Mohawk Valley Environmental Information Exchange Monthly Meeting. Topic: Update on MTBE Regulations, Speaker: Wayne McFarland, Sterns and Wheler, Radisson Hotel Utica Center- 200 Genesee St. Utica (Across from the State Office - Building- Park in the garage free) Meeting Format: Buffet Breakfast 7:30 - 8:00AM - Program 8:00 - 9:30 AM \$10-12 includes breakfast. For reservations email [davep@mvatc.net](mailto:davep@mvatc.net).

### *A Holiday Message From Young, Sommer...LLC*

Please accept with no obligation, implied or implicit, our best wishes for an environmentally conscious, socially responsible, low stress, non-addictive, gender neutral celebration of the winter solstice holiday, practiced within the most enjoyable traditions of the religious persuasion of your choice, or secular practices of your choice, with respect for the religious/secular persuasions and/or traditions of others, or their choice not to practice religious or secular traditions at all ... and a fiscally successful, personally fulfilling, and medically uncomplicated recognition of the onset of the generally accepted calendar year 2004, but not without due respect for the calendars of choice of other cultures whose contributions to society have helped make America great (not to imply that America is necessarily greater than any other country or is the only "America" in the Western hemisphere), and without regard to the race, creed, color, age, physical ability, religious faith, or sexual orientation of the wishee.

This wish is limited to the customary and usual good tidings for a period of one year, or until the issuance of a subsequent holiday greeting, whichever comes first. "Holiday" is not intended to, nor shall it be considered, limited to the usual Judeo-Christian celebrations or observances, or to such activities of any organized or ad hoc religious community, group, individual or belief (or lack thereof).

Note: By accepting this greeting, you are accepting these terms. This greeting is subject to clarification or withdrawal, and is revocable at the sole discretion of the wisher at any time, for any reason or for no reason at all. This greeting is freely transferable with no alteration to the original greeting. This greeting implies no promise by the wisher to actually implement any of the wishes for the wishee her/himself or others, or responsibility for the consequences which may arise from the implementation or non-implementation of same. This greeting is void where prohibited by law.

## QUICK-REPLY FORM

For more information on the topics in this issue, fax or mail this form to: Vicki Schlierer, Regulatory Affairs Paralegal, Young, Sommer...LLC, Five Palisades Drive, Albany, NY 12205. Fax: (518) 438-9914.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

City, ST, Zip: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

Please send the following:

DEC Industrial Rag Policy

Reservations for the Capital District Environmental Breakfast Club, Holiday Inn Turf, Wolf Road, Colonie, NY **January 9, 2004**

___	Registration (includes full breakfast buffet)	\$12.00
___	Binder update	\$ 5.00

Please make your reservation no later than **January 6, 2004**. Fax your reservation to 518/438-9914; call Betsy Popolizio at 518/438-9907 ext. 240; or email [bpopolizio@youngsommer.com](mailto:bpopolizio@youngsommer.com). Cancellations will be accepted until January 31, 2001. No refunds or credits given after that time. To help us plan, please make a reservation. **The registration fee will be \$14.00 for walk-ins.**