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USEPA ISSUES 2017 STORMWATER GENERAL PERMIT FOR CONSTRUCTION ACTIVITIES



USEPA has published the final version of its 2017 stormwater general permit for construction activities. This general permit is applicable to construction sites that will disturb more than one acre and commence construction activity after the permit's effective date (February 16, 2017). It is only directly enforceable in the four states (MA, NH, NM and ID) and other limited jurisdictions (such as tribal lands) that are not currently delegated authority to implement the Clean Water Act.

The revised permit includes changes for the previous version issued in 2012. Some of the most significant changes are:

1. The permit provides that, at sites with multiple operators, USEPA will impose joint and several liability for non-compliance associated with shared stormwater controls;
2. The permit incorporates the effluent limitation guidelines (ELGs) and New Source Performance Standards (NSPS) that USEPA adopted in 2014. These non-numeric standards seek to reduce the discharge of sediment and sediment-bound pollutants, including dissolved pollutants;
3. The permit has changed requirements regarding management of stockpiles and land-clearing debris piles, establishing a time-based standard for determining when cover and/or stabilization may be required;
4. The Notice of Intent must include information notifying the public that the Stormwater Pollution Prevention Plan is available for review.

Author: Hamilton Hackney, Greenberg Traurig - [Learn More](#)

USEPA's fact sheet describing the new general permit can be found [here](#).

RETAIL STRATEGY: A NEW FOCUS ON HAZARDOUS WASTE REGULATIONS

America's hazardous waste management program ensures the safe management of hazardous waste from the "cradle to the grave". These regulations were developed primarily for industrial and manufacturing settings, but apply to any non-household facility generating and managing hazardous waste—including some facilities that may surprise people.



For example, hospitals, schools, and retail stores all generate hazardous waste and are subject to US EPA regulations. However, because these types of facilities aren't industrial in nature, sometimes the design of the hazardous waste regulations can pose compliance challenges. In recent years, the US EPA began to explore how these important safeguards can be updated for a retail setting and address the potential challenges these regulations present for retail.

You might not think of consumer goods at retail stores as especially hazardous, but some household cleaners, automotive products, batteries and other items meet the definition of hazardous waste when disposed. These goods are important parts of our everyday lives and may require special disposal when they are no longer able to be sold. The US EPA wants to ensure that these items, if they are not sold and must be disposed, are managed safely and properly.

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DEVELOPMENTS IN INSURANCE COVERAGE FOR ASBESTOS-RELATED LIABILITIES

The amazing thing about asbestos litigation is that, much like the product that spawned it, it seems to be virtually indestructible. The battle has shifted over the years from the question of whether asbestos liabilities are covered (under policies not containing an asbestos exclusion, and sometimes even then) to the question of how to allocate asbestos-related liability among insurance companies. The New Jersey Supreme Court has issued several major decisions on this issue, yet the issue seems never to be fully resolved.



The New Jersey Appellate Division recently handed down yet another decision trying to untangle the various questions raised by complex toxic tort insurance coverage cases. Two aspects of the decision are worth noting. First, the fact that every excess and umbrella policy should be carefully examined when purchased, because these policies may provide significantly less coverage than you believe you're getting. Second, the question of when a policyholder is entitled to recover its counsel fees from the insurance company when it has to sue to enforce coverage. Author: Gene Killian. Source: The Killian Firm, P.C. [Learn more....](#)

VAPOR INTRUSION DUE DILIGENCE AND THE LANDLORD/TENANT RELATIONSHIP

The potential for soil and groundwater contamination to migrate through soil gas ("vapor intrusion") into interior building spaces is increasingly becoming a critical component of



environmental due diligence in real estate transactions, remediation of brownfield sites, and in development of infill areas.

Historically, environmental due diligence focused almost exclusively on impacts to soil and groundwater. Where a property has known or suspected prior environmental releases, environmental engineers perform "phase II" soil and groundwater sampling and laboratory testing to determine whether that contamination required remediation under state and federal hazardous material remediation laws.

Now, careful consideration of the potential for prior environmental releases to enter building spaces must be added to the "all appropriate inquiries" to be taken during due diligence to meet accepted standards of environmental due diligence for real estate transactions. Understanding and mitigating for potential vapor intrusion may ward off exposure claims from tenants, and can help protect property values from environmental stigma price reductions.

The protocol for conducting Phase I environmental site assessments, ASTM E1527-13, specifically requires assessing the potential for hazardous vapors to migrate onto or within the target property. It does so by defining "migrate/migration" as "the movement of hazardous substances or petroleum products in any form, including, for example, solid and liquid at the surface or subsurface, and vapor in the subsurface," and then requiring an analysis of surrounding property uses and data-base records for migration potential. But the phase I protocol typically only results in a consultant recommending additional analysis of the vapor pathway if there are other indications of soil and groundwater releases in areas that could impact onsite building structures.

Since the inclusion of vapor migration potential in the ASTM Phase I standard and EPA's vapor intrusion assessment guidance last summer, environmental practitioners have wrestled with legal and technical ramifications. As methods for measuring and assessing the migration of hazardous vapors from contaminated subsurface sources has become more sophisticated and awareness of the potential of exposure to vapor intrusion has increased, approaches for evaluating and managing vapor intrusion increasingly are of central concern.

Source: Lexology Authors: Nelson Mullins Riley & Scarborough LLP. [Learn more...](#)

FLORIDA VOTERS ADD SOLAR TAX BREAK TO STATE CONSTITUTION

Amendment 4 prevents solar panels from being counted towards a home's or business' property value. That, in turn, means there will be no subsequent property tax hike because of the addition of solar panels.

It also gives tax relief for solar leasing companies that will no longer have to pay tangible personal property tax on solar equipment it provides to individuals.

But the battle isn't over for clean-energy advocates in Florida. In November, Florida voters will have a chance to vote on another ballot initiative, Amendment 1, that would constitutionally "ensure that consumers who do not choose to install solar are not required to subsidize the costs of backup power and electric grid access to those who do."

Author: Jorge Diaz, Jr. Source: Powur



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