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Friday, April 19, 2013

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1 - Before Texas plant exploded: What did regulators know?
Reuters, 04/19/2013
http://www.reuters.com/article/2013/04/19/us-usa-explosion-fertilizer-idUSBRE93I04W20130419

Despite being located within a short walk of a nursing home, school and residential buildings, West Fertilizer Co in central Texas had no blast walls and had filed no contingency plan to the Environmental Protection Agency for a major explosion or fire at the site. It remains unclear what safety measures, if any, were required of the company or whether West Fertilizer failed to comply. But on Wednesday night, the company's fertilizer complex in West, Texas - population, 2,600 - exploded with such force that 60 to 80 homes were flattened, the school and nursing home took heavy damage and at least 14 people were killed, authorities said.

2 - Fertilizer company fined by feds in '12
KXAN, 04/18/2013
http://www.kxan.com/dpp/news/texas/tceq-investigated-west-plant-in-2006

Federal regulators fined the company that operates the Texas fertilizer plant that exploded overnight $10,000 last summer for safety violations, The Associated Press reported Thursday. But the government accepted $5,250 after the company took what it described as corrective actions. The wire service also reported that the facility did not have the state-required sprinkler systems.

3 - 121 Harris County facilities registered with EPA to use anhydrous ammonia
KPRC Houston, 04/18/2013
http://www.click2houston.com/news/121-Harris-County-facilities-registered-with-EPA-to-use-anhydrous-ammonia/-/1735978/19809774/-/format/rss_2.0/-/4oniwu/-/index.html

Local 2 has learned 121 facilities in Harris County have registered with the Environmental Protection Agency to use anhydrous ammonia. Anhydrous ammonia is the same substance that exploded in West, Texas on Wednesday. But industrial health and safety experts have said fire and explosion is not the greatest risk from the substance. According to the Centers for Disease Control, anhydrous ammonia is a colorless gas with pungent, suffocating fumes, and is used as an agricultural fertilizer and industrial refrigerant.

4 - EPA Fined West Fertilizer Plant In 2006
KERA, 04/18/2013
http://keranews.org/post/epa-fined-west-fertilizer-plant-2006

David Gray, Director of External Affairs for the EPA, issued a statement to KERA that the agency conducted an inspection of the West Fertilizer Co.'s risk management plan on March 16, 2006, during which it found a number of deficiencies. It fined the plant $2,300 on August 14, 2006 and ordered the facility to correct the problems identified during the inspection.

5 - Plant Explosion Drives Push For Facility Safety Bills
Inside EPA, 04/18/2013

http://insideepa.com/EPA-Blog/The-Inside-Story/menu-id-97.html

The fatal explosion at a Texas fertilizer plant is prompting new calls for Congress to require industrial facilities and wastewater treatment plants to use safer chemicals and other technologies. Sen. Frank Launtenberg (D-NJ) is expressing his condolences for the families of those killed or injured by the massive explosion at a Texas fertilizer facility, saying the incident illustrates the need to pass his legislation "to ensure that chemical plants use the safest chemicals and processes available."

6 - 3 years after Gulf oil spill, crews continue to clean up, scientists study environment
The Washington Post, 04/19/2013
http://www.washingtonpost.com/national/energy-environment/3-years-after-gulf-oil-spill-crews-continue-to-clean-up-scientists-study-environment/2013/04/19/de763992-a8d4-11e2-9e1c-bb0fb0c2edd9_story.html

At first glance, the marshy, muddy coastline of Bay Jimmy in southeast Louisiana appears healthy three years after the nation's worst offshore oil spill. Brown pelicans and seagulls cruise the shoreline, plucking fish and crabs from the water. Snails hold firm to tall blades of marsh grass. Underneath the surface, environmentalists and scientists fear there may be trouble, from tiny organisms to dolphins. Yet the long-term environmental impact from the spill is still not fully known and will likely be debated for years to come.

7 - Wastewater Pipeline Permit Ruling Could Complicate Suits Over Keystone
Inside EPA, 04/18/2013
http://insideepa.com/201304182431384/EPA-Daily-News/Daily-News/wastewater-pipeline-permit-ruling-could-complicate-suits-over-keystone/menu-id-95.html

A federal district court has ruled that the Obama administration properly used a streamlined Clean Water Act (CWA) permit to authorize an Arkansas wastewater pipeline, a decision that could complicate others' challenges to use of the permit to cover expansive projects, including a suit over the controversial Keystone XL tar sands oil pipeline.
The U.S. District Court for the District of Columbia in an April 10 ruling rejected environmentalists' claim that the U.S. Army Corps of Engineers unlawfully authorized construction of the Arkansas pipeline under its streamlined permit for utility line projects rather than issuing an individual CWA section 404 permit, which involves a site-specific analysis and greater input from EPA.

8 - Green groups ask court to speed EPA's cement emission standards
Environment and Energy Daily, 04/18/2013
http://www.eenews.net/Greenwire/2013/04/18/4

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9 - House removes limits on greenhouse gases
Burleson Star, 04/18/2013
http://www.burlesonstar.net/texasnews/ci_23055442

The Texas Commission on Environmental Quality will no longer have the authority to limit greenhouse gas emissions under a proposal the Texas House of Representatives passed on Thursday.

Lawmakers voted on a new provision that would instead require the agency better known as TCEQ to issue greenhouse gas emission permits under federal regulations. The federal Environmental Protection Agency currently has that responsibility in Texas.

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Before Texas plant exploded: What did regulators know?

12:12am EDT

By Anna Driver and Joshua Schneyer

HOUSTON/NEW YORK (Reuters) - Despite being located within a short walk of a nursing home, school and residential buildings, West Fertilizer Co in central Texas had no blast walls and had filed no contingency plan to the Environmental Protection Agency for a major explosion or fire at the site.

It remains unclear what safety measures, if any, were required of the company or whether West Fertilizer failed to comply. But on Wednesday night, the company's fertilizer complex in West, Texas - population, 2,600 - exploded with such force that 60 to 80 homes were flattened, the school and nursing home took heavy damage and at least 14 people were killed, authorities said.

In a 2011 filing with the EPA, the operators of West Fertilizer told regulators that a typical emergency scenario at the facility that holds anhydrous ammonia could result in a 10-minute release of the substance in gas form. That chemical, used as a fertilizer, is toxic to inhale but is not considered highly flammable or explosive, and the safety plan did not envisage any blast scenario.

In a separate filing earlier this year to the Texas Department of State Health Services, West Fertilizer disclosed that, as of the end of 2012, the company was also storing more volatile chemical compounds at the same address, including 270 tons of ammonium nitrate.

The same type of solid fertilizer was mixed with fuel and used by Timothy McVeigh to raze the Oklahoma City federal building in 1995, killing 168 people. Sales of as little as 25 pounds (11 kg) of the substance are now tracked by the U.S. Department of Homeland Security.

Investigators said on Thursday they remained concerned about volatile chemicals that may remain on the site, posing further risk. One official, McLennan County Deputy Sheriff Matt Cawthon, said ammonium nitrate was found at the scene. It was not known whether the site used or stored the substance before 2012.

"This is a fertilizer company and as it is, it has that type of component in it and it is a volatile product," Cawthon told reporters. "I don't know about anhydrous ammonia. I've been told about ammonium nitrate."

Authorities are investigating what caused Wednesday's blast, Cawthon said.

Public records show that the family-run company in recent years had at least two types of operations at its complex - one that sold and stored liquid fertilizer and another that dealt with dry fertilizer, using what experts consider more volatile ingredients.

West Fertilizer is owned by 83-year-old Donald Adair, and employed fewer than 10 people, according to a background report on the company from business information firm D&B. Adair and his wife, Wanda Adair, could not be reached for comment. A person who answered the phone at Adair Grains Inc, West Fertilizer's parent company, said the owners had survived the blast.

Ted Uptmore, listed as manager of the plant, could not be reached for comment, and other people listed in public records as working at the plant did not return phone calls. Craig Rogers, an owner at Security Truck Service, LLC, a contractor who hauls fertilizers and was listed as carrying out an independent safety inspection of the plant in June 2011, did not return a call requesting comment.

In a filing with the EPA in 2011, West Fertilizer outlined safety measures to deal with an incident involving only the less flammable liquid gas, anhydrous ammonia. The filing, obtained by the left-leaning Center for Effective Government, did not envisage an emergency scenario that would cause a fire or explosion.

PLANT'S SAFETY HISTORY AVERAGE

The privately held fertilizer plant, which has been in operation since 1962, has been cited for safety violations by regulators in the past. Records show the EPA fined West in 2006 for $2,300 for failing to update its risk management plan, a blueprint required to ensure safe operations.

At the time, the EPA found that the firm had poor employee training programs and did not have a formal written maintenance program in place. The EPA has not fined West Fertilizer since then, and the agency listed no outstanding violations as of Thursday.

The EPA, which has officials on the scene, said in a statement, "The facility, which is required by law to submit an updated plan at least every five years, submitted an updated plan in 2011."

West Fertilizer is subject to EPA regulation because the quantity of ammonia it stores on site is more than 10,000 pounds (4,530 kg).

In December 2006, it received a 10-year permit from Texas regulators that allowed for the operation of two 12,000-gallon (45,425-liter) storage tanks for anhydrous ammonia. The permit required West Fertilizer to carry out daily visual, auditory and olfactory inspections. It was not clear whether the firm required, or obtained, additional permits for operations involving more volatile compounds.

In 1985, the company, formerly known as West Chemical & Fertilizer, was cited five times by the federal Occupational Safety & Health Administration. Two of the violations were characterized as "serious," with one related to the storage and handling of anhydrous ammonia, federal records show. There were no records of OSHA fines in more recent years.

At a news conference on Thursday, Zak Covar, executive director of the Texas Commission on Environmental Quality described the plant's safety history as average.

"They don't have any negative complaints," Covar told reporters.

The Adair family is a fixture in the town of West. Wanda Adair, age 79, is listed as a co-owner at West Fertilizer, and as a director of the West Chamber of Commerce and a director of the local branch of the Kiwanis Club, a volunteer group. A call to the West Chamber of Commerce went unanswered.

A COMMON WAY TO OPERATE

Thousands of sites across rural America store potentially explosive materials and blend fertilizer for farmers, similar to West Fertilizer. In EPA reports, about 10,000 facilities say they store anhydrous ammonia.

Nitrogen-rich fertilizers help promote crop growth and are used by farms across the country.

Anhydrous ammonia is only flammable at temperatures exceeding 1,500 degrees F (816 C) and would not be expected to trigger such a massive blast, according to an expert.

"Farmers inject anhydrous ammonia into the soil and it is not very explosive per se," said K.A. Barbarick, a professor of crop sciences at Colorado State University.

Despite the fiery TV images and death toll from the blast, some in the fertilizer industry are not expecting calls for new restrictions on where and how such facilities can operate.

An estimated 6,500 farm retail stores in the United States blend, store or sell fertilizers to farmers, said Daren Coppock, chief executive of the Agricultural Retailers Association. The West Fertilizer plant is far from the only one near homes, he said.

(Additional reporting by Rod Nickel in Winnipeg, Ryan McNeill in New York, Erwin Seba and Kristen Hays in Houston; Editing by Janet Roberts, Mary Milliken and Peter Cooney)

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Fertilizer company fined by feds in '12

Advertisement

Facility did not have required sprinkler system

Updated: Thursday, 18 Apr 2013, 10:36 PM CDT
Published : Thursday, 18 Apr 2013, 9:53 AM CDT

- Jackie Vega
- Joe Ellis

WEST, Texas (KXAN/AP) - Federal regulators fined the company that operates the Texas fertilizer plant that exploded overnight $10,000 last summer for safety violations, The Associated Press reported Thursday. But the government accepted $5,250 after the company took what it described as corrective actions.

The wire service also reported that the facility did not have the state-required sprinkler systems.

Records reviewed by the AP show that the U.S. Pipeline and Hazardous Materials Safety Administration determined that the West Fertilizer Co. planned to transport anhydrous ammonia without making or following a security plan. An inspector also found that the plant's ammonia tanks weren't properly labeled.

It is not unusual for companies to negotiate lower fines with regulators.

Meanwhile, The Texas Commission on Environmental Quality officials said the 51-year-old West fertilizer plant has been cited before for failing to obtain or to qualify for a permit.

- **Photos: Deadly explosion in West Texas**
- **How to find a shelter or get help**
- **Timeline: Plant cited in 2006**

The TCEQ investigated West Fertilizer on June 20, 2006, after receiving a complaint June 9 of a strong ammonia smell.

Agency records show that the person who lodged the complaint said the ammonia smell was "very bad last night" and lingered until after he or she went to bed.

TCEQ officials cited the plant for failing to obtain or to qualify for a permit. The plant received an air quality permit as a fertilizer mixing and storage facility from the TCEQ the following December.

Also in 2006, the U.S. Environmental Protection Agency fined the plant in 2006 for failing to have a risk management plan.

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c1=8&c2=6035610&c3=76689499&c4=76703179&c5=

Meanwhile, a search of OSHA inspection records show there have been no inspections done at the facility for at least the last five years.

- **How to file a complaint with Occupational Safety and Health Administration**
- **OSHA inspections fact sheet**

Amid the rubble and chaos -- and high winds spurred by an approaching cold front -- the chemical officials are worrying about as search-and-rescue missions are underway is the anhydrous ammonia.

West Fertilizer reportedly stored 54,000 pounds of anhydrous ammonia that, along with nitric acid, is used to produce ammonium nitrate. That is a fertilizer, pesticide and rodent killer.

The U.S. Chemical Safety Board said it was deploying a large investigation team to West. An ATF national response team that investigates all large fires and explosions was also expected, bringing fire investigators, certified explosives specialists, chemists, canines and forensic specialists.

American Red Cross crews from across Texas also headed to the scene to help evacuated residents.

In 2001, an explosion at a chemical and fertilizer plant killed 31 people and injured more than 2,000 in Toulouse, France. The blast happened in a hangar containing 300 tons of ammonium nitrate, which can be used for both fertilizer and explosives. The explosion came 10 days after the Sept. 11, 2001, terrorist attacks in the U.S., and raised fears at the time it was linked. A 2006 report blamed the blast on negligence.

Wednesday night's explosion leveled the plant, dozens of homes for blocks, and severely damaged other area buildings -- including the West Rest Haven Nursing Home where 133 people were evacuated.

Throughout the overnight hours, emergency crews have been trying to evacuate area homes and conduct search-and-rescue missions.

The scene Thursday morning

Officials in West, Texas, are labeling the deadly explosion at a fertilizer plant that left more than 160 hurt a crime scene.

"What that means to us is: Until we know that it is an industrial accident, we will work it as a crime scene," said Waco Police Sgt. William Patrick Swanton during a press conference around 4:40 a.m. "I have heard no indications that this is anything other than an accidental fire."

Bureau of Alcohol, Tobacco, Firearms and Explosives officials are investigating the explosion at the plant, while the McLennan County Sheriff's Office is investigating the deaths from the Wednesday night explosion.

Swanton said they were still unsure of the number of deaths so far but offered a rough estimate of anywhere between five- and 15 people.

There have already been more than 160 people treated at hospitals, 19 of whom are in serious condition. Of those 101 people treated at Hillcrest Baptist Medical Center, five are in critical condition.

"Some needed fertilizer decontamination when they first came in," said Swanton.

In addition, there are three- to five firefighters missing and an additional law enforcement official who was with those firefighters trying to put out the blaze at the plant when the explosion happened.

The explosion

The blast sent flames shooting high into the night sky -- leaving the factory a smoldering ruin, causing major damage to nearby buildings and injuring several others.

The explosion happened just before 8 p.m. Wednesday and registered a magnitude 2.1 earthquake, according to the U.S. Geological Survey.

West is located about 120 miles north of Austin, or about 20 miles north of Waco. The plant is located at 1471 Jerry Mashek Drive, just east of Interstate 35.

Among the damaged buildings was the West Rest Haven Nursing Home, from which first-responders evacuated 133 patients -- some in wheelchairs.

This report contains information from The Associated Press.

121 Harris County facilities registered with EPA to use anhydrous ammonia

Anhydrous ammonia is colorless gas with pungent, suffocating fumes, used as agricultural fertilizer, industrial refrigerant

Author: Joel Eisenbaum, Investigative Reporter, Anchor, jeisenbaum@kprc.com
Published On: Apr 18 2013 10:39:28 PM CDT Updated On: Apr 18 2013 10:58:22 PM CDT

HARRIS COUNTY, Texas -

Local 2 has learned 121 facilities in Harris County have registered with the Environmental Protection Agency to use anhydrous ammonia.

Anhydrous ammonia is the same substance that exploded in West, Texas on Wednesday. But industrial health and safety experts have said fire and explosion is not the greatest risk from the substance.

According to the Centers for Disease Control, anhydrous ammonia is a colorless gas with pungent, suffocating fumes, and is used as an agricultural fertilizer and industrial refrigerant.

"If you go to a safety person and ask them what is your concern about anhydrous ammonia, flammability and explosiveness would not be high on my list. The health effects from the burns and injuries would be high on my list," said Dr. Robert Emery, Safety, Health, and Risk Manager with the University of Texas Public Health in Houston.

In 1976, less than a mile from the Houston Galleria, an overturned tanker truck carrying anhydrous ammonia overturned. The resulting casualties were not from fire but from a toxic cloud that escaped from the tanker.

"I started gagging, coughing, I couldn't breath," a commuter said on air May 11, 1976.

Seven people died and 178 people were injured died as a result of the disaster on I-610 at 59.

Today, hazardous loads are not allowed inside Houston's loop without special permit.

But there are tens of thousands of Harris County residents who live within two miles of plants using and storing anhydrous ammonia.

"Ain't nothing you can do it about it anyway, why worry about it," Pasadena resident, Clevonia Smith, said.

If you have a news tip or question for KPRC Local 2 Investigates, drop them an e-mail or call their tipline at (713) 223-TIPS (8477).

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Texas News **4:13 PM** THU APRIL 18, 2013

EPA Fined West Fertilizer Plant In 2006

By STELLA M. CHÁVEZ (/PEOPLE/STELLA-M-CH-VEZ)

David Gray, Director of External Affairs for the EPA, issued a statement to KERA that the agency conducted an inspection of the West Fertilizer Co.'s risk management plan on March 16, 2006, during which it found a number of deficiencies. It fined the plant $2,300 on August 14, 2006 and ordered the facility to correct the problems identified during the inspection.

Deficiencies identified in 2006 included:

- Failure to update its risk management plan in a timely manner. The plan was due in 2004 but wasn't updated until 2006.
- Failure to document that hazards had been addressed.
- Operating procedures failed to address consequences of deviation.
- Poor employee training records.
- The company had not developed a formal written maintenance program.

According to Gray, the facility is subject to certain provisions because of the amount of ammonia on its property exceeds 10,000 lbs.

By law, the plant is required to submit an updated plan every five years. It submitted one in 2011. It has not had an accident in the last five years.

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The Inside Story

Plant Explosion Drives Push For Facility Safety Bills

Posted: April 18, 2013

The fatal explosion at a Texas fertilizer plant is prompting new calls for Congress to require industrial facilities and wastewater treatment plants to use safer chemicals and other technologies.

Sen. Frank Launtenberg (D-NJ) is expressing his condolences for the families of those killed or injured by the massive explosion at a Texas fertilizer facility, saying the incident illustrates the need to pass his legislation "to ensure that chemical plants use the safest chemicals and processes available."

The April 17 explosion at the West Fertilizer Co. plant in the central Texas town of West injured more than 160 people and may have killed as many as 15 people, according to news reports April 18.

Lautenberg earlier this year reintroduced his legislation aimed at securing chemical facilities as well as wastewater and drinking water plants, although observers said they doubt the bills, S. 67 and S. 68, will get very far as they lack companion legislation in the House and failed to make it out of committee in 2010 and 2011.

"My heartfelt condolences go out to the families and friends of those killed and injured by the chemical plant explosion in Texas, including the brave first responders who rushed in to help their neighbors," Lautenberg said in an April 18 statement. "I've been fighting for years to ensure that chemical plants use the safest chemicals and processes available to prevent this type of tragedy."

The senator added, "Communities located near chemical facilities deserve to know that all reasonable steps are being taken to reduce the risk of a chemical explosion. We need to pass my legislation to require facilities to thoroughly review risk and help us move toward more secure plants and safer communities."

In addition to mandating "inherently safer" technology (IST) security requirements at chemical and water facilities, the bills would reduce quantities of lethal gas stored at industrial plants, and minimize use of chlorine gas that could pose a risk if released.

The bills also would require water and chemical facilities to assess vulnerability to an attack and plan to address those vulnerabilities. Facilities would have to assess whether IST could reduce the consequences of an attack, and share data with state and local governments, plant workers and first-responders.

The bills would give communities a role in ensuring facilities comply with security regulations, and also authorize grants to help cover the cost of site assessments, security plants and adoption of IST.

EPA fined the Texas fertilizer plant $2,300 in 2006 for failing to have a risk management plan that met federal standards, although it was not fined in later years, according to an April 18 report by Dallas TV station WFAA.

The Dallas Morning News reported April 17 that the facility had told EPA and local public safety officials in an emergency planning report that while the facility had as much as 54,000 pounds of anhydrous ammonia on hand, the chemical posed no risk of fire or explosion. The worst possible scenario, the report said, would be a 10-minute release of ammonia gas that would kill or injure no one.

Anhydrous ammonia is a common source of nitrogen fertilizer, but it can be dangerous in liquid form and cause liquid storage tanks to explode under certain circumstances. In 2005 instructions on the safe handling of anhydrous ammonia on farms, the University of Minnesota Extension warns against filling storage tanks to greater than 85 percent of total liquid capacity. Otherwise, outside temperature increases will cause increases in the liquid temperature, causing the liquid to expand and increasing the vapor pressure in the tank. "If the tank is overfilled and no vapor space is available, the safety relief valve might fail, causing the tank to rupture or explode," the bulletin says.

But fertilizer industry officials say there are too many variables at the Texas plant, which was an agricultural retail facility selling supplies to farmers, to know yet exactly what caused the explosion.

The Chemical Safety Board, a federal investigative agency, said in a statement that it has sent a “large investigation team . . . [to] . . . look into all aspects of chemical accidents, including physical causes such as equipment failure as well as inadequacies in regulations, industry standards, and safety management systems.”

Court Urged To Stay Cement MACT Compliance Extension

Posted: April 17, 2013

Environmentalists are urging the U.S. Court of Appeals for the District of Columbia Circuit to stay an EPA decision to delay by two years a Sept. 9 deadline for complying with the agency's cement air toxics rule, asking the court to prevent implementation of the compliance extension pending a resolution of their suit over the rule.

In an April 17 filing, Earthjustice criticizes EPA's Dec. 21 rule softening emissions limits and extending compliance deadlines for its Portland cement plant maximum achievable control technology (MACT) air toxics rule. In addition to seeking a stay of the deadline extension, they also want expedited consideration of their suit.

As part of the MACT rulemaking EPA extended compliance deadlines from Sept. 9, 2013, to Sept. 9, 2015, and weakened some emissions limits as a result of removing cement kilns now qualified as solid waste incinerators under a related, more stringent EPA rule, from the scope of the cement plant regulation. Environmentalists' lawsuit over the rule had been expected, as they were highly critical of the proposed version of the revised MACT.

With environmentalists' suit over the MACT, *Sierra Club, et al. v. EPA, et al.* pending in the D.C. Circuit, Earthjustice is looking to prevent industry taking advantage of the extended compliance deadline that would give affected facilities two extra years to meet the rule's emissions limits. In its April 17 filing, Earthjustice asks the court to stay the extended compliance deadline pending judicial review of the agency's revised MACT.

The group also asks the appellate court for expedited consideration of the lawsuit in order to provide a decision as close to Sept. 9, 2013 -- the original compliance date for the rule -- as possible, according to the filing.

Earthjustice says its members “are exposed to cement plants' toxic emissions where they live, work, and recreate, and will be irreparably harmed by the delay unless a stay is granted.”

In an April 17 press release on the filing, the group says the extension would delay installation of pollution controls that, “By the agency’s own calculations . . . will cause between 1,920 and 5,000 avoidable deaths and will allow cement plants to release” thousands of pounds of additional mercury into the environment.

EPA Floats Lead NAAQS Lawsuit Settlement

Posted: April 17, 2013

EPA is proposing a settlement to resolve environmentalists' suit on the agency's missed deadlines for forcing some states to implement its 1978 and 2008 lead national ambient air quality standard (NAAQS), with the agency floating a decree that would require it take final action on two states' lead NAAQS air quality plans by August.

Environmentalists sued EPA last year claiming the agency had failed to issue a finding that 12 states had never submitted infrastructure state implementation plans (SIPs) outlining the pollution control measures they would impose to meet the agency's 2008 lead NAAQS, despite a statutory mandate to do so by November 2011. In the 2008 rulemaking the agency tightened the 1978 lead limit of 1.5 micrograms per cubic meter (ug/m3) down to 0.15 ug/m3.

The suit, *Center for Biological Diversity and Center For Environmental Health v. EPA*, filed in the U.S. District Court for the Northern District Court of California, also claims that the agency had failed to approve or disapprove Tennessee's submitted SIP for the 2008 lead NAAQS or to determine whether the Herculaneum lead NAAQS nonattainment area, located in Missouri, had ever met the 1978 lead NAAQS by its attainment date.

In an April 11 proposed consent decree, EPA and environmentalists float deadlines for EPA action that will lead to the suit's dismissal, contingent on the consent decree being approved and implemented. The consent decree will not become official until it

Energy & Environment

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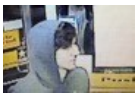
Capital One

PHOTOS | Boston under lockdown



LIVE VIDEO: Latest on massive Boston manhunt

1 Boston suspect dead; Manhunt for 2nd

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3 years after Gulf oil spill, crews continue to clean up, scientists study environment

By Associated Press, Updated: Friday, April 19, 4:44 AM

BAY JIMMY, La. — At first glance, the marshy, muddy coastline of Bay Jimmy in southeast Louisiana appears healthy three years after the nation's worst offshore oil spill. Brown pelicans and seagulls cruise the shoreline, plucking fish and crabs from the water. Snails hold firm to tall blades of marsh grass.

Underneath the surface, environmentalists and scientists fear there may be trouble, from tiny organisms to dolphins. Yet the long-term environmental impact from the spill is still not fully known and will likely be debated for years to come.

How Cruise Lines Fill All Those Unsold Cruise Cabins

How to Improve Memory with Scientifically Designed Brain Exercises

Why Scientists Are Urging Men Across the Country to Build Muscle

BP has spent billions of dollars on cleanup efforts since the Deepwater Horizon rig exploded and a well ruptured April 20, 2010, spilling 200 million gallons of crude.

The oil fouled 1,110 miles of beaches and marsh along Louisiana, Mississippi, Alabama and Florida. Fishing waters were closed and thousands of people who depend on the Gulf's deep blue waters wondered if the coast would ever be the same again. Crews continue to find oil buried underneath beaches whenever a tropical storm stirs up the Gulf.

"Visually, the coast looks great, and I think most of what was visible is gone," said David Muth, director of the National Wildlife Federation's Mississippi River Delta Restoration Program.

Still, oil sheens penetrated deep into marshes, worrying Muth.

"The micro-organisms and the smallest invertebrates, they're all eating the grasses and eating each other," he said. "Some of those persistent chemicals just get built up, and as each creature comes along and eats it, the toxins can be amplified right up the food chain until you get to the top predators, like dolphins and sea turtles."

More than 650 stranded dolphins have been found since the spill, Muth said.

But those deaths started two months before the disaster and it's not clear what is causing

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them — or how much the spill may have contributed. Federal biologists have said the one consistent thread was a bacterial infection.

Turtle deaths also are being looked at, but the National Oceanic and Atmospheric Administration has said many probably drowned in shrimp nets.

Nearly every aspect of the spill's environmental impact is under review, though much of the research cannot be released because it's likely going to be evidence in an ongoing trial.

The trial's first phase ended Wednesday without any rulings from the judge who heard eight weeks of testimony from witnesses for the federal government, a team of plaintiffs' attorneys, BP, rig owner Transocean Ltd. and cement contractor Halliburton.

The first phase was designed to identify the causes of BP's well blowout and assign percentages of fault. The second phase, set to start in September, is supposed to determine how much oil spilled into the Gulf and examine BP and Transocean's efforts to stop the gusher.

Damage can take years to show up. Herring populations looked normal after Alaska's Exxon Valdez oil spill in 1989, but by 1993 there were only one-quarter as many spawning adults as in the late 1980s.

In Bay Jimmy, erosion has been a problem, but that was case long before the spill. Different studies have come up with different answers about whether the spill increased the rate of erosion.

One found double the rate when heavily oiled parts of Barataria Bay were compared with more lightly affected areas, though the effect faded after 18 months.

However, scientists at the Louisiana Universities Marine Consortium laboratory in Cocodrie did not find such a stark contrast in the Barataria Bay marshes they studied, assistant professor Alex Kolker said.

"We're still crunching numbers. I still want to dot all my i's and cross all my t's. But nonetheless I feel comfortable telling you we don't see a large difference," he said.

As the studies continue, so do cleanup efforts.

On the beach at Grand Isle, La., crews were still finding tar balls washing ashore. They were also drilling through the sand to find deposits of oil.

The spill, which fouled white-sand beaches along the Alabama coast, seems a distant memory at Sportsman Marina in Orange Beach, said general manager Brian Wells.

Located near the Florida line on a cove off Perdido Bay, the marina specializes in storing and fueling boats for private anglers. It's adding a new bar and has about 50 more boats than this time last year, Wells said.

Nearby, restaurants are opening and condominium buildings are under construction.

"We've had a really good spring," Wells said. "Boat counts are up, business is up."

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Associated Press reporter Janet McConnaughey reported from New Orleans. Jay Reeves contributed to this report from Birmingham, Ala.

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Wastewater Pipeline Permit Ruling Could Complicate Suits Over Keystone

Posted: April 18, 2013

A federal district court has ruled that the Obama administration properly used a streamlined Clean Water Act (CWA) permit to authorize an Arkansas wastewater pipeline, a decision that could complicate others' challenges to use of the permit to cover expansive projects, including a suit over the controversial Keystone XL tar sands oil pipeline.

The U.S. District Court for the District of Columbia in an April 10 ruling rejected environmentalists' claim that the U.S. Army Corps of Engineers unlawfully authorized construction of the Arkansas pipeline under its streamlined permit for utility line projects rather than issuing an individual CWA section 404 permit, which involves a site-specific analysis and greater input from EPA.

The decision could therefore cause complications for environmentalists' efforts to force stricter reviews of the potential adverse impacts from the Keystone project, which they are urging President Obama to reject.

Environmentalists filed the Arkansas wastewater pipeline suit, *Ouachita Riverkeeper, et al. v. Thomas Bostick, et al.* challenging the Corps' 2010 decision to authorize construction of a 23.5-mile pipeline in El Dorado, AR to transport treated wastewater to the Ouachita River and an effluent diffuser, under its nationwide permits (NWP) 7, which is for outfall structures, and NWP 12 for utility line projects.

The Corps uses its NWPs to streamline permitting for authorizing dredge and fill projects for similar classes of activities, if they are determined to result in impacts to no more than a half-acre of wetlands.

But environmentalists are increasingly challenging the Corps' review of the projects' impacts, arguing that they are often insufficient to determine that impacts will be confined to the half-acre statutory requirement.

Activities that the Corps determines would have significant environmental impacts must be authorized under individual 404 permits, a process that involves a more rigorous, site-specific review of potential adverse effects, gives EPA a stronger oversight role and veto authority of specific project sites, and often becomes the target of environmentalist litigation.

In the *Ouachita* lawsuit, environmental groups had argued that the Corps' decision violates the CWA because it would "injure or destroy at least twenty-nine wetland areas" 13 of which are larger than half an acre -- the threshold for allowing coverage under the NWP program.

Although the groups are challenging the Corps' 2007 NWPs, the decision could ultimately impact other challenges to the current batch of permits, which includes a U.S. District Court for the Western District of Oklahoma suit contesting the Corps' decision to authorize the southern leg of the Keystone XL project under NWP 12.

In the Keystone permit challenge, *Sierra Club, et al. v. U.S. Army Corps of Engineers, et al.* environmental groups are pushing a similar argument to *Ouachita* that the use of NWP12 to the project's southern leg violates the CWA, saying the Corps failed to consider the cumulative impacts of hundreds of small wetlands crossings that fall below the permit's half-acre threshold. Oral arguments in the suit were held Nov. 7.

The district court earlier rejected environmentalists' motion seeking a preliminary injunction and temporary restraining order to block the Keystone construction from proceeding until the court ruled, saying the suit was unlikely to succeed on the merits. Sierra Club has since filed an appeal to the U.S. Court of Appeals for the 10th Circuit.

But the court granted a motion for summary judgment from industry intervenors in the *Ouachita* suit, El Dorado Water Utilities, Lion

Oil Company, Great Lakes Chemical Company and El Dorado Chemical Company, saying environmentalists failed to meet the legal burden for showing that the project's authorization under the NWPs was arbitrary or capricious.

"The Plaintiffs offer no grounds on which the Court could conclude that the Corps' interpretation distinguishing between the loss of wetland function and the loss of waters is 'plainly erroneous or inconsistent with the regulations being interpreted,' thus that interpretation is controlling in this case," Judge Colleen Kollar-Kotelly wrote in the April 10 memorandum opinion.

'Adverse Effects'

In the suit, environmentalists had argued that the Corps' interpretation that converting forested wetlands to scrub or shrub wetlands did not constitute "permanent adverse effects" was unlawful under the CWA because that conversion of forested wetlands, which exceeded the half-acre threshold should be considered "lost waters" for the purposes of the NWP authorization.

While the ruling appears to be fairly narrow in scope because it pertains to the 2007 permits, in the opinion Kollar-Kotelly supports the Corps' CWA interpretation that there is a distinction between permanent loss of waters and "loss of function" that would result from conversion of wetlands to forested wetlands, but could be addressed through compensatory mitigation.

In the 2007 NWPs, the Corps defines loss of waters as those "permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity" that ultimately change an aquatic area to dry land and are "not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services."

In the ruling, the court also upheld the environmentalists' ability to bring the suit, rejecting industry and the Corps' arguments that the issue was moot since construction of the pipeline had already begun, saying they failed to address the "risk of a leak from the pipeline once the pipeline becomes operational," and that a potential remedy could still affect the 5,727 feet of pipeline that had yet to be installed. -- *Bridget DiCosmo* (bdicosmo@iwpnews.com)

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THE LEADER IN ENERGY & ENVIRONMENTAL POLICY NEWS

4. AIR POLLUTION:

Green groups ask court to speed EPA's cement emission standards

Jason Plautz, E&E reporter
Published: Thursday, April 18, 2013

Environmental and community groups yesterday asked a federal court to hold off revisions made by U.S. EPA earlier this year to air standards for cement manufacturers that give industry two extra years to comply.

Earthjustice, representing several green groups, argued that a series of amendments released in December and published in February would delay emissions reductions and weaken standards meant to reduce emissions of soot, mercury, lead, benzene and other toxic pollutants. The effect of the delay alone, they said, would be 1,920 to 5,000 avoidable deaths.

In a **motion** filed yesterday with the U.S. Court of Appeals for the District of Columbia Circuit, the groups asked for a stay on the amendments. If the stay is granted, the 2015 compliance date will revert back to September 2013, as established under the original 2010 rule.

"As if gutting and delaying the rule were not bad enough, EPA has essentially created a compliance shield for the industry, making it impossible for citizens to hold facilities accountable for their toxic emissions," said Jennifer Swearingen of Montanans Against Toxic Burning, one of the groups that made the filing. "These changes in the cement rule are irresponsible and reckless."

The groups include the Sierra Club, Texas-based Downwinders at Risk, California-based Desert Citizens Against Pollution, the Huron Environmental Activist League and PenderWatch & Conservancy.

EPA announced in December that it would make several revisions to the cement air rules, including extending the compliance deadline from 2013 to 2015. The changes angered environmentalists, who said that the rule was already late and that the final regulations weaken particulate matter standards and emissions monitoring.

EPA's changes came after a settlement with the Portland Cement Association, which had argued that the industry needed more time to study and implement the technology needed to meet the rule (***Greenwire***, Dec. 21, 2012).

In a statement, the Portland Cement Association said that the complaints are without merit and that it is backing EPA's decision, which provides "the additional time needed for compliance with the revised standards."

"EPA's revised rule strikes the right balance in establishing compliance limits that, while still extremely challenging, are now realistic and achievable," said Greg Scott, PCA president and CEO. "PCA and EPA agreed that the revised standards and reset compliance period are essential to preserving jobs at domestic cement facilities, providing direct support for an American manufacturing industry that is critical to our nation's infrastructure."

The original 2010 rules were issued in response to a lawsuit by Earthjustice and other groups that said the 1990 Clean Air Act amendments had required them a decade earlier. EPA said at the time that the rules would prevent between 960 and 2,500 premature deaths a year, with a compliance cost of $926 million to $950 million a year.

Earthjustice attorney Jim Pew said using EPA's own data, the two-year delay could mean up to 5,000 premature deaths at little cost to the industry.

"The cement companies until February had no reason to believe that they wouldn't have to comply with this 2013 compliance date," Pew said. "This is not some hardship. They've had plenty of time, and they can still meet that date with the same technology they've been planning all along."

In a statement, EPA said it intends to respond to the motion.

Click here to read the motion.

House removes limits on greenhouse gases

By CHRIS TOMLINSON, Associated Press Burleson Star
Posted:

BurlesonStar.net

AUSTIN, Texas (AP) The Texas Commission on Environmental Quality will no longer have the authority to limit greenhouse gas emissions under a proposal the Texas House of Representatives passed on Thursday.

Lawmakers voted on a new provision that would instead require the agency better known as TCEQ to issue greenhouse gas emission permits under federal regulations. The federal Environmental Protection Agency currently has that responsibility in Texas.

Rep. Wayne Smith, R-Baytown said the EPA currently has a backlog of permit requests in Washington and the bill would help Texas industries. The measure would also remove the right of citizens to contest permits granted by TCEQ through an administrative hearings process.

"The EPA and TCEQ have been in conversation, they agree the permitting process should come to Texas, so this is an agreed-to thing," Smith said. "If the EPA is forced to stop regulating greenhouse gases, the TCEQ will too."

Environmentalists, though, oppose the bill because they say it could lead to more climate changing pollution. They also complain the bill would take away the public's right to challenge permits issued by TCEQ.

Rep. Chris Turner, D-Arlington, tried to restore language that would have allowed TCEQ to regulate greenhouse gases, but his amendment was defeated by the Republican majority.

"I think we put ourselves at a tremendous disadvantage if we don't give TCEQ the option of dealing with issue," Turner said.

Rep. Lon Burnam, D-Fort Worth, read from the opposition section of an analysis written by the House Research Organization pointing out the dangers of eliminating the contested hearing process.

"Contested case hearings ensure adequate public notice, a public opportunity to review the draft permit, and the right to seek redress in Texas instead of at the federal level," Burnam said.

The House approved the bill without changes 119-23. The bill now goes to the Senate for consideration.

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House Bill 788: http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=83R&Bill=HB788