



New York Water Environment Association, Inc.

The Water Quality Management Professionals

126 North Salina Street • 100 Clinton Square, Suite 200 • Syracuse, New York 13202
(315) 422-7811 • Fax: 422-3851 • www.nywea.org

Recent Environmental Legislative, Regulatory and Judicial Developments¹

February 4 to April 29, 2005

I. NEW YORK

A. Legislation

See Separate Report on Key Proposed Bills

1. Budget

According to the Business Council of New York, some of the key environmental provisions in Governor Pataki's 2005 Executive Budget Proposal (not necessarily included in the final budget) include:

Regulatory Fees

- **Air Permit Fees** -- The maximum Title V permit fee would increase from \$45 per ton of emissions to a maximum of \$58 per ton; a minimum fee of \$1,250 would apply to all Title V facility. Changes will increase fee income by \$3,614,000 per year. No increase or change is proposed for state facility permit fees.
- **Wetlands Fees and Regulations** – The budget proposes to extend the state's freshwater wetlands regulatory program to wetlands less than 12.4 acres in size that are deemed to be of local significance, or are "isolated" from waters of the U.S. It also increases maximum civil and criminal penalties for the violation of wetlands regulations;

¹ For more information, please contact Libby Ford, QEP at 585-263-1606 (lford@nixonpeabody.com).
<http://www.nixonpeabody.com/>

The NYWEA GAC thanks Nixon Peabody LLP for its on-going support of this newsletter. It also thanks WEF's Government Affairs Staff, The Business Council of New York and AMSA for much of the information in this newsletter. If you are not already a member of one or all of these organizations, visit their web pages and consider becoming a member. The WEF web page can be reached through the NYWEA web page at <http://www.nywea.org/index.htm>; the AMSA web page is at amsa-cleanwater.org; and TBCNY is at bcnys.org. NYWEA gratefully acknowledges the following sources of the information contained in this newsletter: BNA Environmental Reporter, EPA Administrative Law Reporter, Water On-Line, Pollution On-Line and Environmental Protection E-News: these are excellent resources for the environmental manager, attorney or consultant.

eliminates the Freshwater Wetlands Appeals Board; establishing freshwater permit fees of \$50 for minor projects and \$100 for major projects; establishes tidal wetlands permit fees of up to \$200 for minor projects and \$900 for major projects. Fees are expected to raise \$1 million annually, and be used for new wetlands program-related staff.

Environmental Spending

- **State Operations:** The operational budget for the Department of Environmental Conservation is proposed at \$427 million, a 2 percent increase over the proposed FY 2005 budget; staff positions would remain about the same at 3,352. Air and water programs would receive a net increase of 24 positions however 24 positions would be eliminated from CWCA bond act administration.
- **Superfund/Brownfields:** Appropriations are set at \$135 million, the same as in 2005, with \$185 million in reappropriations from the 1986 bond act to continue ongoing cleanup programs.
- **Environmental Protection Fund:** the budget proposes to increase the EPF to \$150 million, a \$25 million increase over recent levels. The EPF receives revenues from the state real property transfer tax, and is used for a wide range of projects including state land purchases, local solid waste management projects, historic preservation projects, and others.

Environmental Tax Credits

- **Green Building Tax Credit** – This credit, originally adopted in 2000 with \$25 million in available credits extended over a nine year period (2001 through 2009), will receive another \$25 million in available credits to be made available from 2005 through 2009. Credits are available for new or modified buildings that meet specific energy, building material, property management and other criteria, and are available for a “base building,” “whole building,” or “tenant space.” The Green Building credit program is Section 19 of the Tax Law

B. Policy

1. Wetlands

Settlement With State Seeks Restoration Of Bronx Wetlands

A parcel of tidal wetlands in the New York City borough of the Bronx that was illegally filled with construction waste must be restored, under a settlement announced March 28 by state prosecutors. The settlement, which was approved March 9 in New York Supreme Court for Bronx County, allows for construction of a planned townhouse development in the upland portion of the property, with a portion of the proceeds of each townhouse sale to go into an account to fund the site’s wetlands restoration

Source: Environment Reporter, April 1, 2005 citing *New York v. Railroad Maintenance Co.*, N.Y. Sup. Ct., No. 667/00, 3/9/05.

C. Regulations

1. Hazardous Waste

New York State Department of Environmental Conservation (NYSDEC), pursuant to Environmental Conservation Law Article 27, Title 7 and Title 9, has adopted amendments to 6 NYCRR Sections 372.7 and 373-1.11 to correct errors made when previously correcting and incorporating federal changes to the hazardous waste management regulations. Regulatory language in section 373-1.11 regarding Remedial Action Plans (RAPs) is revised to clarify that the State's permitting process under 6 NYCRR Part 621 applies to RAPs. 6 NYCRR Section 372.7 was revised to make requirements for water (bulk shipments) at least as stringent as federal requirements. These changes became effective April 10, 2004.

Source: NYSDEC webpage, to obtain additional information, please contact Deborah Aldrich, NYSDEC, Division of Solid & Hazardous Materials, 625 Broadway, Albany, New York 12233-7250, faxed to: (518) 402-9024 or e-mailed to dlaldric@gw.dec.state.ny.us or call (518) 402-8730.

2. Air

Part 200, General Provisions and Part 219, Incinerators

On May 21, 2005, two sets of changes to the State's air regulations became effective. The first involves 6 NYCRR Part 200 (Part 200) which has been amended to correct the tables referencing Federal New Source Performance Standards (40 CFR Part 60), National Emission Standards for Hazardous Air Pollutants (40 CFR Part 61), National Emission Standards for Hazardous Air Pollutants regulations (40 CFR Part 63), and other miscellaneous Federal regulations.

In addition, technical corrections to the recently adopted 6 NYCRR Part 219 Incinerators rule were adopted. The incorporation of the mercury test method had been omitted from Table 1 (Referenced Material) in 6 NYCRR Part 200.9 and a cross reference to this method was not included in the express terms of 219.2.2(f) and 219-7.2.

Source: NYSDEC Website http://www.dec.state.ny.us/website/dar/air_regs.html#recent

Part 202, Emissions Verification

The New York State Department of Environmental Conservation is proposing to revise 6 NYCRR Subpart 202-1 "Emissions Testing, Sampling and Analytical Determinations" and Subpart 202-2 "Emission Statement" to reflect several legal and regulatory developments. The proposed amendments would incorporate test methods specified in CFR Part 51, Appendix M and Part 63, Appendix A, eliminating the special request requirement under Subpart 202-1. The proposed amendments will also clarify that the specific regulatory timelines or those required in an operating permit supersede the timeline contained in Subpart 202-1. In addition, the Department is proposing changes to Subpart 202-2 to comply with EPA's Consolidated Emission Reporting Rule.

Source: NYSDEC Website. Questions and comments should be directed to: Mike Miliani NYSDEC, Division of Air Resources 625 Broadway, Albany, NY 12233-3255 Telephone: (518) 402-8396 E-mail: DARWeb@gw.dec.state.ny.us

Acid Precipitation Trading Program

NYSDEC has adopted and modified its formal trading program. 6 NYCRR Part 237 establishes the Acid Deposition Reduction (ADR) NO_x Budget Trading Program and Part 238 establishes the ADR SO₂ Budget Trading Program. These programs are designed to reduce acid deposition in New York State by limiting emissions of NO_x during the non-ozone season and SO₂ year-round from fossil-fuel fired electricity generating units.

Parts 237 and 238 establish emission budgets for NO_x and SO₂, respectively. Parts 237 and 238 establish trading programs by creating and allocating allowances that are limited authorizations to emit up to one ton of NO_x or SO₂ in the respective control periods or any control period thereafter. Affected units are required to hold for compliance deduction, at the respective allowance transfer deadlines, the tonnage equivalent to the emissions at the unit for the control period immediately preceding such deadline. Changes were also made to Part 200 which cites the portions of federal statute and regulations that are incorporated by reference into Parts 237 and 238. The changes became effective on April 27, 2005.

Source: NYSDEC Website http://www.dec.state.ny.us/website/dar/em237_238xptsum.html

3. Site Investigation and Clean-up

Onondaga Lake Bottom Subsite Proposed Remedial Plan

NYSDEC's proposed cleanup plan for Onondaga Lake was released on November 29, 2004. Public comments were accepted until April 30, 2005. NYSDEC has worked with the United States Environmental Protection Agency (EPA) throughout the Remedial Investigation/Feasibility process in investigating the site and in evaluating remedial alternatives. On March 25, 2005, EPA concurred with DEC's Proposed Plan. The proposed remedy is estimated to include the dredging of up to 2.65 million cubic yards of sediment from the portion of the lake in which water depths range from 0 to 30 feet--with most of the dredging being performed in the southwest portion of the lake. It would also include the use of isolation capping over an estimated 425 acres of this area. In water depths greater than 30 feet, a thin layer cap would be installed over an estimated 154 acres. For these deeper areas, the remedy also includes the performance of a pilot study to introduce oxygen in the lake (oxygenation) to prevent the development of anoxic (no oxygen) conditions, which currently exist in summer (June through September). This would be followed by full-scale implementation (if supported by the pilot study). In addition, the proposal would monitor the natural covering of the contaminated sediments with clean sediments (monitored natural recovery) discharged from tributaries to the lake.

Source: NYSDEC Website: <http://www.dec.state.ny.us/website/der/projects/ondlake/>

Proposed Vapor Intrusion Guidance

The New York State Department of Health (NYSDOH) is making guidance for evaluating soil vapor intrusion available for public comment. The document provides guidance on identifying and addressing existing and potential human exposures to contaminated subsurface vapors associated with known or suspected volatile chemical

contamination. This guidance is applicable anywhere a soil vapor intrusion investigation is warranted in the State of New York. Written comments on the draft guidance are welcome and should be sent to BEEI@health.state.ny.us or by mail to Flanigan Square, Room 300, 547 River Street, Troy, New York 12180-2216 by May 31, 2005. After all written comments are considered, a working draft of the guidance will be released.

Source: NYSDEC Website linking to

http://www.health.state.ny.us/nysdoh/gas/svi_guidance/index.htm

Draft Certificate of Completion

NYSDEC has prepared a draft Certificate of Completion to be issued to eligible parties under the Brownfield Cleanup Program. The Certificate of Completion will be issued upon a determination that either 1) the final engineering report is approved; or, 2) a no further action decision document is issued. The Certificate of Completion provides liability protections in the above program and will trigger the availability of tax credits for eligible parties. The Certificate of Completion also allows the Certificate holder to redevelop the site, subject to certain restrictions, if applicable. The Certificate also may be modified or revoked by the Department, subject to certain reopeners. The comment period closed on **April 29, 2005**. For further information contact Robert Schick, NYS Department of Environmental Conservation, Division of Environmental Remediation, Remedial Bureau C, 625 Broadway, Albany, NY 12233-7014.

Source: NYSDEC Website <http://www.dec.state.ny.us/website/der/coc.pdf>

B. Judicial and Enforcement

1. Water

Domino Sugar Reaches Plea Agreement Following Hydrochloric Acid Spill

American Sugars Refining Co. agreed Jan. 24 to pay a \$20,000 fine and donate \$100,000 to a river-restoration project as part of a plea agreement stemming from a spill of hydrochloric acid from a Yonkers plant in March 2003 (*People v. American Sugars Refining Co.*, N.Y. City Ct., docket number unavailable, 1/24/05). The company, also known as Domino Sugar, agreed to make the payments in addition to the \$250,000 it has spent on upgrades to its processing plant's chemical storage facility and improvements to dock operations to protect the Hudson River during unloading of raw sugar shipments. The charges arose from an accidental puncture of a pipe to a 3,750-gallon tank of hydrochloric acid on the 10th floor of an industrial building at the Domino plant, prosecutors said. A safety system meant to contain the spill failed, and the acid leaked through the building, collected outside, and discharged to the Yonkers Joint Treatment Works, they said. The company will make the \$100,000 donation to Hudson Riverkeeper for river projects as a part of the community service component of its sentence, prosecutors said. Riverkeeper will oversee and work with the Saw Mill River Coalition to establish community-based monitoring, river restoration, and an outreach and education program.

Source: BNA Environment Reporter, 1/28/05

2. Soil

\$3.8 Million Settlement Reached For Cleanup of Gasoline Station Spills

Two companies will pay a total of \$3.8 million to settle a 1992 New York State lawsuit seeking reimbursement of the costs of cleaning up two adjacent gasoline station properties.

Fuel spills from Exxon and Arrow filling stations in Farmingdale, N.Y., were first reported to the state in 1984, after the discovery of gasoline fumes in the basement of a nearby house. About \$2.4 million had been spent by the state Department of Environmental Conservation and a state Oil Spill Fund to clean up the gasoline contamination caused by the spills at the Farmingdale site, Spitzer said. The reimbursement amount in the settlement also includes accrued interest and future costs associated with the cleanup.

Source: Environment Reporter, April 1, 2005 citing *New York v. ExxonMobil Corp.*, N.Y. Sup. Ct., No. L-00244-92, 3/23/05

C. Regulatory

II. FEDERAL

A. Congress

Senate Votes to Keep Stormwater Set Aside in Transportation Bill

The Senate voted against an amendment to strike a provision from its Transportation Reauthorization bill that requires states to set aside 2% of the transportation funding they receive annually for stormwater mitigation efforts related to transportation projects – this amounts to \$900 million over the life to the bill for stormwater mitigation projects. Once the Senate completes its work on the transportation bill, it heads to conference negotiations with the House, where support for the stormwater provision is unclear. President Bush continues to threaten to veto the entire transportation package if it exceeds his top dollar funding level of \$284 million.

Source: WEF's *This Week In Washington*, April 29, 2005

Funding Fight Continues Over Clean Water SRF

The final Budget package negotiated by the House and Senate cut \$500 million of the \$1.35 billion the Senate had included during its consideration of the budget last month. On May 3, House Appropriators will have the first chance to decide how much funding the CWSRF should receive next year when the House Appropriations Subcommittee for the Interior, Environment and Related Agencies votes on its FY06 appropriations package. The Senate Appropriations Committee is expected to begin its work on the EPA budget sometime in June.

Source: WEF's *This Week In Washington*, April 29, 2005

B. Policy

White House Claims Wetlands Restoration Progress

One year after President Bush announced his wetland initiative to restore and improve the Nation's wetlands by 2009 the White house released "*Conserving America's Wetlands: Implementing the President's Goal.*" The President's 5-year goal calls for restoring one million acres of additional wetlands, improving the condition of one million acres of existing degraded wetlands, and extending protection to one million additional acres of imperiled wetlands. According to the report, 328,000 acres have been restored or created, 154,000 acres have been improved, and 350,000 acres have been protected over the past year. The President's 2006 budget requests continued funding for the programs to support progress on an additional 1.6 million acres by September 30, 2006. **Source:** WEF's *This Week In Washington*, April 29, 2005. A copy of the report is available at http://www.coastalamerica.gov/Conserving_Americas_Wetlands.pdf

C. Judicial And Enforcement

Clean Water Act Agreement With Louisville and Jefferson County

On April 25, the U.S. Department of Justice, U.S. EPA, and Kentucky's Environmental and Public Protection Cabinet jointly announced a comprehensive Clean Water Act settlement with the Louisville and Jefferson County Metropolitan Sewer District (MSD). The settlement ensures that MSD will make extensive improvements to its sewer systems to eliminate unauthorized discharges that will likely cost more than \$500 million. The consent decree will require MSD to take action to bring combined sewer overflows into compliance with water quality standards; to eliminate unauthorized discharges from its sanitary sewers; to improve its management, operation and maintenance programs to prevent future overflows; and to respond to overflows when they occur. The proposed consent decree is subject to a 30-day public comment period and final court approval before becoming effective.

Source: WEF's *This Week In Washington*, April 29, 2005, see also <http://www.epa.gov/compliance/resources/cases/civil/cwa/louisville.html>

State Water Quality Permit Conditions not Appealable to EPA

The EPA Environmental Appeals Board rejected an appeal by the City of Marlborough Massachusetts of the NPDES Permit issued by the EPA and the Massachusetts Department of Environmental Protection. The appeal centered on requirements limiting discharges of phosphorous. The EAB stated that these requirements were "attributable to State certification" and, could not be reviewed by the Board.

Source: EPA Administrative Law Reporter, April 2005 Citing In Re City of Marlborough, Massachusetts Easterly Wastewater Treatment Facility, NPDES Appeal No. 04-12, EAB March 11, 2005.

Testing Drinking Water Systems For Lead

The District of Columbia's drinking water utility violated federal law by not using approved methods for testing lead in more than 400 houses and then notifying these residents that their water met federal standards, the Environmental Protection Agency

announced Jan. 19. The water was tested by allowing the tap to run for five minutes before taking the sample which is not a protocol allowed under the Lead and Copper Rule of the Safe Drinking Water Act. EPA must notify all affected residents that their lines were incorrectly tested, EPA Region III said in a compliance order. Moreover, the D.C. Water and Sewer Authority (WASA) must offer new water tests and advise residents to use water filters or flush their lines before drinking it, the order said. The order also called for WASA to physically replace an additional 500 lead service lines, in addition to what it was already planning to replace, by Sept. 30, 2007. The exceedances, and resulting confusion, have been blamed in part, on the fact that three agencies have control over the District's drinking water--WASA, the U.S. Army Corps of Engineers, and EPA.

Source: BNA Environment Reporter, 1/28/05

Knoxville Utility Will Spend \$530 Million to Address Sewer Overflows

The wastewater utility for Knoxville, Tenn., will have to pay more than \$530 million to correct problems with its sewer system that have caused millions of gallons of sewage to spill into nearby waterways. The Knoxville Utility Board will be required to continuously monitor and analyze the cause of overflows from its sanitary sewer system and fix any problems that are found, according to the proposed consent agreement filed in the U.S. District Court for the Eastern District of Tennessee. The Justice Department estimated that measures to correct the problems will cost \$530 million over the next 12 years. The requirements in the agreement must be satisfied by the end of 2016.

Source: BNA Env. reporter 12/3/04 citing *United States v. Knoxville Utilities Board*, E.D. Tenn., No. 3:03-CV-497, 12/1/04.

Nebraska City Agrees to Pay \$225,000 For Violating Two Federal Water Laws

The city of McCook, Neb., has agreed to pay \$225,000 in civil penalties for violating two federal water protection laws. Under the consent decree, the city agreed to comply with the drinking water law by meeting the federal standards for nitrates, uranium, and arsenic, when the arsenic standard takes effect in 2006. For violating the drinking water law, the city agreed to pay a civil penalty of \$136,000, of which \$131,000 will go to the Environmental Protection Agency and \$5,000 to Nebraska. McCook also agreed to pay a total civil penalty of \$89,000 to EPA and Nebraska for violating the National Pollutant Discharge Elimination System permit issued under CWA and to comply with the act and the NPDES permit.

Source: Environment Reporter, April 1, 2005 citing *United States v. McCook*, D. Neb., No. 8:05CV93, 3/2/05; 70 Fed. Reg. 15,642.

California Court Upholds Stormwater Rules

Local governments lost the first round of their legal battle seeking to overturn strict stormwater runoff standards in a national pollutant discharge elimination system permit (NPDES) for Los Angeles County. A California Superior Court judge filed two decisions March 24. At issue in the case is the countywide NPDES permit the Los Angeles Regional Water Quality Control Board, that requires the county, 81 cities, and certain industrial facilities to implement aggressive stormwater runoff pollution prevention measures. The permit calls for drain filters, silt-removal basins, and more rigorous

inspections of industrial facilities. Other features require controls that address the quantity of runoff and “storm surges,” prompt reports of spill and other pollution problems at “critical source” locations, monitoring programs that warn of environmental degradation, coordinated response systems for sewage spills, and measures to reduce discharges from building sites. The permit requires measurable improvement in coastal water quality, not merely an effort by cities, industries, and developers. The court upheld the regional board’s decision to apply California’s clean water quality standards to polluted runoff. As a result, the permit requires both the cities and builders to implement and develop control measures to meet the standards, which also apply to pathogens, toxins, and other pollutants. In December, the California Court of Appeals, Fourth District, upheld similar requirements in a permit issued by the San Diego Regional Water Quality Control Board (*Building Industry Association of San Diego v. Water Resources Control Board*, Cal. Ct. App., 4th District, No. D042385, 12/7/04).

Source: BNA Environment Reporter, April 1, 2005 citing *In re Los Angeles County Municipal Stormwater Permit*, Cal. Super. Ct., No. BS-080548, 3/24/05.

Florida Suit on Permitting Underground Injection of Treated Wastewater

Permits issued by the Florida Department of Environmental Protection allowing a Miami wastewater treatment plant to inject treated sewage into an aquifer violate the Safe Drinking Water Act, an environmental organization has said in a lawsuit. The suit, which was filed by the Sierra Club in the U.S. District Court for the Northern District of Florida, alleged that contamination from the treated sewage injected into underground wells by the South District Wastewater Treatment Facility seeps into an aquifer that provides drinking water for some of the state’s largest cities. The facility serves Miami and Dade County.

Source: BNA Environmental reporter, February 25, 2005, citing *Sierra Club v. Florida DEP*, N.D. Fla., 2/17/05

Ship Captain Guilty of Obstruction of Justice

The captain of a Maltese-flagged cargo ship has pleaded guilty to obstruction of justice by trying to block a U.S. Coast Guard investigation into pollution allegations. The plea came just weeks after the chief engineer of the ship, the M/V Katerina, also pleaded guilty to the same charge. The Katerina arrived at the Long Beach port equipped with pipes to bypass the ship’s oil and water separation equipment, prosecutors alleged. The captain confessed to trying to conceal incriminating telexes from investigators and the Chief Engineer admitted directing crew members to use the pipes to bypass the anti-pollution system.

Source: BNA Environmental Reporter, February 25, 2005 citing *United States v. Kallikis*, C.D. Cal., No. 04-2290, 2/16/05. See also *United States v. Guinto*, C.D. Cal., No. 04-02291, 1/14/05).

Man Indicted in Idaho Wastewater Treatment Plant Case

The Idaho representative for Quality Water Systems Inc., of Bozeman Idaho (“QWS”), was indicted on April 13 in U.S. District Court for the District of Idaho on multiple counts of mail fraud in connection with false representations that he allegedly made to the Idaho Department of Environmental Quality in support of applying for permits to

construct wastewater treatment systems. Quality Water Systems designs, sells and operates Sequencing Batch Reactor, (SBR), wastewater treatment systems. These systems are specifically designed for communities that cannot be hooked up to public sewers. One of these SBR systems was built on Eagle Island which is located in the middle of the Boise River. The QWS representative allegedly used falsified data from this system to request applications for 12 additional systems to be built in Idaho. Some areas of Idaho have a concern regarding nitrate concentration in their groundwater and building wastewater treatment systems based on false data could lead to increased nitrate concentrations in groundwater. The case was investigated by the Boise Office of EPA's Criminal Investigation Division and the FBI. The case is being prosecuted by the U.S. attorney's office in Boise.

Source: Water and Wastewater News, April 29, 2005.

Suit Against Texas City for Venting Sewer Gases

A Texas appeals court allowed homeowners to sue a municipality for allegedly releasing noxious gases onto their land through sewer lines. The ruling by the Texas Court of Appeals for the Fifth District allowed claims based in negligence and intentional tort to go forward against the city of Allen, Texas, and the North Texas Municipal Water District. The court rejected defense arguments that the suit should be dismissed because intentional tort claims are not permissible against the city. While the state's Tort Claims Act does not waive sovereign immunity for intentional torts committed by government employees, the appeals court held that a complaint can include allegations of intentional acts when, alternatively, it also includes allegations of negligence by city employees. The latter claims are specifically allowed under the act.

Source: BNA Environmental reporter, April 29, 2005 reporting on *City of Allen v. Ahmed*, Tex. App., 5th Dist., No. 05-04-00265, 03/23/05.

D. Regulatory

U.S. Senate Confirms Johnson to Lead EPA

Stephen L. Johnson was confirmed on April 29 by the U.S. Senate to serve as Administrator of the United States Environmental Protection Agency. Nominated in March by President Bush, Johnson becomes the EPA's tenth Administrator and the first professional scientist to lead the Agency.

Source: WEF's *This Week In Washington*, April 29, 2005

1. Water

Stormwater eNOI for Industrial Facilities

EPA's new electronic permit application system for industrial facilities requiring coverage under EPA's stormwater permit for industrial facilities (Multi-Sector General Permit) is available. Industrial facilities that require permit coverage under EPA's MSGP can now fill out and electronically sign their applications using this helpful system.

Source: WaterNews for March 1, 2005. For more on the eNOI system, visit www.epa.gov/npdes/enoi. EPA also posts all industrial and construction stormwater applications on its website at www.epa.gov/npdes/noisearch

EPA Releases Second National Coastal Condition Report

EPA released the second National Coastal Condition Report (NCCR II), which describes and ranks the status, extent, and geographical distribution of national coastal ecological resources. The report rates the overall condition of U.S. coastal waters as fair, with essentially no change in condition since the first report was released in 2001. The report is based on four years of monitoring data from 23 coastal states and covers 100% of estuarine waters in the lower 48 states, compared to about 70% in the previous report. EPA's Office of Water and Office of Research and Development worked cooperatively with the National Oceanic and Atmospheric Administration, the U.S. Geological Survey, the U.S. Fish and Wildlife Service and coastal states to produce the report. Additional information on the NCCR II, including a copy of the report, is available at <http://www.epa.gov/owow/oceans/nccr/>.

Source: This Week in Washington, 1/21/05.

National Pollutant Discharge Elimination System Permits Available On-line

EPA is implementing a multi-year project to scan copies of major NPDES permits and make them easily available to the public on our website. You can now find over 2000 NPDES individual and general permits at www.epa.gov/npdes/permitsearch

Source: EPA WaterNews for October 26, 2004.

EPA To Propose Rule For Pesticide Spraying on Water

The Environmental Protection Agency announced plans Jan. 27 to propose a rule codifying that a Clean Water Act permit is not needed to apply pesticides directly into or above waters for insect control as long as the label on the chemical is followed. The proposal will accompany a final policy titled *Interpretive Statement on Application of Pesticides to Waters of the United States in Compliance with FIFRA*. The policy, which clarifies the agency's position with regard to permitting requirements for pesticide spraying, was signed Jan. 25. The final policy, which is being called an "interpretive statement" rather than a guidance, closely mirrors the interim "statement and guidance" issued by EPA in July 2003. That interim statement essentially said the application of pesticides either directly into U.S. waters or aurally above to control mosquitoes and other pests does not require a National Pollution Discharge Elimination System permit under the Clean Water Act. Pesticides must be applied in accordance with all relevant provisions of the Federal Insecticide, Fungicide, and Rodenticide Act, the interim guidance said. That would include complying with any use restrictions noted on a pesticide's label.

Source: *BNA Environment Reporter*, 1/28/05. Copies of the *Interpretive Statement on Application of Pesticides to Waters of the United States in Compliance with FIFRA* and proposed rule can be found at <http://www.epa.gov/npdes/agriculture#pesticides>

2. Air

Nine States File Challenge to EPA Action On Mercury Emissions From Power Plants

New York and eight other states challenged an Environmental Protection Agency rule that allowed coal-fired power plants to avoid technology-based emissions controls and

paved the way for what the states said was a much weaker emissions trading regulatory scheme. In a lawsuit filed in the U.S. Court of Appeals for the District of Columbia Circuit, the states sought to overturn a final rule announced March 15 that withdrew a regulatory determination in 2000 that power plants were a major source of mercury, a hazardous air pollutant, for which the agency was required to set strict emissions limits. EPA withdrew the 2000 finding to allow the agency to announce another rule the same day establishing an emissions trading program that will reduce mercury emissions from power plants by 35 percent by 2010 and 50 percent by 2020.

Source: Environment Reporter, April 1, 2005 citing *New Jersey v. EPA*, D.C. Cir., No. 05-10973/29/05.

3. Other

EPA Eliminates RCRA/UST/LUST Hotline

The EPA Call Center will no longer provide support for the Resource Conservation and Recovery Act (RCRA), Underground Storage Tanks (UST), and Leaking Underground Storage Tanks (LUST) programs at the **close of business on March 31, 2005**. For RCRA information, try the [RCRA FAQs Database http://waste.custhelp.com](http://waste.custhelp.com). This database enables users to search frequently asked questions or submit their own question or comment on a variety of RCRA issues and topics.

Source: Federal Register Notice March 4, 2005

<<http://www.epa.gov/epaoswer/hotline/documents/callctr-fr.pdf>>