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Environmental Update

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DEP Appoints Deputy Secretaries for Regulatory Programs and Water Policy and the Environment

Contact: Richard Brightman

Jeff Littlejohn has been appointed as Deputy Secretary for Regulatory Programs, to oversee the Divisions of Waste Management, Air Resources Management, and Water Resource Management/Environmental Assessment and Restoration, and the Siting Coordination Office. Mr. Littlejohn is a Professional Engineer most recently with Isiminger & Stubbs Engineering in Tallahassee, Florida.

Melissa Meeker has been appointed as Deputy Secretary for Water Policy and the Environment. This is a new position that will oversee administrative services, numeric nutrient criteria,

coordination/oversight over water management districts, and everglades restoration. Previously Ms. Meeker served as DEP's Southeast Florida District Manager, on the South Florida Water Management District Board, and on the Environmental Regulations Commission.

Important EPA Corps Draft Guidance Leaked

Contact: Timothy M. Riley

In February, *InsideEPA*, an EPA-focused news service, released a leaked copy of a December 2010 draft guidance document addressing how the EPA and Army Corps of Engineers will identify waters subject to jurisdiction under the Clean Water Act (CWA). If approved, the guidance will supersede similar Bush-era guidance documents interpreting the Clean Water Act, as well as previous interpretations of the seminal Supreme Court decisions, *Solid Waste Agency of Northern Cook County [SWANCC] v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001), and *United States v. Rapanos*, 547 U.S. 715 (2006).

As anticipated, the EPA and Corps propose to significantly expand the number of waters found to be subject to CWA jurisdiction. The EPA and Corps note, however, that the scope of jurisdiction will still not be as extensive as it was prior to the *SWANCC* and *Rapanos* decisions. According to the draft guidance, the prior 2008 *Rapanos* guidance memorandum interpreted Justice Kennedy's "significant nexus" test too narrowly, resulting in fewer waterbodies being subject to CWA jurisdiction. The guidance is intended to provide a "more faithful interpretation" of the "significant nexus" standard, one that "is more consistent with Justice Kennedy's opinion and the science of aquatic ecosystems."

On February 19th, the U.S. House of Representatives passed House Resolution 1, a Fiscal Year 2011 continuing appropriations act, which includes a provision preventing EPA from expending any funds implementing the guidance document. The resolution is pending in the Senate. A copy of the 2010 Draft Guidance can be found at: http://www.westernroundtable.com/Portals/0/Docs/lands/water/2011/draft_wous_guid_final_rev1ew.pdf.

EPA Seeks Public Comment Regarding Review of Federal Regulations

Contact: Brian Accardo

In response to an Executive Order directing all federal agencies to conduct a retrospective review of their regulations, **EPA is accepting public comment through March 20, 2011**, on how the agency should conduct the review and whether any existing rules are no longer justified or necessary. 76 Fed. Reg. 9988 (Feb. 23, 2011). This public comment period provides industry with an opportunity to explain to EPA why certain regulations should be modified, streamlined, expanded, or repealed. An underlying purpose of the review is to respond to widespread concerns regarding unwarranted regulatory impediments to job growth.

EPA Proposes CO NAAQS, and Monitoring Revisions

Contact: Brian Accardo

On February 11, 2011, EPA published its proposed rule regarding National Ambient Air Quality Standards (NAAQS) for carbon monoxide (CO). 76 Fed. Reg. 8158. The proposed rule would retain the existing NAAQS for CO, but would revise the requirements for the ambient CO monitoring network. The existing primary standards are 9 parts per million (ppm) measured over 8 hours, and 35 ppm measured over 1 hour. There is no secondary NAAQS for CO.

The proposed CO monitoring requirements would require states to install CO monitors near highly trafficked roads in certain urban areas. In Florida, four urban areas (Miami-Ft. Lauderdale-Pompano Beach; Tampa-St. Petersburg-Clearwater; Jacksonville; and, Orlando-Kissimmee) would require monitors. Currently, no urban area in Florida is designated as nonattainment for the CO NAAQS.

EPA is accepting public comment on the proposed rule through April 12, 2011. EPA is under court order to issue a final rule by August 12, 2011.

EPA Finalizes, and Announces Reconsideration of, Boiler MACT

Contact: Brian Accardo

On February 21, 2011, EPA finalized NESHAPs for industrial, commercial, and institutional boilers located at area and major source facilities, and amendments to the NSPS for commercial and solid waste incineration units. The final rules should be published soon in the *Federal Register*, and may be viewed at <http://www.epa.gov/airquality/combustion/actions.html>.

EPA finalized these rules by the court-ordered deadline; EPA asked the court for a several month extension, but was only granted 30 days. EPA believes, however, that further public review of the final rules is warranted due to the “difficult technical issues” raised during commenting on the proposed rule. Therefore, in a separate action, EPA announced its intent to reconsider certain portions of the new emission standards. The agency is in the process of developing a proposed reconsideration notice that identifies the specific elements of the rules for which it believes further public comment is appropriate and any provisions that it proposes to modify after more fully evaluating the data and comments already received.

EPA Extends GHG Reporting Deadline

Contact: Brian Accardo

On March 1, 2011, EPA announced its intent to extend the reporting deadline for calendar year 2010 greenhouse gas emissions from March 31, 2011, to a date not yet determined (at least several months). EPA is in the process of finalizing its online electronic reporting platform, and does not expect to have the final reporting tool available until this summer.