Bloomberg BNA

Daily Environment Report™

VOL. 15, NO. 3 TUESDAY, JANUARY 6, 2015

HIGHLIGHTS

McConnell Says Senate Will Target Waters of U.S. Regulation

New Senate Majority Leader McConnell promises to go after a proposed Clean Water Act jurisdiction rule this year, including it in an ever-expanding list of rulemakings Republicans plan to stop or impede. At issue is a joint proposed rule from the EPA and the Army Corps of Engineers that would clarify the scope of the Clean Water Act's jurisdiction over U.S. waters and wetlands. Republicans and some Democrats have called the proposal a radical expansion of the agency's authority and warned it could cripple agricultural, ranching and other industries. **A-3**

Federal Coordination Falls Short on Rail Spills, EPA Official Says

Federal transportation regulators need to coordinate better with environmental officials and others in preparing for accidents involving crude oil rail transport, says northern Michigan's on-scene response coordinator for EPA Region 5. The EPA, the Coast Guard and the National Oceanic and Atmospheric Administration are ''always working on tightening up our working relationships,'' but the Department of Transportation and its subsidiary agencies are ''not in the game,'' Ralph Dollhopf tells the 25th annual ''No Spills'' conference in Mount Pleasant, Mich. The DOT agencies also lack resources and are heavily influenced by lobbyists, he says. **A-1**

Export Limits Among Amendments Senate Democrats Seek for Keystone

A measure that would bar the export of oil and products refined from crude oil flowing through the Keystone XL pipeline is among the amendments Senate Democrats plan to offer to legislation that would approve the Canada-to-Texas project, according to Sen. Schumer. The amendment is part of a counterattack planned by Democrats that includes measures to require spending on clean energy, prohibit a state from allowing a foreign company to use eminent domain to build the pipeline and require steel and other construction materials used for the pipeline to be American. **A-5**

Ninth Circuit Urged to Review Aerial Disposal Issue in Superfund Case

The U.S. Court of Appeals for the Ninth Circuit should accept an interlocutory request to consider Superfund liability for aerial disposal of hazardous substances, an issue no court has addressed ''head-on,'' a federal district court rules. The Ninth Circuit should consider how the Resource Conservation and Recovery Act's definition of ''disposal'' is to be interpreted under the Comprehensive Environmental Response, Compensation and Liability Act, the U.S. District Court for the Eastern District of Washington says. ''In over 30 years of CERCLA jurisprudence, no court has impliedly or expressly addressed the issue,'' the district court says. **A-4**

California Governor Proposes Increasing Renewable Portfolio Standard

California Gov. Brown proposes increasing the state's 33 percent renewable portfolio standard to 50 percent over the next 15 years and cutting petroleum

ALSO IN THE NEWS

CHEMICALS: Companies and regulators looking for ways to reduce or eliminate uses of a chemical of concern should consider focusing first on the function the chemical serves, according to a new paper. **A-9**

HAZMAT TRANSPORT: The Pipeline and Hazardous Materials Safety Administration will publish a final rule harmonizing domestic rules with international standards for transport of various hazardous materials by air, ship and other methods, and it will take effect retroactively starting Jan. 1. **A-2**

WETLANDS: Summary judgment is upheld against two North Carolina farmers who claimed the USDA impermissibly denied their eligibility for farm program benefits, based on their failure to appeal a determination that a parcel contained 38 acres of wetlands. **A-6**

ENERGY: Exelon Corp., the biggest U.S. owner of nuclear reactors, needs to almost double power prices to keep a New York plant running in a development that promises to show just how far regulators will go to keep uneconomic plants operating. **A-7**

ENDANGERED SPECIES: A federal appeals court affirms Forest Service approval of an Idaho project to improve the Little Slate Creek Watershed. **A-3**

 ISSN 1060-2976

HIGHLIGHTS

Continued from previous page

use in cars and trucks in half over the same period. He also calls for making heating fuels cleaner and doubling the efficiency of existing buildings. Brown announces the new ambitious climate policy goals in the inaugural address and state of the state message after being sworn in for an unprecedented fourth term. **A-8**

Natural Gas Pipeline Permitting Bill Slated for House Floor Action

Legislation that would expedite the permitting for new natural gas pipelines will be brought to the floor next week, Mike Long, a spokesman for House Majority Leader McCarthy tells Bloomberg BNA. The bill, the Natural Gas Pipeline Permitting Reform Act, would establish statutory deadlines for the Federal Energy Regulatory Commission and federal resource agencies to approve permits for constructing new interstate natural gas pipelines. **A-4**

California Approves Final Rules for Oil, Gas Well Stimulation

California's Office of Administrative Law approves permanent regulations for oil and gas well stimulation activities, including hydraulic fracturing, required under legislation (S.B. 4) enacted in 2013. Effective July 1, the regulations are designed to protect health, safety and the environment and supplement the state's existing well construction standards, the Department of Conservation's Division of Oil, Gas and Geothermal Resources says. State officials have until July 1 to develop an environmental impact report. **A-9**

EPA Inspector General to Audit Superfund Contracts, Cost Recovery

The EPA Office of Inspector General begins an audit into how the agency oversees contracts with states on Superfund cleanups and whether the agency properly recovers costs associated with them. According to a memorandum, the audit also will examine whether the agency ''properly approves and applies [Superfund state contract] credits and in-kind payments to Superfund sites.'' Superfund state contracts are joint, legally binding agreements between a state or tribe and the EPA that assure the transfer of cost-sharing funds when the agency is leading a Superfund response action. **A-1**

Chesapeake Bay Water Quality Slightly Improved, Foundation Says

Water quality in the Chesapeake Bay and its tidal waters has improved somewhat over the past two years, the Chesapeake Bay Foundation says in its 2014 State of the Bay report. Between 2012 and 2014, the bay's overall water quality has continued to improve, despite the growing population in the 64,000 square-mile watershed, the biennial report says. CBF's overall ecosystem health grade is unchanged from 2012, mainly due to declines in the population of rockfish and blue crabs. **A-11**

Court Says Arizona May Issue Temporary Permit for Leachate

The Arizona Department of Environmental Quality was within its statutory authority to issue an administrative regulation authorizing it to accept and approve applications for a temporary individual aquifer protection permit, a state appeals court affirms. The Arizona Court of Appeals upholds a ruling by the state's district court, rejecting the town of Florence's claim that administrative authorization of temporary permits exceeds the DEQ's authority. **A-10**

Commerce Ruling Would Lower Duties on Solar Products From China

Antidumping duties imposed by the Commerce Department in 2012 on some solar products from China would be lowered if the department affirms preliminary findings in a recent administrative review. The Coalition for Affordable Energy welcomes the proposed lower antidumping duty rate as ''a step in the right direction for the U.S. solar industry,'' while the president of SolarWorld Americas says the preliminary findings do not reflect the actual amount of dumping by Chinese producers. **A-10**

Daily Environment Report

CHAIRMAN:
PAUL N. WOJCIK

CEO AND PRESIDENT:
GREGORY C. MCCAFFERY

VICE PRESIDENT:
KENNETH B. CRUTCHFIELD

DIRECTOR, EHS NEWS: Larry Pearl

MANAGING EDITOR, CHEMICALS:
James A. Stimson

MANAGING EDITOR, WATER:
Greg Henderson

ASSISTANT MANAGING EDITOR:
Jessica Coomes

COPY EDITORS: Susan E. Bruninga, Regina Cline, Rachael Daigle, Michael C. Davis, Jean Fogarty, Susan McInerney, Frank White III, Mark A. Williams

REPORTERS: Anthony Adragna, Patrick Ambrosio, Andrew Childers, Lynn Garner, Alan Kovski, Rachel Leven, Ari Natter, Pat Rizzuto, Amena Saiyid, David Schultz, Dean Scott, Andrea Vittorio, Patricia Ware

LEGAL EDITORS: Lars Hedberg, John Stam, Rebecca Wilhelm

CONTRIBUTING EDITORS: Paul Albergo, Mary Ann Grena Manley, Elizabeth Mansfield

CORRESPONDENTS: Paul Connolly, *Chief;* Terry Hyland, *Asst. Chief;* *Albany,* Gerald Silverman; *Atlanta,* Chris Marr; *Austin,* Paul Stinson; *Boston,* Adrianne Appel, Martha W. Kessler; *Chicago,* Michael J. Bologna; *Cincinnati,* Bebe Raupe; *Denver,* Tripp Baltz; *Houston,* Nushin Huq; *Lansing, Mich.,* Nora Macaluso; *Los Angeles,* Carolyn Whetzel; *New York,* John Herzfeld; *Philadelphia,* Lorraine McCarthy; *Phoenix,* William Carlile; *Raleigh, N.C.,* Andrew Ballard; *Sacramento,* Laura Mahoney; *San Francisco,* Joyce Cutler; *St. Louis,* Christopher Brown; *St. Paul, Minn.,* Mark Wolski; *Seattle,* Paul Shuhovsky; *Washington,* Jeff Day; *Brussels,* Stephen Gardner; *Mexico City,* Emily Pickrell; *Ottawa,* Peter Menyasz; *Rome,* Eric J. Lyman; *Shenzhen, China,* Michael Standaert; *St. Petersburg,* Jenny Johnson; *Tokyo,* Toshio Aritake; *Vancouver,* Jeremy Hainsworth

BNA
1801 South Bell Street
Arlington, VA 22202
Telephone: (703) 341-3000
Fax: (703) 341-1678

Correspondence concerning editorial content should be directed to the Director of ESH News at the address above or by e-mail at lpearl@bna.com.

For customer service, call 800-372-1033, or e-mail customercare@bna.com.

  DEN ISSN 1060-2976

In This Issue

News / *Page A-1*

Regulatory Agenda / *Page D-1*

NEWS

REGULATORY AGENDA

TABLE OF CASES

Documents Available

Copies of documents referenced in this issue are available for a fee ($27 for up to 200 pages) from Research & Custom Solutions. To order, call 800 372-1033; fax 703 341-1643; or e-mail research@bna.com.

News

Hazmat Transport

Federal Efforts Lacking on Responses To Rail Spills, EPA Region 5 Official Says

Federal transportation regulators need to coordinate better with environmental and other officials on preparing for potential incidents involving crude oil transported by rail, said Ralph Dollhopf, northern Michigan on-scene response coordinator for the Environmental Protection Agency's Region 5.

EPA, the Coast Guard and the National Oceanic and Atmospheric Administration are ''always working on tightening up our working relationships,'' holding training exercises and outreach efforts in conjunction with industry, Dollhopf said Jan. 5 at the 25th annual ''No Spills'' conference in Mount Pleasant, Mich. The Department of Transportation and its subsidiary agencies, which are responsible for the transport of oil, are ''not in the game,'' and are lacking in resources and too heavily influenced by lobbyists, he said.

Over the past five years, oil production has ''vastly outpaced and outstripped rail safety and rail safety response regulation,'' Dollhopf said. ''We've got unsafe DOT railcars we're using to get [oil] away from the production areas, aging rail infrastructure, and really poor community and first responder awareness on train routes,'' he said.

First responders in communities along routes shipping Bakken crude ''don't have the resources'' to deal with the large fires that could result from a derailment, and their strategy so far has been to ''get everybody out of the way and let it burn,'' Dollhopf said. ''That's been the approach to every single rail Bakken crude situation we've had.''

The problem is likely to grow as oil production continues to increase, Dollhopf said. ''This is not a flash-in-the-pan type phenomenon,'' he said.

Production-related issues are also a concern, Dollhopf said. A 2014 incident in southeastern Ohio involving a fire at a Statoil production pad pointed out ''response challenges,'' he said. Volunteer fire departments worked on their own, and the Ohio Department of Natural Resources and other agencies regulating the industrial pad ''worked in a vacuum,'' leaving federal and Ohio EPA officials ''to deal with the environmental fallout'' elsewhere, he said.

''It wasn't smooth,'' Dollhopf said of the Ohio incident. ''I would venture to say that in other states, maybe even Michigan, there's not the best coordination potentially'' among various agencies, he said.

In Region 5, planning and preparedness efforts are a priority, Dollhopf said. Mapping projects, training exercises and symposia are ongoing, and a regional response website has recently gone live, he said.

The conference, sponsored by No Spills, a northern Michigan group dedicated to improving preparedness efforts in the event of an oil spill in the Great Lakes, continues through Jan. 7.

BY NORA MACALUSO

To contact the reporter on this story: Nora Macaluso in Lansing, Mich., at nmacaluso@bna.com

To contact the editor responsible for this story: Larry Pearl at lpearl@bna.com

Superfund

EPA Inspector General to Audit Superfund Contract Oversight, Cost Recovery Process

The Environmental Protection Agency's Office of Inspector General has begun an audit into how the agency oversees contracts with states on Superfund cleanups and whether the agency properly recovers costs associated with them.

According to a memorandum released Jan. 5, the audit also will examine whether the agency ''properly approves and applies [Superfund state contract] credits and in-kind payments to Superfund sites.''

Superfund state contracts are joint, legally binding agreements between a state or tribe and the EPA that assure the transfer of cost-sharing funds when the agency is leading a Superfund response action.

The Office of the Inspector General anticipates the audit will result in ''improved efficiency and effectiveness of [Superfund state contract] oversight and cost sharing,'' according to the memorandum, which was sent to Mathy Stanislaus, EPA assistant administrator for solid waste and emergency response.

In preparing for the audit, the inspector general's office requested records of revenue calculations, written policies and procedures on Superfund state contracts, a list of staff responsible for contracts and a record of all active Superfund state contracts in each EPA region.

In May 2007, the EPA updated its regulations for Superfund state contracts under 40 C.F.R Part 35, Subpart O to require a single cooperative agreement for each remedial and removal action. The agency issued the revisions under the Comprehensive Environmental Response, Compensation and Liability Act (84 DEN A-8, 5/2/07).

BY ANTHONY ADRAGNA

To contact the reporter on this story: Anthony Adragna in Washington at aadragna@bna.com

To contact the editor responsible for this story: Larry Pearl at lpearl@bna.com

The new start memorandum on Superfund state contract oversight and fee collection, which is dated Dec. 30 and was released Jan. 5, is available at http://1.usa.gov/1yt0To8.

Hazmat Transport

Final Hazmat Transport Harmonization Rule Will Be Effective Retroactive to Jan. 1

The Pipeline and Hazardous Materials Safety Administration will publish a final rule Jan. 8 harmonizing domestic rules with a number of international safety standards for transport of various hazardous materials by air, vessel and other methods.

The final rule, which will take effect retroactively starting Jan. 1, will alter several parts of the Hazardous Materials Regulations, such as the PHMSA Marine Pollutant List. It also addresses two domestic petitions for rulemaking regarding hazmat passenger notification and segregation requirements for toxic and infectious materials.

Harmonizing international and domestic hazmat transport requirements will reduce business costs and improve safety, with industry expected to see a net benefit of $47 million in the first year alone, the final rule said. The harmonization also will be significant for the foreign trade of chemicals, ''a large segment of the United States economy'' that generated a $6 billion trade surplus in 2000, the rule said.

''The amendments in this final rule are intended to facilitate the safe and efficient transportation of hazardous materials in international commerce, provide clarity to encourage and increase regulatory compliance, and improve the efficacy of emergency response in the event of a hazardous materials incident,'' the rule said.

More than two dozen companies, individuals and trade associations commented on the proposal, which was released in August 2014. Some of the interested parties included the American Chemistry Council, Dow Chemical Co., the Dangerous Goods Advisory Council and the International Vessel Operators Dangerous Goods Association.

Compliance Dates. Companies may comply as early as Jan. 1, 2015, but must comply by Jan. 1, 2016, according to the final rule.

The final rule harmonizes the hazmat regulations with parts of the:

- International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air,
- International Maritime Dangerous Goods Code,
- International Atomic Energy Agency (IAEA) Safety Standards for Protecting People and the Environment,
- IAEA Regulations for the Safe Transport of Radioactive Material,
- 18th Revised Edition of the United Nations Recommendations on the Transport of Dangerous Goods and
- Canadian Transportation of Dangerous Goods Regulations.

PHMSA offered several editorial clarifications in its final rule and listened to industry's concerns regarding compliance dates.

For example, PHMSA altered the proper shipping name for automobile air bags under UN3268 to be ''safety devices, electrically initiated,'' a top priority for Council on Safe Transportation of Hazardous Articles, Inc., according to the group's general counsel Rick Schweitzer.

Schweitzer said the agency was particularly responsive to its request, allowing for a one-year extension for compliance since many companies had already purchased materials with the old shipping name. PHMSA potentially saved companies millions by allowing companies to use these materials through Jan. 1, 2016, he said.

Marine Pollutant Exception. However, the agency didn't make changes that certain industry groups sought. For example, the PHMSA final rule still will include an exemption from hazmat rules for shipments of marine pollutants of up to five liters for liquids and five kilograms for solids, as long as they are appropriately packaged (213 DEN A-10, 11/4/14).

The International Vessel Operators Dangerous Goods Association generally supported the harmonization proposal; however, the group told PHMSA that lack of disclosure requirements for these products could be problematic for carriers as they may still need to disclose the pollutants to the Environmental Protection Agency under its vessels general permit, for example.

PHMSA included the exception that was supported by groups such as the Association of Hazmat Shippers, saying marine pollutants aren't covered in the permit, and this change will be significantly beneficial for shippers.

Dodecene Included. The rule will also modify a Marine Pollutant List to remove one pollutant (''Chlorotoluenes (meta-; para-)'') and to include 62 new pollutants, including dodecene.

The American Chemistry Council said that it is unclear what form of dodecene would be regulated—there are several forms with different chemical properties—and that the chemical wouldn't meet PHMSA's criteria for a marine pollutant.

PHMSA said in its final rule that all entries for the list were thoroughly vetted by the International Maritime Organization and PHMSA. Data from the Group of Experts on the Scientific Aspects of Marine Environmental Protection shows dodecene meets its acute toxicity criteria to be labeled a marine pollutant, the final rule said.

PHMSA will include 17 new adsorbed gases in the Hazardous Materials Table in its final rule, but won't include provisions for transporting adsorbed gases using DOT specification cylinders. While PHMSA agreed with Entegris Inc. and the Council on Safe Transportation of Hazardous Articles Inc. that these provisions should be considered, the agency said it didn't propose it in the notice of proposed rulemaking (165 DEN A-3, 8/26/14).

PHMSA said the agency will continue to allow this type of transport under Special Permit 14237 and will consider codifying these actions through a future rulemaking.

Larry Bierlein, general counsel for the Association of Hazmat Shippers, told Bloomberg BNA that the rulemaking should have been released before Jan. 1, as the rules go into effect internationally Jan. 1, 2015.

Late Release Date. This means if a hazmat shipper does international business, which is common, the shipper must be in compliance with the international rules

  DEN ISSN 1060-2976

on Jan. 1, Bierlein said. If the U.S. doesn't finalize its rules by Jan. 1, it creates compliance confusion and uncertainty for the shipper, he said.

''There's no reason that this couldn't have been out a year ago,'' Bierlein said.

Schweitzer said his members aren't experiencing any problems due to the date of the rule's release.

The United Parcel Service of America Inc. didn't respond to Bloomberg BNA's messages requesting comments. The Dangerous Goods Advisory Council and the American Chemistry Council declined to comment.

BY RACHEL LEVEN

To contact the reporter on this story: Rachel Leven in Washington at rleven@bna.com

To contact the editor responsible for this story: Larry Pearl at lpearl@bna.com

The Federal Register notice is available at https://s3.amazonaws.com/public-inspection.federalregister.gov/2014-30462.pdf.

Endangered Species

Ninth Circuit Affirms Ruling Upholding Idaho Watershed Improvement Project

A federal appeals court affirmed that the Forest Service's approval of an Idaho project to improve the Little Slate Creek Watershed through aquatic habitat restoration, timber harvest and other measures did not violate federal laws (*Alliance for the Wild Rockies v. Brazell*, 2015 BL 79, 9th Cir., No. 14-35050, 1/2/15).

In a Jan. 2 memorandum, the U.S. Court of Appeals for the Ninth Circuit concluded that the Forest Service's decision to implement the Little Slate Project, a 2,598-acre timber thinning sale within a 36,000-acre project area in the 2.2 million-acre Nez Perce National Forest, conformed with the National Forest Management Act, National Environmental Policy Act, Endangered Species Act and Administrative Procedure Act.

In doing so, it affirmed the U.S. District Court for the District of Idaho's November 2013 grant of summary judgment in favor of the Forest Service and the Fish and Wildlife Service.

The district court ruled in November 2013 that the agencies properly analyzed in their biological assessment and biological opinion the impacts the project would have on the bull trout. Specifically, they found that although the project would have minor shorter-term impacts, it would have longer-term benefits for the fish (*Alliance for the Wild Rockies v. Brazell*, 2013 BL 331060, D. Idaho, No. 12-00466, 11/27/13).

The district court also denied in July 2014 Alliance for the Wild Rockies' and Friends of the Clearwater's motion for an injunction and stay of the ruling (*Alliance for the Wild Rockies v. Brazell*, 2014 BL 206195, D. Idaho, No. 12-00466, 7/25/14; 145 DEN A-8, 7/29/14).

The groups had asked the court to set aside approval of the project and bar the Forest Service from implementing it until provisions of the laws have been met.

The project is located in the Salmon River Ranger District of the Nez Perce National Forest, a 2.2 million-acre forest in the Idaho panhandle, and lies within the Little Slate Creek Watershed. Slate Creek and other tributaries feed the Salmon River, the longest free-flowing river in the lower 48 states.

The forest is home to a number of threatened and sensitive species, such as the grey wolf, the Canada lynx, bull trout, chinook salmon and steelhead, according to the complaint.

No Statutory Violations. Circuit Judges Michael Daly Hawkins, M. Margaret McKeown and Richard C. Tallman conducted an independent review of the administrative record and concluded that the agencies did not violate the statutes.

The Ninth Circuit ruled that the Forest Service complied with the Nez Perce Forest Plan and, therefore, the requirements of the NFMA when it developed the project without conducting a population survey of management indicator species. Specifically, the court found that nothing in the forest plan requires the Forest Service to conduct site-specific monitoring before implementing projects such as the Little Slate.

As to NEPA, it found that the Fish and Wildlife Service satisfied the law's ''hard look'' requirement because the environmental impact statement examined how the project would potentially affect the bull trout, fisher, goshawk and pileated woodpecker by considering the effects on their critical habitats.

Lastly, the court found that the Fish Wildlife Service's ''no jeopardy'' conclusion under the ESA is supported by the record. Specifically, evidence shows that although the project will temporarily disrupt some bull trout habitat in the short term, it will have a long-term benefits on many of the streams in which bull trout live and reproduce.

The Law Office of Dana Johnson, PLLC and Northwest Natural Resource Advocates represented the groups.

The U.S. Department of Justice represented the agencies.

The memorandum of the U.S. Court of Appeals for the Ninth Circuit in Alliance for the Wild Rockies v. Brazell *is available at http://www.bloomberglaw.com/public/document/Alliance_for_the_Wild_Rockies_et_al_v_Rick_Brazell_et_al_Docket_N.*

Water Pollution

McConnell Says Senate Will Target EPA Proposed Waters of U.S. Regulation

New Senate Majority Leader Mitch McConnell (R-Ky.) promised to go after a proposed Clean Water Act jurisdiction rule this year, including it in an ever-expanding list of rulemakings Republicans plan to stop or impede.

At issue is a joint proposed rule from the EPA and the Army Corps of Engineers that would clarify the scope of the Clean Water Act's jurisdiction over the nation's waters and wetlands. Republicans and some Democrats have called the proposal a radical expansion of the agency's authority and warned it could cripple agricultural, ranching and other industries.

''[President Barack Obama's administration is] also after agriculture through what they call the waters of the U.S. regulation,'' McConnell said in an interview

with CNN that aired Jan. 4. ''We need to do everything we can to try to rein in the regulatory onslaught.''

McConnell has previously vowed to have the Senate halt other EPA regulatory efforts, but identified proposed carbon pollution standards for power plants and revisions to the national ozone standard as his priorities. Now, he joins other senior Republicans in naming the waters of the U.S. rule as a high priority target (234 DEN A-3, 12/5/14).

Previously, the new Senate leader has voiced strong disapproval of the Clean Water Act regulation. In July, after meeting with EPA Administrator Gina McCarthy, McConnell said the proposed rule would ''essentially regulate every ditch and pothole in our state'' and warned it would have a ''devastating impact'' on jobs and the local economy.

Shortly after the Nov. 4 elections, in which Republicans seized control of the Senate with 54 seats, McConnell said his top priority as majority leader would be to ''try to do whatever I can to get the EPA reined in'' (217 DEN A-12, 11/10/14).

McConnell again said in the interview with CNN that the Senate would try to ''do everything we can to push back against this overactive bureaucracy of the current administration that's created much job loss, for example, in my state, in the mining industry, coal mining industry.''

BY ANTHONY ADRAGNA

To contact the reporter on this story: Anthony Adragna in Washington at aadragna@bna.com

To contact the editor responsible for this story: Larry Pearl at lpearl@bna.com

Energy

Natural Gas Pipeline Permitting Bill Slated for House Floor Action, Aide Says

Legislation that would expedite the permitting for new natural gas pipelines will be brought to the floor the week of Jan. 12, Mike Long, a spokesman for House Majority Leader Kevin McCarthy (R-Calif.), told Bloomberg BNA.

The bill, the Natural Gas Pipeline Permitting Reform Act by Rep. Mike Pompeo (R-Kan.), would establish statutory deadlines for the Federal Energy Regulatory Commission and federal resource agencies to approve permits for constructing new interstate natural gas pipelines.

Approved by the House by a vote of 252-165 in 2013, the measure has not yet been reintroduced in the 114th Congress. The previous version of the bill would have required FERC to approve or deny a permit application for the siting, construction, expansion or operation of any natural gas pipeline within 12 months of receiving a completed permit application. The Senate never took up the measure.

The process for reviewing natural gas pipelines need to be modernized, ''especially as natural gas becomes more prevalent as a source of electricity generation,'' Pompeo said Jan. 5 in an e-mailed statement to Bloomberg BNA. ''Consumers must have affordable and reliable electricity choices. Ongoing delays because of a complex permitting process must not get in the way of people cooling their homes in the summer and heating them in the winter.''

Under the Natural Gas Act, FERC is the lead agency for regulatory approvals and environmental reviews, but other agencies and laws, such as the Clean Water Act, can be involved in the permitting process.

The legislation has been supported by groups representing companies such as BP Energy Co. and Shell Energy North America.

In a memo to House Republicans in 2014, House Majority Leader Kevin McCarthy (R-Calif.) cited the Pompeo bill as an example of an energy bill the Republican Senate likely would pass.

''The House has already passed energy legislation to improve the permitting process for pipelines, and with a new majority, I am confident the bill won't be ignored in the Senate,'' McCarthy wrote (205 DEN A-2, 10/23/14).

BY ARI NATTER

To contact the reporter on this story: Ari Natter in Washington at anatter@bna.com

To contact the editor responsible for this story: Larry Pearl at lpearl@bna.com

Superfund

Ninth Circuit Should Review Aerial Disposal Issue in Superfund Case, District Court Says

The U.S. Court of Appeals for the Ninth Circuit should accept an interlocutory request to consider Superfund liability for aerial disposal of hazardous substances, an issue no court has addressed ''head-on,'' a federal district court ruled Dec. 31 (*Pakootas v. Washington*, 2014 BL 367498, E.D. Wash., No. 04-cv-00256, 12/31/14).

The Ninth Circuit should consider how the Resource Conservation and Recovery Act's definition of ''disposal'' is to be interpreted under the Comprehensive Environmental Response, Compensation, and Liability Act, the U.S. District Court for the Eastern District of Washington said.

''In over 30 years of CERCLA jurisprudence, no court has impliedly or expressly addressed the issue of whether aerial emissions leading to disposal of hazardous substances 'into any land or water' are actionable under CERCLA,'' the district court said, suggesting that the conclusion has been treated as a ''given'' by courts.

The trial court found that Superfund disposal occurred when hazardous substances from a smelter operated by Teck Cominco Metals, Ltd. in Canada were deposited by water or air at Washington State's Upper Columbia River Superfund site, reaffirming an initial ruling.

The court, however, authorized an immediate interlocutory appeal to allow the Ninth Circuit to resolve a question for which there is a ''substantial ground for difference of opinion.''

Plaintiffs Joseph Pakootas and Donald Michel allege that Teck Cominco is liable as a Superfund ''arranger'' due to air emissions from its smelter in Canada.

Intervening Decision. Teck Cominco relied on a Ninth Circuit decision limiting a defendant's liability under RCRA for solid waste emitted through the air.

  DEN ISSN 1060-2976

Teck Cominco argued that the Ninth Circuit decision limited ''disposal'' under RCRA (42 U.S.C. 6903(3)) to solid waste released on land or into water, and that the same rule applied to CERCLA (*Ctr. for Cmty. Action and Envtl. Justice v. BNSF Ry. Co.*, 764 F.3d 1019 (9th Cir. 2014).

The district court disagreed, siding with the plaintiffs and the Department of Justice, which filed an amicus curiae brief in the case.

Once the pollutants reached a ''facility,'' here the Superfund site located in the U.S., CERCLA makes no distinction between waste released from the smelter into the water or the air, the court said.

Nevertheless, since the question is unsettled, it warrants an immediate interlocutory appeal under 28 U.S.C. § 1292(b), the court said, noting that CERCLA borrows RCRA's definition of ''disposal.''

New Question? Here, the district court wasn't persuaded that *BNSF* affected its ruling.

The *BNSF* plaintiffs claimed that a railway company was liable under the RCRA for diesel particulates transported by air onto the land and water near railyards. For the purposes of RCRA, aerial emissions refer to solid waste aerated *after* disposal of waste onto land or into water, the appeals court said.

That conclusion doesn't apply, the district court concluded, because unlike RCRA, CERCLA requires disposal of hazardous waste at a ''facility.''

Teck Cominco's smelter in British Columbia wasn't a ''facility'' under CERCLA, the court said. The disposal of hazardous waste occurred when it was deposited by water or air ''into or on any land or water'' of the Superfund site located in the U.S.

Justice Department Weighs In. The Department of Justice opposed Teck Cominco's argument, characterizing the company's interpretation of *BNSF* as erroneous because the case deals with an overlap between RCRA and the Clean Air Act—not CERCLA.

At press time, no appeal had been filed in the Ninth Circuit.

Judge Lonny R. Suko issued the opinion.

Short Cressman & Burgess and K&L Gates represented Joseph A. Pakootas, Donald R. Michel and the Confederated Tribes of the Colville Reservation.

Pillsbury Winthrop Shaw Pittman and Lukins & Annis represented Teck Cominco Metals, Ltd.

BY STEVEN SELLERS

To contact the reporter on this story: Steven M. Sellers in Washington at ssellers@bna.com

To contact the editor responsible for this story: Peter Hayes at phayes@bna.com

The opinion is available at http://www.bloomberglaw.com/public/document/Pakootas_v_Teck_Cominco_Metals_Ltd_No_CV04256LRS_2014_BL_367498_E.

Energy

Export Restrictions Among Amendments Senate Democrats Plan for Keystone Bill

A measure that would bar the export of oil and products refined from crude flowing through the Keystone XL pipeline is among the amendments Senate Democrats plan to offer to legislation that would approve the Canada-to-Texas project, according to Sen. Charles Schumer (D-N.Y.).

The amendment is part of a counterattack planned by Democrats that includes measures that would require spending on clean energy, prohibit a state from allowing a foreign company to use eminent domain to build the pipeline and require steel and other construction materials used for the pipeline to be American made, Schumer and Sen. Debbie Stabenow (D-Mich.) wrote in a dear colleague letter. Schumer chairs the Senate Democratic Policy Committee.

''Consideration of this bill will provide us with the first opportunity to demonstrate that we will be united, energetic and effective in offering amendments that create a clear contrast with the Republican majority,'' the Senators wrote in a Jan. 4 dear colleague letter. ''By offering them, we would put Republicans clearly on the record about where they stand.''

Senate Majority Leader Mitch McConnell (R-Ky.) said in December that legislation to approve TransCanada Corp.'s $8 billion pipeline would be ''the first item up'' for consideration and would be considered under an open amendment process, unlike how former Majority Leader Harry Reid (D-Nev.) handled the issue in the 113th Congress (242 DEN A-2, 12/17/14).

Schumer Predicts Obama Veto. Schumer, speaking on CBS's ''Face the Nation,'' predicted President Barack Obama would veto the legislation and that Democrats hold enough votes to sustain that veto. Sixty-seven votes are needed to override a veto.

In a briefing with reporters Jan. 5, White House Press Secretary Josh Earnest declined to say if Obama would veto such a bill.

''I'm gonna reserve judgment on a specific piece of legislation until we actually see what language is included in that specific piece of legislation,'' Earnest said. He added: ''In the past, we've taken a rather dim view of legislative attempts to circumvent this well-established process.''

The pipeline, which was first proposed in 2008, is undergoing State Department review because it would cross an international boundary.

The measure to place export restrictions on the pipeline has long been considered a ''poison pill'' by supporters of the pipeline. TransCanada and oil shippers that have contracted for capacity on the pipeline strongly oppose an export ban, saying it is unworkable in today's international oil markets.

Amendment on Solar Planned. Sens. Ron Wyden (D-Ore.) and Ed Markey (D-Mass.) have championed similar measures in the past, such as a bill introduced by Markey in the 113th Congress that said if Keystone was approved, the oil and all refined fuels produced from that oil would be required to be kept in America.

''Keystone XL is the capstone of the oil industry's plan to export North American energy to China and

other markets,'' Markey said in a statement last year. ''We can't allow our climate to be harmed by this dirty oil, and then be expected to add the insult of exporting that oil abroad to benefit other economies.''

In addition, Democrats are considering an amendment that would ''require that for every job created by the pipeline, an equal or greater amount of jobs is created through clean energy investments,'' according to the dear colleague letter. The letter specifically cited legislation introduced by Sen. Bernie Sanders (I-Vt.) in 2010 to establish incentives for placing solar panels and solar-powered water heaters on the rooftops of 10 million residences, buildings, and other structures by 2019 (19 DEN A-3, 2/1/10).

Other amendments being considered by Democrats include one to increase funding for the Low Income Home Energy Assistance Program, according to the letter.

Don Stewart, McConnell's deputy chief of staff, said in a Jan. 5 e-mail that Republicans ''welcome [Democrats'] participation and hope that they'll back it up by helping pass the bipartisan Keystone XL pipeline jobs bill.''

''We're starting with a bipartisan infrastructure bill for a reason, and we'll have a chance to see if Sen. Schumer and the Democratic leadership allow their members to actually participate, or if they continue to fight against their own members who want to help create good jobs here at home,'' Stewart said.

Meanwhile, the Senate Energy and Natural Resources Committee is planning a Jan. 8 markup of the legislation.

House to Vote on Bill. House is planning on considering Keystone legislation later the week of Jan. 5, according to Mike Long, a spokesman for House Majority Leader Kevin McCarthy (R-Calif.).

''For years, the House has vigorously worked to get Keystone across the finish line—the project has been thoroughly debated and vetted by Congress and the administration,'' House Energy and Commerce Committee Chairman Fred Upton (R-Mich.) said in a statement. ''After six years of foot-dragging, it's time to finally say yes to jobs and yes to energy. It's time to build.''

BY ARI NATTER

To contact the reporter on this story: Ari Natter in Washington at anatter@bna.com

To contact the editor responsible for this story: Larry Pearl at lpearl@bna.com

The dear colleague letter from Sens. Schumer and Stabenow is available at http://op.bna.com/env.nsf/r?Open=smiy-9sgsxa.

Wetlands

Fourth Circuit Upholds Summary Judgment Against Farmers Who Converted Wetland

Summary judgment against two North Carolina farmers who claimed that the U.S. Department of Agriculture impermissibly denied their eligibility for farm program benefits after failing to tell them they could appeal a determination that their land contained wetlands was upheld by a federal appeals court (*Bass v. Vilsack,* 2014 BL 366798, 4th Cir., No. 14-1017,12/31/14).

The U.S. Court of Appeals for the Fourth Circuit said in a Dec. 31 ruling that farmers Steve and Terry Bass had no triable case. Specifically, the ruling held that the family did not administratively appeal a determination by the USDA's Natural Resources and Conservation Service in 1994 that the parcel contained 38 acres of wetlands. Because of that determination, the brothers were ineligible for most USDA farm programs.

The unpublished ruling upheld, on somewhat different grounds, a summary judgment against the Basses issued by the U.S. District Court for the Eastern District of North Carolina.

The appellate court said the ''Swampbuster'' provision of the Food Security Act of 1985 bars persons participating in USDA programs from converting wetlands to agricultural use without USDA authorization.

Original farm owner Joe Bass in 1994 planned to expand farming on the property and asked the NRCS to examine the parcel. The NRCS determined that it included 38 acres of wetlands, barring the expansion. Bass declined to file an administrative appeal, making the decision final, despite subsequent events, the Fourth Circuit said.

Second Bite at Apple. The court related that in 2004, Joe Bass again applied to convert the land, including ''falsely representing'' that he had not previously received a wetland determination or delineation on this tract.

He died shortly thereafter. The NRCS, apparently unaware of the 1994 determination, reinspected the property. It found 28 acres of wetlands, but this time NRCS neglected to inform his heirs, Steve and Terry Bass, that they could appeal the determination to USDA's National Appeals Division.

As a matter of routine, the USDA shared its 2005 finding with the Army Corps of Engineers. The Army Corps told Steve and Terry Bass that portions of the land were subject to Clean Water Act Section 404 dredge-and-fill requirements. The brothers hired a consulting company that found no wetlands.

According to the court, the brothers substantially changed the parcel and began farming it, based on the consultant's report. They applied for USDA certification so that they could be eligible for certain farm program benefits. However, USDA determined the brothers had converted wetlands into farmland without department approval, in violation of the Food Security Act. That ended the Basses' eligibility for USDA benefits.

The brothers challenged the decision at the USDA's National Appeals Division, contending that they were not informed that they could appeal the 2005 determination and that there was no evidence that the land had previously been a wetland, citing the consultant's report.

The Fourth Circuit said the NAD hearing officer dismissed the consultant's report as substandard. The hearing officer ultimately ruled that the NRCS's 1994 determination that there were 38 acres of wetland had not been rescinded. The hearing officer upheld USDA's termination of benefits for the Basses' farm. The Fourth Circuit agreed, upholding the lower court's summary judgment in favor of the USDA.

  DEN ISSN 1060-2976

The Bass brothers were represented by attorney Thomas A. Lawler, of Lawler & Swanson, Parkersburg, Iowa. U.S. Attorney for the Eastern District of North Carolina Thomas G. Walker and Assistant U.S. Attorney Matthew Fesak represented the USDA.

BY JEFF DAY

To contact the reporter on this story: Jeff Day in Washington.

To contact the editor responsible for this story: Larry Pearl at lpearl@bna.com

The Fourth Circuit ruling in Bass v. Vilsack *is available at http://www.bloomberglaw.com/public/document/Bass_v_Vilsack_No_141017_2014_BL_366798_4th_Cir_Dec_31_2014_Court.*

Energy

New York Reactor's Survival Tests Support for Expensive Nuclear Power

Exelon Corp., the biggest U.S. owner of nuclear reactors, needs to almost double power prices to keep a New York plant running in a move that promises to show just how far regulators will go to keep uneconomic plants operating.

After recording losses that exceeded $100 million from 2011 to 2013, Exelon will need to charge about 83 percent more than wholesale prices to earn a profit at its Ginna plant, based on company cost estimates. State regulators have set a Jan. 15 deadline for a new power contract that's rich enough to keep the Rochester-area plant running.

Last month, Entergy Corp. shut Vermont's only operating reactor citing low power prices. Ginna is one of 10 other nuclear power plants that can't compete in current markets, Moody's Investors Service said in November. Retiring the reactors, which account for 10 percent of the nation's nuclear output, would undercut a push to produce power without greenhouse gases as renewables such as wind and solar are just emerging.

''Ginna nuclear power plant is an important asset in the state's generation fleet,'' Patricia Acampora, a commissioner for the New York Public Service Commission, said at a Nov. 23 meeting. ''It's important, reliable, carbon-free energy.''

Exelon acquired the plant when it bought Constellation Energy Group Inc. in 2012. Constellation paid Rochester Gas & Electric $401 million for the plant in 2004 and agreed to sell power back to its former owner at $44 a megawatt-hour for 10 years. The average wholesale power price in the Rochester area was $38.83 a megawatt-hour during the past five years, according to data compiled by Bloomberg.

Power prices have dropped as booming natural gas production from shale cut costs for competing power stations that burn the fossil fuel.

Game Changers: Shale Gas, Renewables. ''The two game changers have been the shale gas and the distortive effect of subsidies'' for renewable energy projects like wind, said Joseph Dominguez, Exelon's senior vice president for governmental and regulatory affairs and public policy. ''Those things really started to seriously impact the economics of plants probably around 2010.''

Exelon won regulatory approval in November to begin talks with Rochester Gas on a new contract with the utility, which is owned by Iberdrola SA and serves about 371,000 homes and businesses in nine counties.

Exelon isn't alone in its struggle with at-risk plants. Four U.S. nuclear reactors were shut in 2013 because they weren't profitable or needed repairs that owners decided were too costly. Entergy's Vermont Yankee was closed after it failed to find a buyer. The company blamed ''artificially low'' power prices for the shutdown.

'Extraordinary Amount' to Demand. A single-unit reactor like Ginna needs as much as $71 a megawatt-hour to earn an 11 percent return and $56 to $64 to break even, based on 2016 forecasts, Exelon said.

The average Rochester Gas customer probably will pay an additional $18 more a month to keep Ginna operating, based on figures provided by Exelon in its state filing, said Tim Judson, executive director of the Nuclear Information and Resource Institute. The group estimated the operating costs for the Alliance for a Green Economy, an antinuclear group.

''Ginna will likely request a contract approximately $80 million a year greater than the market cost of electricity,'' said Jessica Azulay, program director of the Syracuse, New York-based Alliance, in a filing. ''This is an extraordinary amount of money to be demanded of ratepayers to prop up a private company that has become uncompetitive in the market.''

Single Reactors. The 581-megawatt Ginna nuclear reactor produces power without heat-trapping carbon dioxide emissions. Closing it ''presents potentially serious reliability problems for New York,'' the Independent System Operator, which runs the state power grid, said in a filing.

Retiring nuclear stations that produce power without greenhouse gases would undercut President Barack Obama's plan to cut emissions. The U.S. and China, the world's largest greenhouse gas emitters, last month pledged to reduce climate pollution in an effort to curb global warming.

Other plants at risk of closing include Exelon's Clinton station in Illinois, Entergy Corp.'s Pilgrim station in Massachusetts and FirstEnergy Corp.'s Davis-Besse plant in Ohio, according to Moody's. All three are single reactors, where costs can be higher than at multi-unit plants.

In Ohio, state regulators are considering FirstEnergy's proposal for 15 years of customer subsidies to keep the 908-megawatt Davis-Besse reactor and some coal-burning plants in service.

'Sufficient Revenues.' ''Markets have not, and are not, providing sufficient revenues to ensure continued operations of the plants,'' Donald Moul, a vice president for commodity operations at FirstEnergy, said in Aug. 4 testimony. While prices eventually will rise, ''the plants may not survive long enough to see the higher prices.''

Illinois legislators in May ordered agencies to propose ''market-based solutions'' that would keep Exelon's nuclear plants open in the state. The company expects to hold off any retirement decisions until May 2015, awaiting any new laws, Chief Executive Officer Christopher Crane said Oct. 29.

A new power contract to keep Ginna open would be an ''interim measure'' to meet reliability needs, Paul

Elsberg, a spokesman for Exelon, said in an e-mail. It would also maintain 700 jobs as Exelon seeks ''longer-term, market-based solutions for its nuclear fleet,'' he said.

Ginna Alternatives. Other power generators in New York, including NRG Energy Inc. and Entergy, owner of the Indian Point nuclear plant, oppose the premium contract, saying competitors should be allowed to offer alternatives to Ginna. Options include adding power plants or power lines from existing plants to supply the Rochester area, NRG said in a filing.

''For what Exelon is asking to keep Ginna running, we could replace this plant with lower cost sustainable energy, like efficiency, like wind and like solar,'' said Judson, whose group opposes nuclear energy.

Rochester Gas is reviewing six alternatives, said Daniel Hucko, a spokesman for Iberdrola, declining to identify the proposals.

''It's about reliability,'' Hucko said in an e-mailed response to questions. ''We will work in the best interests of our customers with considerations of cost at the forefront while recognizing the importance of continued network reliability and reaching reasonable terms for all parties.''

BY NAUREEN S. MALIK AND JIM POLSON

To contact the reporters on this story: Naureen S. Malik and Jim Polson in New York at nmalik28@bloomberg.net and jpolson@bloomberg.net

To contact the editor responsible for this story: Susan Warren at susanwarren@bloomberg.net

Climate Policy

California Governor Proposes Increasing Renewable Portfolio Standard to 50 Percent

California Gov. Jerry Brown (D) Jan. 5 proposed increasing the state's 33 percent renewable portfolio standard to 50 percent over the next 15 years and cutting petroleum use in cars and trucks in half over the same period.

He also called for making heating fuels cleaner and doubling the efficiency of existing buildings.

Brown announced the new ambitious climate policy goals in the inaugural address and state of the state message he delivered after being sworn in for an unprecedented fourth term.

In the 30-minute message, Brown outlined multiple challenges the state faces over the next four years, including climate change, long-term financial liabilities, social programs and infrastructure of water, roads, highways and bridges.

''Governor Brown's relentless commitment to tackle climate change couldn't be more important or timely,'' Derek Walker, associate vice president for the Environmental Defense Fund, said in a statement. ''The world is moving toward an inflection point on climate action and Governor Brown is showing how California innovation and ingenuity will deliver deep reductions in pollution from electricity, transportation fuels and working lands while growing the state's economy for decades to come.''

California is on track to meeting its 2020 goal of deriving one-third of its electricity from renewable sources, Brown said. The state also is set to achieve the Global Warming Solutions Act of 2006 (A.B. 32) target of limiting greenhouse gas emissions to 431 million tons by 2020, he said.

Existing Efforts Not Enough. The governor said that while the state's existing climate, energy efficiency and clean cars policies are impressive, ''they are not enough'' to limit the increase in global warming to 2 degrees Celsius by 2015, as recommended by the majority of the world's scientists.

''If we have any chance at all of achieving that, California, as it does in many areas, must show the way,'' he said. ''We must demonstrate that reducing carbon is compatible with an abundant economy and human well-being. So far, we have been able to do that.''

Methane, black carbon and other potent greenhouse gases also must be reduced, he said. Plus, the state ''must manage farm and rangelands, forest and wetlands, so they can store carbon,'' Brown said.

''All of this is a very tall order,'' he said. ''It means that we continue to transform our electrical grid, our transportation systems and even our communities.''

Brown said he envisions that ''a wide range of initiatives'' are necessary to achieve the goals, including ''more distributed power, expanded rooftop solar, micro-grids, an energy imbalance market, battery storage, the full integration of information technology and electrical distribution and millions of electric and low-carbon vehicles.''

''It will require enormous innovation, research and investment,'' Brown said. ''And we will needed active collaboration at every stage with our scientists, engineers, entrepreneurs, businesses and officials at all levels.''

Cutting Vehicle Petroleum Use. Cars and trucks account for nearly half of the state's greenhouse gas emissions, according to the California Air Resources Board. Cutting petroleum use in cars and trucks by 2030 would reduce emissions of ozone-forming pollutants by 80 percent and reduce emissions of diesel particulate matter, which has been linked to cancer, by 95 percent, the agency said in a fact sheet it released after Brown's address.

Existing policies will cut petroleum use in the vehicles by more than 30 percent by 2030, CARB said.

The path to a 50 percent reduction could involve reducing growth in vehicle-miles traveled to 4 percent; increasing on-road fuel efficiency of cars to 35 miles per gallon and heavy-duty trucks to about seven miles per gallons; and at least doubling the use of alternative fuel vehicles, such as those powered by biofuels, electricity, hydrogen and renewable natural gas, the agency said.

Cathy Reheis-Boyd, president of the Western States Petroleum Association, said in a written statement that 96 percent of the state's transportation fuel is derived from petroleum, citing the California Energy Commission.

''Reducing that number to 50 percent by 2030 is certainly an ambitious goal and one that will require a great deal of involvement by all Californians,'' she said.

Infrastructure Investment. The governor said the state must deal with ''long-standing infrastructure challenges.''

  DEN ISSN 1060-2976

California is ''finally grappling with the long-term sustainability'' of its water supply, Brown said, citing voters' approval in November of a $7.5 billion water bond and spending plan and his California Water Action Plan.

Brown called on Republicans and Democrats in the state Legislature to pass legislation to improve the states' roads, highways and bridges. The state has accumulated an estimated $59 billion in needed upkeep and maintenance, he said.

''Each year, we fall further and further behind, and we must do something about it,'' Brown said.

BY CAROLYN WHETZEL

To contact the reporter on this story: Carolyn Whetzel in Los Angeles at cwhetzel@bna.com

To contact the editor responsible for this story: Larry Pearl at lpearl@bna.com

The CARB fact sheet is available at http://op.bna.com/env.nsf/r?Open=smiy-9sgvxj.

Oil & Gas

California Approves Final Regulations For Oil, Gas Well Stimulation Activities

California's Office of Administrative Law has approved permanent regulations for oil and gas well stimulation activities, including hydraulic fracturing, required under legislation (S.B. 4) enacted in 2013.

Effective July 1, the regulations are designed to protect health, safety and the environment and supplement the state's existing well construction standards, the Department of Conservation's Division of Oil, Gas and Geothermal Resources (DOGGR) said in a Dec. 31, 2014, notice.

State officials have until July 1 to develop a report analyzing the environmental impacts of the permanent regulations.

The approved final regulations will replace interim rules the DOGGR has had in place since Jan. 1, 2014.

Beginning July 1, permits are required for well stimulation activities.

The regulations require well stimulation activities to be performed in compliance with state and local air and water quality rules and hazardous materials rules.

Permit applications must provide detailed information about the fluids used, a groundwater monitoring plan and a water management plan, according the regulations. In addition, oil and gas well operators are required to notify neighboring property owners and tenants of planned well stimulation activities and, if requested, to provide water well testing.

The permanent regulations establish criteria for monitoring and testing water quality and impose reporting requirements for well stimulation treatments. Also, the rules require pressure testing of wells, monitoring for seismic activity near wells, and reporting of water use and disposal methods.

BY CAROLYN WHETZEL

To contact the reporter on this story: Carolyn Whetzel in Los Angeles at cwhetzel@bna.com

To contact the editor responsible for this story: Larry Pearl at lpearl@bna.com

The final regulations are available at http://www.conservation.ca.gov/index/Pages/prpsregs.aspx.

Chemicals

Regulators Urged to Focus on Function To Find Alternatives to Chemicals of Concern

Companies and regulators looking for ways to reduce or eliminate uses of a chemical of concern should consider focusing first on the function the chemical serves, according to a paper published Jan. 5 in Environmental Science & Technology.

''The concept of chemical 'function' or 'functional use,' that is to say how and why a chemical is used, is an under appreciated element in both traditional chemicals policy frameworks and alternative assessment frameworks,'' principal author Joel Tickner, an associate professor at the University of Massachusetts-Lowell, wrote in ''Advancing Safer Alternatives Through Functional Substitution.''

Tickner's four co-authors include Jessica Schifano, a health scientist working at the Occupational Safety and Health Administration.

Focusing on function first would provide a solutions-oriented approach to reduce risks, the paper said.

Maximizing Sustainability. ''Understanding the functional use of a chemical is vital to maximizing the sustainability of a solution to a particular problem,'' Richard Engler, who served as leader of the Environmental Protection Agency's Green Chemistry Program prior to joining the law firm of Bergeson & Campbell, P.C., told Bloomberg BNA.

A functional approach helps the designer avoid regrettable substitution, risk trade-offs and other undesirable outcomes, he said in a Jan. 5 e-mail.

The paper describes three ways companies or policymakers can analyze the function a chemical provides. They can focus on:

- properties—such as reducing surface tension between two liquids—that a particular molecular structure provides (Chemical Function);
- performance characteristics of the final product that uses a chemical, such as reducing the potential for a material to catch on fire (End Use Function); or
- service a chemical provides in a material, product or process, such as making plastic flexible, preventing bacterial buildup in cosmetics or providing lubrication (Function as Service).

More Possible Solutions. Looking through all three ''lenses'' would allow a company to consider not only a chemical substitute but a redesign of the material or production process, Tickner told BNA Jan. 5.

For example, the university's Toxics Use Reduction Institute has worked with companies that want to eliminate the solvent trichloroethylene (TCE) from their degreasing operations, Tickner said.

Alternative degreasing agents include ultrasonic cleaning and water-based cleaning, which eliminate the need for TCE, he said.

Engler said: ''Analysis of the functional use at the highest substitution level possible (function as service,

for example), maximizes both the range of possible solutions as well as the sustainability benefits, including both environmental and economic outcomes. A drop-in replacement may have the least business risk, but it also may miss the greatest business opportunity.''

BY PAT RIZZUTO

To contact the reporter on this story: Pat Rizzuto in Washington at prizzuto@bna.com

To contact the editor responsible for this story: Larry Pearl at lpearl@bna.com

An abstract of ''Advancing Safer Alternatives Through Functional Substitution'' is available at http://pubs.acs.org/doi/abs/10.1021/es503328m, where the full paper can be purchased.

Trade

Commerce Preliminary Ruling Would Lower Current Duties on Solar Products From China

Antidumping duties imposed by the Commerce Department in 2012 on some solar products from China would be lowered if the department affirms preliminary findings in a recent administrative review.

The Coalition for Affordable Energy (CASE) on Jan. 5 welcomed the proposed lower antidumping duty rate as ''a step in the right direction for the U.S. solar industry.'' But Mukesh Dulani, president of SolarWorld Americas, said in an e-mailed statement that preliminary findings do not reflect the actual amount of dumping by Chinese producers. SolarWorld was the petitioner in the case.

In a separate administrative review of the countervailing duty order, the preliminary ''all-others'' rate for Chinese producers is 15.68 percent—slightly higher than the 2012 all-others rate of 15.24 percent.

Commerce imposed both the antidumping and countervailing duties in 2012 after an International Trade Commission found the dumped and subsidized imports were materially injuring the U.S. industry.

In the antidumping administrative review, Commerce preliminarily found weighted average dumping margins of 1.82 percent for Yingli Energy (China) Co. and about 20 other respondents. Administrative reviews calculate final antidumping or countervailing duties for a particular producer/exporter and set new cash deposit rates for future U.S. imports of the subject merchandise.

Commerce plans to issue final results within 120 days of the preliminary determination. Dulani said that, by removing the company Suntech from its calculations, Commerce has allowed other Chinese producers to obtain an artificially lower antidumping rate. Dulani said SolarWorld will carefully scrutinize the preliminary results and work to ensure that the final results reflect all of China's unfair trading practices. ''That said, it is important to note that the current deposit rate of more than 29 percent (or higher) will continue to apply to the vast majority of Chinese producers, including the fewer than 20 Chinese manufacturers covered by [the preliminary] ruling until the final determination later this year,'' he added.

CASE said lowering the antidumping tax ''means more American consumers will be able to afford solar power and more American solar companies will be able to expand their hiring.'' But while lower antidumping duty rates is positive news, this fails to solve the underlying problem, CASE said. ''The U.S. solar industry remains unfairly penalized by a trade policy that inflates the cost of solar power and has already expanded to include imports from Taiwan.'' CASE reiterated its call to the U.S. and China to negotiate an end to the trade dispute.

Additional Cases Filed. Currently, SolarWorld is pursuing a second batch of trade cases against China as well as a dumping case against Taiwan. Commerce on Dec. 16 announced final affirmative determinations in those cases where SolarWorld is alleging that China was circumventing the duties imposed in the initial case by outsourcing certain steps in the production process to Taiwan. The scope of the current cases specifically excludes products covered by the existing antidumping and countervailing duty orders. In the second round of cases, the International Trade Commission is expected to make its injury determination on or about Jan. 29.

Commerce also recently turned down a request by SolarWorld to conduct changed circumstances reviews of the antidumping and countervailing duty orders based on cyber espionage allegations involving China. SolarWorld had prevailed in the cases but sought a determination on whether Chinese producers gained further unfair advantage as a result of the alleged cyber spying.

BY ROSSELLA BREVETTI

To contact the reporter on this story: Rossella Brevetti in Washington at rbrevetti@bna.com

To contact the editor responsible for this story: Jerome Ashton at jashton@bna.com

The antidumping duty preliminary decision memorandum is available at http://op.bna.com/itr.nsf/r?Open=mcan-9sgqza.

The countervailing duty preliminary decision memorandum is available at http://op.bna.com/itr.nsf/r?Open=mcan-9sgrgx.

Water Pollution

Court Affirms Arizona Within Rights To Issue Temporary Permit for Leachate

The Arizona Department of Environmental Quality was within its statutory authority to issue an administrative regulation authorizing it to accept and approve applications for a temporary individual aquifer protection permit, a state appeals court affirmed (*Town of Florence v. Ariz. Dep't of Water Quality,* 2014 BL 367737, Ariz. Ct. App., No. 1 CA-CV 13-0476,12/30/14).

In its Dec. 30 decision, the Arizona Court of Appeals upheld a ruling by the state's district court.

The town of Florence, Ariz., had challenged the regulation in Arizona Superior Court, arguing that administrative authorization of temporary permits exceeded the DEQ's authority.

The case involved Curis Resources Arizona, a mining company that was seeking to build a permanent in-situ leaching copper mine in the Florence area. According to the opinion, in-situ-leach mining requires injecting an acidic substance into the ground near an aquifer that

  DEN ISSN 1060-2976

supplies drinking water to Florence residents. The town was concerned that the aquifer will become contaminated by the mining process, posing a threat to public health.

According to the court document, the trial court on a motion to dismiss determined that no statute prohibited the issuance of temporary permits, and that ADEQ ''was entitled to deference in interpretation of the statutory scheme enabling it to issue the regulation.''

The temporary permit would allow the DEQ to regulate activities, such as mining, that may affect aquifer water quality, by authorizing an applicant to operate a pilot project.

The town also raised concerns that operation of the mine near planned residential communities might lead to a decline in property values.

A town spokesman told Bloomberg BNA Jan. 5 that Florence has not determined whether to pursue a further appeal.

Presiding Judge Peter B. Swann delivered the court's decision, in which Judge Kenton D. Jones and Judge Michael J. Brown joined.

BY WILLIAM H. CARLILE

To contact the reporter on this story: William H. Carlile in Phoenix at wcarlile@bna.com

To contact the editor responsible for this story: Larry Pearl at lpearl@bna.com

The Arizona Court of Appeals opinion in Town of Florence v. Ariz. Dep't of Water Quality *is available at http://www.bloomberglaw.com/public/document/Town_of_Florence_v_Ariz_Dept_of_Envtl_Quality_No_1_CACV_130476_20.*

Chesapeake Bay

Bay Quality Improves Slightly in 2014; States, Farmers Must Do More, CBF Says

Water quality in the Chesapeake Bay and its tidal waters improved somewhat over the past two years, the Chesapeake Bay Foundation said in its 2014 State of the Bay report.

Between 2012 and 2014, the bay's overall water quality has continued to improve, despite the growing population in the 64,000 square-mile watershed, the biennial report said. However, the improvement in water quality was offset somewhat by indications that populations of blue crabs and rockfish are not doing doing well.

''The declines in these metrics and in the phosphorus indicator offset the improvements in water quality,'' the report said.

CBF's overall ecosystem health grade—32 out of possible 100 for pristine waters—is unchanged from 2012, mainly due to declines in the population of rockfish and blue crabs. At its low point in the 1970s, the bay's health grade was 23, CBF said.

William C. Baker, CBF's president, told a Jan. 5 press conference at the foundation's headquarters in Annapolis, Md., that bay water quality, while improving somewhat, is not on track to meet the water quality goals of the mandatory bay restoration program established in 2010 by the Environmental Protection Agency and the states in its watershed.

Political leaders in Maryland, Pennsylvania and Virginia must rapidly increase their efforts to reduce nutrient and sediment loading to the estuary, he said.

The total maximum daily load program, which CBF calls the Chesapeake's Clean Water Blueprint, requires the six states to implement by 2025 all policies and practices necessary to reduce loading to levels so that the estuary can recover on its own. Sixty percent of those policies and practices are to be implemented by 2017.

If TMDL implementation is successful, CBF forecasts that the bay ecosystem will be healthy, albeit not pristine, by 2040 or 2050.

Focus on Farms. Baker recommended the states focus their efforts on the agricultural sector. It costs much less to reduce nutrient and sediment loading from farms than it does from other sectors, and agriculture is the single largest source of nutrient and sediment loading in the watershed, he said.

According to CBF's 2014 State of the Bay Report, the cost of nitrogen pollution reduction varies widely:

- Reducing nitrogen pollution through agricultural ''best management practices,'' such as conservation tillage, planting cover crops, and creating grassed buffers between fields and streams, costs less than $5 per pound.

- Reducing nitrogen pollution through wastewater treatment plant upgrades costs between $15.80 and $47.40 per pound, depending on the degree of upgrade.

- Reducing nitrogen pollution by installing stormwater management in new development costs $92.40 per pound.

- Reducing nitrogen pollution through retrofitting of existing stormwater management infrastructure costs more than $200 per pound.

The American Farm Bureau Federation and other agricultural industry groups are challenging the legality of TMDL program. A Pennsylvania U.S. District Court upheld the program in 2013 and the U.S. Court of Appeals for the Third Circuit recently took oral argument on the case.(224 DEN A-6, 11/20/14).

Baker suggested that the agricultural industry is plowing so much effort into overturning the total maximum daily load program because the TMDL is working. The Chesapeake Bay TMDL is the first led by the EPA, rather than states, and there could be more.

BY JEFF DAY

To contact the reporter on this story: Jeff Day in Annapolis, Md.

To contact the editor responsible for this story: Larry Pearl at lpearl@bna.com

The Chesapeake Bay Foundation State of the Bay *report is available at http://op.bna.com/env.nsf/r?Open=sbra-9sgvtx.*

In Brief

EPA Sued Over Flea Collar Chemical

The Natural Resources Defense Council petitioned a federal appeals court to force the Environmental Pro-

tection Agency to reconsider its decision not to ban an insecticide commonly used in flea collars for pets (*Natural Res. Def. Council v. EPA*, 9th Cir., No. 15-70025, 1/5/15). The environmental group had petitioned the EPA to revoke its registration of the chemical tetrachlorvinphos, or TCVP, because it said children who come into close contact with pets wearing TCVP collars could be highly exposed to the chemical. In November 2014, the EPA denied the group's petition (217 DEN A-8, 11/10/14). There are no ''risks of concern resulting from pet uses of TCVP,'' Jack Housenger, director of the agency's Office of Pesticide Programs, wrote in a Nov. 6 letter denying the petition. A copy of the council's lawsuit in the U.S. Court of Appeals for the 9th Circuit in response to the denial is available at http://www.bloomberglaw.com/public/document/NRDC_v_USEPA_Docket_No_1570025_9th_Cir_Jan_05_2015_Court_Docket.

Honorable Sworn In as FERC Commissioner

Colette Honorable was sworn in Jan. 5 as a commissioner of the Federal Energy Regulatory Commission. She had been chairman of the Arkansas Public Service Commission since 2011 and is a former president of the National Association of Regulatory Utility Commissioners. Her swearing in gave FERC a full complement of five commissioners. Among the issues she will face is the potential strain that could be imposed on U.S. power supplies by proposed Environmental Protection Agency regulations for carbon emissions from power plants. FERC plans technical conferences on the subject (238 DEN A-6, 12/11/14).

  DEN ISSN 1060-2976

Regulatory Agenda

JANUARY 6 FEDERAL REGISTER

The following entries are summaries from the January 6, 2014, Federal Register *(Vol. 80, No. 3) Full text of all of the identified* Federal Register *items is available from BNA PLUS.*

Environmental Protection Agency

AIR QUALITY

California SIP/South Coast Air Quality Planning Area

Notice of the EPA announces an extension of the comment period for a Dec. 9, 2014, proposed rule (79 FR 72999) to amend regulations under 40 CFR 52 to specify that the South Coast air quality planning area in California has attained the 1997 annual and 24-hour fine particle (PM-2.5) NAAQS, based on certified, quality-assured ambient air monitoring data for 2011 through 2013. The rule also suspends the requirements for the state to submit certain SIP revisions related to attainment of the NAAQS for the area for as long as it continues to attain the NAAQS. Comments now are due Jan. 22, 2015. Contact: Wienke Tax; EPA Region 9; (415-947-4192)

AIR QUALITY

California Area Designations/Pechanga Reservation

Proposed rule of the EPA amends regulations under 40 CFR 49 and 81 to revise the boundaries of the Southern California air quality planning areas to designate the reservation of the Pechanga Band of Luiseno Mission Indians (Pechanga Reservation) as a separate air quality planning area for the 1997 eight-hour ozone NAAQS. The rule also approves the tribal implementation plan for maintaining the 1997 ozone standard within the Pechanga Reservation through 2025. In addition, the rule grants a request from the tribe to redesignate the Pechanga Reservation ozone nonattainment area to attainment for the 1997 eight-hour ozone standard. Comments are due Feb. 5, 2015. Contact: Ken Israels; EPA Region 9, Grants and Program Integration Office; (415-947-4102)

HAZARDOUS WASTE

Michigan/Willow Run Powertrain Site

Notice of the EPA announces a proposed prospective purchaser agreement and administrative settlement concerning a portion of the Willow Run Powertrain Site in Ypsilanti, Mich. The settlement requires the settling party to execute and record a declaration of restrictive covenant, to provide access to the property, and to exercise due care concerning existing contamination. The settlement also provides the settling party with a covenant not to sue under CERCLA or RCRA concerning existing contamination at the site. Comments are due Feb. 5, 2015. Contact: Peter Felitti; EPA Region 5, Office of Regional Counsel; (312-886-5114)

Justice Department

WATER QUALITY

West Virginia/Clean Water Act Consent Decree

Notice of the Department of Justice announces a proposed consent decree in United States v. XTO Energy Inc. (Civil Action No. 1:14-cv-00218-IMK), lodged on Dec. 22, 2014, with the U.S. District Court for the Northern District of West Virginia. The consent decree addresses a complaint seeking injunctive relief and civil penalties under Section 301(a) of the Clean Water Act and state statutes for the alleged discharge of pollutants without a permit into U.S. waters at various locations in Harrison, Marion and Upshur counties. The consent decree requires the defendant to restore the impacted areas, to perform mitigation, and to pay a civil penalty. Comments are due Feb. 5, 2015. Contact: Kenneth Amaditz; DOJ, Environmental Defense Section; (202-514-3698)

Federal Energy Regulatory Commission

MISCELLANEOUS

Electric Utilities/Available Transfer Capability Workshop

Notice of the Federal Energy Regulatory Commission announces a workshop on available transfer capability (ATC) standards for wholesale electric transmission services. The workshop will address ways the commission could ensure that transmission providers continue to calculate and post ATC in a manner that provides nondiscriminatory access to wholesale electric transmission services. The notice specifies that the workshop is in response to a June 26, 2014, proposed rule (79 FR 36269) to approve changes to the North American Electric Reliability's Corp.'s ATC-related reliability standards and a separate initiative to replace these standards with business practice standards to be developed by the North American Energy Standards Board. The workshop is scheduled for March 5, 2015, in Washington, D.C. Contact: Christopher Young; FERC, Office of Energy Policy and Innovation; (202-502-6403)

Interior Department

ENERGY

Federal Oil and Gas and Federal and Indian Coal Valuation

Proposed rule of the Department of the Interior, Office of Natural Resources Revenue, amends regulations under 30 CFR 1202 and 1206 regarding valuation for roy-

JANUARY 6 FEDERAL REGISTER

Continued from previous page

alty purposes of oil and gas produced from federal onshore and offshore leases and coal produced from federal and Indian leases. The rule also consolidates definitions for oil, gas and coal product valuation. Comments are due March 9, 2015. Contact: Armand Southall; ONRR; (303-231-3221)

Federal Railroad Administration

HAZARDOUS MATERIALS TRANSPORTATION

National Highway-Rail Crossing Inventory Reporting

Final rule of the Federal Railroad Administration adopts regulations under 49 CFR 234, Subpart F, to require railroads that operate one or more trains through highway-rail or pathway crossings to submit information to the department's national highway-rail crossing inventory about the crossings through which they operate. The rule requires operating railroads to submit initial reports to the crossing inventory, including current information about warning devices and signs, for previously unreported and new highway-rail and pathway crossings. The rule also requires operating railroads to periodically update data in the crossing inventory, including the prompt reporting of a crossing sale, crossing closure, or changes in certain crossing characteristics. The rule is effective March 9, 2015. Contact: Ronald Ries; FRA; (202-493-6299)

JANUARY 5 FEDERAL REGISTER

Environmental Protection Agency

AIR QUALITY (80 Fed. Reg. 201)

Indiana SIP/Minor New Source Review for Construction Permits

Proposed rule of the EPA amends regulations under 40 CFR 52 to approve revisions to the Indiana SIP. The revisions replace the state's minor new source review construction permit requirements for sources subject to the Title V and federally enforceable state operating permit programs. Comments are due Feb. 4, 2015. Contact: Sam Portanova; EPA Region 5, Air Programs Branch; (312-886-3189)

AIR QUALITY (80 Fed. Reg. 277)

NAAQS for Lead

Proposed rule of the EPA amends regulations under 40 CFR 50 regarding the NAAQS for lead. The rule retains the current standards based on the agency's review of the ambient air quality criteria and standards for lead. Hearing requests are due Jan. 26, 2015. Comments are due April 6, 2015. Contact: Eloise Shepherd; EPA, Office of Air Quality Planning and Standards; (919-541-5507)

U.S. Fish and Wildlife Service

MISCELLANEOUS (80 Fed. Reg. 255)

Washington State/Conboy Lake National Wildlife Refuge

Notice of the Fish and Wildlife Service announces the availability of a final comprehensive conservation plan and environmental assessment for the Conboy Lake National Wildlife Refuge in Klickitat County, Wash. The plan describes how the service will manage the refuge for the next 15 years. Contact: Rich Albers; FWS, Conboy Lake National Wildlife Refuge; (509-546-8317)

Pipeline and Hazardous Materials Safety Administration

HAZARDOUS MATERIALS TRANSPORTATION (80 Fed. Reg. 275)

Applications for Modifications of Special Permits

Notice of the Pipeline and Hazardous Materials Safety Administration announces the availability of a list of five applications for the modification of special permits from the DOT's hazardous materials transportation regulations under 49 CFR 107, Subpart B. Comments are due Jan. 20, 2015. Contact: PHMSA, Office of Hazardous Materials Safety; (202-366-4535)

HAZARDOUS MATERIALS TRANSPORTATION (80 Fed. Reg. 168)

Pipeline Safety/Technical Standards

Final rule of the Pipeline and Hazardous Materials Safety Administration amends regulations under 49 CFR 192, 193, 195, 198 and 199 to update pipeline safety standards. The rule incorporates by reference new, updated or reaffirmed editions of voluntary consensus technical standards. The rule also clarifies language and makes editorial corrections. The rule is effective March 6, 2015. Contact: Mike Israni; PHMSA; (202-366-4571)

Nuclear Regulatory Commission

RADIOACTIVE WASTE (80 Fed. Reg. 265)

Nuclear Power Plant Licensing/ITAAC Closure Guidance

Notice of the Nuclear Regulatory Commission announces the availability of a draft regulatory guide (DG-1316) to provide guidance regarding the inspections, tests, analysis and acceptance criteria (ITAAC) closure requirements under 10 CFR 52. The draft guide, which is Revision 2 to Regulatory Guide 1.215, incorporates additional information regarding ITAAC maintenance, lessons learned from simulated ITAAC implementation, changes to the information and formatting guidance for uncompleted ITAAC notifications, and other changes. The draft guide also approves updated industry guidelines containing additional information and examples of ITAAC closure notifications. Comments are due March 6, 2015. Contact: James Gaslevic; NRC, Office of New Reactors; (301-415-2276)

  DEN ISSN 1060-2976

RADIOACTIVE WASTE (80 Fed. Reg. 143)

Reportable Safety Events Involving Special Nuclear Material

Notice of the Nuclear Regulatory Commission announces the confirmation of the effective date of a Sept. 26, 2014, direct final rule (79 Fed. Reg. 57,721) that amends regulations under 10 CFR 70.50, 70.74 and Appendix A regarding reportable safety events for licensees or applicants that are authorized, or plan to be authorized, to possess greater than a critical mass of special nuclear material. The rule increases the time licensees are allowed to submit a written follow-up report from within 30 days to within 60 days after the initial report of an event. The rule also updates the reporting framework for certain situations and removes redundant reporting requirements. The rule is effective Jan. 26, 2015. Contact: Keith McDaniel; NRC, Office of Federal and State Materials and Environmental Management Programs; (301-415-5252)

Federal Energy Regulatory Commission

MISCELLANEOUS (80 Fed. Reg. 219)

Maryland and Pennsylvania/Wildcat Point Generation Facility

Notice of the Federal Energy Regulatory Commission announces the availability of an environmental assessment for an application from Exelon Generation Co., of Kennett Square, Pa., to allow Old Dominion Electric Cooperative to use Conowingo Project lands and waters on the Susquehanna River near Lancaster, Pa., for the withdrawal and discharge of water in support of the proposed 1,000-megawatt Wildcat Point Generation Facility in Cecil County, Md. The project is located in Cecil and Hartford counties, Md., and Lancaster and York counties, Pa. Comments are due Jan. 28, 2015. Contact: Carlisa Linton; FERC; (202-502-8416)

U.S. Army Corps of Engineers

MISCELLANEOUS (80 Fed. Reg. 210)

Alaska/Foothills West Transportation Access Project EIS

Notice of the U.S. Army Corps of Engineers announces the withdrawal of a May 20, 2011, notice of intent (76 Fed. Reg. 29,218) to prepare an environmental impact statement for the Alaska Department of Transportation and Public Facilities' proposed Foothills West Transportation Access Project. The notice also announces the withdrawal of the related application for a Department of the Army permit. Contact: Melissa Riordan; USACE, Regulatory Division; (907-474-2166)

MINING (80 Fed. Reg. 212)

Arizona/Lone Star Ore Body Development Project EIS

Notice announces the intention of the U.S. Army Corps of Engineers to prepare a draft environmental impact statement for the proposed Lone Star Ore Body Development Project in Graham County, Ariz. The project includes the construction of mining facilities that will result in the discharge of fill materials into waters of the U.S., requiring a Department of the Army permit under Section 404 of the Clean Water Act. The draft EIS will evaluate various issues, including project impacts on air quality, cultural resources, water quality, soils and geology, transportation networks, and environmental justice. A meeting is scheduled for Feb. 4, 2015, in Safford, Ariz. Comments are due Feb. 20, 2015. Contact: Michael Langley, USACE, Los Angeles District; (602-230-6953)

INVASIVE SPECIES (80 Fed. Reg. 210)

Illinois/Brandon Road Aquatic Nuisance Species Controls EIS

Notice of the U.S. Army Corps of Engineers announces an additional meeting and extension of the comment period for a Nov. 20, 2014, notice of intent (79 Fed. Reg. 69,099) to prepare a draft environmental impact statement to evaluate potential alternatives for control of aquatic nuisance species near the Brandon Road Lock and Dam in Joliet, Ill., as identified in the Great Lakes and Mississippi River Interbasin Study report. The meeting is scheduled for Jan. 8, 2015, in New Orleans. Comments now are due Jan. 30, 2015. Contact: David Wethington; USACE, Chicago District; (312-846-5522)

Department of Defense

MISCELLANEOUS (80 Fed. Reg. 209)

Maryland/Fort Meade East Campus Integration Program EIS

Notice announces the intention of the Department of Defense to prepare an environmental impact statement for the East Campus Integration Program at Fort Meade, Md. The notice specifies that the program involves the development of an operational complex and headquarters at the National Security Agency's East Campus for use by NSA and the intelligence community. A meeting is scheduled for Jan. 27, 2015, in Severn, Md. Comments are due Feb. 27, 2015. Contact: Jeffrey Williams; DOD; (301-688-2970)

Comment Deadlines on Major Regulations & Other Actions

Water Pollution	EPA proposed rule to require electronic reporting instead of current paper-based reporting for NDPES reports (40 C.F.R. pts. 122, 123, 127, 403, 501, 503)(79 Fed. Reg. 71,066; Docket No. EPA-HQ-OECA-2009-0274 ; Dec. 1, 2014)	Jan. 30, 2015	Contact Andrew J. Hudock (202-564-6032) or Carey A. Johnston (202-566-1014) in EPA's Office of Compliance
Climate Change	EPA proposed rule to require the oil and natural gas industry to report greenhouse gas emissions data from gathering and boosting systems, completions and workovers of hydraulically fractured oil wells and blowdowns of natural gas transmission pipelines beginning in 2016 (40 C.F.R. pt. 98)(79 Fed. Reg. 73,148; Docket No. EPA-HQ-OAR-2014-0831; Dec. 9, 2014)	Feb. 9, 2015	Contact Carole Cook in EPA's Office of Atmospheric Programs at (202) 343-9263
Water Pollution	EPA proposed rule to require dental offices to comply in the discharge of mercury and other metals into publicly owned treatment works (79 Fed. Reg. 63,258; Docket No. EPA-HQ-OW-2014-0693 ; Oct. 22, 2014	Feb. 21, 2015	Contact Damon Highsmith in EPA's Office of Water at (202) 566-2504
Endangered Species	NOAA Fisheries Service proposal to designate parts of the seas off Alaska's northern and western coasts as critical habitat for the Arctic ringed seal (50 C.F.R. pt. 226)(79 Fed. Reg. 71,714; Docket No. NOAA–NMFS–2013– 0114; Dec. 3, 2014)	March 3, 2015	Contact Tamara Olson in the NOAA Fisheries Alaska Region at (907) 271-5006
Chemicals	Agency for Toxic Substances and Disease Registry notice on a draft new toxicological review for the pesticide parathion and on draft updates of its toxicological profiles for four industrial chemicals (79 Fed. Reg. 74,093; Docket No. ATSDR-2014-0001, Dec. 15, 2014)	March 16, 2015	Contact Delores Grant in the Division of Toxicology and Human Health Sciences at (770) 488-3351

DEN ISSN 1060-2976