

Legislative and Regulatory Outlook

Federal and State EH&S Update

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Heidi Anderson
Leidos

(703) 676-5951
andersonhei@leidos.com



President Obama's Environmental Priorities



- On November 1, 2013, President Barack Obama issued an [Executive Order](#) (EO) on climate preparedness.
- The EO contains instructions for federal agencies relating to preparedness and resilience including:
 - modernizing federal programs to support climate-resilient investment,
 - managing lands and waters,
 - providing information within the government,
 - developing climate adaptation plans,
 - establishing a Council on Climate Preparedness and Resilience; and
 - forming a task force with state, local, and tribal officials.



113th Congress, 2nd Session



- House of Representatives - there are 234 Republicans, 199 Democrats, (including 5 Delegates and the Resident Commissioner), and 2 vacant seats.
- The Senate has 45 Republicans, 53 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, 2nd 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.

113th Congress, 2nd Session



➤ Mid-term elections next month...



113th Congress, 2nd Session



- Republicans likely to **retain** control of the House.
- Republicans likely to **gain** control of the Senate (6 seats needed).

113th Congress, 2nd Session



- **Climate Change**

- On March 6, the House voted 229-183 to block the Environmental Protection Agency's (EPA) plans to limit power plant carbon emissions.
- The measure, [H.R. 3826](#), introduced by Representative Ed Whitfield (R-KY), would prevent the EPA from finalizing its proposal to require carbon capture and storage technology for all new coal-fired power plants and would make rules for existing power plants contingent on congressional approval.
- The bill would require the EPA to replace its September proposal for future power plants with a new one based on widely deployed technology and to wait for Congress to set an effective date for an existing power plant rule.
- The measure is now awaiting consideration in the Senate.



113th Congress, 2nd Session



- **Climate Change (Continued)**

- Senate Democrats have held two all-nighters on the issue of climate science and the EPA's proposed carbon limits for power plants. The first debate on the issue occurred in March and although all 45 Republicans were invited to attend the debate, only one Republican Senator Jim Inhofe (OK) attended the event.
- On June 18 the Senate Environment and Public Works Subcommittee on Clean Air and Nuclear Safety heard testimony from the former EPA chiefs, two academics and Alabama's attorney general on "the scientific consensus that climate change is a real and urgent threat that needs to be addressed."



113th Congress, 2nd Session



- **Climate Change (Continued)**

- On June 19, the House Committee on Energy and Commerce (Subcommittee on Energy and Power) held a hearing on EPA's proposed carbon dioxide ("CO₂") regulation for power plants.
- House Democrats are urging Congress to have more hearings on climate change; only one hearing has been held this year.
- The Senate, controlled by Democrats, has only held 4 climate change hearings.



113th Congress, 2nd Session



- **EPA Oversight**

- On June 25, EPA Administrator Gina McCarthy testified at the House Oversight and Government Reform Committee at a hearing entitled [“Management Failures: Oversight of the EPA.”](#)
- Committee Chairman Darrell Issa (R-CA) threatened to hold McCarty in contempt of Congress for failure to produce documents that were subpoenaed last fall.

113th Congress, 2nd Session



- **Other Bills**

- Stormwater Management - On June 10, Senator Benjamin Cardin (D-MD) introduced legislation that would require states to establish highway stormwater management programs to better control polluted water generated from U.S. federal aid highways.
- EPA Waters of the US
 - The House Appropriations Committee is proposing a permanent ban on efforts by the Corps to write and enforce rules changing the existing scope of the CWA jurisdiction under the draft fiscal year 2015 energy and water spending bill released June 9.
 - On July 11, Representatives Bob Gibbs (R-OH), Bill Shuster (R-PA) and Steve Southerland (R-FL) introduced legislation which would block the EPA and Corps' rule and instead would require the agencies to write a proposed rule jointly with state and local officials based on consensus recommendations, which would be subject to public review. The bill passed committee and is awaiting a vote in the full House.



• Clean Water – Construction and Development Rule

- On December 1, 2009, a [final rule](#) was published in the *Federal Register* to help reduce water pollution from construction sites.
- The final rule contained numeric turbidity limits requiring that beginning on August 1, 2011, all sites that disturb **20 or more acres** of land at one time are required to comply with the turbidity limitation. As of February 2, 2014, the limitation applies to all construction sites disturbing **10 or more acres** of land at one time.
- These sites must sample stormwater discharges and comply with a numeric limitation for turbidity (i.e., cloudiness, haziness).





- **Clean Water – Construction and Development Rule**

- In response to a lawsuit, the EPA vacated the turbidity portion of rule.
- On April 1, 2013, the Agency issued a proposed rule to allow construction companies to use BMPs in lieu of numerical turbidity limits to control the volume and velocity of stormwater runoff.
- On March 6, 2014, the [final rule](#) was published in the *Federal Register*. The rule is effective May 5, 2014.





• Clean Water – Waters of the United States

- On April 21, a [notice](#) was published in the *Federal Register* announcing a proposed rule issued by the EPA and the United States Army Corps of Engineers (USACE) clarifying Clean Water Act (CWA) jurisdiction over U.S. waters and wetlands.
- It does not protect any new types of waters that have not historically been covered under the Act.
- The proposal clarifies protection for streams and wetlands.
- The proposal is in response to Supreme Court ruling on this issue and reflects a more narrow reading of the CWA as interpreted by the Court.





- **Clean Water – Waters of the United States**

- **Telco Impact:** A change that could impact telecommunications operations with regard to linear construction is proposed language that would exclude “water-filled depressions created incidental to construction activity” in the definition of waters of the United States.





- **Climate Change**

- On November 1, 2013, the Environmental Protection Agency (EPA) released its draft Climate Change Adaptation Implementation Plans for public review and comment.
- The draft Implementation Plans were developed by the EPA's Program and Regional offices and describe how each will address the impacts of climate change on its mission, operations, and programs, in response to the Agency-wide plan.





- **Climate Change**

- New report issued *Climate Change Indicators in the United States 2014*. This [report](#), based on years of observed data, focuses on 30 indicators of climate change in the United States and details the serious public health and environmental consequences of climate change.
- How is climate change hurting Americans' health:
 - “The incidence of Lyme disease—the most common vector born disease in America—has approximately doubled since 1991, in part due to climate change, which expands the range of tick habitat.”
 - “Twenty six percent of Americans are sensitive to ragweed, and its pollen season has lengthened by around 20 days in some northern regions of the country due to delayed first frosts.”
 - Decreased snowpack which reduces the amount of drinking water.
 - Increased frequency of violent storms
- House Democrats want a hearing on this report.





- **Clean Air – Commuter Benefits**

- The Clean Air Act (CAA) requires states to develop a general plan to attain and maintain the National Ambient Air Quality Standards (NAAQS) in all areas of the country and a specific plan to attain the standards for each area designated nonattainment for an NAAQS.
- These plans, known as State Implementation Plans (SIPs), are developed by state and local air quality management agencies and submitted to the United States Environmental Protection Agency (EPA) for approval.
- The EPA has issued "[Commuter Programs: Quantifying and Using Their Emission Benefits in SIPs and Conformity Guidance for State and Local Air and Transportation Agencies](#)"





- **Clean Power Plan**

- On June 2, the EPA announced a [Clean Power Plan](#) which cuts carbon pollution from existing power plants.
- The proposed rule was issued rule under section 111(d) for existing power plants entitled "*Emissions Guidelines for Existing Stationary Sources: Electric Generating Units*" ("Clean Power Plan").
- Section 111(d), rarely invoked by the agency, applies to existing sources; the section authorizes the Administrator to prescribe regulations establishing a procedure under which States submit to the Administrator a plan establishing standards of performance for certain existing sources and certain air pollutants.





- **Clean Air – NESHAP – Rice Rule**

- In January 2013, 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 – (September 2013). Comments were due November 4, 2013.**

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.





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

- **Reconsideration of 3 issues – (September 2013). Comments were due November 4, 2013.**

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.

UPDATE:

The EPA announced August 15, 2014 that it will not reconsider the petitioners' three issues.





- **EPCRA (Emergency Planning and Community Right-to-Know Act)**
 - On November 26, 2013, the Agency released updated versions of [CAMEO](#) and [Tier 2 Submit](#), two software programs for entities to use under Section 312 of the Emergency Planning and Community Right-to-Know Act ([EPCRA](#)).
 - The Tier II form has been updated—effective as of January 1, 2014—for inventory forms that were due March 1, 2014.



- **Hazardous Waste**

- On January 15, the EPA issued a [final rule](#) upgrading the current paper-based system of tracking hazardous waste to an electronic one.
- The final rule authorizes the use of e-Manifests to track hazardous wastes under the Resource Conservation and Recovery Act (RCRA).





- **Communication Towers Safety**

- On April 14, OSHA announced a proposed \$21,000 penalty against Optica Network Technologies
- 25-year-old man was performing maintenance when he fell about 50 feet while descending the tower
- See OSHA Fatal Facts “Fall from a Telecommunications Tower:”
<https://www.osha.gov/Publications/OSHA3710.pdf>



- **Communication Towers Safety**

- Over the past 20 years, the industry has experienced an average fatality rate that greatly exceeds that of the construction industry
- In 2013, the industry experienced a dramatic increase in the number of fatalities occurring during communication tower work, with 13 total fatalities.”
- November 2013 – OSHA sends memo to field staff and inspectors regarding cell tower safety
- February 2014 – OSHA sent letter to tower owners regarding safety standards
- OSHA develops Tower Safety webpage
- Request for Information to be issued shortly

- **Heat Illness** - Campaign to Prevent Heat Illness in Outdoor Workers launched May 2014 – “Water, Rest, Shade”

- **Injury and Illness Video** – “We Can Do This”

- **Lawsuit**
 - Against Southwestern Bell on behalf of four employees who received disciplinary action and unsatisfactory performance appraisals for reporting workplace injuries. The company alleged that each employee violated a corporate workplace safety standard; however, OSHA's investigation found that the company's actions were a result of workers reporting their injuries.

 - Against Ohio Bell regarding employee retaliation for reporting workplace illnesses and injuries between 2011-2013 (13 incidents).

- **Improved Tracking of Workplace Injuries and Illnesses**

- **Proposed Rule issued November 2013**

- Rule adds requirements for the electronic submission of injury and illness information employers are already required to keep under existing standards.
- The first proposed new requirement is for establishments with more than 250 employees (who are already required to keep records) to electronically submit the records on a quarterly basis to OSHA.
- The Agency is also proposing that establishments with 20 or more employees, in certain industries with high injury and illness rates, be required to submit electronically only their summary of work-related injuries and illnesses to OSHA once a year.
- The designated industries represent all industries covered by Part 1904 with a 2009 DART rate in the BLS SOII of 2.0 or greater.

- **Improved Tracking of Workplace Injuries and Illnesses**

- Public Hearings were held in January 2014. CWA and unions were heavily represented.
- Supplemental Notice Issued August 14, 2014. The Agency is seeking the following information:

- Are you aware of situations where employers have discouraged the reporting of injuries and illnesses?
- Will the fact that employer injury and illness statistics will be publicly available on the Internet cause some employers to discourage their employees from reporting injuries and illnesses? Why or why not? If so, what practices or policies do you expect such employers to adopt?
- Are you aware of any studies or reports on practices that discourage injury and illness reporting?
- Do you or does your employer currently inform employees of their right to report injuries and illnesses? If so, please describe how and when this information is provided.

- Are there any difficulties or barriers an employer might face in trying to provide such information to its employees? How might an employer best provide this information: orally to the employee, through a written notice, posting, or in some other manner?
- What procedures do you or does your employer have about the time and manner of reporting injuries and illnesses? How do these procedures assist in the collection and maintenance of accurate records? May an employee be disciplined for failing to observe these procedures? If so, what kind of discipline may be imposed?
- Are you aware of any examples of reporting requirements that you consider to be unreasonably burdensome and could discourage reporting? What are they?

- How should OSHA clarify the requirement that reporting requirements are "reasonable and not unduly burdensome"?
- Are you aware of employer practices or policies to take adverse action against persons who report injuries or illnesses?
- Are you aware of any particular situations where an employee decided not to report an injury or illness to his or her employer because of a fear that the employer would take adverse action against the employee? If so, please describe the situation, including the nature of the injury or illness and the reasons the employee had for believing he or she would be retaliated against.
- What kinds of adverse actions might lead an employee to decide not to report an injury or illness? Are there other employer actions that would not dissuade a reasonable employee from reporting an injury or illness?

- OSHA encourages employers to enforce safety rules as part of a well-functioning workplace safety program. Are there any employer practices that OSHA should explicitly exclude under this provision to ensure that employers are able to run an effective workplace safety program?
- What other actions can OSHA take to address the issue of employers who discourage employees from reporting injuries and illnesses?
- Is the fact that retaliation for reporting workplace injuries and illnesses is illegal communicated in your workplace? How? What costs are associated with communicating this information?
- What kinds of existing reporting procedures might be prohibited by this requirement? What costs or other detrimental effects might employers incur if they are prevented from requiring these procedures?

- Do you anticipate any additional costs associated with the enforcement of the prohibition against discrimination through the citation and penalty provisions of the OS Act that would not be incurred if OSHA instead used its authority under section 11(c) of the Act?
- The final rule is expected March 2015

- **Other**

- Distracted Driving Reminder – “employers have a responsibility to protect their workers by prohibiting texting while driving”
- “It is a violation of the OSH Act if employers require workers to text while driving, create incentives that encourage or condone it or structure work so that texting is a practical necessity for workers to carry out their job.”
- The Agency has an initiative aimed at employers, young workers and safety groups to combat distracted driving.
- Website: <https://www.osha.gov/distracted-driving/initiative.html>



- **Other**

- Electric Power Generation Rule – issued final rule April 2014
 - First update to the 40 year old standard.
 - Includes revised approach-distance requirements and adds new requirements to protect workers from electric arcs.
 - General industry and construction standards for electrical protective equipment are also revised under the final rule.

State Legislative & Regulatory Update



- **Arizona**
 - The current Draft De-Minimus General Permit (DMGP) will expire at the end of its five-year term on April 26, 2015. The Arizona Department of Environmental Quality (ADEQ) is starting preparations for reissuing the permit and is now seeking preliminary input from interested parties.

State Legislative & Regulatory Update



- **California**

- **Diesel Vehicles** - Companies operating diesel trucks and buses in the state are required to adhere to the reporting requirements of the California Air Resources Board's Truck and Bus Regulation. The first reporting deadline was January 31.
- **Utility Vaults** – The Utility Vaults Permit under Order 2006-0008-DWQ has expired. It remains in effect until the State Water Board reissues the permit and the reissued permit becomes effective. Comments on the draft permit were due August 1.

State Legislative & Regulatory Update



- **Connecticut**
 - Companies operating in the state need to be aware of the new General Permit for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities that was effective October 1, 2013.
- **Delaware**
 - The Department of Natural Resources and Environmental Control has issued a [final rule](#) regarding aboveground storage tanks that extends the time frame for notifying the department about a retrofit or upgrade from 60 days to one year.

State Legislative & Regulatory Update



- **Florida**

- In March, the Department of Environmental Protection issued a proposed underground storage tank (UST) [operator training rule](#).
- During hours of operation, UST facilities must have at least one certified operator (either a Class A, Class B, or Class C operator) present at the UST facility, except when a UST facility is unmanned.

State Legislative & Regulatory Update



- **Indiana**

- The Department of Environmental Management, Office of Air Quality, has released a nonrule policy document ([Policy No. Air-037-NPD](#)) regarding treatment of emergency stationary internal combustion engines used for emergency demand response and nonemergency uses.

- **Maine**

- The Department of Transportation is looking at revising the Maine Utility Accommodation Rules. Comments were due July 7.

State Legislative & Regulatory Update



- **Michigan**
 - Final Excavation, Shoring and Trenching Rule has been issued.

- **Virginia**
 - Stormwater Discharge Permit from Construction Sites – new 5 year permit issued.

- **Washington**
 - Ladder Safety proposed rule has been issued.

OTHER



- **Ceres**

- On June 19, [Ceres](#) released a [report](#) indicating that 53 companies out of the Fortune 100 have reported collective savings of \$1.1 billion annually from their efforts to reduce greenhouse gas emissions and source more renewable energy. Several telecommunications companies were highlighted in the report:
 - “**AT&T** exceeded its 2012 goal of adding 5 megawatts (MW) of alternative energy from a 2011 baseline of 3.9 MW. They surpassed this target, adding 7 MW of alternative energy, and have now installed 11 MW total as of 2013.
 - **Verizon** already had a target of reducing scope 1 & 2 carbon intensity 50 percent by 2020 from its 2009 baseline. The company has now added a renewable energy target of implementing 10 MW by 2014.”
 - **Sprint** for its commitment to renewable energy.