

in the news

Energy and Utilities



January 2014

2014 Top Energy & Environmental
Regulatory Issues

In this Issue:

Environmental Protection Agency NAAQS	1
Tier 3 & 4 Standards Stormwater Control Hydraulic Fracturing Regulation Clean Water Act Expansion Renewable Fuels Standard	2
OSHA Alignment Carbon Capture Other Issues Department of Energy (DOE)	3
Department of the Interior (DOI) Nuclear Regulatory Commission (NRC) Department of Transportation (DOT)	4
OSHA For More Information	5

Although Congress is expected to remain gridlocked in 2014, federal agencies will have a very full agenda in the year ahead. President Obama appears to have given up on Congress, and continues to look to his own administration to implement new policies and establish his legacy. Below is list of top-tier issues that might be of interest to current clients, as well as potential clients with an interest in energy and environmental policy.

Environmental Protection Agency (EPA)

U.S. EPA has a full plate with more than 100 items on its agenda, including high-profile regulations tightening carbon emissions from both new and existing power plants. The rule for new power plants—proposed last fall—is expected to be completed in 2014. The proposed rule for existing power plants is expected in June 2014, and the final rule in June the following year.

NAAQS

U.S. EPA also plans for a long-awaited review of National Ambient Air Quality Standards (NAAQS) for ozone pollution. U.S. EPA has said it is still performing analytical work, and likely won't propose a rule until late 2014. The previous attempt to tighten the ozone standards was stopped by the White House in 2010 prior to the midterm elections that November. The



agency is also considering a NAAQS for lead, which is due to be proposed in July 2014. An implementation rule for the 2012 NAAQS for fine particulate matter (PM 2.5) is scheduled for May of this year.

Tier 3 & 4 Standards

U.S. EPA also plans to finalize its Tier 3 rule lowering the level of sulfur in gasoline in February. The rule was expected to be done by the end of 2013, but a high volume of comments will push its completion into this year.

Tier 4 emission standards are part of an initiative by U.S. EPA to reduce emissions and air toxics from non-road diesel engines. Some construction companies are already asking Congress to weigh in with U.S. EPA to recognize the need for flexibility. Some equipment manufacturers are having problems obtaining Tier 4 compliant engines in a timely manner and have had concerns about how it might affect their production schedules.

Stormwater Control

U.S. EPA has said stormwater discharges are “a leading source of impairment and a fast growing water quality concern.” Currently 800,000 acres of land are developed each year, and development frequently covers the landscape with impervious surfaces such as pavement and roofs, and other practices that cause additional runoff. U.S. EPA is considering a range of regulatory and non-regulatory options to reduce the pollutant loads delivered by storm water discharges to receiving waters and improve water quality and aquatic ecosystem integrity, and to protect water quality from certain currently unregulated storm water discharges.

Hydraulic Fracturing Regulation

U.S. EPA also anticipates publishing an advanced notice of proposed rulemaking (ANOPR) in August 2014 under the Toxic Substances Control Act's sections 8(a) and 8(d) to obtain data on chemical substances and mixtures used in hydraulic

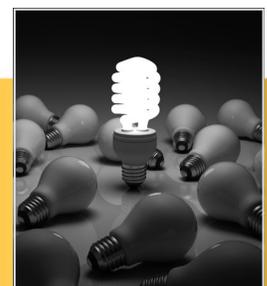
fracturing. U.S. EPA will “initiate a stakeholder process to provide input on the design and scope of the TSCA reporting requirements that would be included in a proposed rule” and anticipates states, industry, public interest groups and members of the public will participate in the process.

Clean Water Act Expansion

After a series of U.S. Supreme Court decisions, the issue of what constitutes “waters of the United States” has been in dispute as U.S. EPA seeks to expand its regulation of wetlands. Developers and agricultural interests, among others, have said that U.S. EPA is attempting to improperly broaden its powers to regulate lands that should not be classified as wetlands. U.S. EPA has already started the process of declaring that it has the power to regulate streams, brooks and small ponds—asserting that regulating smaller bodies of water is necessary to protect larger rivers and lakes downstream.

Renewable Fuels Standard

The agency's controversial proposal to scale back renewable fuel targets for the first time as part of the 2014 renewable fuel standard could be finalized in February. Under the current proposal, U.S. EPA will require that refiners blend 15.21 billion gallons of renewable fuels into petroleum-based gasoline and diesel next year, a modest step back from previous targets. The Agency will also have to begin developing targets for 2015 throughout the year as well.





OSHA Alignment

For the first time, U.S. EPA plans to propose (by July 2014) a rule that would align worker protection requirements in significant new use rules with the Occupational Safety and Health Administration's (OSHA) latest requirements. The proposed rule would update 1990 TSCA regulations that addressed worker protection and hazard communication requirements the agency can impose in significant new use rules (SNURs). These rules address chemicals newly introduced to the market as well as new uses of existing chemicals and compounds U.S. manufacturers are phasing out of production. The revisions would be designed to align U.S. EPA's requirements with regulations that OSHA issued on March 26, 2012.

OSHA's regulations incorporate hazard communication standards of the United Nations' Globally Harmonized System for Classification & Labeling of Chemicals (GHS). OSHA revised its criteria for classifying physical and health hazards, adopted standardized labeling requirements and required a specific, standardized order of information on safety data sheets (SDS).

Carbon Capture

On January 3, 2014, U.S. EPA published regulations designed to remove obstacles for the use of carbon capture and sequestration (CCS) technology—necessary for coal plants to meet proposed GHG emissions standards. The rule also clarifies that U.S. EPA will not deem sequestration a waste management activity, which would subject the practices to other regulations. The agency also issued draft guidance explaining the process for transitioning wells used to inject carbon dioxide for oil-and-gas development into wells used for CCS.

Other Issues

The agency may take action to increase oversight of uranium extraction facilities and radon emissions from conventional uranium milling facilities.

U.S. EPA could finally complete a rulemaking on the disposal of coal combustion waste material (ash). By court order, U.S. EPA is scheduled to file a timeline for completion in the coming weeks.

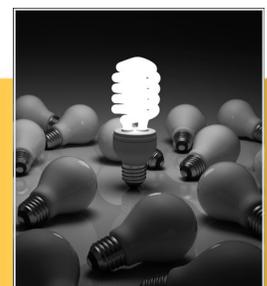
U.S. EPA is also working on a series of water quality rules: the National Primary Drinking Water Regulations for Lead and Copper: Regulatory Revisions; the Water Quality Standards Regulatory Clarifications; the National Pollutant Discharge Elimination System (NPDES) Application and Program Updates Rule; and the National Primary Drinking Water Regulations: Group Regulation of Carcinogenic Volatile Organic Compound.

Department of Energy (DOE)

The Energy Department is considering setting revised or first-time energy efficiency standards for wine chillers, residential dehumidifiers, residential boilers, and beverage vending machines. Secretary Moniz has vowed to accelerate the pace at which the department issues efficiency standards that set strict requirements on how much energy certain appliances can use.

DOE expects to finalize a number of proposed energy efficiency standards in 2014, including ones for walk-in coolers and walk-in freezers, commercial refrigeration equipment, and automatic commercial ice makers.

DOE is also retrospectively analyzing three rulemakings: efficiency standards for battery chargers and





external power supplies, procedures to obtain a waiver from certain testing requirements, and potential identification of alternative methods to rate appliance efficiency and determine compliance with applicable standards.

Department of the Interior (DOI)

The Interior Department plans to establish a competitive bidding process for solar and wind energy projects. The amended regulations planned by May 2014 for commercial solar and wind energy development on federal lands would establish competitive bidding procedures for sites within designated leasing areas, would define qualifications for potential bidders, and would structure the financial arrangements necessary for the process. BLM has historically processed applications on a first-come-first-served basis, a process the agency has said stifles competition and has led to bureaucratic delays. An NOPR was issued in late 2011.

The Office of Surface Mining Reclamation and Enforcement will largely focus its regulatory agenda efforts on stream protection and coal combustion. The stream protection notice of proposed rulemaking (NOPR), which should be published in August 2014, would revise a 2008 rule that allowed dumping of coal mine waste near streams. The rule has been on the Obama administration's agenda since 2009 due to two lawsuits by environmental groups.

An NOPR is also scheduled to be published in May 2014 regarding coal ash. The rule will regulate some states' use of coal mines—especially depleted mines—for coal waste disposal or use of the waste in site remediation.

Other high-profile actions include the finalization of BLM's sweeping hydraulic fracturing regulations, targeted for May 2014. Proposed last May, the regulations would require operators to disclose the chemicals used in hydraulic fracturing and demonstrate plans to maintain well-bore integrity and the management of flowback water.

BLM is also still considering a new onshore oil and gas order that would establish limits for the venting and flaring of

natural gas. The order would address the escape of methane during natural gas production. A proposed rule is scheduled for August 2014.

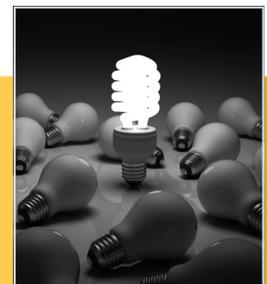
Nuclear Regulatory Commission (NRC)

The Nuclear Regulatory Commission is developing about a dozen proposed rules and eight final rules. On the safety front, NRC is working through a host of regulations to update U.S. reactors' plans for withstanding flooding and severe earthquakes. The rules reflect lessons from the 2011 Fukushima nuclear disaster in Japan. NRC has said all top-tier actions stemming from the disaster should be finished by the end of 2016.

The commission issued an NOPR last March, dubbed the "station blackout" rule, to ensure power-hungry nuclear plants in the United States have the right strategies or equipment on- and off-site to cool a reactor's core and hot, spent fuel in nearby pools for an indefinite amount of time if outside power is cut. Comments on the proposed rule were due May 4, 2013.

Department of Transportation (DOT)

The 2012 transportation law, MAP-21 requires the Pipeline and Hazardous Materials Safety Administration (PHMSA) to set new benchmarks for the evaluation and approval of special permits for the transportation of chemicals and other hazardous materials. The agency will





also consider stricter safety rules for the transportation of hazardous material by rail and regulatory changes that cover liquids transported in onshore pipelines.

DOT is also moving forward with the 2nd phase of a rule to alert consumers about the benefits of alternative fuel vehicles. DOT is required to raise awareness about hybrid and electric vehicles under 2007's EISA. The change would require alternative fuel vehicles to display a special label and include updated energy efficiency information in the cars' owner's manuals.

OSHA

The Occupational Safety and Health Administration has come under fire from safety groups, who say it is dragging its feet on long-sought standards for combustible dust. Citing scores of deaths and more than 700 injuries since the 1980s, OSHA began work on a rule to regulate the dust in 2009, but has not yet completed the process. The agency has set spring of 2014 as the target to release a proposed rule.

For More Information



If you have specific questions related to this Alert, please contact:

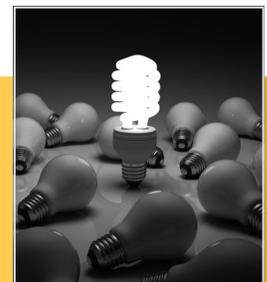
- [Tracy Hammond](#) | 202.626.8322 | thammond@polsinelli.com
- [Andy Wright](#) | 202.626.8318 | awright@polsinelli.com
- [Christopher E. Erker](#) | 314.622.6679 | cerker@polsinelli.com

To contact another member of our Energy and Utilities law team, click [here](#) or visit our website at www.polsinelli.com > [Industries](#) > [Energy and Utilities](#) > [Related Professionals](#).

To learn more about our Energy and Utilities practice, click [here](#) or visit our website at www.polsinelli.com > [Industries](#) > [Energy and Utilities](#).

To contact another member of our Environmental and Natural Resources law team, click [here](#) or visit our website at www.polsinelli.com > [Industries](#) > [Environmental and Natural Resources](#) > [Related Professionals](#).

To learn more about our Environmental and Natural Resources practice, click [here](#) or visit our website at www.polsinelli.com > [Industries](#) > [Environmental and Natural Resources](#).





About Polsinelli

real challenges. real answers.SM

Serving corporations, institutions, entrepreneurs, and individuals, our attorneys build enduring relationships by providing legal counsel informed by business insight to help clients achieve their objectives. This commitment to understanding our clients' businesses has helped us become the fastest growing law firm in the U.S. for the past five years, according to the leading legal business and law firm publication, *The American Lawyer*. With more than 700 attorneys in 18 cities, we work with clients nationally to address the challenges of their roles in health care, financial services, real estate, life sciences and technology, energy and business litigation.

The firm can be found online at www.polsinelli.com.

Polsinelli PC. In California, Polsinelli LLP.

About this Publication

If you know of anyone who you believe would like to receive our e-mail updates, or if you would like to be removed from our e-distribution list, please contact Kim Auther via e-mail at KAuther@polsinelli.com.

Polsinelli provides this material for informational purposes only. The material provided herein is general and is not intended to be legal advice. Nothing herein should be relied upon or used without consulting a lawyer to consider your specific circumstances, possible changes to applicable laws, rules and regulations and other legal issues. Receipt of this material does not establish an attorney-client relationship.

Polsinelli is very proud of the results we obtain for our clients, but you should know that past results do not guarantee future results; that every case is different and must be judged on its own merits; and that the choice of a lawyer is an important decision and should not be based solely upon advertisements.

Polsinelli PC. In California, Polsinelli LLP.

