

Hopping Green & Sams

Attorneys and Counselors

Environmental Update

• P.O. Box 6526 • Tallahassee, FL 32314 • (850) 222-7500 • <http://www.hgslaw.com/> •

May 18, 2011

INSIDE THIS EDITION

SCOTT MAKES APPOINTMENTS TO WMD GOVERNING BOARDS	1
MEEKER NEW EXECUTIVE DIRECTOR OF SFWMD	2
DEP DIVISION OF SOLID WASTE HOLDING SERIES OF INTERACTIVE WEBINARS	2
DEP LEADERSHIP CHANGES	3
CORPS REISSUES SAJ-90	3
EPA AND CORPS PUBLISH DRAFT CWA GUIDANCE.....	3
EPA DELAYS EFFECTIVE DATES FOR BOILER MACT AND CISWI RULE.....	4
EPA REPEALS 1997 PM₁₀ SURROGATE POLICY FOR FEDERAL PSD PERMITS; POLICY SUNSETS IN FLORIDA.....	4



Scott Makes Appointments to WMD Governing Boards

Contact: Amelia Savage

On April 21, 2011, Lowry “Lad” Daniels and Charles “Chuck” Drake were appointed to the Governing Board of the St. Johns River Water Management District. Lad Daniels is the president of Daniels and Associates and succeeds Michael Ertel. Chuck Drake is a hydrogeologist and senior manager for Tetra Tech Inc and succeeds Hersey Huffman.

In addition, on April 26, 2011, Albert Joeger, H. Paul Senft and Doug Tharp were re-appointed to the Southwest Florida Water Management District. Albert Joeger is the founder and

president of The Conservation Foundation of the Gulf Coast. H. Paul Senft is a self-employed business and insurance consultant. Doug Tharp is a retired industrial engineer.

Finally, on May 10, 2011, Daniel DeLisi, James “Jim” Moran, Daniel O’Keefe, Timothy Sargent, and Glenn Waldman were appointed to the Governing Board of the South Florida Water Management District. DeLisi is a planning and engineering consultant who is appointed to represent Collier, Lee, Hendry, and Charlotte counties. Moran is an attorney and is appointed to represent Palm Beach County. O’Keefe is an attorney with Shutts and Bowan LLP and is appointed to represent Glades, Okeechobee, Highlands, Polk, Orange, and Osceola counties. Sargent is the director of tax and operating company chief financial officer of Huizenga Holdings Inc. and is appointed as an at-large member. Waldman is an attorney and is appointed to represent Broward County.

All were appointed for terms beginning on the date of appointment and ending on March 1, 2015 except for O’Keefe, whose appointment ends March 1, 2012, and Sargent and Waldman, whose appointments end March 1, 2014. Senate confirmation will be required for all ten.

Meeker New Executive Director of SFWMD

Contact: Amelia Savage

On May 12, 2011, the Governing Board of the South Florida Water Management District (SFWMD) announced the appointment of Melissa L. Meeker as the new Executive Director of SFWMD. Meeker replaces Carol Whele, who resigned effective April 29, 2011. Meeker earned her Bachelor of Science degree in Biology from Palm Beach Atlantic University and her Master of Science degree in Environmental Resource Management from the Florida Institute of Technology. In the past, she served in a variety of roles at both SFWMD and the Florida Department of Environmental Protection (DEP), as well as working at an international environmental consulting firm and operating her own strategic consulting business. Most recently, Meeker served as DEP’s Deputy Secretary for Water Policy and Ecosystem Projects. Meeker’s appointment will begin on June 1, 2011.

DEP Division of Solid Waste Holding Series of Interactive Webinars

**Contact: Mike Petrovich
Jake Cremer**

DEP’s Division of Solid Waste announced recently it will be holding a series of quarterly webinars. The purpose of the interactive online sessions is to discuss issues, build consensus, and clarify policy. The Division has expressed particular interest in inconsistencies in program policy and implementation across the state. The public is invited to participate by viewing the webinars and by submitting questions and concerns. HGS plans to monitor these meetings and to discuss client concerns with the Division, as appropriate.

DEP Leadership Changes

**Contact: Mike Petrovich
Jake Cremer**

DEP Deputy Secretary Jeff Littlejohn has named several new division directors. Andrew Bartlett is the new director of the Division of Environmental Assessment and Restoration (DEAR). Mr. Bartlett was formerly with the U.S. Environmental Protection Agency, where he worked in surface water and drinking water quality programs. Mark Thomasson, P.E., is the new director of the Division of Water Resource Management (DWRM). Mr. Thomasson worked for a number of private sector firms, including most recently Genesis Group as Associate Vice President and Director of Stormwater and Site Development Divisions. Jorge Caspary is the new director of the Division of Waste Management (DWM). Mr. Caspary moves to DEP from ARCADIS U.S.; he was formerly with the Division of Waste Management for 13 years. Finally, the Deputy Secretary for Environmental Policy and Ecosystem Management position is vacant again as a result of Melissa Meeker being named Executive Director of the South Florida Water Management District (SFWMD).

Corps Reissues SAJ-90

Contact: Amelia Savage

On April 5, 2011, the Jacksonville District of the United States Army Corps of Engineers (Corps) reissued regional general permit SAJ-90 which can be used by residential, commercial, and institutional developments in Northeast Florida. SAJ-90 does not apply to tidal wetlands; for non-tidal wetlands to qualify for SAJ-90, they must meet certain criteria such as being in specified agricultural uses or covered by more than 80% exotic vegetation. Applicants must apply to the Corps to use SAJ-90 and must still provide compensatory mitigation for wetland impacts, but the regional general permit obviates the need for a project-specific individual permit by the Corps. SAJ-90 was reissued for an additional 5 years and will expire on April 5, 2016.

EPA and Corps Publish Draft CWA Guidance

**Contact: Susan L. Stephens
Amelia Savage**

On May 2, 2011 the United States Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) published proposed guidance describing how the agencies will identify “waters of the United States” pursuant to the Clean Water Act (CWA). 76 Fed. Reg. 24479. The proposed guidance increases the number of areas that are considered to be waters of the United States and is intended to improve predictability and clarity. When finalized, the guidance will apply to all CWA programs, including § 303 water quality standards; § 311 oil spill prevention and response; § 401 water quality certification; § 402 National Pollutant Discharge Elimination System permits; and § 404 permits for discharges of dredged or fill material. Notably, the draft guidance does not address the regulatory exclusions for waste treatment systems, prior converted cropland, or agriculture. The agencies are seeking public

comment on the guidance which can be found at: <http://water.epa.gov/lawsregs/guidance/wetlands/CWAwaters.cfm>. Comments are due by July 1, 2011, and can be submitted through <http://www.regulations.gov>.

EPA Delays Effective Dates for Boiler MACT and CISWI Rule

Contact: Brian Accardo

EPA has delayed the effective dates for the final rules titled “National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters,” commonly referred to as the “Boiler MACT,” and “Standards of Performance for New Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units,” commonly referred to as the “CISWI Rule.” 76 Fed. Reg. 28662 (May 18, 2011). EPA published these final rules on March 21, 2011; these rules were to take effect on May 20, 2011. This action postpones the effectiveness of the rules “until the proceedings for judicial review of these rules are complete or the EPA completes its reconsideration of the rules, whichever is earlier.”

Notably, EPA decided to delay the effective date of the Boiler MACT and CISWI Rule pursuant to the federal Administrative Procedures Act (“APA”), rather than the Clean Air Act (“CAA”). The APA authorizes EPA to find that justice requires postponing the effective date of a rule when litigation is pending. In contrast, the CAA authorizes EPA to stay the effectiveness of a rule for three months if the Administrator has convened a proceeding to reconsider the rule.

EPA Repeals 1997 PM₁₀ Surrogate Policy for Federal PSD Permits; Policy Sunsets in Florida

Contact: Brian Accardo

On May 18, 2011, EPA repealed the 1997 “grandfather” provision for PM_{2.5} under the federal Prevention of Significant Deterioration (“PSD”) permit program, which allowed certain facilities to satisfy PSD requirements for PM_{2.5} simply by satisfying the requirements for PM₁₀. 76 Fed. Reg. 28646. The surrogate policy was necessary at that time because various technical problems made it infeasible to estimate PM_{2.5} and conduct the analyses necessary to demonstrate compliance with the applicable PM_{2.5} requirements under the PSD program. Now, EPA will review federal PSD applications directly against the PM_{2.5} requirements or, alternatively, use a surrogate approach for PM_{2.5} (other than the 1997 PM₁₀ Surrogate Policy) that is consistent with the applicable case law.

For permits issued under PSD programs implemented by the states as part of their approved State Implementation Plans (“SIPs”), such as permits issued by DEP, the 1997 PM₁₀ Surrogate Policy ended on its May 16, 2011 sunset date.