

# EH&S Legislative and Regulatory Outlook

---

## Environment, Health and Safety Regulatory and Legislative Update

September 27, 2011

Heidi Anderson  
SAIC

(703) 676-5951

[andersonhei@saic.com](mailto:andersonhei@saic.com)



# President Obama's Environmental Priorities



## 2011

- In 2008, then candidate Barack Obama made enactment of comprehensive energy/environmental legislation a key part of his campaign platform.
- In 2010, Congress was unable to pass climate change legislation. In fact, in the past decade, Congress has only passed two comprehensive pieces of energy and environmental legislation.
- Last year, Congress rejected President Obama's renewable energy initiative.
- FY 2012 budget for the United States Environmental Protection Agency (EPA) is \$8.9 billion, 13 percent decrease from FY 2010. However, the budget contains an increase (\$27.5 million) for enforcement and compliance and \$46 million for regulatory efforts to reduce greenhouse gas pollution.

# Outcome of the Fall 2010 Elections Federal



## HOUSE:

- Republicans gained 60 seats and now have a majority 242 members; Democrats 192 – and there is currently one vacancy.
- Congressman John Boehner (R-OH) became the new speaker of the House replacing Congresswoman Nancy Pelosi (D-CA), who was elected House Minority Leader.

## SENATE:

- Democrats retained a majority of 51 members; 47 Democrats and 2 Independents.
- Senator Harry Reid (D-NV) won his bid to remain as Majority Leader.

# Outcome of the Fall 2010 Elections States



## LEGISLATURES:

- Republicans took control of the Colorado, Indiana, Iowa, Michigan, Montana, Ohio, and Pennsylvania Houses.
- Republicans took control of both chambers (House and Senate) in Alabama, Maine, Minnesota, New Hampshire, North Carolina, and Wisconsin, for a net gain of 19.

## GOVERNORS:

- On the state level, 37 governorships were decided.
- Republicans were elected in 23; Democrats were elected in 13 races; 1 Independent.
- 50 States: 29 Republicans; 20 Democrats, and 1 Independent.

# 112<sup>th</sup> Congress, 1<sup>st</sup> Session



## Clean Air

- Boiler Rule – Bipartisan legislation (H.R. 2250) introduced June 21 and allows 15 additional months to propose new emissions standards for industrial boilers, process heaters, and incinerators. Companion legislation (S. 1392) was introduced July 20. H.R. 2250 passed the Energy and Commerce committee on September 20.
- American Energy Initiative – A series of 6 hearings held in May to address rising gasoline prices and expand American energy production.
- EPA Administrator Lisa Jackson testified at a hearing June 15 entitled “The Clean Air Act and Public Health.”

# 112<sup>th</sup> Congress, 1<sup>st</sup> Session



## Clean Air

### Greenhouse Gas Emissions

- The beginning of the 112<sup>th</sup> Congress was marked by a number of efforts to strip EPA of its authority to regulate greenhouse gases (“GHGs”) under the Clean Air Act. While these measures have yet to be successful, EPA's regulation of GHGs appears likely to be an ongoing point of contention as the 2012 budget debate proceeds. Both the President and the Senate have signaled their intent to continue to push for a “clean energy future.”
- In January, the House Energy and Commerce Committee’s Energy and Power Subcommittee held its first hearing of the 112<sup>th</sup> Congress on the EPA’s climate change regulations.
- On March 8, the Energy and Power Subcommittee held a hearing entitled “Climate Science and EPA’s Greenhouse Gas Regulations.” The hearing was requested by House Democrats in response to legislation (H.R. 910) that would prohibit EPA from regulating GHGs.

# 112<sup>th</sup> Congress, 1<sup>st</sup> Session



## Clean Air

- Diesel Emissions Reduction Act (DERA) was signed into law in January 2011. DERA was first passed in 2005 and provides funding for cleaning up diesel engines.
- Senate Environment and Public Works Committee held a hearing May 12 on “Federal Efforts to Protect Public Health by Reducing Diesel Emissions.”

# 112<sup>th</sup> Congress, 1<sup>st</sup> Session



## TRAIN Act

- The “Transparency in Regulatory Analysis of Impacts on the Nation Act,” or “TRAIN Act,” (H.R. 1705) would gather the heads of more than 10 agencies and organizations to study the cost of new limits on air pollution, water contamination, and waste from the power sector.
- The bill contained \$2 million to carry out the study, but the funding was stripped during the subcommittee markup (i.e., consideration).
- Democrats claim that Republicans are going back on “CUTGO” rule. Note: When Republicans took over the House, they replaced “PAYGO” with “CUTGO.”

# 112<sup>th</sup> Congress, 1<sup>st</sup> Session



## Clean Water

- Legislation was introduced that would give states final say on rules concerning water, wetlands, and mountaintop-removal mining (H.R. 2018). The legislation was passed by the full House on July 13.

## E-Waste

- H.R. 2284 was introduced June 22 and would prohibit exportation of restricted electronics containing toxic material.
  - Companion legislation S. 1270 was introduced in the Senate.
- H.R. 2396 was introduced June 24 and is aimed at spurring new techniques for safely and productively recycling electronics.
- 25 states have passed e-waste recycling legislation.

# 112<sup>th</sup> Congress, 1<sup>st</sup> Session



## OSHA

**Protecting American Workers Act** - On the first day of the 112<sup>th</sup> Congress, Representative Lynn Woolsey (D-CA) reintroduced legislation that strengthens the existing OSH Act by increasing protections for whistleblowers, which include amendments to employee actions, prohibition of retaliation, and procedures. The bill also improves reporting, inspection, and enforcement including changes to the following:

- Posting of employee rights;
- Employer reporting of work-related deaths and hospitalizations and prohibition on discouraging employee reports of injury or illness;
- No loss of employee pay for inspections;
- Investigations of fatalities and significant incidents;
- Prohibition on unclassified citations; and
- Victims' rights;

# 112<sup>th</sup> Congress, 1<sup>st</sup> Session



## OSHA

### Protecting American Workers Act – continued

- Right to contest citations and penalties;
- Correction of serious, willful, or repeated violations pending contest and procedures for a stay;
- Conforming amendments;
- Civil penalties; and
- Criminal penalties; and
- Prejudgment interest.

# 112<sup>th</sup> Congress, 1<sup>st</sup> Session



## OSHA

### House Education and Workforce Committee Audit

- Republicans want the Government Accountability Office (GAO) to weigh the effectiveness of OSHA's enforcement program using the same criteria the agency has applied to scrutinize state plans.
- Democrats want GAO to gauge OSHA's effectiveness in issuing health and safety standards.

# 112<sup>th</sup> Congress, 1<sup>st</sup> Session



## OSHA

- On June 10, the American Society of Safety Engineers (ASSE) sent congressional leaders draft legislation to address what the society says are needed reforms in the federal occupational safety and health law to help improve U.S. workplace safety and health.
- The “Enhancing Occupational Safety and Health Protections in the 100<sup>th</sup> Year Act of 2011,” is intended to help improve Occupational Safety and Health Administration (OSHA) and National Institute for Occupational Safety and Health (NIOSH) capabilities and better encourage employer responsibility for worker safety and health.



## Clean Air

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

- On February 23, 2011, the EPA released final standards for boilers and incinerators.
- At the same time, the Agency issued a motion for reconsideration of the rule.
- Telco Impact: Some telecommunications facilities operate large area source boilers. This rulemaking could impact the current operation and maintenance practices, as well as notification, record keeping, and reporting requirements.
- Update: On May 16, EPA announced it will postpone implementing new air pollution limits for large industrial boilers and solid waste incinerators indefinitely while it reconsiders portions of the rules and addresses legal challenges. The stay would not apply to EPA's hazardous air pollutant rule for smaller area source boilers, which it also is reconsidering. Additional data on boiler and incinerator emissions were due by July 15.



## Clean Air NESHAP

- On March 7, the EPA issued a direct final rule amending the August 2010 final rule on spark ignition engines. The direct final rule became effective May 9, 2011.
- The new direct rule gives operators of stationary oil- and natural gas-fired engines an additional 180 days to comply with new hazardous air pollutant monitoring requirements.
- The direct final rule extends the compliance date for the continuous parameter monitoring systems (CPMS) portion of the rule.



## Clean Air NESHAP (continued)

- The direct final rule would require temperature measurement device performance checks annually rather than quarterly as required by the hazardous air pollutant rule.
- Telco Impact: The direct final rule makes the following changes: 1) provides an additional 180 days for sources to comply with the CPMS operation and maintenance requirements; 2) revises the frequency of the temperature measurement device performance check from quarterly to annually; and 3) corrects an inadvertent error in the averaging time for the continuous parameter data.



## Clean Air

### New Source Performance Standards (NSPS)

- NSPS for stationary compression ignition (CI) and spark ignition (SI) internal combustion engines (ICEs) were initially published on July 11, 2006.
- Those standards were challenged in a lawsuit. As part of the settlement, EPA promised to promulgate final standards by May 2011.
- On June 28, the final rule was published in the *Federal Register*.
- The rule is effective June 28, 2011.



## Clean Air NSPS (continued)

### Telco Impact - Emergency Engines

- The EPA only finalized a portion of the proposed revisions to the emergency engine definition.
- Final rule allows hours of nonemergency service for stationary CI engines, subject to the NSPS, in order to make the emergency engine provisions for new CI engines consistent with those for new SI engines and existing CI and SI engines.
- Agency did not finalize the proposed provision allowing 15 hours for demand response operation for emergency stationary engines.



## Clean Air Greenhouse Gas Emissions Reporting

- On October 30, 2009, EPA published the Mandatory Greenhouse Gas Reporting Rule (40 CFR part 98) for collecting information regarding GHGs from a broad range of industry sectors.
- For reporters required to submit 2010 GHG data under Part 98, the original reporting deadline was March 31, 2011.
- On March 17, EPA extended the reporting deadline to September 30. Under the GHG Reporting Program, entities required to submit data must register with the electronic GHG reporting tool (e-GGRT) no later than 60 days before the reporting deadline. With this reporting deadline extension, the new deadline for registering with e-GGRT is August 1, 2011.



## Clean Air Greenhouse Gas Inventory

- On April 18, the EPA released the 16<sup>th</sup> annual U.S. GHG inventory.
- The inventory tracks annual GHG emissions from 1990 to 2009 at the national level.
- The final report shows overall emissions during 2009 decreased by 6.1 percent from the previous year.



## Clean Air CSAPR

- On July 7, the EPA released the Cross-State Air Pollution Rule (CSAPR) which replaces and strengthens the 2005 Clean Air Interstate Rule (CAIR), which the U.S. Court of Appeals for the D.C. Circuit ordered EPA to revise in 2008.
- The rule requires significant reductions in sulfur dioxide (SO<sub>2</sub>) and nitrogen oxide (NO<sub>x</sub>) emissions (i.e., reduce hundreds of thousands of tons of smokestack emissions that travel long distances through the air.)
- Emission reductions will take effect quickly, starting January 1, 2012, for SO<sub>2</sub> and annual NO<sub>x</sub> reductions, and May 1, 2012, for ozone season NO<sub>x</sub> reductions. By 2014, combined with other final state and EPA actions, the CSAPR will reduce power plant SO<sub>2</sub> emissions by 73 percent and NO<sub>x</sub> emissions by 54 percent from 2005 levels in the CSAPR region.

**Note:** On July 12, the House Energy and Commerce Committee approved a bill that includes an amendment to delay the rule until 2013.



## Clean Air CSAPR

- In July, EPA also issued a supplemental notice of proposed rulemaking (SNPR) to require six states—Iowa, Kansas, Michigan, Missouri, Oklahoma, and Wisconsin—to make summertime NO<sub>x</sub> reductions under the CSAPR ozone-season control program.
- Five of those states are already covered in the final rule for interstate fine particle pollution (PM<sub>2.5</sub>). With the inclusion of these states, a total of 26 states would be required to reduce ozone-season NO<sub>x</sub> emissions to assist in attaining the 1997 8-Hour Ozone National Ambient Air Quality Standards (NAAQS). Finalizing this supplemental proposal would bring the total number of covered states under the CSAPR to 28.
- EPA issued a proposal instead of a final action for these states in order to provide additional opportunity for public comment on their linkages to downwind nonattainment and maintenance areas.
- EPA expects to finalize this proposal by late fall 2011.



## Clean Air

- On July 13, EPA proposed secondary air quality standards to protect the environment from NO<sub>x</sub> and sulfur oxides (SO<sub>x</sub>).
- The proposed rule builds on EPA efforts already underway to reduce NO<sub>x</sub> and SO<sub>x</sub> emissions.
- The new secondary standards would be NO<sub>2</sub>: 100 parts per billion (ppb) averaged over one hour; and SO<sub>2</sub>: 75 ppb averaged over one hour.
- Comments are due by September 30, 2011.
- A final rule will be issued by March 2012.



## Clean Water Guidance

- On April 27, the EPA and the United States Army Corps of Engineers (USACE) released proposed guidance intended to clarify which U.S. waters are covered by the Clean Water Act (CWA). This is not a rule and is not binding.
- Specifically, the draft guidance clarifies how the EPA and the USACE will identify waters protected by the CWA and implement the Supreme Court's decision concerning the extent of waters covered by the Act (Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers [SWANCC] and Rapanos v. United States [Rapanos]).
- Comments were due July 31, 2011.
- EPA intends to initiate a rulemaking to clarify the extent of the CWA.

## Clean Water Guidance (continued)



- Telco Impact – Telecommunications companies undertake work that impacts water bodies and future regulations could affect work practices. This draft guidance document is intended to describe for field staff the agencies' current understandings; it is not a rule, and hence it is not binding and lacks the force of law. Once finalized, this guidance will supersede existing guidance to field staff issued in 2003 and 2008 on the scope of “waters of the United States” subject to CWA programs.



## Clean Water Construction General Permit (CGP)

- The CGP regulates the discharge of stormwater from construction sites that disturb one acre or more of land and from smaller sites that are part of a larger, common plan of development.
- On April 15, 2011, the EPA released a proposed CGP for public comment. The current permit (dated 2008) is scheduled to expire on June 30, 2011; however, EPA proposes to extend the current permit until January 31, 2012, to provide sufficient time to finalize the new permit.
- EPA anticipates that it will issue the final construction general permit by January 31, 2012.



## Clean Water Construction General Permit (CGP)

• Telco Impact – In the past, certain telecommunications companies' activities have been subject to National Pollutant Discharge Elimination System (National Pollutant Discharge Elimination System (NPDES)) permitting. These areas include the placing of residential or commercial site cable (though in most cases, telecommunications companies need only follow the site owner's storm water plan) or in undergrounding of new cable where a project exceeds the threshold acreage in its linear calculation. The following could impact telecommunications practices (linear projects and Utility Right-of-Way):

- Sampling practices
- Sampling locations
- Reporting turbidity sample results
- Discharge limitations for impaired waters
- Site inspections



## Clean Water Nationwide Permits (NWP)

- On February 16, the USACE announced it is seeking comments on its proposal to renew and revise nationwide permits for work in wetlands. Comments were due by April 18.
- Telco Impact: NWP 3 and NWP 12 are permits that apply to telecommunications companies' operations.
  - NWP 3 deals with maintenance and covers the following activities: repair, rehabilitation, and replacement of previously authorized, currently serviceable structures or fills in wetlands; discharges or removal of accumulated sediments and debris in the vicinity of existing structures; and discharges associated with restoration of upland areas damaged by storms, flood, or other discrete event.
  - NWP 12 includes installation of utility lines, utility line substations, foundations for overhead utility line towers, poles and anchors, and access lines.

**Note:** Division engineers can add regional conditions (RCs) to any NWP to further restrict the use of the NWP.



## Energy Efficiency

- On May 2, EPA announced the “Battle of the Buildings Competition.”
- Administered by the Energy Star program and includes 26 types of buildings, including retail stores, schools, hospitals, hotels, houses of worship, and museums.
- Competition will pit the owners, operators, and managers of 245 buildings around the country in a “head-to-head.”
- Finalists were announced in July; winner will be announced in November.
- Many telecommunications companies are members of EPA’s Energy Star Program.



## E-Waste

- In January, the EPA, the General Services Administration (GSA), and the Council on Environmental Quality (CEQ) requested written stakeholder input to inform the national framework for electronics stewardship that is being developed by the Interagency Task Force on Electronics Stewardship.
- Comments were due by March 11, 2011.
- The task force was scheduled to deliver to CEQ a national framework for electronics stewardship by May 6, 2011.



## Emergency Planning and Community Right-to-Know Act (EPCRA)

- EPA is proposing to revise the Emergency and Hazardous Chemical Inventory Forms (Tier I and Tier II) under Section 312 of EPCRA to add new data elements and revise some existing data elements.
- EPA proposes to revise chemical information and storage types and conditions.
- EPA also proposes to modify the chemical information reporting section by providing separate entries for mixtures and pure chemicals.
- Comments on the proposed rule are due October 7.

**Telco Impact:** These changes will impact facilities required to submit Tier I and Tier II forms as more information will be required to complete these forms (e.g., additional man-hours).



## Spill Prevention Control and Countermeasure (SPCC)

- October 2010 announcement extending compliance deadline.
- The final date for facilities to amend or develop an SPCC plan is November 10, 2011.

**Telco Impact:** This change will provide facilities more time to implement the SPCC final rule (2002).



## Underground Storage Tanks (USTs)

- EPA recently released the *Underground Storage Tank Flood Guide*.
  - The guide provides information about preparing for a flood, important actions after a disaster strikes, and information on financial assistance.
  - It consolidates information from various federal, state, nongovernmental, and UST industry resources.
  - The guide will help prepare for, prevent, or lessen the catastrophic effects and environmental harm that could occur as a result of flooded UST systems, as well as help return these UST systems to service as soon as possible.
- EPA issued final guidance July 5 for UST owners who store gasoline blended with greater than 10 percent ethanol or diesel blended with greater than 20 percent biodiesel.

## Underground Storage Tanks



- EPA announced in March that Region 9's Underground Storage Tanks Program Office (R9 USTPO) is planning to undertake an effort to increase the rate of compliance in Region 9.
- The Agency is seeking approval to send information request letters annually to approximately 500 underground storage tanks (UST) facilities. This letter will request that the facility owner or operator send to the R9 USTPO the compliance records that they are already required to keep, but have not previously been asked to submit to the Agency.
- In accordance with 40 CFR 280.34(c), these records should be kept either on-site or must be readily available at an alternative site and, thus, should be easy to locate. The information is routinely reviewed during inspections, but the Agency believes there is suspected noncompliance that warrants additional collection and believes that these requests will encourage owners and operators to maintain regulatory compliance.

**Telco Impact:** Companies with USTs in EPA Region 9 could receive letters from the Agency and need to ensure that compliance records are available.



## Other

- **Hazardous Waste Manifests** - On June 22, minor revisions were published in the *Federal Register*.
- **Definition of Solid Waste** - EPA published a proposed rule July 22 that would make certain wastes that are recycled subject to federal hazardous waste regulations after they were exempted under a Bush-era rule.
  - EPA drafted the rule as part of an agreement with the Sierra Club which argued that the 2008 rule would disproportionately affect disadvantaged communities.
  - EPA promised to issue a final rule by December 31, 2012.
  - Comments were due by September 20, 2011.



## Other

### DSW Rule (Continued)

**Telco Impact:** The proposed regulation applies to industries that generate or recycle hazardous secondary materials that are (1) currently regulated as Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous wastes, (2) hazardous secondary materials currently excluded under the 2008 DSW final rule, or (3) hazardous secondary materials currently excluded from RCRA Subtitle C under other recycling exclusions (32 exclusions). The proposed changes will affect the recycling of lead-acid batteries (see §266.80 Applicability and Requirement). There are also proposed changes to management of cathode ray tubes (CRTs).



## Compliance Directive

- On September 8, OSHA issued a Compliance Directive, [Enforcement Procedures for Investigating or Inspecting Incidents of Workplace Violence](#)

- According to the Directive, “employers may be found in violation of the general duty clause if they fail to reduce or eliminate serious recognized hazards. Under this directive, inspectors should therefore gather evidence to demonstrate whether an employer recognized, either individually or through its industry, the existence of a potential workplace violence hazard affecting his or her employees. Furthermore, investigations should focus on the availability to employers of feasible means of preventing or minimizing such hazards.”

**Telco Impact:** OSHA states that certain industries such as healthcare and social service settings and late night retail establishments are vulnerable to workplace violence. However, in the past, OSHA has also included the utility industry in this group.



## Corporate-Wide Settlements

- Recently issued a Compliance Directive updating guidance on administering corporate-wide settlement agreements (CSAs).
- Previous guidelines were issued in 1991.
- The changes allow OSHA to initiate negotiation of CSAs.

**Telco Impact:** These agreements may be used on a broader range of enforcement cases, particularly where an employer has or may have a significant pattern of noncompliance with the OSH Act across multiple locations.



## Excavations

Over the last few months, OSHA has fined many companies for violations of excavations standards. Many of the inspections are part of the National Emphasis Program on Trenching and Excavation.

- Prince Contracting – On July 20, utility contractor cited for repeat violations; \$70,000 proposed fines.
- Martin & Company Excavating – On August 8, an underground utility construction and earth-moving company cited for willful and serious trenching violations; proposed penalty of approximately \$70,000.
- C. Scott Fulcher, doing business as 2-Brothers Enterprises – On August 4, cited for serious and willful violations including the death of employee due to a cave-in; proposed penalty of \$116,000.



## Heat-Related Illnesses

- On April 26, Secretary of Labor Hilda L. Solis announced a national outreach initiative by OSHA to educate workers and their employers about the hazards of working outdoors in the heat and steps needed to prevent heat-related illnesses.
- OSHA has developed heat illness educational materials in English and Spanish, as well as a curriculum to be used for workplace training.
- A new web page provides information and resources on heat illness—including how to prevent it and what to do in case of an emergency—for workers and employers.

## Indoor Air Quality

- OSHA recently issued a guidance document, [\*Indoor Air Quality in Commercial and Institutional Buildings\*](#).
- This document provides building owners, managers, employers, and workers with recommendations to prevent or minimize indoor air quality (IAQ) problems in commercial and institutional buildings.



## Personal Protective Equipment

- On February 15, OSHA issued enforcement guidance on personal protective equipment (PPE) and requirements for employers.
- The instruction clarifies what type of PPE employers must provide at no cost, when employers must pay for PPE or for replacement PPE, and when they are not required to pay for the equipment.
- It also clarifies requirements for PPE worn off the job site, for PPE that must remain at the site, and for employee-owned equipment.
- The final rule contains many comments regarding “tools of the trade.” OSHA did not make a decision on this issue.



## Powered-Industrial Trucks

- OSHA Region 4 announced an initiative program aimed at reducing fatalities and serious injuries in Alabama, Florida, Georgia, and Mississippi related to powered industrial trucks.
- Effective and Compliance Date(s): The regional emphasis program began on May 29 and will continue until September 30, 2012, unless it is extended.

**Telco Impact:** The inspections primarily will focus on the training operators receive, maintenance and repair, and the pathways the trucks travel to ensure clear visibility and determine any possible struck-by hazards.



## Record Keeping and Recording Rule

- On January 25, OSHA announced that it has temporarily withdrawn from review by the Office of Management and Budget (OMB) its proposal to restore a column for work-related musculoskeletal disorders (MSDS) on employer injury and illness logs.
- On May 17, OSHA announced that that it has reopened the record on the regulation. The purpose of reopening the record is to allow interested individuals to comment on the small business teleconferences that OSHA and the Small Business Administration's Office of Advocacy co-sponsored on April 11 and 12, and on the issues raised during the teleconferences.
- Additional comments were due by June 16, 2011.

**Telco Impact:** Several telecommunications companies commented on this rulemaking.



## Recording and Reporting Rule

- On June 22, OSHA released a proposal to update Appendix A to Subpart B of its Injury and Illness Recording and Reporting regulation.
- Appendix A contains a list of industries that are partially exempt from maintaining records of occupational injuries and illnesses, generally due to their relatively low rates of occupational injury and illness.
- The current list of industries is based on the Standard Industrial Classification (SIC) system.
- In 1997, the North American Industry Classification System (NAICS) was introduced to classify establishments by industry.
- The proposed rule would update Appendix A by replacing it with a list of industries based on NAICS and more recent injury and illness data.



## Recording and Reporting Rule

- The proposed rule would also require employers to report to OSHA, within eight hours, all work-related fatalities and all work-related in-patient hospitalizations; and within 24 hours, all work-related amputations.
- The current regulation requires an employer to report to OSHA, within eight hours, all work-related fatalities and in-patient hospitalizations of three or more employees.
- Comments were due by September 20.

# Department of Transportation



## Alcohol Testing Form

- The deadline for the mandatory use of the Department of Transportation's (DOT) updated Alcohol Testing Form (ATF) was January 1, 2011.

## CSA

- Comprehensive Safety Analysis 2010 (CSA 2010) is a Federal Motor Carrier Safety Administration (FMCSA) initiative to improve large truck and bus safety and ultimately reduce commercial motor vehicle (CMV)-related crashes, injuries, and fatalities.
- The Safety Measurement System (SMS) is now online. The system is a tool used by FMCSA and state partners to evaluate a carrier's safety performance.

## Electronic Signatures

- In January, the FMCSA issued guidance concerning the use of electronic signatures and documents to comply with FMCSA regulations.

# Department of Transportation



## Hours of Service

- On January 31, 2011, DOT's FMCSA issued a regulatory proposal that would require interstate commercial truck and bus companies to install electronic on-board recorders (EOBRs) to monitor their drivers' hours-of-service (HOS) compliance. Comments were due by April 14.

**Telco Impact:** This rulemaking will impact interstate drivers. Specifically, under the proposal, interstate carriers that currently use Records of Duty (RODS) logbooks to document drivers' HOS would be required to use EOBRs.

**Note:** While Section 4132 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) exempts the operators of utility service vehicles (USVs) from all FMCSA HOS regulations and prohibits states, their political subdivisions, interstate agencies, or any other entity consisting of two or more states from enacting or enforcing "any law, rule, regulation, or standard that imposes requirements on the driver of a utility service vehicle that are similar to the requirements" in FMCSA's HOS rule, there might be other vehicles used by the telecommunications industry that are not exempt from this proposed regulation.

# Department of Transportation



## HOS – Continued

- The Agency announced that it is reopening the comment period for the rule.
- Comments will be accepted until June 8 on four documents that DOT placed in the docket in early May.

## OTHER

- The DOT recently issued a *Warning Letter Tip sheet* to help motor carriers understand what a warning letter is and recommend actions carriers can take to ensure compliance.

# State Legislative & Regulatory Update



## Georgia Excavation

- Excavation Training - The Secretary of State/Professional Licensing Boards Division/Construction Industry Licensing Board is proposing a regulation that would require applicants to take 12 hours of competent person and excavation training. Comments were due by May 17.

## Iowa Generators

- On April 4, Iowa Governor Terry Branstad (R) issued an Executive Order that rescinds an Iowa Environmental Protection Commission rule that would have required backup diesel generators used in electricity production to be retrofitted with pollution-reducing equipment.

# State Legislative & Regulatory Update



## Maryland – Sediment Control

- The Department of the Environment has issued a proposed rule regarding erosion and sediment control.
- The rule updates existing provisions and incorporates by reference the revised handbook “1994 Maryland Standards and Specifications for Soil Erosion and Sediment Control.”

**Telco Impact:** Proposed changes could impact best management practices, as well as costs at construction sites. The proposal replaces an August 27, 2010, proposed rule on the same topic.

# State Legislative & Regulatory Update



## Michigan Ergonomics

- Michigan Governor Rick Snyder signed legislation (SB 20) March 22 preventing state-level administrative rules mandating workplace ergonomics in the state.

## Missouri Stormwater

- The Department of Natural Resources has released a revised set of guidelines directed at aiding developers and contractors to better manage stormwater runoff from construction sites.

# State Legislative & Regulatory Update



## New Jersey Stormwater

- The Department of Environmental Protection announced an extension of the chapter expiration date for regulations under New Jersey Administrative Code (NJAC) 7:8 regarding stormwater management.
- The notice extends the expiration date from February 2, 2011 to August 2, 2012.

## New York Utility Poles

- Legislation (NY AB 6181) has been introduced in New York that would require reliability inspection of poles.
- The bill requires a safety and reliability inspection of all telephone poles used by telephone corporations providing telephone service to more than one million subscribers and the replacement or removal of deficient poles.

# State Legislative & Regulatory Update



## Virginia

- Emergency Engines – Adopted a new rule, effective August 17, regarding permits for emergency engine generators.

## Washington

- Safety – In April, Governor Chris Gregoire (D) signed a bill into law that requires employers to correct serious safety and health violation hazards even if they file an appeal of their citation. Under existing rules as in most states, if the Division of Occupational Safety and Health cites an employer for a serious workplace safety violation, the employer has no legal obligation to correct the hazard until all appeal rights are exhausted.

# State Legislative & Regulatory Update



## California

- **Clean Air** - On December 17, 2010, the California Air Resources Board (CARB) made amendments to the Truck and Bus regulations in order to offer businesses a variety of options to comply with regulations to reduce soot from diesel engines while assuring that California continues to meet its air quality obligations and public health.
  - **Update:** On April 6, the CARB announced an early action compliance credit for trucking fleets that install a particulate filter by July 1, 2011, or that make a commitment to purchase a particulate filter by May 1, 2011. By installing a particulate filter early on one truck, the fleet will be able to delay compliance for a second truck in the fleet until January 1, 2017.
  - **Telco Impact:** The early action “buy-one-get-one-free” credit applies to heavier trucks with a manufacturers’ gross vehicle weight rating of more than 26,000 pounds. There is no limit on how many trucks in the fleet can earn the early action credit.

# State Legislative & Regulatory Update



## California

### Greenhouse Gas Emissions

- In December 2010, the CARB adopted an emissions trading program which is scheduled to go into effect in January 2012. The regulation will cover 360 businesses representing 600 facilities and is divided into 2 broad phases: an initial phase beginning in 2012 that will include all major industrial sources along with utilities and a second phase that starts in 2015 and brings in distributors of transportation fuels, natural gas, and other fuels.
- In March, a California Superior Court ordered CARB to look at alternative plans.
  - **Update:** In August, the CARB voted to reaffirm its cap-and-trade plan—a decision that puts the nation's first-ever state carbon trading program back on track, for now.

# State Legislative & Regulatory Update



## California

- **Energy** – On April 12, California Governor Jerry Brown (D) signed into law a measure requiring one-third of the electricity sold in the state to come from solar, wind, geothermal, or other renewable sources by the end of 2020. The bill was passed by the Legislature in March and is key to rolling back statewide GHG emissions to 1990 levels by 2020, as required by the Global Warming Solutions Act of 2006 (A.B. 32).
- **Worker Safety** – A proposed rule was issued in July that amends the first aid standard for electrical workers. The rule also amends regarding the ventilation of shafts, culverts, and pipelines.
  - A hearing was held August 18 and comments were due on that date.

# State Legislative & Regulatory Update



## California

### Worker Safety (continued)

- Portable Ladders – Proposed rule issued in September.
  - Telco Impact: Companies covered under the general industry safety order regarding portable ladders will be impacted by this change.
- Fixed Ladders – Final rule issued September 6; relates to width and diameters of rungs
  - Effective October 6
  - Companies with telecommunications towers in California could be impacted.
  - More information: [http://www.dir.ca.gov/oshsb/Telecom\\_Ladders\\_ISOR.pdf](http://www.dir.ca.gov/oshsb/Telecom_Ladders_ISOR.pdf)

# State Legislative & Regulatory Update



## California

### Worker Safety (continued)

- Employer Duty to Pay for Personal Safety Devices
  - Proposed rule issued September 2.
  - Telco Impact: This rulemaking amends Article 10 to add new Section 3380.1: “Whenever any safety order in Division 1 of Title 8 requires the provision, furnishing, use or wearing of any safety device and/or safeguard, it shall mean that the safety device and/or safeguard shall be provided at no cost to the employee.”
  - Comments are due September 29, 2011.

# State Legislative & Regulatory Update



**UST Regulations – States are busy implementing the federal guidelines from the Energy Act. All states receiving Subtitle I funding must:**

- Develop state-specific operator training requirements consistent with EPA's guidelines by August 8, 2009. State-specific operator training requirements must:
  - Be developed in cooperation with tank owners and operators;
  - Take into consideration training programs implemented by tank owners and tank operators; and
  - Be appropriately communicated to tank owners and operators.
  - Establish guidelines for three classes of operators identified as Class A, Class B, and Class C.



# State Legislative & Regulatory Update



## USTs Regulations

- **Kentucky**
- **New Mexico**
- **North Dakota**
- **Ohio**
- **Rhode Island**
- **Texas**
- **Utah**
- **Vermont**

# State Legislative & Regulatory Update



## Idling Regulations

- The American Transportation Research Institute (ATRI) has recently updated its compendium of idling regulations for all 50 states.
- There are new regulations in Oregon, effective January 2012, which allow idling for no more than 5 minutes in a 60-minute period.
- Texas has also added some new requirements to its existing regulation.
- More information can found on ATRI's website located at: [http://www.atri-online.org/research/idling/ATRI\\_Idling\\_Compendium.pdf](http://www.atri-online.org/research/idling/ATRI_Idling_Compendium.pdf)