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# Lake Michigan States Section Air & Waste Management Association Newsletter<sup>®</sup>

## Illinois EPA and US EPA Are Evaluating Vapor Intrusion — Are You?

*By Mike Reese & Dan Podraza, Boelter & Yates, Inc.*

The Illinois EPA and US EPA have undertaken evaluations at several sites to determine whether vapors from contaminated groundwater are intruding into overlying homes. At each site, contaminated groundwater lies beneath residential neighborhoods. At one of the sites, US EPA has detected contaminants in indoor air that are believed to be from vapor intrusion. In response, US EPA is planning an expanded, long-term indoor air-sampling program.

### What is Vapor Intrusion?

Vapor intrusion is the migration of vapors from contaminated soils and groundwater into structures. Vapor intrusion is a complex exposure pathway influenced by such factors as soil and groundwater conditions, building construction, building ventilation and contaminant characteristics. The concern associated with vapor intrusion is long-term exposure and inhalation of low-level volatile contaminants in the indoor environment.

### Why Is Vapor Intrusion an Emerging Issue?

More contaminated sites are receiving risk-based closures that allow volatile contaminants (such as chlorinated solvents, benzene, mercury, pesticides, and PNAs) to remain in soils and groundwater under or near occupied residential, public and office buildings. This includes properties where building slabs and/or asphalt parking lots are utilized as engineered barriers or where groundwater contamination is managed in-place either through municipal ordinance or site-specific groundwater use prohibition.

However, indoor air sampling results from several high profile sites where risks associated with this pathway were estimated to be minimal

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## New Members

**Scott Anderson**  
Black & Veatch

**Lisa Barbieri**  
Peerless Industries

**Erin Burke**  
Wight & Company

**Jeff Chou**  
ENSR

**Gary Crawford**  
Boelter & Yates, Inc.

**Ed Currillo**  
Dayton Superior

**Carol Dorge**  
Carol Dorge Attorney at Law

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## Upcoming Events

### October 23, 2003

LM-A&WMA Board of  
Directors Meeting  
4:00 p.m. - Willowbrook

### October 23, 2003

Air Primer Course  
Willowbrook Holiday Inn

### October 24, 2003

Air Quality Mgmt. Conf.  
Willowbrook Holiday Inn

### November 22, 2003

LM-A&WMA Board of  
Directors Meeting  
8:00 a.m. Chicago

### December 4, 2003

Annual Holiday Reception  
IIT Stuart - Chicago

# Homeland Security Conference - A Real Success

*Lawrence Fieber, PG, Burns & McDonnell*  
**Program Chair**

The 2003 *Homeland Security Conference*, held on August 21, 2003 at Seyfarth Shaw's office in Chicago, Illinois was a true success. Speakers covered security topics from the regulator, law enforcement, legal, consulting and manufacturing perspectives.

Reginald Dunn of the US Department of Transportation Research and Special Programs Administration provided the regulator's perspective to HM-232 and provided a wealth of information including CDs, paper handouts and Web resources. Mark Misiorowski of Williams Montgomery & John gave a legal analysis of required provisions and enforcement guidelines concerning the HM-232 regulations. Mark Lies of Seyfarth Shaw gave legal perspectives about the employer's legal liability for failing to develop security plans.

We were very happy to have Lt. Commander Gary Martin of the US Coast Guard and Special Agent Joe Cheney of the Federal Bureau of Investigation (FBI) speak about their real life experiences with assessing security vulnerabilities and implementing countermeasures that work. Special Agent Cheney and Lt. Commander Martin provided some exceptional examples of real world threats that they have investigated.

Paul Zwijack, PE of Corn Products, provided a balancing industry perspective on the topic, including numerous informative photos. Joe Surette of AIG shared very useful information about the available coverages for acts of terrorism and available environmental coverages.

Laura McGovern, PE of Burns & McDonnell, and Scott Schankweiler of Versar masterfully covered the practical aspects of security planning and vulnerability assessments. Mr. Schankweiler described the myriad of security analysis tools available to consultants. Ms. McGovern shared some lessons learned during her extensive experience with vulnerability assessments of water supply facilities.

Since the seminar, the US Department of Transportation Research and Special Programs Administration published its final rule titled *Hazardous Materials Regulations: Penalty Guidelines and Other Procedural Regulations* (68 FR 52844, 09/08/2003, 49 CFR Parts 105, 107 and 171). This new rule sheds light on the significant penalties that can be levied on non-compliant facilities subject to HM-232 and other DOT rules.

Most speaker's presentation materials are available on line at: <http://www.lmawma.org/archive.htm#2003security>



*Conference Chair, Lawrence Fieber of Burns & McDonnell welcomes attendees to the conference.*



*Mark Misiorowski, Esq., Williams Montgomery & John Ltd., updates attendees on the legal aspect to the Hazardous Materials Transporter Regulations.*



*Lt. Commander Gary Martin, U.S. Coast Guard, briefs attendees on Maritime Facility Security Issues.*

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# 2003 Air Quality Management Conference

**Willowbrook Holiday Inn – Willowbrook, IL**

**October 23 and 24, 2003**

The Lake Michigan States Section of the Air & Waste Management Association is pleased to announce the Midwest's most comprehensive annual program on air quality management issues. The Lake Michigan States air conference has become an October tradition in the region – bringing together environmental professionals from industry, government, environmental services and the legal community to learn about the hottest issues and most important developments in the rapidly evolving field of air quality management.

**The one-day air conference on October 24, 2003** will cover a variety of topics of both regional and national interest. Issues to be discussed will include:

- EPA and Environmentalist perspectives on important and controversial federal initiatives, including New Source Review (NSR) Reform and market-based regulations for the utility industry
- Environmental management priorities and new initiatives from the senior regulatory officials of the Lake Michigan States
- Important changes and new opportunities anticipated at the state and federal levels for the Title V and NSR permitting programs
- Rapidly developing air toxics issues, including the challenge of broadly applicable MACT standards and the potential for massive case-by-case MACT permitting under the Clean Air Act's "MACT Hammer"
- Fresh insights into current prospects, changing priorities and new directions for environmental compliance & enforcement

As in the past, session breaks and a closing reception will provide opportunities to effectively network with a wide range of professionals in your field.

LM-A&WMA will again present an **Air Primer Workshop on the evening of Thursday, October 23, 2003**, prior to the conference. The Air Primer is perfect for both environmental professionals new to the air quality field and senior executives who want an opportunity to learn the details of the program implemented by their staffs.

**Mark your calendars for Thursday and/or Friday, October 23 and 24, 2003**, and watch for more information on registration and the detailed conference program. For information on opportunities to promote your organization's environmental initiatives at the conference, please contact Robin Pelsis of LM-A&WMA at **847-202-0418** or **lm\_awma@ameritech.net**.

# Illinois Tax Law Change

By Eric R. Johnson, Deloitte & Touche LLP

On May 31, 2003, Illinois Governor Rod R. Blagojevich approved a \$52 billion state budget. The state's estimated \$5 billion budget shortfall was addressed without a general sales or income tax increase. However, manufacturers and businesses will likely face higher taxes through a combination of new taxes, increases of existing taxes, limits on current exemptions and the elimination of other exemptions.

How are environmental professionals impacted by the tax law changes contained in the new budget? Effective July 1, 2003, the Illinois sales tax exemption associated with the purchase of pollution control equipment has been repealed. This change in the tax law is expected to cost Illinois manufacturers and businesses \$3 million per year.

Based on an informal conversation with a Department of Revenue representative, purchases made prior to the July 1, 2003 effective date are still eligible for the exemption as long as delivery was made and receipts are dated (and thus, payment made) prior to the July date.

Although Illinois sales tax benefits for pollution control equipment have been repealed, property tax benefits continue to apply. Many owners of real property in Illinois have achieved tax savings from preferential property tax treatment for eligible pollution control property that has been certified by

the Illinois Pollution Control Board. This tax treatment allows certified property to be assessed at 33-1/3% of its fair cash value.

Preferential property tax treatment afforded pollution control equipment is not limited to the State of Illinois. In more than 30 states, owners of such equipment can receive property and/or sales tax savings. Does your state allow preferential tax treatment for pollution control equipment? Statutes addressing taxation of pollution control equipment are typically found in the state's Tax Code. If your state allows favorable tax treatment, you have two issues to consider. First, you need to determine how state laws define pollution control equipment. Second, you need to determine what your state requires in order to qualify for the applicable benefits.

In most states that offer some form of preferential tax treatment for pollution control equipment, that equipment generally falls into one of three categories: air, water, or solid waste. For example, Illinois defines "pollution control facilities" as "any system, method, construction, device or appliance appurtenant thereto, or any portion of any building or equipment, that is designed, constructed, installed or operated for the primary purpose of:

(a) eliminating, preventing, or reducing air or water pollution, as the terms 'air pollution' and 'water

pollution' are defined in the Environmental Protection Act; or

(b) treating, pre-treating, modifying or disposing of any potential solid, liquid or gaseous pollutant which if released without treatment, pretreatment, modification or disposal might be harmful, detrimental or offensive to human, plant or animal life, or to property."

If your state's definition of pollution control equipment is fairly broad, depending on the quantity and cost of your equipment, your tax savings can be substantial.

If you have eligible pollution control equipment, how do you obtain the applicable tax benefits? Many states have a formal certification process that involves the state's Environmental Agency and Department of Revenue. This process may include lengthy application forms and approval procedures. Other states have less formal procedures that may be as simple as submitting relevant documentation to the local tax agency. A handful of states have pre-certified equipment lists that help expedite the entire process. The application and approval process can take as little as a few weeks or as long as several months depending on the complexity of that process, the nature of the equipment for which special tax treatment is sought, the cooperation of local tax agencies and assessors and other factors.

*Continued on page 8.*

# New Security Requirements for Hazmat Transportation

By: Sarah H. Halpin, Jenner & Block

On March 25, 2003, as a result of increased security concerns in the United States, the Department of Transportation's (DOT's) Research and Special Programs Administration (RSPA) published a Final Rule on security requirements for offerors and transporters of hazardous materials (the New Rule). The New Rule, with explanatory preamble, is published at 68 Fed. Reg. 14510-14521. It will be codified at 49 C.F.R. Part 172. The New Rule potentially affects many industrial facilities that transport hazardous materials or even offer them for transportation. Because of the New Rule, many facilities must now make certain adjustments to improve the secure transport and storage of hazardous materials shipments.

The New Rule contains two basic components: 1) increased training for hazmat employees; and 2) the new "security plan" requirement, which directs certain facilities to create and implement a hazmat security plan.

## 1. Increased Hazmat Training Requirements for Employees

The first component of the New Rule, increased training for hazmat employees, applies to *all* facilities employing hazmat employees. According to the New Rule, a hazmat employee is "one who directly affects hazardous materials transportation safety." All such employees must be trained in security awareness and familiarity with any security plan the facility has. The New Rule requires two distinct types of training. First, a facility must

provide general safety awareness training to its hazmat employees through "security awareness training." In this general safety training, hazmat employees should be made aware of possible security risks and how to recognize and respond to those risks. Second, the New Rule requires facilities to provide in-depth security training to all hazmat employees through "in-depth security training." This training is more specialized than the general safety awareness training and should include specific security objectives, procedures and employee responsibilities.

For current hazmat employees, security awareness training can be combined with the three year recurrent hazmat training likely already in place at any facility dealing in hazardous materials. For hazmat employees hired after March 25, 2003, however, facilities must provide security awareness training within three months of the employees' start date. By March 24, 2006, all hazmat employees must have received security awareness training. Likewise, all hazmat employees must then receive in-depth security training by December 22, 2003.

## 2. The New "Security Plan" Requirement

The second component of the New Rule, creation and implementation of a hazmat security plan, only applies to facilities involved in the transportation, or storage incidental to transportation, of seven specific hazardous materials: 1) a highway route-controlled quantity of Class 7 (radioactive) material;

2) more than 25 kg of Division 1.1, 1.2, or 1.3 (explosive) material; 3) more than one liter per package of material poisonous by inhalation in Hazard Zone A; 4) hazardous materials in bulk with capacity greater than or equal to 13,248 liters for liquids or gases or more than 13.24 cubic meters for solids; 5) hazardous materials not in bulk with 2,268 kg gross weight for which placarding is required; 6) select agents or toxins regulated by the Centers for Disease Control and Prevention; or 7) a quantity of hazardous waste that requires placarding.

Facilities involved in the transportation of one or more of the listed hazardous materials must implement a security plan by September 25, 2003. The security plan must identify security risks during transportation and provide information regarding how the facility has eliminated identified risks. At a minimum, the security plan must cover three security risk areas: 1) personnel security risks; 2) risks involving unauthorized access to materials; and 3) en route security risks.

## 3. Regulated Facilities: Taking Steps to Compliance

Before taking any action regarding increased security, each facility must first determine whether it is regulated by the New Rule. Before instituting increased security training measures, a facility should ensure that it has employees who directly affect hazardous materials transportation and safety. Only

*Continued on page 10.*

# NSR Reform - Keep Holding Your Breath

*By: Jon Faletto, Howard & Howard*

On the last day of 2002, the U. S. Environmental Protection Agency (EPA) published long-awaited regulations governing the New Source Review (NSR) programs mandated by Parts C & D of Title I of the Clean Air Act. Through that rulemaking (referred to as the “NSR Reform” initiative), EPA promulgated regulatory improvements in the way the NSR program works for existing facilities. At the same time, EPA requested public comment on a proposed rule concerning the “routine maintenance, repair and replacement” exemption under the NSR Program. The improvements effected by the final NSR Reform regulations and the proposed “clarification” of the contentious “routine maintenance” exemption represented the culmination of tremendous efforts by industry, environmental groups, state regulatory authorities and EPA over the course of the past ten years.

Interested parties, particularly private industry, now hold their breath wondering if those efforts were in vain. On July 25, 2003, EPA announced that it will reconsider parts of the December 31<sup>st</sup> NSR Reform rulemaking. While it is widely believed that EPA’s reconsideration of the rules will leave those program improvements basically intact, six contested issues under reconsideration have the potential to change the final makeup of the NSR program.

The significance of EPA’s current reconsideration effort is underscored by appreciating the momentous improvements made to the NSR permitting program through the final NSR Reform rules. Those improvements included five substantive revisions to the NSR preconstruction permitting requirements, summarized below:

- **Methodology for Establishing “Baseline Actual Emissions”** - This new methodology for establishing past “actual emissions” from an existing source allows pre-change emissions to be calculated using any consecutive 24 months during the preceding ten years. The new calculus will allow sources to utilize a more accurate emissions baseline reflecting fluctuations in the business cycle over time.
- **“Actual-to-Projected-Actual” Applicability Determination** - Prior to the NSR Reform rulemaking, the “actual-to-potential” test was used to determine whether a proposed change at an existing facility would result in a “net significant increase” in regulated air pollutants subject to NSR review. The “actual-to-potential” test was the single most controversial aspect of the NSR requirements for existing sources.

- **Plantwide Applicability Limitations (PALs)** - The use of PALs gives facility operators the ability to manage facility-wide emissions without triggering NSR review requirements. In its implementation, a facility operator obtains a permit with facility-wide caps on actual emissions, known as PALs. Changes to the facility can proceed without triggering NSR review if post-change actual emissions stay below the caps.
- **Exemption for “Clean Units”** - A designated “clean unit” is subject to allowable limits based on state-of-the-art controls, such as Best Available Control Technology. An emission unit with “clean unit” status may undergo physical or operational changes without triggering NSR review, if the post-change emissions stay below the allowable limits.
- **Exemption for Pollution Control Projects** - The NSR Reform regulations replaced a similar exclusion available only to the electric utility industry and codified a 1994 EPA policy statement. Under this exclusion, a facility operator may install specified pollution control or prevention equipment (PCPs) without triggering NSR review and with minimal agency oversight. For PCPs identified by the new rule, i.e., “listed” PCPs, a facility operator can proceed

## NSR Reform (continued from page 6)

with the PCP without obtaining a permit after giving notice to permitting authorities.

Following publication of the December 31<sup>st</sup> NSR Reform regulations, EPA received numerous petitions, filed pursuant to section 307 of the Clean Air Act, requesting reconsideration of many aspects of the final rules. EPA has agreed to proceed with reconsideration of six issues raised by the Petitioners and will decide by October 30, 2003, whether to proceed with the formal reconsideration process for any of the other issues raised by the Petitioners.

Although EPA agreed to reconsider six issues associated with the final NSR Reform rules, it did not agree to stay or suspend the legal force and effect of the final rules. In those states with a delegated NSR program (federal NSR program administered by the State/local permitting authority), the program changes implemented by the final NSR Reform rules are already in effect and will remain in effect. Those States and local permitting authorities with SIP-approved NSR programs (EPA-approved NSR programs authorized by State law), will still have up to three years to implement changes to the State's NSR program to incorporate the NSR Reform changes.

The six issues that EPA has agreed to reconsider are summarized as follows:

- *Supplemental Analysis of the Environmental Impact of the 2002 Final NSR Improvement Rules* - Prepared after the 1996 NSR Reform proposal but prior to promulgation of the final rules in 2002, this EPA report provided additional analysis of the potential environmental effects associated with the final NSR Reform rules. As a result of its analysis, EPA concluded that the NSR Reform rules would result in a net benefit to the environment as compared to the former NSR rules. Given the opposition to the NSR Reform rules from various States and environmental groups, EPA's conclusion of environmental benefits may have touched a raw nerve. EPA's reconsideration process will determine the accuracy of its conclusion as well as whether the report was timely and appropriately considered during the rulemaking process.
- *PALs: Establishing Baseline Actual Emissions* - In establishing facility-wide caps or PALs based on actual emissions, the permitting authority is directed to use any consecutive 24-month period during the preceding 10 years. If the selected 24-month period is not the most recent 24-months, the cap must account for new units added and existing units shut down after the selected 24-month period. Otherwise the cap would be set artificially high by including within the allowable cap the actual emissions

from shutdown units. Conversely, the cap would be set artificially low by omitting emissions from units added after the selected 24-month baseline period. Petitioners challenged certain features of this methodology (selected by EPA as the best means to "equalize" the baseline actual emissions used in establishing PALs), particularly EPA's decision to use the allowable or potential emissions for those emission units added after the selected 24-month period.

- *PALs: Elimination of Synthetic Minor Limits* - In issuing a permit with PALs, the permitting authority may eliminate conditions imposed in previous construction permits to limit potential emissions below NSR "major" source or modification thresholds. Essentially, the facility-wide cap or PAL on emissions serves the same purpose as limits imposed to create a "synthetic minor" source or modification, because either approach is designed to avoid triggering NSR review requirements. When the PAL expires, those synthetic minor limits of previous permits are not reinstated but the new permit will include limits on individual emissions units based on the total facility-wide emissions allowed by the PAL. Petitioners objected to the permanent deletion of pre-existing synthetic minor limits.

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# Call for Volunteers

The LM-A&WMA Section is seeking *volunteers* to participate in the following activities:

**Environmental Authors:** Our LM-A&WMA Board Secretary, James Harrington, is always looking for talented writers to contribute articles on current environmental issues to the quarterly Lake Michigan States Section Newsletter. If you have interesting information to share from industry, government, academia or consulting, please contact **Jim Harrington** at 312-750-8619 or james.harrington@rosshardies.com.

**Open Board Meetings:** If you are an interested LM-A&WMA member and would like to become more active or if you would like to present an issue or idea to our Board, come and attend one of our open Board meetings. Contact LM-A&WMA's Admin, **Robin Pelsis**, at 847-202-0418 to find the date and location of the next Board meeting or to be placed on the meeting agenda.

**Advisory Committee:** Our Section formed an Advisory Committee for our members who are interested in being actively involved with the A&WMA Board and its conference planning activities. If you have such an interest, please contact our LM-A&WMA Board Chair, **Diana Jagiella**, at 309-999-6309.

## NSR Reform (continued from page 7)

- *Actual-to-Projected Actual Test: Recordkeeping and Reporting Requirements* – Based on its experience with the WEPCO rule applicable to electric utility units, EPA decided to limit the reporting and recordkeeping requirements (during the 5 or 10 year period following a particular change), to those changes with a “reasonable possibility” of causing a significant emissions increase. Without the “reasonable possibility” qualifier, the NSR rules would require recordkeeping and reporting for all physical or operational changes occurring during the relevant post-change period. Petitioners expressed concerns about what constitutes a “reasonable possibility” and who makes the decision.
- *Actual-to-Projected Actual Test: Availability of New Test for Replacement Units* – Relying once again on its experience with the WEPCO rule, EPA determined that the actual-to-projected actual test for calculating whether a proposed change would result in a “net significant increase” will be available for changes involving replacement of existing emission units. Replacement or reconstructed units are treated as modifications only if the replacement or reconstruction of the unit results in a significant increase as measured by the new test comparing past actual emissions to future projected actual emissions rather than future potential emissions.
- *Exemption for Clean Units: Effect on Clean Unit Status Due To Re-designation* – The final NSR Reform rules allow a “Clean Unit” to retain its status even if the area in which the unit is located subsequently is re-designated from an attainment area to a non-attainment area. By maintaining Clean Unit status, such units can rely on the exemption from NSR review for physical and operational changes at the unit that are consistent with allowable emission limitations or work practice standards and do not alter basic design characteristics relied upon to establish control requirements for the unit.

EPA's reconsideration process includes a public comment period and hearing scheduled for August 14, 2003, during which interested parties present their concerns about the NSR Reform issues under reconsideration. Although further legal challenges to the final NSR Reform regulations are possible, EPA's current reconsideration effort is believed to be the only significant opportunity to dismantle the NSR program improvements achieved through the NSR Reform rulemaking.

## Vapor Intrusion (continued from page 1)

have challenged traditional risk assessment conceptions and practices and led to increased concern for vapor intrusion exposures.

### Who Should Consider Vapor Intrusion?

Since most existing No Further Remediation (NFR) Letters, Consent Decrees/Orders and Records of Decision (RODs) do not specifically address the exposure pathway, vapor intrusion presents several risks and liabilities to:

- **Potentially Responsible Parties (PRPs).** Findings of the new investigations may trigger additional response actions by PRPs who may have thought all necessary response actions were completed when a new drinking water supply was provided to the affected area.
- **Buyers.** Many states are currently developing vapor intrusion regulations. Today's buyer may later be faced with unforeseen environmental liabilities and difficulties when selling properties if the pathway is not evaluated prior to purchase.
- **Property Owners.** Owners should consider proactively evaluating potential exposures from vapor intrusion to facilitate future sales and address potential building occupant exposure concerns.
- **Developers.** Developers should consider the impact of vapor intrusion at contaminated properties that will include residential, public or office uses. Vapor intrusion controls can be cost-effectively incorporated into the building design prior to occupancy. Failure to proactively evaluate vapor intrusion could lead to higher costs to retrofit structures with control devices.

### Where Can You Get More Information?

The US EPA has developed a Draft Subsurface Vapor Intrusion Guidance document that can be found at <http://www.epa.gov/correctiveaction/eis/vapor.htm>. The Wisconsin Department of Public Health has a good guidance document at <http://www.dhfs.state.wi.us/>.

In addition, Boelter & Yates has over 10 years experience helping our clients assess, manage and reduce risks and liabilities associated with vapor intrusion. If you need help evaluating your sites, please contact us.

## Univ. of IL Student Wins A&WMA Scholarship

Amit Kaldate, University of Illinois, Urbana-Champaign, has been awarded Second Place – Tie in the Air & Waste Management Association's 2003-2004 Scholarship Program. Kaldate is pursuing his Doctoral degree in Civil & Environmental Engineering under the direction of Dr. Deborah Thurston.

For more than a decade, the Association has awarded \$260,250 in scholarships to 71 of the most promising environmental students. Full-time graduate students who are pursuing courses of study and research leading to careers in air pollution control and/or waste management are encouraged to apply for the award.

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News!



LM-A&WMA wants to share your news. Send your announcements of new employees, new location, awarding of a job, etc. to [lm\\_awma@ameritech.net](mailto:lm_awma@ameritech.net). Your announcement will be included in the next issue of this newsletter. Newsletters are published on a quarterly basis.

# New Security Requirements (continued from page 5)

these individuals must receive increased security training.

If a facility is required to provide increased security training, the security training requirement provides flexibility for facilities in planning employee trainings. It may be unnecessary to implement a completely new training program, as training conducted by employers to comply with the hazard communication programs required by OSHA, EPA or other security training programs required by other Federal or international agencies may be used to satisfy the new training requirements. This training must, however, address the training components specified in the New Rule.

To determine whether a facility must implement a security plan, that facility should first determine whether it deals with the types and quantities of hazardous materials covered by the New Rule. The New Rule is only triggered by the seven specific types/amounts of hazardous substances discussed above. Thus, facilities that do not deal with one of the seven types of wastes and quantities are not regulated by the New Rule.

If a facility does deal with one of the seven trigger hazardous materials, the facility should evaluate whether or not it is involved in the transportation of these materials. The New Rule only applies to facilities that: 1) offer for transportation or actually transport hazardous material; or 2) operate a facility which stores hazardous material after it leaves its original destination, but before it reaches its final destination. Thus, facilities not involved in the

transportation of one or more listed hazardous material do not need to create security plans.

Keep in mind that the DOT purposefully created a flexible security plan rule, permitting a facility to tailor its security plan to its unique circumstances. Thus, a facility that already has a security plan in place under another rule or regulation will not need to create a separate security plan so long as the facility's current plan evaluates possible risks involved in transporting hazardous materials, and contains measures for personnel security, prevention of unauthorized access to materials and en route security.

For facilities that do not already have a security plan in place, the first and most important step in creating a security plan is performing a risk assessment of the facility. The risk assessment will establish a framework within which the facility may design a security plan and establish security training. The Department of Transportation's website provides several examples of useful risk assessments. The risk assessment should list the materials the facility handles and identify which materials may cause potential harm if they fall into the wrong hands. After assessing such risks, the facility should consider its current transportation process, considering what could go wrong under the facility's current transportation process, and what the facility could do differently to ensure safe transportation of hazardous materials. Each facility should also consider whether any other facilities are involved in the transportation process and whether security efforts could be

coordinated with these other facilities. It is important for a facility to record, in its security plan, the steps it took to assess transportation-related risks, as well as any discovered risks.

Once the facility has assessed possible risks, it should create a written security plan that explains the actions that facility has taken to minimize the possible occurrence of those risks. Each facility may decide how to address transportation-related risks, so long as that facility has made a good faith effort to ensure safe transportation of hazardous materials. A facility may address as many risks as it feels necessary in a security plan. The New Rule requires, however, that facilities address at least the following three risks: 1) personnel security; 2) unauthorized access to materials; and 3) en route security.

Although the New Rule has the potential to affect many diverse facilities, the Department of Transportation has attempted to create a flexible rule that a facility may tailor to its unique circumstances. With careful evaluation of its individual risks and situation, a facility should be able to comply with the New Rule by the applicable deadlines.

*Sarah H. Halpin* is an associate at Jenner & Block, LLC, in the Environment, Energy and Natural Resources practice group. She can be contacted at [shalpin@jenner.com](mailto:shalpin@jenner.com).



## New Members (con't.)

**Ke Du**  
UIUC

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University of Illinois

**Bill Franek**  
Cook County Dept. of Env.

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**Kia Zuber**  
Boelter & Yates

## Illinois Tax Law (continued from page 4)

Once you've complied with the required procedures, the tax benefits can be substantial. For example, a manufacturing facility located in a state that imposes a 2% personal property tax can, by application of a pollution control exemption, realize a permanent, annually-recurring \$20,000 property tax savings for each \$1 million of assessed pollution control equipment value. Equally significant sales tax benefits can also be realized where applicable. For example, assume a manufacturing facility is located in a

state that imposes sales tax, allows a full exemption for certified pollution control equipment and has a 5% sales tax rate. For every \$1 million in new pollution control equipment acquired in a given year, the facility would receive a one-time \$50,000 sales tax savings.

Note that the property tax savings associated with a particular pollution control asset are permanent annual savings and the sales tax savings occur only in the year the equipment is acquired.

In addition to the state programs described above, Section 169 of the United States Internal Revenue Code allows tax benefits associated with the amortization of certified pollution control facilities at qualifying operating plants.

In summary, it pays to know how the tax codes address pollution control property. In many cases, the tax benefits can be leveraged to result in significant tax savings for your facilities.



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Air & Waste Management Association  
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LM-A&WMA has been working to update its website. Check us out at [www.lmawma.org](http://www.lmawma.org)

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