



# REC Review

## of Legislative & Regulatory Actions



The *REC Review* publishes environmental and energy related developments for DoD/Navy leaders and Installation staff. Covering 20 states in Federal Regions 1, 2, 3, 4, and 5, the *REC Review* gives early notice of legislative and regulatory activities relevant to DoD interests.

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### GENERAL INTEREST

**EPA CHALLENGES YOUR FACILITY TO EMBRACE COST-EFFECTIVE LIFE-CYCLE IMPROVEMENTS!** Is your facility interested in going "greener" and sharing its experience with fellow feds? Executive agencies are asked to demonstrate leadership in environmental, energy, and economic performance by embracing life-cycle cost-effective improvements within their operations. EPA can support fellow federal agencies whether they are in government-owned or leased space. Please join more than 500 facilities nationwide that have become participants in this Challenge. Federal facilities start participation by selecting areas to focus on, such as: waste, electronics, purchasing, energy, water, or transportation. Members challenge themselves to improve in at least two of these areas within a fiscal year. The Federal Green Challenge provides technical/networking support and recognition for exemplary performance! For more information, visit: [www.epa.gov.fgc](http://www.epa.gov.fgc) or contact David Iacono, at [iacono.david@epa.gov](mailto:iacono.david@epa.gov) or 215-814-3231.

**SPECIES CANDIDATES FOR LISTING AS ENDANGERED OR THREATENED** The Fish and Wildlife Service has provided their annually [updated list of species](#) regarded as candidates, or that have been proposed for listing. FWS will accept information on any of the species in this Candidate Notice of Review at any time.

FWS has not identified any new candidate species through this notice, but is changing the listing priority number for some, and is updating the list to reflect species for which FWS has published a final listing rule.

**DOE GRANT: ASSISTING FEDERAL FACILITIES WITH ENERGY CONSERVATION TECHNOLOGIES** DOE has released a [funding announcement](#): Assisting Federal Facilities with Energy Conservation Technologies

(AFFECT) 2017 will provide grants to federal agencies for projects in three topic areas: (1) Combined Heat and Power, (2) Renewable Energy and (3) Energy Efficiency Deep Retrofits.

Applicants will be asked to show how the proposed project results are conducive to broader adoption at other Federal facilities. The anticipated total funding level for AFFECT 2017 is \$3.0 million, subject to appropriations, with anticipated funding per award to be between approximately \$100,000 and \$1.0 million. Letters of intent (LOI) are due by 22 December 2016, and full applications by 30 January 2017.

## FEDERAL NEWS

**Notice:** *With regard to any regulation or legislation, installation staff is requested to contact their respective component REC with information on mission or installation impacts, questions, or comments.*

### WATER

**FEDERAL WATER QUALITY CRITERIA APPLICABLE TO WASHINGTON** EPA has set [new human health criteria](#) for 144 chemicals for waters under the State of Washington's jurisdiction. The values have been changed to more accurately reflect the typical amount of fish consumed by residents, including tribes with treaty-reserved rights for subsistence fishing. EPA had previously based these water quality criteria on an assumed fish consumption rate of 6.5 grams per day (g/ day) based on national surveys. The revised water quality criteria are based on a fish consumption rate of 175 g/day.

**NPDES MUNICIPAL SEPARATE STORM SEWER SYSTEM GENERAL PERMIT REMAND RULE** EPA has [revised the regulations](#) addressing small municipal separate storm sewer system (MS4) permits, to respond to a remand from the United States Court of Appeals for the Ninth Circuit in "Environmental Defense Center, et al. v. EPA," 344 F.3d 832 (9th Cir. 2003). Effective 9 January 2017.

In that decision, the court determined that the regulations for providing coverage under small MS4 general permits did not provide for adequate public notice and opportunity to request a hearing. Additionally, the court found that EPA failed to require permitting authority review of the best management practices (BMPs) to be used at a particular MS4 to ensure that the small MS4 permittee reduces pollutants in the discharge from their systems to the "maximum extent practicable" (MEP), the standard established by the Clean Water Act (CWA) for such permits.

The final rule establishes two alternative approaches a permitting authority can use to issue National Pollutant Discharge Elimination (NPDES) general permits for small MS4s and meet the requirements of the court remand.

- The first option is to establish all necessary permit terms and conditions to require the MS4 operator to reduce the discharge of pollutants from its MS4 to the MEP, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act ("MS4 permit standard") upfront in one comprehensive permit.
- The second option allows the permitting authority to establish the necessary permit terms and conditions in two steps: A first step to issue a base general permit that contains terms and

conditions applicable to all small MS4s covered by the permit and a second step to establish necessary permit terms and conditions for individual MS4s that are not in the base general permit.

## HAZARDOUS WASTE

**HAZARDOUS WASTE GENERATOR IMPROVEMENTS RULE** EPA has formally issued the RCRA Hazardous Waste Generator Improvements [final rule](#).

Changes made by the rule include:

- The term “very small quantity generators” (VSQGs) has replaced the term “conditionally exempt small quantity generators” (CESQGs);
- a "very small quantity generator" (VSQG) may send its hazardous waste to an offsite large quantity generator under control of the same person; (this shipment does not require a manifest); The LQG must notify EPA prior to the first shipment, must keep records, and include these wastes in their biennial report;
- the rule will allow a hazardous waste generator to avoid increased burden of bumping up to a higher generator status when generating episodic waste, provided the episodic waste is properly managed and notice provided to EPA,
- Specific records required to support a generator’s hazardous waste determinations have been identified in a new Section 262.11(f). (Although EPA recommends it as a best management practice, generators are not required to retain documentation of their nonhazardous waste determinations.)
- added incompatibility requirements for satellite accumulation containers (265.177), and emergency/contingency plan requirements;
- labeling of satellite accumulation containers and 90/180/270-day accumulation containers and tanks must include an indication of the associated hazards (e.g., the hazardous waste characteristic(s), a DOT label or placard, an OSHA hazard statement or pictogram, or an NFPA hazard label).

The generator improvements final rule is promulgated under the base (non-Hazardous and Solid Waste Amendments (non-HSWA)) RCRA authority. Thus, the rule becomes effective in Alaska and Iowa on May 30, 2017, six months after the date of publication in the Federal Register. In the 48 authorized states, the new requirements do not take effect until the state adopts equivalent state requirements. Several of the requirements are relaxations, such as allowing VSQG to LQG transport, and states may adopt but are not compelled to adopt changes unless they are more stringent.

## NEPA

**REVISIONS TO REGULATIONS FOR EAGLE INCIDENTAL TAKE AND TAKE OF EAGLE NESTS** FWS [revised the regulations](#) for eagle nonpurposeful take permits and eagle nest take permits. Revisions include changes to permit issuance criteria and duration, definitions, compensatory mitigation standards, criteria for eagle nest removal permits, permit application requirements, and fees. FWS intended the revisions to add clarity to the eagle permit regulations, improve their implementation, and increase compliance, while maintaining strong protection for eagles. Effective 17 January 2017.

The revisions are intended to create a permitting framework that can be implemented more efficiently and thus encourage greater public compliance while ensuring protection of bald and golden eagles. The goal is to enhance protection of eagles throughout their ranges through implementation of mitigation measures

that avoid and minimize, and compensate for, adverse impacts from otherwise lawful activities.

The Service is modifying the definition of the Bald and Golden Eagle Protection Act's "preservation standard," which requires that permitted take be compatible with the preservation of eagles. We are also removing the distinction between standard and programmatic permits, codifying standardized mitigation requirements, and extending the maximum permit duration for eagle incidental take permits (50 CFR 22.26). The regulations also include a number of additional revisions to the eagle nest take regulations at 50 CFR 22.27, as well as revisions to the permit fee schedule at 50 CFR 13.11; new and revised definitions in 50 CFR 22.3; revisions to 50 CFR 22.25 (permits for golden eagle nest take for resource development and recovery operations) for consistency with the § 22.27 nest take permits; and two provisions that apply to all eagle permit types (50 CFR 22.4 and 22.11).

## TSCA

**REGULATION ON TRICHLOROETHYLENE** EPA [proposed](#) prohibiting the manufacture, processing, and distribution in commerce of Trichloroethylene (TCE) for use in aerosol degreasing and for use in spot cleaning in dry cleaning facilities; to prohibit commercial use of TCE for aerosol degreasing and for spot cleaning in dry cleaning facilities; to require manufacturers, processors, and distributors, except for retailers of TCE for any use, to provide downstream notification of these prohibitions throughout the supply chain; and to require limited recordkeeping. Comments due 14 February 2017.

## OSHA

**CLARIFICATION OF EMPLOYER'S CONTINUING OBLIGATION TO MAKE AND MAINTAIN AN ACCURATE RECORD OF EACH RECORDABLE INJURY AND ILLNESS** OSHA is [amending its recordkeeping regulations](#) to clarify that the employer's duty to make and maintain accurate records of work-related injuries and illnesses is an ongoing obligation; the duty does not expire just because the employer fails to create the necessary records when first required to do so. The amendments add no new compliance obligations and do not require employers to make records of any injuries or illnesses for which records are not currently required to be made.

# REGION I



**Note: The Connecticut Legislature convened on 28 SEPT 2016 and adjourned on 28 SEPT 2016.**

No new environmental legislation or regulation of significant importance to DoD was identified during this reporting period.



**Note: The Maine Legislature convened on 3 DEC 2014 and adjourned on 29 APR 2016.**

### ***PROPOSED RULES***

**IDENTIFICATION OF HAZARDOUS WASTES** The Department of Environmental Protection has [proposed to amend Ch. 850](#), Identification of Hazardous Wastes, to include an exemption for solvent contaminated wipes which is found in federal regulations of hazardous waste. Comments due 23 January 2017.



**Note: The Massachusetts Legislature convened on 7 JAN 2015 and adjourns on 4 JAN 2017.**

No new environmental legislation or regulation of significant importance to DoD was identified during this reporting period.



**Note: The New Hampshire Legislature convened on 16 JUN 2016 and adjourned on 16 JUN 2016.**

### ***FINAL RULES***

**REGULATED TOXIC POLLUTANTS UPDATES** The Department of Environmental Services has [adopted amendments](#) to Env-A 1400, Regulated Toxic Air Pollutants, implements RSA 125-I, the Air Toxic Control Act (Act), by listing regulated toxic air pollutants (RTAPs), classifying them, and establishing ambient air limits (AALs). Effective 30 December 2016.

The Department proposes changes to the list of RTAPs and their AALs each year to reflect updates made to the list of chemical substances by the American Conference of Governmental Industrial Hygienists (ACGIH) and the US EPA's Integrated Risk Information System (IRIS). In this rulemaking, the ACGIH updates for both 2013 and 2014 are being incorporated. In that time frame, the ACGIH added four chemical substances and changed the Occupational Exposure Limit (OEL) for nine chemicals, which results in a change to the AALs. As a result of changes made in IRIS, the annual AALs for five chemical substances have changed. The Department also is proposing to make several corrections to the table that were found during an upgrade to the Department's data base.

In addition to the required updates, the Department makes changes to the list of RTAPs in order to reflect the latest scientific data, to streamline the compliance determination and permitting process, and to allow the Department and businesses to concentrate their efforts on those toxic chemicals that pose the greatest health risk to the public.



## RHODE ISLAND

**Note: The Rhode Island Legislature convened on 5 JAN 2016 and adjourned on 18 JUN 2016.**

### ***FINAL RULES***

**CONTROL OF NITROGEN OXIDES EMISSIONS** The Department of Environmental Management has [adopted revisions](#) to Air Pollution Control Regulation No. 27 “Control of Nitrogen Oxides Emissions”. Effective 9 January 2017.

The purpose of this regulation is to limit nitrogen oxide emissions stationary sources. The Department is proposing to revise this regulation to:

- Reduce the frequency of compliance testing required under the regulation from annually to once every five years
- Reduce the frequency of tune-ups required for industrial-commercial-institutional boilers from annually to biennially
- Allow the tune-up procedure for boilers specified in federal regulations (40 CFR 63, Subpart JJJJJ) as an acceptable substitute procedure for the procedure specified in Appendix A of the regulation
- Revise the method for determining compliance with the emission limits to allow compliance be demonstrated based upon the average results of three-one hour test runs, rather than demonstrating compliance with each individual test run to be consistent with federal requirements
- Update/eliminate some outdated provisions of the regulation
- Add Figures 1 and 2 back into Appendix A, as they were inadvertently omitted from the regulation.

**CONTROL OF VOLATILE ORGANIC COMPOUNDS FROM SURFACE COATING OPERATIONS** The Department of Environmental Management has [adopted revisions](#) to Air Pollution Control Regulation No. 19 “Control of Volatile Organic Compounds from Surface Coating Operations”. Effective 9 January 2017.

The purpose of this regulation is to limit emissions of volatile organic compounds from surface coating operations. The emission limits in this regulation and Air Pollution Control Regulation No. 44 “Control of Volatile Organic Compounds from Adhesives and Sealants” can apply to the same processes. Regulatory language is being added to clarify that the emission limitations in this regulation do not apply if you are subject to the requirements in APC Regulation No. 44. Additionally, the registration requirements in this regulation are being revised to be consistent with the requirements in the Department’s Air Pollution Control Regulation No. 14 “Record Keeping and Reporting. Effective 9 January 2017.

**SULFUR CONTENT OF FUELS** The Department of Environmental Management has [adopted revisions](#) to Air Pollution Control Regulation No. 8 “Sulfur Content of Fuels”. Effective 9 January 2017.

The purpose of this regulation is to limit the sulfur content of fuels. The amendment will correct a mistake that was made when this regulation was revised in 2014. This regulation was revised in 2014 to lower the allowable sulfur content of fuels. Prior to that revision, the allowable sulfur content of alternative fuels was the same as that for residual fuel oils. In the 2014 revision, the allowable sulfur content of alternative fuels was changed to be the same as that for distillate fuel oils. This was a mistake and evidence has been provided to the Department to show that it is impossible to achieve those limits for waste oils. The change will restore the allowable sulfur content for alternative fuels to be the same as that for residual fuel oils as it was prior to 2014.

**CONTROL OF EMISSIONS FROM ORGANIC SOLVENT CLEANING** The Department of Environmental Management has

[adopted revisions](#) to Air Pollution Control Regulation No. 36 “Control of Emissions from Organic Solvent Cleaning”. Effective 9 January 2017.

The purpose of this regulation is to limit emissions of volatile organic compounds from cleaning operations. The Department is proposing to revise this regulation to:

- Provide an exemption from certain requirements for small cold cleaners (internal volume less than 1 liter)
- Provide an alternative means of compliance for spray gun cleaning operations
- Clarify the performance standard when an air pollution control system is used as an alternative to low vapor pressure solvents, and
- Revise recordkeeping requirements to allow users of certain machines additional time to compile monthly records to be consistent with the requirements we impose in other regulations and permits.

The proposed changes do not impose any new requirements for the entities covered by this regulation.

**RHODE ISLAND AIR POLLUTION CONTROL GENERAL DEFINITIONS REGULATION** The Department of Environmental Management has [adopted revisions](#) to Rhode Island Air Pollution Control General Definitions Regulation. Effective 9 January 2017.

The purpose of this regulation is to provide a consistent set of definitions and abbreviations for terms used in more than one of the Rhode Island Air Pollution Control Regulations. The Department is proposing to revise this regulation to amend the definition of “volatile organic compound” to be consistent with the current, federal definition. The proposed change does not impose any new requirements for the entities covered by the air pollution control regulations.



**Note: The Vermont Legislature convened on 7 JAN 2015 and adjourned on 7 MAY 2016.**

No new environmental legislation or regulation of significant importance to DoD was identified during this reporting period.

## REGION II



**Note: The New Jersey Legislature convened on 12 JAN 2016 and adjourns on 9 JAN 2018.**

No new environmental legislation or regulation of significant importance to DoD was identified during this reporting period.



**Note: The New York State Legislature convened 7 JAN 15 and adjourns 4 JAN 17.**

No new environmental legislation or regulation of significant importance to DoD was identified during this reporting period.

## REGION III



**Note: The Council of the District of Columbia convened 3 JAN 15 and adjourns 31 DEC 16.**

### **FINAL RULES**

**MOTOR VEHICLE AND MOBILE EQUIPMENT NON-ASSEMBLY LINE COATING OPERATIONS REGULATIONS** The Department of Energy and Environment has [adopted amendments](#) to Chapter 7 (Air Quality – Volatile Organic Compounds and Hazardous Air Pollutants) of Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR). Effective 9 December 2016.

This rulemaking establishes higher emission standards for automobile paint spray booth operations. Specifically, the rulemaking sets automotive coating and cleaning solvent volatile organic compound (VOC) limits, mandates the use of certain automotive coating application methods, prescribes work practices and other requirements to reduce emissions, includes stack requirements for new and existing automobile paint spray booths, requires manufacturers and repackagers to include certain information on product data sheets and containers of automotive coating and cleaning solvents, prescribes recordkeeping requirements for those who use particular automotive coating and cleaning solvents and related emission control systems, and details the test methods to determine compliance with various limits and standards. This emergency rulemaking also amends and adds applicable definitions and revises cross references to this section.



**Note: The Delaware General Assembly convened on 13 JAN 15 and adjourned on 30 JUN 16.**

No new environmental legislation or regulation of significant importance to DoD was identified during this reporting period.



## MARYLAND

**Note: The Maryland General Assembly convened on 13 JAN 16 and adjourned on 11 APR 16.**

### **OTHER REGULATORY ACTIVITY**

**NOTICE OF TENTATIVE DETERMINATION AND PUBLIC HEARING—GENERAL PERMIT FOR DISCHARGES FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS** The Department of the Environment has issued [a notice of a tentative determination](#) to issue a National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges from State and Federal Small Municipal Separate Storm Sewer Systems (General Discharge Permit No. 13-IM-5500, General NPDES No. MDR055500). MDE has drafted a general permit designed to comply with United States Environmental Protection Agency’s (EPA) regulations and to control stormwater pollutant discharges from small municipal separate storm sewer systems. The permit is issued for five years. Comments due 30 March 2017.

**NOTICE OF TENTATIVE DETERMINATION TO ISSUE A GENERAL PERMIT FOR DISCHARGES FROM STATE AND FEDERAL SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS** The Department of the Environment has issued a [notice of a tentative determination](#) to issue a National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges from State and Federal Small Municipal Separate Storm Sewer Systems (General Discharge Permit No. 13-SF-5501, General NPDES No. MDR055501). MDE has drafted a general permit designed to comply with United States Environmental Protection Agency’s (EPA) regulations and to control stormwater pollutant discharges from small municipal separate storm sewer systems. The permit is issued for five years. Comments due 30 March 2017.



## PENNSYLVANIA

**Note: The Pennsylvania General Assembly convened on 6 JAN 2015 and adjourns on 30 NOV 2016.**

No new environmental legislation or regulation of significant importance to DoD was identified during this reporting period.



## VIRGINIA

**Note: The Virginia General Assembly will convene on 11 JAN 2017 and adjourn on 25 FEB 2017.**

No new environmental legislation or regulation of significant importance to DoD was identified during this reporting period.



## WEST VIRGINIA

**Note: The West Virginia Legislature convened on 18 SEPT 2016 and adjourned on 20 SEPT 2016.**

No new environmental legislation or regulation of significant importance to DoD was identified during this reporting period.

### REGION IV



## NORTH CAROLINA

**Note: The North Carolina General Assembly convened on 23 MAR 2016 and adjourned on 23 MAR 2016.**

No new environmental legislation or regulation of significant importance to DoD was identified during this reporting period.

### REGION V



## ILLINOIS

**Note: The Illinois General Assembly convened on 14 JAN 2015 and adjourned on 11 JAN 2017.**

No new environmental legislation or regulation of significant importance to DoD was identified during this reporting period.



## INDIANA

**Note: The Indiana General Assembly convened on 11 JAN 2016 and adjourned on 10 MAR 2016.**

### ***PROPOSED RULES***

**HERBICIDES** The Pesticide Review Board has [proposed rulemaking](#) to amend 357 IAC 1-17 to expand the list of state

restricted use pesticide products to include certain herbicides containing the active ingredient dicamba.



**Note: The Michigan Legislature convened on 14 JAN 2015 and adjourns on 31 DEC 2016.**

No new environmental legislation or regulation of significant importance to DoD was identified during this reporting period.



**Note: The Ohio General Assembly convened on 5 JAN 2015 and adjourns on 31 DEC 2016.**

No new environmental legislation or regulation of significant importance to DoD was identified during this reporting period.



**Note: The Wisconsin Legislature convened on 5 JAN 2015 and adjourns on 4 JAN 2017.**

No new environmental legislation or regulation of significant importance to DoD was identified during this reporting period.

## MEET THE REC STAFF

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