

Environmental Compliance News

Thompson Environmental Consulting, Inc.

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Thompson Environmental Consulting, Inc., located in West Des Moines, Iowa, is a full service environmental firm serving clients in the Midwest. We specialize in air quality, water quality and land quality issues.

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SECTION 1 ENVIRONMENTAL REPORTING REQUIREMENTS FOR JANUARY 2010

Every facility has their own set of environmental regulatory requirements each month. Some of these requirements due in January 2010 include:

- Iowa Country Grain Elevator Potential to Emit Calculations (to determine Group status)
- Many Polk County facilities are required to submit throughput monitoring reports in January (to verify synthetic minor status)
- NESHAP EEEE – Annual Vapor Pressure Calculations
- NSPS VV Semi-Annual Report

SECTION 2 ROLAND-STORY HIGH SCHOOL AIR QUALITY ASSESSMENT

In 2008, USA Today partnered with the University of Massachusetts-Amherst's Political Economy Research Institute to evaluate the air quality levels at 127,809 schools in the United States. The source of the emission data came from Form R reports.

This analysis indicated that the air quality at the Roland-Story High School in Story City, IA had the 3rd worst air quality among the 127,809 schools analyzed, based on their criteria. The pollutant of concern in Story City was diisocyanates.

This information was published in USA Today in December 2008. The Des Moines Register soon after printed a front page article on this issue focusing on Iowa schools, including Roland-Story High School.

In August 2009, IDNR issued their report concerning air quality at Roland-Story High School. Their analysis used detailed dispersion modeling techniques. The IDNR analysis showed essentially zero impact.

EPA placed monitors around the high school to measure actual levels of diisocyanates. Their monitoring report was released on December 15, 2009. This monitoring showed levels less than applicable detection limits.

SECTION 3 CONGRESS PROPOSES CHANGES TO CLEAN WATER ACT (NAVIGABLE WATERS)

The Clean Water Act (CWA) was originally passed in 1972. It was amended in 1977 and 1987. One of the regulations written in support of this Act includes the National Pollutant Discharge Elimination System (NPDES), which includes storm water regulations.

The Act governs discharges to "navigable waters," this includes all waters with a "significant nexus" into navigable waters. The U.S. Supreme Court has rejected the position of the Army Corps of Engineers that its authority over water was essentially limitless under the CWA (*Rapanos* majority opinion).

In *Rapanos v. United States*, the Supreme Court clarified that the term "waters of the United States" "includes only those relatively permanent, standing or continuously flowing bodies of water 'forming geographic features' that are described in ordinary parlance as 'streams[,] ... oceans, rivers, [and] lakes.'"

All waters with a "significant nexus" to "navigable waters" are covered under the CWA; however, the words "significant nexus" remains open to judicial interpretation and considerable controversy. Some interpretations included water features such as intermittent streams, playa lakes, prairie potholes, sloughs and wetlands as "waters of the United States".

In *Rapanos v. United States*, the Army Corps of Engineers applied that broad definition, seeking millions of dollars in fines and penalties from a seventy year old farmer in Michigan who failed to get a federal permit before clearing his cornfield. The Army Corps of Engineers claimed that the farmer had filled a wetland with sand and in doing so he had discharged a pollutant into the "waters of the United States." The US. Supreme Court rejected that position, holding that isolated wetlands could not be considered "waters of the United States" for purposes of the CWA.

A bill currently pending in Congress proposes to delete the term "navigable waters" and replace it with "Waters of the United States". If passed, this will be defined as:

The term 'waters of the United States' means all waters subject to the ebb and flow of the tide, the territorial seas, and all interstate and intrastate waters and their tributaries, including lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, natural ponds, and all impoundments of the foregoing, to the fullest extent that these waters, or activities affecting these waters, are subject to the legislative power of Congress under the Constitution.

FOR ADDITIONAL INFORMATION – PLEASE CONTACT TEC

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