

## Articles of Interest

1. EPA Plans to Classify Meds as Universal Waste
2. EPA Faces \$400 Million Funding Cut in 2009
3. Editor's Comments: I'm From the Government and I'm Here to Help (discussion on 2008 Landfill Methane Outreach Program [LMOP])
4. Court OK's Exclusive Franchise to Haul Construction Waste
5. Flow Control Ruling Debated at Summit

# EPA plans to classify meds as universal waste

By Bruce Geiselman

The U.S. EPA plans later this year to propose adding hazardous pharmaceutical waste to the universal waste system, which would make it easier for health care workers and pharmacy employees to dispose of pharmaceutical waste.

Employees in hospitals, doctors' offices and retail pharmacies who are unfamiliar with Resource Conservation and Recovery Act regula-

tions often mismanage hazardous pharmaceutical waste under the current system, said Roxanne Smith, an EPA spokeswoman.

The universal waste rule is designed to reduce the amount of hazardous waste in municipal solid waste, to encourage the recycling and proper disposal of certain common types of hazardous waste, and to reduce the regulatory burden for businesses that generate these types of waste.

"Expansion of the universal waste system to include hazardous pharmaceutical wastes will protect public health and the environment by providing a more streamlined but effective waste management system," Smith said. "Due to the simplified requirements, this action will also provide regulatory relief to health care facilities, retail pharmacies, veterinary clinics and any other entities that generate hazardous pharmaceutical

wastes."

The inclusion of hazardous pharmaceutical waste in the universal rule would make it easier for health care and pharmaceutical employees to manage P-listed pharmaceuticals by simplifying current requirements of large-quantity generators, she said. P-listed waste consists of commercial chemical products that are categorized as acutely hazardous under RCRA. Many chemotherapy

agents fall into the category.

"Also, we anticipate that the rule will encourage health care personnel to manage other pharmaceutical wastes as universal wastes, particularly wastes that are not regulated as hazardous but which nonetheless pose hazards," Smith said. ■

Contact Waste News senior reporter Bruce Geiselman at (330) 865-6172 or [bgeiselman@crain.com](mailto:bgeiselman@crain.com)

# EPA faces \$400 million funding cut in 2009

By Bruce Geiselman

The U.S. Environmental Protection Agency would operate with about \$400 million less in funding in fiscal year 2009 if a budget submitted by President Bush is approved by Congress.

The EPA would receive about \$7.1 billion — down from \$7.5 billion in fiscal year 2008. President Bush's overall budget for the entire federal government next year totals \$3.1 trillion.

Under the EPA funding plan unveiled Feb 4, one of the biggest funding cuts would come to the Clean Water State Revolving Fund — which extends loans to communities looking to upgrade their wastewater systems. The president's proposal calls for \$555 million in funding for 2009, as compared with \$689 million in 2008.

The budget also cuts funding for a program dealing with leaking underground storage tanks by more than \$33.5 million.

Meanwhile, the Superfund program — which cleans up some of the nation's most toxic waste sites — would see a slight funding increase from \$1.25 mil-

lion to \$1.26 million.

Funding for the EPA's homeland security functions also would receive a funding boost.

EPA Administrator Stephen Johnson said the budget would help the government control costs while still protecting the environment.

However, Senate environment committee chairwoman Barbara Boxer criticized the Bush administration for cutting the EPA's budget, including several programs she considers important.

"The EPA's job is to protect the health of our families, but with this budget the president is once again sending a clear message that cleaning up our environment is not a priority for the Bush administration," said Boxer, a Democrat from California.

Sen. Diane Feinstein, D-Calif., criticized the Bush budget for failing to include funding for a program tracking greenhouse gas emissions.

While the EPA budget is facing a budget cut, the Department of Energy's budget for fiscal year 2009 would increase by a little more than \$1 billion to \$25 billion under the proposal Bush un-

veiled Feb. 4. The Energy Department's budget includes funding for the development of clean, renewable sources of energy and climate change technologies.

Among the priorities in the fiscal year 2009 energy budget request is \$1.4 billion to promote emission-free nuclear power, a \$386 million increase compared with 2008.

The budget also requests \$648 million, the largest request in more than 25 years, for increased research in clean coal technology and demonstration of carbon capture and storage for coal-fired power plants. During his recent State of the Union address, President Bush pledged to fund clean coal technology.

The budget request also calls for \$1.25 billion — a \$1 million increase — in funding for the Office of Energy Efficiency and Renewable Energy, which supports the development of clean, alternative fuel and energy sources, such as biofuels, biomass and solar energy. ■

---

Contact Waste News senior reporter Bruce Geiselman at (330) 865-6172 or [bgeiselman@crain.com](mailto:bgeiselman@crain.com)

# Editor's Comments

## I'm From the Government and I'm Here to Help

I spent this past weekend working on my 2007 income taxes, and I have to admit that my upset quotient entered the stratosphere as I pondered my W-2 form's catalog of taxes that various agencies have zapped right off the top. These, of course, are merely prelude to another round of taxes—sales excise, fuel, property, etc.—reminding me that my life is a partnership having less to do with the needs of my family and me than



it does with people I've never met. It's hardly surprising I felt at that moment that a disproportionate percentage of life's vicissitudes are created by the overzealous actions of people who, through the magic wand of the ballot box find themselves in position to pursue some sort of mandate that the rest of us rarely embrace.

Anyway ... while I was building up a high head of steam to brand the whole lot of our public overseers as a bunch of bureaucratic sadists, I happened upon the receipt for my roundtrip flight to Washington, DC, for the 2008 Landfill Methane Outreach Program (LMOP) conference earlier this year, and I felt my self-indulgent anarchist bubble pop. "Why should LMOP be different from the rest of the bureaucratic madness," I asked myself, content to leave TurboTax, the IRS, and my ill feelings for Homeland Security to another time. There was, after all, something incongruous in the distinction I observed between LMOP and the legions of federal programs that defy anyone's ability to catalog, much less explain.

Then it came to me that people who know what they're trying to accomplish are able to go about their business in a purposeful and noninvasive way. Leading the parade in governmental cost-effective behavior is LMOP, and if you're not familiar with the outfit, you should be. It's a totally voluntary assistance partnership that promotes the use of landfill gas as a renewable, green energy source. No wild-eyed, pie-in-the-sky program, it's a down-and-dirty, real world, let's-see-

you-get-it-done process that works.

The partnership consists of communities and states, landfill owners and managers, power brokers, and energy consumers, for whom LMOP provides the forum that allows them to interact. It's means boil down to some telephones, a Web site, an annual conference, several workshops, a handwritten list of landfills and potential projects, and four—yes, you heard it right, four—incredibly active, highly motivated, entrepreneurial staff members.

Taken straight from its Web site at [www.epa.gov/lmop](http://www.epa.gov/lmop), here's what this mighty host has accomplished:

*LMOP has more than 600 Partners that have signed voluntary agreements to work with EPA to develop cost-effective LFG energy projects.*

*LMOP has developed detailed profiles for over 1,300 candidate landfills.*

*There are approximately 425 operational LFG energy projects in the United States. In addition, about 120 projects are currently under construction or are exploring development options and opportunities.*

*To date, LMOP has assisted in the development of approximately 330 LFG utilization projects—including 32 new projects and nine project expansions that went online in 2006. These 330 projects have prevented the release of over 24 million metric tons of carbon equivalent (MMTCE—the basic unit of measure of greenhouse gases) into the atmosphere over the past 12 years.*

*In the year 2006, all operational LFG energy projects in the United States prevented the release of over 20 MMTCE.*

*This reduction is the carbon equivalent of removing the emissions from nearly 14 million vehicles on the road or planting nearly 20 million acres of forest for one year.*

*These reductions also have the same environmental benefit as preventing the use of over 169 million barrels of oil or offsetting the use of over 356,000 railcars of coal.*

I find it hard to conceive of a government program in the last 200 years that has accomplished so much, with so few, for so little. Truth is, I'm downright proud to have contributed the relative portion of my taxes to such an enterprise. **MSW**

# Rock 'n' Roll-Off

**Court OKs exclusive franchise to haul construction waste.**

**E**XERCISING ITS POLICE POWERS, a county may regulate construction waste by granting an exclusive franchise for its collection and disposal without any unlawful impact on interstate commerce, according to a ruling by the Nevada Supreme Court.

Douglas County, Nev., signed a franchise agreement with Douglas Disposal Inc., giving the company the sole right to collect and dispose of all solid waste within a designated area of the county. At the same time, Wee Haul LLC and NJ Enterprises Inc., without county authorization, began providing roll-off boxes at construction sites within the franchise area and hauling the waste to landfills in Nevada and California.

Douglas Disposal filed suit in state court against Wee Haul and NJ asking for an injunction and damages based on its exclusive rights. Wee Haul and NJ responded by claiming that the agreement was vague and did not cover construction debris. Moreover, they argued, the county had no legal authority to grant an exclusive franchise, and, even if it had the power, the agreement violated the Commerce Clause.

The trial judge refused to grant an injunction or award damages, finding that "construction debris is not injurious to the public health and therefore falls outside the County's police power." In addition, he ruled that the exclusive franchise, although it does not discriminate against interstate commerce, nevertheless "places an excessive burden on interstate commerce."

However, the state Supreme Court, which directly considers all appeals from decisions by trial courts, unanimously reversed the lower court's ruling. The justices sent the case back to the lower court judge, directing him to grant an injunction banning the defendants from collecting and transporting construction waste within the franchise area.

"We reject the district court's determination that construction waste does not pose

public health and safety concerns," the opinion stated. "[S]uch waste could contain materials adverse to human health ... or may create other safety hazards ... [and] can create a public nuisance."

Besides, the opinion continued, state law authorizes counties to manage all kinds of solid waste, including construction waste, by exclusive franchises if they chose to do so. Thus, Douglas County, whose solid waste management plan specifically includes an exclusive franchise for construction waste, has the right to engage Douglas Disposal as it did.

On the interstate commerce issue, the high court agreed with the lower court that the franchise was not discriminatory, but found no appreciable burden on commerce and considerable local benefits.

Citing precedents from California and New York and noting that government is "afforded great deference when it legislates matters regarding the protection of its citizens' health and well-being," the justices concluded that the county has "a legitimate, if not compelling interest in regulating construction waste through an exclusive franchise."

Oddly, the court introduced a new factor in assessing burden — whether an available, less burdensome alternative existed — but then declined to address it as the defendants had not raised the issue.

[*Douglas Disposal, Inc. v. Wee Haul, LLC*, No. 44862, 123 Nev. Adv. Op. No. 51, Nov. 8, 2007.]

*The legal editor welcomes comments from readers. Contact Barry Shanoff via e-mail: shanoff@knopf-brown.com.*



**By Barry Shanoff**  
The columnist is a Rockville, Md., attorney and serves as general counsel of the Solid Waste Association of North America.

**The justices concluded that the county has "a legitimate, if not compelling interest in regulating construction waste through an exclusive franchise."**

# Flow control ruling debated at summit

By Elizabeth McGowan

WASHINGTON — If you think the controversy over flow control terminated with the April Supreme Court ruling in favor of two Upstate New York counties, you probably haven't been huddling with enough trash-savvy insiders.

Two such experts — David Biderman and Michael Cahill — discussed the justices' 6-3 vote validating the Oneida-Herkimer Solid Waste Management Authority's rubbish and recycling operation during the Waste News Capitol Hill Summit Feb. 12.

"The final chapter has not been written yet on what the Oneida-Herkimer decision means," said Biderman, an attorney for the Na-

tucky's Daviess County, Escambia County in Florida's panhandle and Missouri's St. Louis County.

Fears that they force higher disposal fees for haulers and customers have prompted governments in Florida and Wisconsin to authorize lawsuits against new flow laws. The Oneida-Herkimer authority charges a high tipping fee for nonrecyclable rubbish to cover costs for composting, recycling and hazardous waste disposal.

"Oneida-Herkimer put flow control back in the municipal toolbox," said Cahill, the New York attorney who argued the case before the high court in January 2007. "The public sector looks at waste as a public health problem. The private sector sees it as a business. They're

both right. That's the balance the courts have to wrestle with."

Chief Justice John Roberts Jr. wrote the majority opinion letting stand the Oneida-Herkimer measures approved by voters to control the type and volume of trash rolling into their publicly owned landfills. These ordinances, the ruling stated, do not discriminate against interstate commerce.

Still lingering are questions such as whether governments enforcing flow control have to wholly own their facilities and whether public facilities with flow control can accept outside waste, Cahill said.

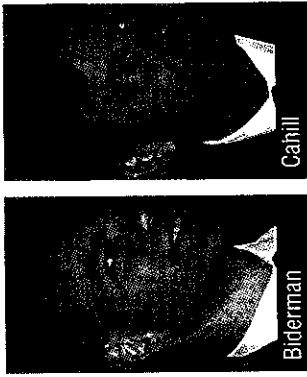
Biderman is curious if the ruling applies to government-owned, privately operated facilities as well as materials including com-

mercial recyclables and construction and demolition debris.

At any rate, Biderman predicts the decision won't have a significant impact nationally. Why? One, thousands of dumps have closed in the last 15 years. And two, under 20 percent of landfill capacity is now in the domain of the public sector. That's a dramatic shift from the 50-50 split with private industry in the early 1990s.

"Oneida-Herkimer is more the exception than the rule," Biderman said, adding that many local governments lack resources to own and operate a landfill. ■

Contact Waste News correspondent Elizabeth McGowan at [elizabethherron@hotmail.com](mailto:elizabethherron@hotmail.com)



Cahill

Biderman

tional Solid Waste Management Authority. "The bottom line is that there's some murkiness here. Clearly there's going to be the need for further clarification."

Whether local governments can dictate the destiny of their garbage is still causing angst in places such as southeastern Virginia, Ken-