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Environmental News

ENVIRONMENTAL NEWS

EPA Issues Enforcement Alert To Airlines

Following a settlement with American Airlines, arising out of violations of the federal fuel standards of the Clean Air Act, the U.S. Environmental Protection Agency has issued an "enforcement alert" to U.S. airlines. Under the terms of the settlement with American, penalties were reduced by more than 90 percent for violations that Texas-based American voluntarily reported. As a result, American paid a $95,000 fine, which equaled the economic benefit it received due to its noncompliance with restrictions on the use of high sulfur fuels in airport ground vehicles. The EPA waived other penalties that could have totaled $1.4 million.

While the EPA is encouraging airlines to take advantage of its voluntary audit program, it is reminding airlines of the federal regulations that most affect them. Under the Comprehensive Environmental Response, Compensation and Liability Act, airlines are responsible for immediately notifying the National Response Center when the release of certain hazardous substance exceeds certain quantities. For airlines, this can involve use of de-icing equipment, according to the EPA. The Emergency Planning and Community Right-To-Know Act requires airlines and other companies to immediately notify state and local authorities when releases of reportable quantities of hazardous substances occur. Airlines may also be liable under the Clean Water Act for discharges into the waters of the United States. "This includes discharges via separate storm sewer systems and may include discharges from de-icing, fueling and maintenance activities," the EPA said.

DAVID M. KURTZ

Missouri AG's Chief Environmental Lawyer Speaks at MU

Joseph Bindbeutel, chief counsel of the environmental protection division of the Missouri Attorney General's Office, addressed University of Missouri–Columbia School of Law students in March on three of the major environmental issues currently facing Missouri courts.

First, the number of hogs produced in Missouri ranks fifth in the United States, according to Bindbeutel, who believes that the days of the small family hog farmer are over. He said the Attorney General's office deals with a lot of antitrust cases involving raising and processing the large number of hogs produced by Missouri's corporate hog farms. He also said that his office has dealt with the ramifications from the waste generated by these hog farms – each hog produces as much waste as 3.2 humans do. The waste, according to Bindbeutel, generates odor problems that in one instance even caused a softball game being held 12 miles away to be canceled. Most of the cases involving hog farms, he said, settle out of court for injunctive remedies such as ceasing production or forcing the hog farms to employ odor reduction mechanisms. A major goal of politicians and legislators has been to develop ways to treat the excessive waste generated by the corporate hog farms, Bindbeutel said. Cattle, Bindbeutel predicts, will be the next type of livestock to be bred in corporate farm environments. The wave of the future, he said, would be integration farming.

Another major environmental area for concern and litigation in Missouri is chip mills, according to Bindbeutel. Independent woodsmen, he said, are worried about their future because chip mills can turn even bad wood into useable pulp. The major environmental concern is that, if paper prices continues to rise, southeast Missouri could be treeless within about two decades as Missouri's three chip mills continue to clear away trees. Bindbeutel said that the ability of these machines to chop trees fast and efficiently has lead to environmental problems because forests are being cleared away so rapidly and that Missouri's laws have not kept up with the capabilities of the high-tech equipment.

The final major area for environmental concern in Missouri currently, according to Bindbeutel, is the changing nature of the federal/state relationship in the wake of the 8th Circuit's decision in *Harmon v. Browner*, 1999 WL 71843 (8th Cir. 1999). In Harmon, the 8th Circuit held (1) that the EPA cannot overfile in those states where it has

authorized the state to create and enforce programs because it goes beyond the EPA's authority under RCRA and (2) res judicata barred the EPA from filing the action in the first place because the Missouri courts had already decided the issue through consent decrees. Bindbeutel said, because Missouri has taken nearly every opportunity afforded to it by the EPA to regulate the environment, this decision could significantly impact the weight of its enforcement.

TANYA WHITE

LEGISLATIVE UPDATE

HB 2042 – Beverage Container Law

This proposed law, which would become effective in 2002, would impose a refundable deposit of at least five cents on all soft drink, beer, and bottled water containers sold for consumption off-premises. Under the law, all containers would be required to be marked with their refund value and vendors would be required to refund the deposit for any container of a brand of beverage sold by that vendor. If the Department of Natural Resources deemed it convenient for customers, redemption centers that would accept cans on the behalf of vendors would be established. Beer distributors selling non-reusable metal cans would be required to provide for can-return facilities in each county seat. Large cities would be required to have at least one can-return facility for each 25,000 residents.

After vendors have refunded the deposits on returned cans, distributors would retrieve the cans from the vendors and, within one week, reimburse the vendors the deposit value plus one cent for each can or bottle.

This bill also proposes a ban on the sale of single-serving plastic beverage containers and metal cans with removable pull-tabs.

Most violations of the provisions of this bill are class C misdemeanors, although counterfeit labeling of containers and attempting to collect the deposit value of the same container more than once would be classified as class B misdemeanors. Moreover, the manufacture of a prohibited single-serving plastic beverage container would be classified as a class A misdemeanor.

WILLIAM C. ELLIS

HB 1414 -- One-Call Mandatory Notification System for Excavations

Representative James P. O'Toole sponsored this bill to further bolster the protection laws governing underground digging. This bill makes several changes to the existing law. This bill establishes a one-call mandatory notification system for excavations.

The bill makes several other changes. It requires owners and operators of state pipeline systems to participate in a statewide notification center by January 1, 2002. The center must maintain a list of all pipeline operators for the benefit of possible excavators. After the January 1 date, excavators would no longer be required to notify individual pipeline operators; notice to the center would suffice. The pipeline owner or operator then has an opportunity to meet with the excavator if the excavation plans are vague or uninformative. An excavator will be allowed to work so long as markings are visible. If an owner or operator does not respond, an excavator must send a second notice; if there is still no response, the excavator may begin digging. This bill does not allow the recovery of damages by any owner or