

Legislative and Regulatory Outlook

Federal and State Environmental Update

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President Obama's Environmental Priorities



2013

- During his February 12 State of the Union address, President Obama mentioned the following environmental priorities:
 - Climate change is a top issue (Obama mentioned that he will act even without support from the new Congress.)
 - New initiatives to support state energy efficiency efforts and renewable energy. In response to this, the Democrats in the 113th Congress have begun working in earnest on this issue.



President Obama's Environmental Priorities



2013

- On March 26, the Obama Administration issued the nationwide strategy on climate adaptation.
 - The [National Fish, Wildlife, and Plants \(NFWP\) Climate Adaptation Strategy](#) identifies seven steps that are meant to help safeguard the nation's fish, wildlife, and plants in a changing climate.
 - The recommendations include the following: focus on national preparedness for climate change continue efforts to decarbonize the economy; level the playing field for clean-energy and energy-efficiency technologies; sustain research on next generation clean-energy technologies; take additional steps to establish U.S. leadership on climate change internationally; and conduct an initial Quadrennial Energy Review.

President Obama's Environmental Priorities



- On June 25, President Obama formally unveiled his climate plan and announced that for the first time in history, carbon dioxide emissions at power plants would be regulated by the Environmental Protection Agency (EPA).



President Obama's Environmental Priorities



- With Republicans controlling the House, it might be difficult to accomplish anything other than laying the groundwork until after the mid-term elections in 2014.



113th Congress, 1st Session



- House of Representatives - there are 234 Republicans, 206 Democrats, (including 5 Delegates and the Resident Commissioner), and 1 vacant seat.
- The Senate has 46 Republicans, 52 Democrats, and 2 Independents, who caucus with the Democrats.
- The average length of service for Representatives at the beginning of the 113th Congress was 9.1 years (4.6 terms); for Senators, 10.2 years (1.7 terms).



113th Congress, 1st Session



- The 113th Congress is the most diverse in history:
 - One hundred one women (a record number) serve in the 113th Congress: 81 in the House, including 3 Delegates, and 20 in the Senate.
 - There are 43 African American Members of the House and 1 in the Senate. This House number includes 2 Delegates.
 - There are 38 Hispanic or Latino Members (a record number) serving: 34 in the House, including 1 Delegate and the Resident Commissioner, and 4 in the Senate.
 - Thirteen Members (10 Representatives, 2 Delegates, and 1 Senator) are Asian American or Pacific Islanders.
 - Two Native Americans serve in the House.

A CONGRESS OF FIRSTS

The 113th Congress will be the most diverse in US History.
A look at some of the new faces of our federal government.

LGBT



REP. SEAN MALONEY
DEMOCRAT, NY



REP. MARK POCAN
DEMOCRAT, WI



SEN. TAMMY BALDWIN
DEMOCRAT, WI



REP. KYRSTEN SINEMA
DEMOCRAT, AZ



REP. MARK TAKANO
DEMOCRAT, CA



SEN. MAZIE HIRONO
DEMOCRAT, HI



REP. GRACE MENG
DEMOCRAT, NY



REP. JACKIE WALORSKI
REPUBLICAN, IN



SEN. HEIDI HEITKAMP
DEMOCRAT, ND



REP. KYRSTEN SINEMA
DEMOCRAT, AZ



REP. DONALD PAYNE JR.
DEMOCRAT, NJ



REP. STEVEN HORSFORD
DEMOCRAT, NV



REP. MARC VEASEY
DEMOCRAT, TX



REP. HAKEEM JEFFRIES
DEMOCRAT, NY



REP. SUZAN DILLBENE
DEMOCRAT, WA



REP. ANN KIRKPATRICK
DEMOCRAT, AZ



REP. ELIZABETH ESTY
DEMOCRAT, CT



SEN. DEB FISCHER
REPUBLICAN, NE



REP. DINA TITUS
DEMOCRAT, NV



SEN. ELIZABETH WARREN
DEMOCRAT, MA



REP. TONY CARDENAS
DEMOCRAT, CA



REP. JOAQUIN CASTRO
DEMOCRAT, TX



REP. RAUL RUIZ
DEMOCRAT, CA



REP. MICHELLE LUJAN-GRISHAM
DEMOCRAT, NM



REP. SUSAN BROOKS
REPUBLICAN, IN



SEN. TAMMY BALDWIN
DEMOCRAT, WI



REP. CAROL SHEA-PORTER
DEMOCRAT, NH



REP. ANN KUSTER
DEMOCRAT, NH



REP. MICHELLE LUJAN-GRISHAM
DEMOCRAT, NM



REP. ANN WAGNER
REPUBLICAN, MO



REP. FILEMON VELA
DEMOCRAT, TX



REP. PETE GALLEGO
DEMOCRAT, TX



REP. JUAN VARGAS
DEMOCRAT, CA



REP. JOE GARCIA
DEMOCRAT, FL



REP. CHERI BUSTOS
DEMOCRAT, IL



REP. GLORIA NEGRETE McLEOD
DEMOCRAT, CA



REP. TAMMY DUCKWORTH
DEMOCRAT, IL



REP. JOYCE BEATTY
DEMOCRAT, OH



REP. LOIS FRANKEL
DEMOCRAT, FL



REP. JULIA BROWNLEY
DEMOCRAT, CA



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REPUBLICAN, TX



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REP. ERIC SWALWELL
DEMOCRAT, CA



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DEMOCRAT, HI



REP. AMI BERA
DEMOCRAT, CA

WOMEN

RACE/ETHNICITY

FIRST BUDDHIST SENATOR

ONLY NON-THEIST

FIRST HINDU REPRESENTATIVE

ONLY UNITARIAN UNIVERSALIST

BORN IN

DIVERSION

113th Congress, 1st Session



- **Climate Change**

- January – Representative Henry Waxman (D-CA) and Senator Sheldon Whitehouse (D-RI) sent over 300 [letters](#) to a range of companies, business groups, labor unions, environmental and public health groups, academia, and faith-based organizations soliciting their ideas on climate change legislation. **Telco Impact:** Telecommunications [companies](#) receiving the letters include: AT&T, Sprint-Nextel and Verizon Communications.
- February –The House Energy and Commerce committee released an [oversight plan](#) for the 113th Congress which includes investigating whether efforts by the Environmental Protection Agency to regulate greenhouse gas emissions are “scientifically well grounded” and will continue to review the economic impacts of other rulemakings brought forward by the agency under the Clean Air Act.



113th Congress, 1st Session



- **Climate Change (Continued)**

- February 6 – the House Energy and Commerce committee held a hearing on the plan and defeated efforts by Democratic committee members to force Republicans to pledge to hold climate change hearings.
- February 11 – a group of 40 lawmakers sent a [letter](#) to President Obama asking him to name a bipartisan, blue ribbon panel to draw up a national plan to help communities adapt to the impacts of climate change.
- February 13– a briefing was held by Senate Environment and Public Works Committee Chairwoman Barbara Boxer (D-CA).



113th Congress, 1st Session



- **Climate Change (Continued)**

- February 14 - Climate Protection Act of 2013 (S. 332) introduced by Senators Bernard Sander (I-VT) and Boxer.
- February 15 - a group of Democratic House lawmakers launched a Safe Climate Caucus. The caucus includes former House Energy and Commerce Committee Chairman Henry Waxman (D-CA) and Representative Chris Van Hollen (D-MD), the top Democrat on the House Budget Committee.
- February 25 - the Task Force sent [letters](#) to 69 inspectors general from federal agencies, departments, and commissions to compile a list of actions they could take to combat the effects of global climate change.



113th Congress, 1st Session



• Climate Change (Continued)

- Many bills introduced since January including:
 - **H.R. 621** - Ensuring Affordable Energy Act
 - **H.R. 662** - To prohibit United States contributions to the Intergovernmental Panel on Climate Change and the United Nations Framework Convention on Climate Change
 - **H.R. 2023** - Climate Change Health Protection and Promotion Act
 - **H.R. 2127** – To prohibit the EPA from promulgating carbon dioxide emissions regulations
 - **S. 7** - Extreme Weather Prevention and Resilience Act
 - **S. 107 & S. 163** – Bills to prohibit the regulation of carbon dioxide emissions in the United States until China, India, and Russia implement similar reductions.
 - **S. 332** – Climate Protection Act of 2013
 - **S. 906** - Changing How America Reduces Greenhouse Gas Emissions Act (CHARGE)
 - **S. 1202** – Safeguarding America's Future and Environment Act (Safe Act)



113th Congress, 1st Session



- **Other Legislative Action**

- **Safe Chemicals** - On May 22, bipartisan legislation was introduced that would require safety evaluations for all chemicals in commerce and increase the EPA's authority to obtain health and safety data for chemicals and manage their risks.

**Babies are being born
pre-polluted**



**Tell Congress to fix our nation's
broken toxics law TODAY**

SIGN THE PETITION

A vertical graphic with a white background. At the top, the text "Babies are being born pre-polluted" is written in bold black font. Below this is a photograph of a newborn baby lying on its back, appearing to be in a fetal position. Below the photograph, the text "Tell Congress to fix our nation's broken toxics law TODAY" is written in bold black font. At the bottom, there is an orange rectangular button with the text "SIGN THE PETITION" in white, bold, uppercase letters.

113th Congress, 1st Session



- **Other Legislative Action**

- **Electronic Waste** - On February 13, the American Chemistry Council hosted a briefing for congressional staffers on the management of used electronic wastes. At the briefing, the Solid Waste Association of North America ([SWANA](#)) issued a [policy](#) stating that it would support national certification programs for safe recycling and management of used electronic products, but indicated it would not support an outright ban on exporting e-waste to developing countries.



113th Congress, 1st Session



- **Other Legislative Action**

- “Metal Theft Prevention Act,” a bill to prohibit and deter the theft of metal.



- “Trash Reduction Act of 2013,” a bill that would impose a five-cent fee on “single use” plastic and paper bags at grocery and retail stores.



113th Congress, 1st Session



- **Other Committee Action**

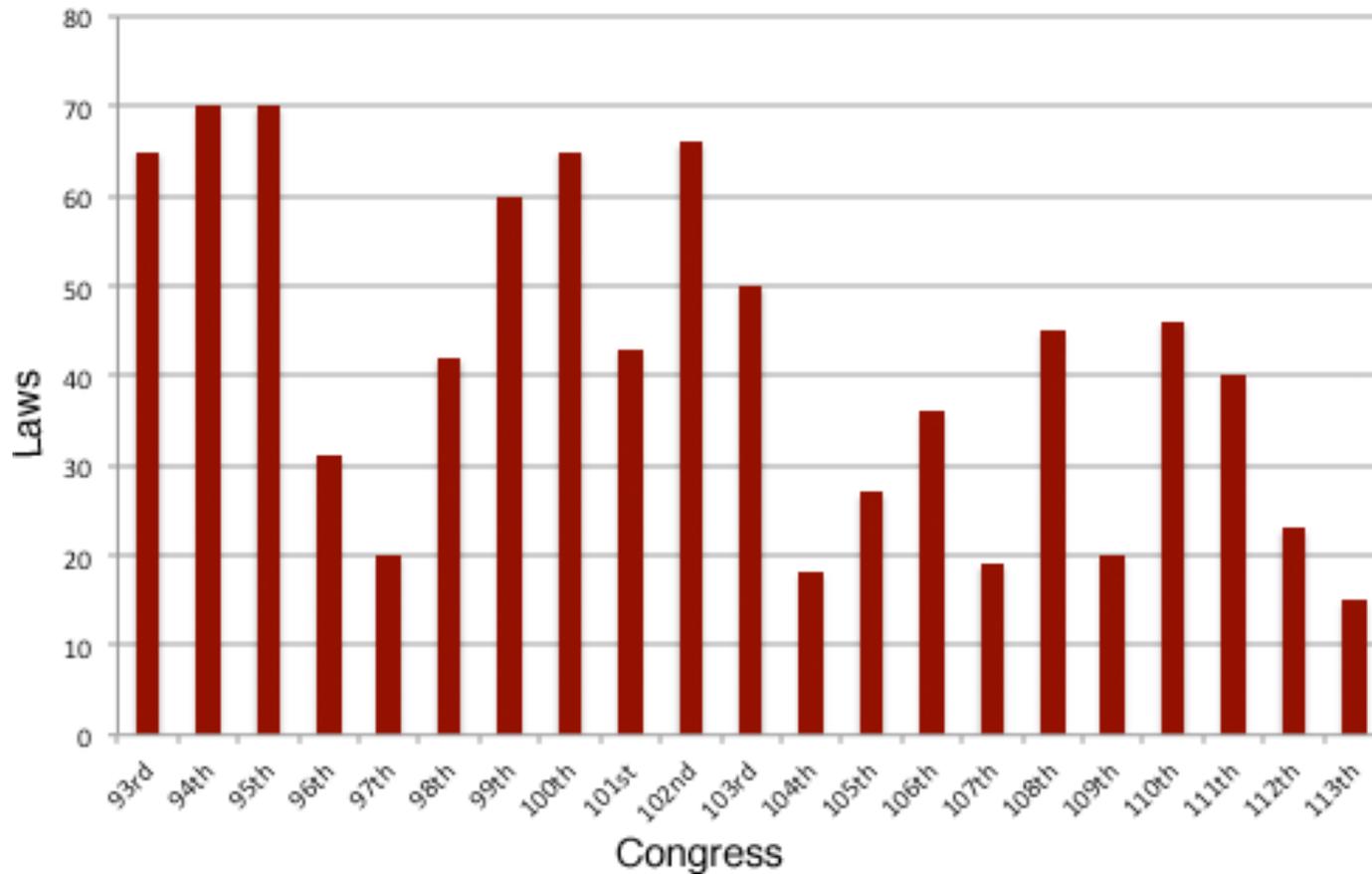
- **House Committee on Science, Space and Technology** – The subcommittee on Environment held a [hearing](#) February 14 entitled, “The State of the Environment: Evaluating Progress and Priorities.”
- **House Energy and Commerce Committee** – On February 15 the Environment and the Economy subcommittee held a [hearing](#) “The Role of the States in Protecting the Environment Under Current Law.”



113th Congress, 1st Session



Bills Signed Into Law Through July 8





- **Climate Change**

- [Climate Change Adaptation Plan](#) outlines the EPA's plan to integrate climate change into federal environmental programs, policies and rules. Key points from the plan include:

- The Interagency Climate Change Adaptation Task Force is recommending efforts to strengthen federal strategies and programs to prepare for and adapt to the effects of climate change at the national level.
- Many federal agencies already manage programs to support and inform adaptation at the regional, state, and local level.
- EPA has programs designed to help decision-makers better understand and address risks posed by climate change.





- **Clean Air – Fine Particles** - On December 14, the EPA finalized an update to its national air quality standards for harmful fine particle pollution (PM_{2.5}), including soot, setting the annual health standard at 12 micrograms per cubic meter.



Image courtesy of the U.S. EPA



- **Clean Air – Fine Particles - Continued**

- By 2020, ninety-nine percent of U.S. counties are projected to meet the revised health standard without any additional actions.
- By 2030, it is expected that all standards that cut PM_{2.5} from diesel vehicles and equipment alone will prevent up to 40,000 premature deaths, 32,000 hospital admissions, and 4.7 million days of work lost due to illness.



- **Greenhouse Gas Emissions**

- On February 21, the EPA released the 11th annual Draft Greenhouse Gas Emissions [Inventory](#) for 1990-2011. Total emissions increased 8.7 percent from 1990-2011 however, from 2010 to 2011, emission decreased.





- **Clean Air – NESHAP – Rice Rule**

- In January, the EPA released final amendments to the national emission standards for hazardous air pollutants (NESHAP) for stationary reciprocating internal combustion engines (RICE) under section 112 of the Clean Air Act (CAA).

- **Telco Impact:**

- Emergency engines may be used to prevent electrical outages and to test and maintain engines for up to a total of 100 hours per year.
- For a combined total of 100 hours per year, emergency engines can be used for the following purposes: maintenance and testing, emergency demand response for Energy Emergency Alert Level 2 situations, responding to situations when there is at least a 5 percent or more change in voltage, and operating for up to 50 hours to head off potential voltage collapse, or line overloads, that could result in local or regional power disruption.



- **Clean Air – NESHAP – Rice Rule - continued**



- **Telco Impact:**

- In 2015, emergency engines will be required to use cleaner fuel – ultra- low sulfur diesel (ULSD) -- if they operate, or commit to operate, for more than 15 hours annually as part of blackout and brownout prevention, also known as emergency demand response.
- Starting in 2015, entities with 100 horsepower (hp) or larger engines that operate, or commit to operate, for more than 15 hours and up to 100 hours per year for emergency demand response will need to collect and submit an annual report including location, dates and times of operation.
- The rules restate that in an emergency, such as hurricane or ice storm, any engine of any size can operate without meeting control requirements or emission limits.
- Emergency engines that commit to run less than 15 hours for emergency demand response can operate without meeting federal control requirements or numeric emission limits.





- **Clean Air – NESHAP – Rice Rule - continued**

- **Reconsideration of 3 issues – (9/5 FR Notice). Comments due November 4. Possible hearing October 17.**

1. Timing for compliance with the ultra-low sulfur diesel (ULSD) fuel requirement . Q: The Agency seeks comment on whether it would be reasonable to implement the requirement to use ULSD fuel earlier than January 1, 2015.
2. Timing and required information for the reporting requirement for emergency engines that operate or are contractually obligated to be available for more than 15 hours per calendar year. Q: The EPA requests comment on the following: a. whether owners and operators of these engines should be required to report operation for the period between the compliance date and January 2015, and when it would be reasonable to submit the report; b. whether the rule should require reporting of the amount and type of diesel fuel used in the engine; and c. whether such a requirement would place an unreasonable burden on affected facilities.
3. Conditions relating to operating engines for up to 50 hours per calendar year in nonemergency situations as part of a financial arrangement with another entity. Q: EPA seeks comment on whether the conditions in the final rule are appropriate or necessary.

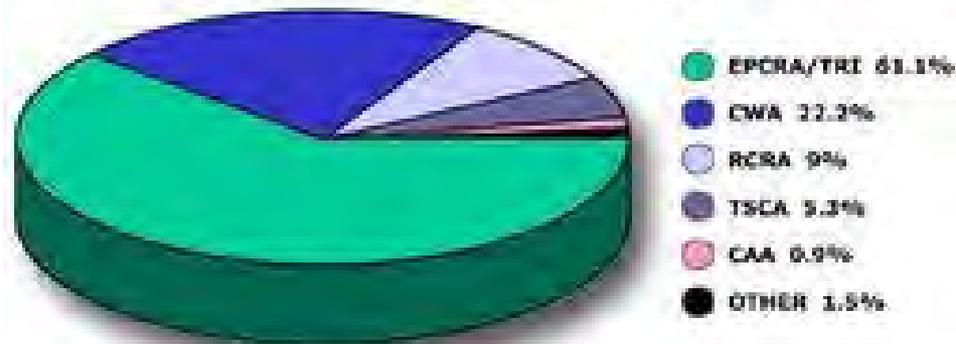




• EPA Self-Disclosure Policy

- The original Audit Policy was issued in 1995.
- It was subsequently revised and republished in April 2000.
- Since 1995, more than 1,150 companies have disclosed potential violations at more than 5,400 facilities.

Figure 1. Audit Settlement by Statute



Source: Environmental Compliance Assistance Platform



- **Consent Decree**

- In February, EPA entered into a Consent Agreement with AboveNet Communications, Inc. to resolve violations of the Clean Water Act (CWA) and the Emergency Planning and Community Right-to-Know Act (EPCRA), and their implementing regulations.
- Violations include: Failure to prepare and implement Spill Prevention Countermeasure Control (SPCC) plans for four facilities; failure to submit a Material Safety Data Sheet (MSDS) for a hazardous chemical(s) or, in the alternative, a list of such chemicals, at 48 facilities; failure to prepare and submit emergency and chemical inventory forms to the Local Emergency Planning Commission (LEPC), the State Emergency Response Commission (SERC), and/or the fire department with jurisdiction over 48 facilities.
- The company disclosed these potential violations pursuant to EPA's Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations (Audit Policy).



- **Administrative Settlement**

- On January 3, the Environmental Appeals Board approved an administrative settlement that requires New Cingular Wireless PCS to pay a total of \$1.375 million in fines and environmental projects for alleged environmental violations at facilities in 43 states.
- NCW will pay a civil penalty of \$750,000, will expend an additional \$625,000 for Supplemental Environmental Projects and will conduct CAA and SPCC compliance audits at legacy AT&T Wireless sites.





- **Effluent Guidelines**

- In late December 2012, the EPA reached an [agreement](#) to resolve a lawsuit over the December 2009 rule that requires discharges associated with construction sites not exceed an average turbidity of 280 nephelometric turbidity units (NTUs).
- In April, the EPA issued a proposed rule to allow construction companies to use best management practices in lieu of numerical turbidity limits to control the volume and velocity of storm water runoff.
Telco Impact: The final C&D rule affects “Heavy and Civil Engineering Construction (NAICS 237) including utility systems construction (water and sewer lines, oil and gas pipelines, and power and communication lines); land subdivision; highway, street, and bridge construction; and other heavy and civil engineering construction.





- **Boiler Rule**

- EPA published [national emissions standards for hazardous air pollutants](#) for area source boilers February 1.
- The final rule requires engines to begin using ultra-sulfur diesel fuel beginning in 2015.
- Several groups, including the state of Delaware and the National Rural Electric Cooperative, have sued the EPA over the final rule.
- EPA recently sent letters stating that portions of the rule will be reconsidered. A timeline has not been set.



EPA



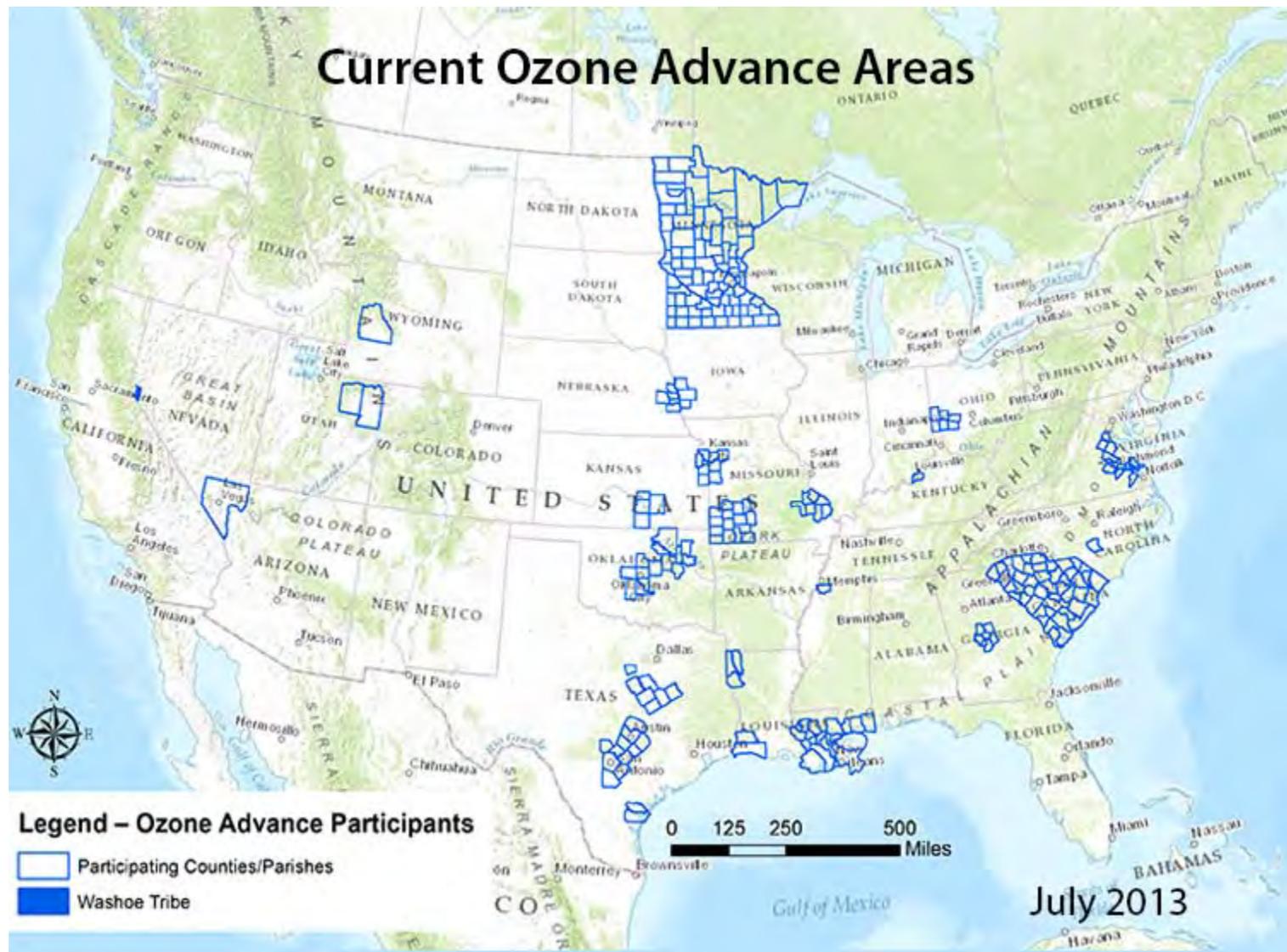
Hole in the Ozone Layer?





- **Ozone**

- The Advance Program is a collaborative effort between EPA, states, tribes, and local governments. The program encourages expeditious emission reductions in ozone and fine particle (PM_{2.5}) attainment areas to help these areas continue to meet the National Ambient Air Quality Standards (NAAQS).
- The [Ozone Advance Program](#), launched in April 2012, helps the areas avoid being designated as nonattainment later, even if EPA strengthens the standard. So far, 25 areas of the country have joined the agency's voluntary program to help ozone attainment areas make further emissions reductions.
- **Telco Impact:** Companies might want to be aware of areas of the country that are involved in this program.
<http://epa.gov/ozoneadvance/participants.html>





- **Other**

- **Greenpower Partnership** - On April 17, the EPA [released](#) a list of the top 50 companies that are using electricity from clean, renewable sources. **Telco Impact:** Sprint is on the list of [Top 20 Tech and Telecom companies](#).
- **Hazardous Waste** - The EPA recently released guidance for conducting waste analyses at facilities that generate, treat, store, and dispose of hazardous wastes. The guidance, [Waste Analysis at Facilities That Generate, Treat, Store, and Dispose of Hazardous Wastes](#), has not been updated since 1994.

State Legislative & Regulatory Update



- **California Pole Safety** – In February a [proposed rule](#) was issued by the Department of Industrial Relations, Occupational Safety and Health Standards Board, to address the securing of poles, such as power line poles, with guy lines or braces during removal and replacement. **Telco Impact:** The proposal is necessary to ensure that poles being removed are secured not only during the actual hoisting of the pole but also in preparing and securing of the pole for the lift.
- **New Jersey Emergency Generator Permits** – The Department of Environmental Protection, Bureau of Air Permits recently issued a draft general operating permit ([GOP-003](#)) for an emergency generator, applicable to 2007 model year or later engines with manufacturer certification showing compliance with new source performance standards.

State Legislative & Regulatory Update



- **Virginia** – The Department of Conservation and Recreation, Soil and Water Conservation Board has revised Stormwater Management Program permit standards. The [rule](#) updates terminology throughout the chapter and adds a missing effluent limitation guideline. The rule also revises provisions concerning definitions, linear projects, application and review procedures, and fees.
 - **Telco Impact:** The final rule clarifies “*that linear projects are no longer exempt and must now control post-development stormwater runoff in accordance with a site-specific stormwater management plan or a comprehensive watershed stormwater management plan. This action is in accordance with amendments made to § 10.1-603.7 of the Code of Virginia that conformed state law to federal requirements.*” The rule was effective November 21, 2012.

OTHER

- **Electronic Waste**

- On March 8, the International Trade Commission released results from a study indicating that widely varying state regulations “generally depress exports” of used electronic products while increasing compliance costs and inefficiencies throughout the industry. The report found a “patchwork” of electronics recycling laws in 28 states has created the electronics recycling industry’s “fragmented structure,” which does not allow for a nationally integrated collection and processing network. On the state level, 25 states have passed e-waste legislation but the varying laws are difficult for recyclers.



- **Sustainability**

- A coalition of investors issued a [proposed standard](#) April 8 requiring companies to disclose environmental and social data in annual financial filings in order to be listed on global stock exchanges.
- The proposed listing standard would require companies to discuss how they determine which environmental and social issues are material to the company; to provide a link in their annual financial filings to a list of sustainability data; and to disclose information on eight issues including climate change, diversity, employee relations, environmental impact, government relations, human rights, product impact and safety, and supply chain.
- The final standard will be released at the World Federation of Exchanges meeting next month.

OTHER



- **Telephone Poles** – On April 3, the U.S. Court of Appeals for the Ninth Circuit ruled that “telephone poles do not constitute ‘point sources’ and are not ‘associated with industrial activity’ under the Clean Water Act, and the preservative does not fit the Resource Conservation and Recovery Act definition of ‘solid waste.’” The ruling was in response to suit filed by an environmental group against Pacific Gas and Electric alleging that preservative-treated telephone poles leached toxic chemicals into the San Francisco Bay.





- **Wood Preservatives** – On April 17, the Stockholm Convention on Persistent Organic Pollutants (POPs) secretariat released for comment a committee’s [draft risk profile](#) recommending that pentachlorophenol (PCP) be listed in the treaty as a POP warranting its ban, elimination, or restriction. **Telco Impact:** The United States is not a party to the Convention but participates as an observer. Companies utilizing penta-treated utility poles could be impacted by increased media attention on this issue.

POSITIVE EFFECTS OF ENVIRONMENTAL DESTRUCTION

HEY, MY ALLERGIES ARE GONE!



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