

# Legislative and Regulatory Outlook

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## Federal and State Environmental Update

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Heidi Anderson  
SAIC

(703) 676-5951  
[andersonhei@saic.com](mailto:andersonhei@saic.com)



# President Obama's Environmental Priorities



## 2012

- In January 2012, the Administration launched an online tool that makes comprehensive greenhouse gas emission data publicly available for 29 different industrial categories and other large sources of greenhouse gas pollution.
- President Obama also directed the federal government – the largest energy consumer in the U.S. economy – to reduce its greenhouse gas emissions from direct sources such as building energy use and fuel consumption by 28 percent by 2020.
- FY 2013 budget for the United States Environmental Protection Agency (EPA) is \$8.34 billion, which represents a savings of 50 million over previous years.

# 112<sup>th</sup> Congress, 2nd Session



## Clean Air – Boiler Rule (NESHAP)

- H.R. 2250 & S. 1392 – introduced last year.
- Legislation would allow the EPA fifteen additional months to propose new emissions standards for industrial boilers, process heaters, and incinerators.
- The bills would also provide affected industries with additional time to prepare for the new rules, extending the compliance date to at least five years after the rule is finalized.
- H.R. 2250 is now in the Senate for consideration.

# 112<sup>th</sup> Congress, 2nd Session



## Clean Air – Greenhouse Gas Emissions

- The House Energy and Commerce Committee held several hearings throughout May and June, including several focusing on the EPA and greenhouse gas regulations.
- The Senate Environment and Public Works held a hearing August 1 entitled “Update on the Latest Climate Change Science and Local Adaptation Measures.” This was the first climate change hearing for the 112<sup>th</sup> Congress.
- A recent National Academy of Sciences study says plainly, “A strong body of evidence shows that climate change is occurring, is caused largely by human activities, and poses significant risks for a broad range of human and natural systems.”
- The National Oceanic and Atmospheric Administration’s (NOAA’s) National Climatic Data Center announced that June 2012 was the “328th consecutive month with a global temperature above the 20th century average.” June also set a record for the amount of Arctic sea ice lost during that month since satellite monitoring began in 1978.

# 112<sup>th</sup> Congress, 2nd Session



## Clean Water

- Legislation (H.R. 4965) was introduced April 27 that would prohibit the EPA or the U.S. Army Corps of Engineers from finalizing proposed guidance that would widen federal regulatory authority over some streams, wetlands, and isolated water bodies.
- On June 7, the House Transportation and Infrastructure committee marked up the bill.
- Similar legislation, S. 2245, was introduced in the Senate March 28.
- The *Draft Guidance on Identifying Waters Protected by the Clean Water Act* was issued June 2011 and it currently under regulatory review. The draft guidance reaffirm protections for small streams that feed into larger streams, rivers, bays and coastal waters as well as protection for wetlands that filter pollution and help protect communities from flooding.

# 112<sup>th</sup> Congress, 2nd Session



## RF Safety

- Legislation (H.R. 6358) was introduced in August that would require the Director of the National Institutes of Health (NIH) to conduct or support a research program to determine whether exposure to electromagnetic fields from mobile communication devices causes adverse biological effects in humans.
- The Cell Phone Right to Know Act is sponsored by Dennis Kucinich (D-OH)
- “Consumers have the right to know the radiation levels of cell phones and whether they are buying the phone with the lowest or the highest level of exposure to cell phone radiation.”

# 112<sup>th</sup> Congress, 2nd Session



## Regulatory Oversight

- ÿ Hearings held last fall aimed at linking Obama's jobs package to the necessity of fixing a “broken rulemaking process.”
- ÿ Several Republicans have introduced bills aimed at including more cost-benefit analysis in the rulemaking process.
  - Wyoming Senator John Barrasso's “Employment Impact Act,” for example, would require agencies to complete a “jobs impact statement” modeled after environmental impact statements.
  - Maine Senator Susan Collins' bill, “Clearing Unnecessary Regulatory Burdens Act,” (S. 1392) requires job analysis.
  - On December 7, the House passed the “Regulations from the Executive in Need of Scrutiny Act of 2011.” H.R. 10 passed in a mostly party line vote of 241-184. Federal agency rules that cost the economy at least \$100 million or have “significant adverse” effects on consumer prices or businesses would require congressional ratification by joint resolution to enter full force under the bill.

# 112<sup>th</sup> Congress, 2nd Session



## Regulatory Oversight (continued)

- The House Oversight and Government Reform Committee advanced legislation April 26 that would impose a moratorium on all federal regulations, as well as a second measure to block President Obama from issuing “midnight” regulations in the event he is defeated this fall.
- H.R. 4078, the Regulatory Freeze for Jobs Act of 2012, would block new, economically significant federal rules until the unemployment rate drops to 6 percent or lower.
- The bill passed the full House on July 26 and is now in the Senate awaiting consideration.
- H.R. 3392, the Regulatory Review Act of 2011, was introduced last November.
- The House Judiciary Subcommittee on Courts, Commercial and Administrative Law held a hearing July 12 on regulatory review.



## Audit Policy

- ÿ The EPA Environmental Appeals Board approved a consent agreement against New Cingular Wireless (NCW) PCS for violations of the Emergency Planning and Community Right-to-Know Act (EPCRA) at facilities across the country.
- ÿ The company voluntarily disclosed to the Agency following a comprehensive audit of company operations that discovered 642 sites with violations across 35 states and Puerto Rico.
- ÿ The EPA said the gravity-based portion of the penalty would have been \$6.7 million but that NCW qualified for a waiver of the entire amount and will pay a penalty of \$125,728.



## Audit Policy – Budget Cuts

Y The EPA’s Office of Enforcement and Compliance Assurance (OECA) recently released the [“FY 2013 draft National Program Manager Guidance”](#) which details areas where the agency is making cuts in the coming year.

- According to the document, “the EPA Regions should consult with Headquarters before initiating any new work in response to self-disclosures.”
- For FY 2013, the Audit Policy/Self Disclosure program is one of the areas where OECA will reduce its program work to a minimal national presence.
- **Telco Impact:** The audit policy, which was first issued in 1995 and revised in 2000, provides incentives for regulated entities to voluntarily disclose and correct environmental violations. In the past, telecommunications companies have participated in EPA’s Self Disclosure program. In 1997, GTE was the first telecommunications company to disclose environmental violations at 500 locations across the United States. Since then, many companies have taken advantage of the policy that waives gravity-based penalties if certain conditions are met



## Compliance Assistance – Budget Cuts

- EPA is considering cutting by half the number of full-time-equivalent employees dedicated to compliance assistance.
- EPA estimated it has 45 full-time-equivalent employees working on compliance assistance, and it is proposing reducing that number to 22.5 full-time equivalents, according to a draft document released in April.
- Compliance assistance functions have been dropping off in part because the agency has moved employees to monitoring and enforcement activities. For example, the agency conducted 946 compliance assistance workshops and training sessions in FY 2007 and just 210 in FY 2011.



## Clean Air – National Emissions Standards for Hazardous Air Pollutants (NESHAP)

- ÿ On May 22, 2012, the EPA proposed amendments to the NESHAP for stationary reciprocating internal combustion engines (RICE).
- ÿ **Telco Impact:** The EPA proposes to amend the current rule to increase the allowance for stationary emergency engine participation in emergency demand response programs to up to 100 hours per year, which would be included as part of the preexisting allowance of 100 hours for owners of emergency engines to test and maintain their emergency engines. Specifically, emergency engines would be allowed to operate for 100 hours per year without meeting emissions limits for the following purposes: monitoring and testing; demand response for Energy Emergency Alert Level 2 situations; and responding to situations where there is at least five percent or more change in voltage. **Note:** As proposed, emergency engines that exceed the 100 hour limit for non-emergency operations can no longer be operated as emergency engines and must meet non-emergency standards for the life of the engine.
- ÿ Hearings were held in July. Comments were due August 9.



## Clean Air – National Emissions Standards for Hazardous Air Pollutants (NESHAP)

- ÿ On December 2, 2011, the Agency announced proposed changes to standards that would reduce air pollutants from existing and new boilers and commercial and industrial solid waste incinerators (CISWI). The changes apply to major and area Industrial, commercial, and institutional boilers.
- ÿ **Telco Impact:** This rule affects facilities that operate fuel-oil boilers.



## Clean Air – New Source Performance Standards (NSPS)

- ÿ In June 2006, the EPA issued final regulations for setting new emissions limits for nitrogen oxides (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>) from stationary combustion turbines.
- ÿ On June 25 2012, in response to a lawsuit filed by the Utility Air Regulatory Group, the Agency announced proposed revisions to this final rule.
- ÿ Comments are due by October 29, 2012.
- ÿ **Telco Impact:** The rule contains an exemption from the NO<sub>x</sub> standards for emergency combustion turbines (as defined in as defined in §60.4420); no run hours (e.g., 100 hour per year) are mentioned.



## Clean Air - Ozone

- ÿ In December 2011, the Agency announced that it was setting a schedule to designate parts of the country that are in nonattainment of the 2008 ozone standards. The EPA designated on May 31, 2012, areas of the country that have attained or not attained the 2008 ozone air quality.
- ÿ **Telco Impact:** Companies operating emergency generators and other sources requiring air permits could face more onerous operating and permitting requirements on the state and local levels following non-attainment designation. For example, this spring, the EPA informed Texas officials that it plans to add Wise and Hood counties to the Dallas-Fort Worth nonattainment area that has failed to meet federal ozone standards. Barnett Shale natural gas operations have been cited as a major factor in increasing air pollution in the counties.



## Clean Air – Particulate Matter

- On June 29, the Agency issued a proposed rule to revise the annual health-based standard for fine PM.
- The agency revised the PM standards most recently in 2006.
- Currently, the standard is 15  $\mu\text{g}/\text{m}^3$ . The EPA is seeking comments on setting the standard as low as 11  $\mu\text{g}/\text{m}^3$ .
- The proposed rule also establishes a separate “secondary” fine particle standard to protect visibility in urban areas.
- EPA anticipates making attainment/non-attainment designations by December 14, with those designations likely becoming effective in early 2015. States would have until 2020 (five years after designations are effective) to meet the proposed health standards.
- **Telco Impact:** Fine particles come from a variety of sources, including vehicles, and gasoline and diesel engines.



## Clean Air - Regional Haze

- ÿ On March 30, the US District Court for the District of Columbia approved deadlines for the EPA to take action on state or federal plans to reduce regional haze in 37 states, the District of Columbia, and the Virgin Islands.
- ÿ EPA's first deadline to take action on a federal plan to reduce regional haze in Nevada was December 13, 2011.
- ÿ The consent agreement requires EPA to have taken final action on the remaining federal implementation plans for regional haze—or to have approved state implementation plans—by November 15, 2012.



## Construction General Permits

- ÿ On February 16, the agency issued the final 2012 CGP.
- ÿ The 2012 CGP replaces the 2008 CGP (which expired on February 15, 2012), and will provide coverage for eligible new and existing construction projects for a period of five years.
- ÿ **Telco Impact:** For the CGP, a linear project “includes the construction of roads, bridges, conduits, substructures, pipelines, sewer lines, towers, poles, cables, wires, connectors, switching, regulating and transforming equipment and associated ancillary facilities in a long, narrow area.” In terms of buffer compliance, EPA has established more flexible compliance alternatives for linear facilities and for small residential lots.
- ÿ **Effective and Compliance Date(s):** The CGP became effective on February 16, 2012, and expires on February 16, 2017.



## Clean Air - Cross-State Air Pollution Rule

- On October 6, 2011, the EPA issued a proposed rule that would increase emissions budgets for 10 states under the Cross-State Air Pollution Rule, which is designed to reduce interstate transport of sulfur dioxide and nitrogen oxides.
- The adjustments for individual states vary, but EPA said the overall emissions budget increases amount to 1 percent. The agency also said it is easing the limits on market-based compliance options.
- The rule covers 28 eastern states.
- On August 21, the U.S. Court of Appeals ruled that the EPA has to start over. In the meantime the Clean Air Interstate Rule (CAIR) is in place.
- The Court found that the rule requires states to reduce emissions by an amount greater than the significant contribution that brought it into the program in the first place.



## Effluent Guidelines

- In January 2012, the Agency announced that it is seeking information on the effectiveness of technologies in controlling turbidity in discharges from construction sites.
- **Telco Impact:** One area of the Notice could potentially impact telecommunications activities. The Agency is soliciting comments on small sites that are part of a larger common plan of development or sale. Often a utility is considered a “subcontractor” (i.e., non-permittee,) on a larger site. EPA is soliciting data and information on the ability to apply treatment to small areas within a larger common plan of development or sale.



## EPCRA

- On July 13, EPA finalized proposed changes to Tier I and Tier II Forms.
- Telco Impact: Some companies had commented on the need to include the number of full-time employees at unmanned substations or cell towers. In the final rule, EPA stated that facilities should estimate the maximum number of employees. Regarding lead-acid batteries and consistency in reporting weight, the Agency said that it is not developing a standard format for reporting at this time. The Agency recommends reporting in the same way that a chemical is listed on a Material Safety Data Sheets (MSDs).
- The final rule is effective January 1, 2014.
- Compliance begins with reporting of 2013 information by March 1, 2014.



## Greenhouse Gas Tailoring Requirement

- On May 13, 2010, the EPA issued a final rule that established thresholds for greenhouse gas emissions (GGE).
- The rule limits the number of facilities regulated for their heat-trapping emissions to new sources that release at least 100,000 tons per year of carbon dioxide equivalent (CO<sub>2</sub>e), or existing modified sources that trigger New Source Review (NSR) for other pollutants and emit at least 75,000 CO<sub>2</sub>e, or for plan modifications that would increase their CO<sub>2</sub>e emissions by at least 75,000 tons per year.
- On February 24, 2012, the agency announced that it is proposing to keep greenhouse gas permitting thresholds at current levels. In other words, the Agency is proposing not to regulate greenhouse gas emissions from smaller sources.
- EPA said it proposes to exclude all smaller sources from regulation because “state permitting authorities are not equipped to administer greenhouse gas regulations for more sources at this time.”



## GGE Requirements for Trucks

- On September 15, 2011, the EPA and the National Highway Traffic Safety Administration (NHTSA) issued the first greenhouse gas emissions requirements for heavy-duty trucks.
- The rules establish greenhouse gas emissions limits and corporate average fuel economy (CAFE) standards for model year 2014 through 2018 heavy-duty pickup trucks, delivery vehicles, and tractor trailers.
- The final rules require tractor trailers to improve fuel economy and reduce greenhouse gas emissions by 20 percent from current levels by 2018. This will save up to 4 gallons of fuel for every 100 miles traveled.
- For heavy-duty pickup trucks and vans, the final rules require them to improve fuel consumption and cut greenhouse gas emissions by 15 percent by 2018 with separate standards for diesel and gasoline engines.



## Nationwide Permits (NWP)

- In February 2012, the U.S. Army Corps of Engineers issued the 2012 NWPs.
- Most of the new nationwide permits have no major changes from 2007, the last time the nationwide permits were authorized in accordance with the law.
- The NWPs were effective March 19, 2012, and will expire on March 18, 2017.
- Division engineers (38 total )can add regional conditions to any NWP to further restrict the use of the NWP .
- **Telco Impact:** NWP 3 and NWP 12 are permits that apply to telecommunications companies' operations. NWP 3 deals with maintenance and NWP 12 includes installation of utility lines, utility line substations, foundations for overhead utility line towers, poles and anchors and access lines.



## Underground Storage Tanks (USTs)

- In October 2011, EPA proposed revisions to the UST regulations.
- Many of the proposed changes are already required by the Energy Policy Act of 2005. For example, operator training is required in states that receive money from EPA. However, some of the proposed changes are more stringent than those required by the Act.
- **Telco Impact:** Currently UST systems storing fuel for use by emergency power generators are deferred from release protection. EPA proposes to remove the deferral and require owners and operators to perform release detection. This requirement would be implemented within one year. According to EPA, “the 1988 UST regulations deferred emergency generator tanks because technology was not available to monitor remote sites. The technology is now available to monitor and detect releases. These systems have releases similar to other regulated UST systems and need to have release detection monitoring.” EPA is also proposing secondary containment testing for all tanks.

# State Legislative & Regulatory Update



- **Arizona Audit Bill** – Legislation has been enacted that would allow companies to withhold results of environmental audits from disclosure, even if pollution problems were found. Under the “I didn’t pay enough fund” ([H.B. 2199](#)), the audits could be performed by outside contractors or by the company itself.
- **Illinois Electronic Disposal Ban** – On January 1, a new law became effective that makes it illegal for individuals in Illinois to dispose of unwanted electronics in their regular trash. Discarded electronics, including computers, monitors, electronic keyboards, scanners, fax machines, and many other electronic devices, must now be taken to a registered recycler for proper management. It will be illegal for the consumer to dispose of them in the trash and it will be illegal for Illinois landfills to accept them.
- **Mississippi** – Legislation (H.B. 1094) was approved that revises the definition of metal property to include manhole covers and other items.

# State Legislative & Regulatory Update



- **New Hampshire** – Legislation was enacted that authorizes the Public Utilities Commission to regulate the safety, vegetation management, emergency response, and storm restoration requirements for poles, conduits, ducts, pipes, pole attachments, wires, cables, and related plant and equipment of public utilities and other private entities located within public rights-of-way and on, over, or under state lands and water bodies. The bill has been approved by the governor and is effective August 10, 2012.
- **New Jersey** - The Department of Environmental Protection adopted new rules to establish the conditions and procedures for the Department to approve waivers from strict compliance with its rules where appropriate to address situations where rules conflict, or a rule is unduly burdensome in specific application, or a net environmental benefit would be realized, or a public emergency exists. **Telco Impact:** The final rule discusses expansion of existing developments and the impact on existing utilities and infrastructure.

# State Legislative & Regulatory Update



- **New York Benefits Corporations** - A new law went into effect February 10 that allows companies in New York State to register as benefit corporations, a new class of companies required to create positive impacts on the environment and society as well as for shareholders. There are six other states with this law, California, Maryland, New Jersey, Vermont, Virginia, and Hawaii. Bills are pending in Michigan, North Carolina, Pennsylvania, Illinois, and Washington, D.C.
- **New York Cellular Antenna** - Legislation was introduced April 19 that would require “prior to the issuance of an alteration permit for the erection or placement of antennae used to provide cellular telephone or similar service or any structure related to such serviced, the commissioner shall consider the aggregate total number of antennas in existence at and proposed for the subject property at the time of the submission of the application for a permit.” The bill also requires of inspections to ensure compliance with FCC standards regarding RF emissions.
- **New York E-Waste** - As of January 1, 2012, private and public waste haulers and transporters in the state of New York are prohibited from collecting electronic scrap unless is it destined to be recycled or reused. The new requirement is part of the Electronic Equipment Recycling and Reuse Act.

# State Legislative & Regulatory Update



- **Pennsylvania NPDES** – Draft regulation published for stormwater discharges associated with construction activities. The regulation contains language that specifically relates to telecommunications activities relating to Post Construction Stormwater Management Plans.
- **Utah – Clean Air Generators** – Draft regulation has been released that prohibit the testing of back-up emergency generators in certain counties during red quality alert days. Comments are due by October 1.
- **West Virginia Recycling Regulation** – A proposed regulation was released in July that prohibits the disposal of covered electronic devices in solid waste landfills also sets for requirements for recyclers. The proposed rule contains language regarding cathode ray tubes and electronic circuit boards.

# Other

- **UST Operator Training** – As of August 8, 2012, all UST facilities are required, per the requirements of the Energy Policy Act of 2005, certified Class A and Class B Operators and trained Class C Operators.
- **Vehicle Idling** – Many changes on the state and local level. Recommend going to the American Transportation Research Institute (ATRI) website contains the latest update on state and local levels.



"...AND MOST IMPORTANT, HOW LARGE IS YOUR CARBON FOOTPRINT?"