

ENVIRONMENTAL NEWS & HIGHLIGHTS

October 2015

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This latest **EXCALIBUR** bulletin presents several emerging developments and in-progress initiatives potentially significant to environmental projects regionally and nationally.

Clean Water Rule Halted



On Friday, October 9, 2015, the U.S. Court of Appeals for the Sixth Circuit issued an order halting implementation of the final "Clean Water Rule" published by the U.S. Army Corps of Engineers (Corps) and the USEPA in June of 2015 (80 Fed. Reg. 37,054 (June 29, 2015)). The Clean Water Rule was expected to affect land development across the nation through its redefinition of the geographic scope of the phrase "waters of the United States" ("WOTUS"), which forms the jurisdictional

limits of the Corps' permitting authority under Section 404 of the Clean Water Act.

Multiple state lawsuits have challenged the validity of the rule, by contending that the redefinition of WOTUS is inconsistent with the Clean Water Act and would result in an illegal expansion of the Corps' and EPA's regulatory jurisdiction. The critique of the rule has now been provided by two separate courts. Meanwhile, USEPA responded immediately by stating that it would nonetheless continue to implement and enforce the rule in every state that had not been involved in the case, thereby creating a patchwork of regulatory coverage for the rule and further increasing the confusion surrounding the implementation and enforcement of the new WOTUS definition. [Read More.](#)

Clean-Up Insurance Rate Increases For U.S. Coal Companies

Since the late 1970s, the Office of Surface Mining Reclamation & Enforcement has permitted U.S. coal companies to "self-bond" and thereby secure discounts on private insurance secured for the cleanup of old coal mines in the event of a future bankruptcy. Under the current regulations, self-bonded permittees must maintain a tangible net worth of at least \$10M, possess fixed assets in the U.S. of at least \$20M, and either meet certain financial ratios or have an "A" or higher bond rating. Some states excluded the self-bond option historically, but in light of declining financial balance sheets across the coal mining industry, the



viability and advisability of this self-bonding option is being questioned at the federal level. Were the “self-bond” option to prove unavailable for an individual firm or for all firms across the coal mining industry, presumably the private insurance discounts previously enjoyed would end and those firms with private clean-up insurance would face paying full market rates. [Read More.](#)

New Pharmaceutical Hazardous Waste Rules for Healthcare Industry



In 2008, EPA proposed to add pharmaceuticals to the types of hazardous wastes that could be managed as universal wastes. In response to comments received on that 2008 proposed rule, the Agency elected to substitute developing an alternative proposed rule providing new standards for the management/disposal of pharmaceutical hazardous wastes generated by healthcare-related

facilities. On 9/1/15, the USEPA published its new proposed rules for the management of hazardous waste pharmaceuticals by healthcare facilities, including hospitals, clinics, retail stores with pharmacies, and reverse distributors that generate hazardous waste. The first proposed rule seeks to improve hazardous waste labeling and emergency planning/preparedness. The USEPA expects this proposed rule will prevent the flushing down sinks and toilets of more than 6,400 tons of hazardous waste pharmaceuticals. The second proposed rule provides greater flexibility in how hazardous waste pharmaceuticals are managed onsite by the generator. These new proposed rules pertain only to those pharmaceutical wastes that meet the current definition of a Resource Conservation and Recovery Act waste. The comment period ends on 11/24/15. [EPA Rule Summary.](#)

New Environmental Standards For PA Oil and Gas Well Sites

The Pennsylvania Department of Environmental Protection (PADEP) has issued its draft final revisions/amendments to the Chapter 78 regulations relating to Oil and Gas Exploration and Production Activities. The amendments modify/update existing requirements related to surface activities associated with oil and gas well development, including containment of regulated substances, waste disposal, site restoration, and reporting releases. There are also new provisions for borrow pits, oil and gas gathering pipelines, identification of abandoned wells, and the road-spreading of brine. In addition, new provisions are proposed for



unconventional gas wells dealing with identifying the impacts to public resources, standards for freshwater and wastewater impoundments, well site containment systems, wastewater processing, and water management plans. Specific changes would: (i) require operators to demonstrate that streams and wetlands will be protected if the edge of the well pad is within 100 feet of the resource; (ii) require centralized wastewater impoundments to be permitted under the Residual Waste Regulations (with existing impoundments upgraded or closed within 3 years of the effective date); (iii) expand the review of impacts

that operators must conduct to include public resources, such as schools, playgrounds and approved wellhead protection areas; (iv) require operators to identify active, inactive, orphan and abandoned wells and submit a plan report to PADEP at least 30 days prior to drilling; and (v) modernize notification and report submission to improve efficiency and ease reporting. Previously proposed provisions for noise mitigation and centralized storage tanks for wastewater were not included in the final rulemaking. [Read More.](#)

New Federal Pipeline Rules Proposed



On 10/1/15, the U.S. Transportation Department proposed new federal rules for pipelines that carry oil and other hazardous liquids (more than 200,000 miles of pipelines). Included in the proposal are new inspection requirements for pipelines in rural areas; increased use of leak detection systems; and a requirement for companies to more closely analyze inspection results. Left out were requirements for the industry to install more automatic or remote-controlled valves that can quickly shut down a line when spills occur. US DOT officials plan to address the valve issue separately. The new rules require companies to re-check lines following floods and hurricanes, and submit information about leaks and other problems on thousands of miles of smaller lines that fall outside of existing regulations. [More information.](#)

New Emission Control Technology (RACT) Regulations Proposed

A Pennsylvania Department of the Environment (PADEP) proposed “RACT II” regulation will impose more stringent emission limits on sources of nitrogen oxides (NOx) and volatile organic compounds (VOC), which are classified as ozone “precursor” pollutants.

This “RACT II” follows the similar “RACT I” regulation issued in 1995 that required major NOx/VOC sources to identify “case-by-case” RACT Plans. Facilities affected by the new “RACT II” regulations are those major source facilities with the potential to emit over 100 tons per year of NOx or over 50 tons per year of VOC. The proposed RACT II regulation includes presumptive RACT requirements (emission limits, work practice standards, recordkeeping, reporting, etc.) for combustion units and turbines; incinerators/thermal oxidizer/catalytic oxidizer air pollution control units; internal combustion engines; municipal solid waste landfills; municipal waste combustors; and cement kilns.

Sources with the potential to emit greater than 5 tons per year of NOx or 2.7 tons per year VOCs that are not regulated by the presumptive RACT requirement must propose case-by-case NOx and/or VOC emission limits within 6 months of the effective date of the rule or within 6 months of becoming a major source. The case-by-case RACT evaluation involves assessing the cost effectiveness of installing an air pollution control device. [Read More.](#)



New Fence Line Monitoring Rule for Petroleum Refineries



The USEPA recently issued updated air pollution standards for petroleum refineries that include a first-of-its-kind rule requiring at-the-fence line monitoring to control air emissions. The new rule also strengthens emission controls for flares, pressure relief devices, storage tanks, and delayed coker operations. When fully implemented, the Agency expects the rule will reduce toxic air pollutant and volatile organic compound emissions by 5,200 tons

per year and 50,000 tons per year, respectively. The EPA also expects the new standards will reduce greenhouse gas emissions to an equivalent of approximately 660,000 tons per year of carbon dioxide. The rule requires continuous monitoring of benzene concentrations at the fence line of refinery facilities. If the established standards are exceeded, corrective actions are to be taken. The required fence line monitoring devices must encircle the facility and have a capability of detecting benzene at very low levels. The monitoring data will be posted on the USEPA's website. Other requirements in the rule specify a comprehensive program of process changes and pollution prevention measures for flares and pressure relief devices. [Read More.](#)

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