

Water Issues/National Rulemaking and Policy Developments

MD-DC Utilities Association
2013 Environmental Conference

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Much in Play ... All at Once

- ELGs
- 316(b) CWIS
- WQS Rule Revisions
- MSGP-2013
- National Stormwater Rule
- WOTUS Rule / Connectivity Study
- Water Quality Trading / Environmental Markets

ELGs / Steam Electric

- Proposed 6/7/13; Comment deadline 9/20/13; Final targeted by 5/22/14
- Targets 7 waste streams: FGD wastewater, fly ash transport water, bottom ash transport water, combustion residual leachate, nonchemical metal cleaning wastes and wastewater from flue gas mercury control (FGMC) systems and gasification systems
- Presents 8 regulatory options for public comment – 4 “preferred” for existing sources, 1 “preferred” for new sources (options differ based on number of waste streams covered, size of the units controlled, and stringency of the controls that would be imposed).
- No TBEL trading allowed.

ELGs / C&D

- Proposed, finalized, litigated, settled and now in the process of being unwound in ways that are both critical and favorable to linear gas and electric utility projects.
- Numeric turbidity limit to be officially withdrawn.
- Non-numeric BMPs relaxed
- Targeted EPA Q&A on access roads and perimeter controls

316(b) CWIS

- Tortured history: Phase I rule 2001, Phase II rule 2004, Phase III rule 2006 – all litigated
- Proposed rule 2011 (would remove portion of Phase I rule and combine Phase II and III rules)
- Three major components:
 - Upper limit on impingement
 - Site-specific controls on entrainment
 - Closed-cycle cooling for new units
- Proposal 4/20/11, NODAs 6/11/12, ESA consultation 6/18/13; Final targeted by 11/4/13

WQS Rule Revisions

- First announced summer 2010; then stalled due to election politics and OMB review; finally proposed 9/4/13; comment deadline 12/3/13
- “Targeted” clarifications in 6 areas:
 - Administrator’s determination
 - Rebuttable presumption of use attainability
 - Minimum process requirements for triennial reviews
 - Minimum standards for antidegradation policies and implementation procedures
 - Explicit standards for variances
 - Limitations on compliance schedules

MSGP-2013

- MSGP-2008 issued 9/29/08, expires 9/29/13 (will be administratively continued for existing permittees but will cause gap for new applicants/permittees)
- MSGP-2013 still has not been proposed (submitted to OMB 4/16/12 and cleared OMB review 9/12/13)
- Likely issues:
 - Benchmarks
 - NALs/NELs
 - More stringent BMPs
 - Broader limitations on coverage in TMDL/impaired waters

National Stormwater Rule

- First announced 12/28/09; then information collection; then series of delays/extensions for proposal; latest target is early 2014 for proposal
- Scope / impacts:
 - Expand universe of regulated MS4s
 - Strengthen/harmonize MS4 requirements (large, medium, small)
 - Set performance standard for development / redevelopment (pre- and post-development hydrology)
 - Retrofits (???)

WOTUS Rule / Connectivity Study

- Rapanos, 2006 (4-4 split with Kennedy as deciding vote on basis of “significant nexus” test)
- Draft EPA/Corps Guidance 4/11; mired in interagency review; now withdrawn
- Draft EPA SAB Connectivity Report 9/13 (comment deadline 10/31/13)
 - All streams – regardless of size or flow – are connected and important
 - Wetlands, water in floodplains and riparian areas are integrated with streams and rivers
 - Insufficient information to generalize about wetlands and water outside of floodplains and riparian areas
- New proposed Rule (just submitted to OMB 9/18/13)

NPDES Electronic Reporting Rule

- Initiated 4/18/08, stalled, then revived with proposed rule 7/30/13, comment deadline 10/28/13, final targeted by 6/14
- Would require e-reporting of all NPDES reports – DMRs, NOIs, NOTs, certifications, etc.
- Also would require e-reporting of non-compliance events, enforcement inspections, NOVs and other actions
- All e-data submitted to states would also be submitted to EPA, which in turn would make it completely and easily accessible to the public
- Open question about whether the technology is available to support the scope of the proposal nationwide

Chesapeake Bay TMDL

- Largest and most complex in history of CWA
- Novel in terms of WIPs, backstops, “reasonable assurance” and other embedded policy decisions
- Upheld in sweeping victory for EPA in federal court challenge
- Trading/offset authorization still in question due to litigation pending in D.C. federal district court

THE END!

Questions / Comments / Thank you

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