Preparing for the Onslaught: Environmental Update

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Today’s Discussion

- Current regulatory climate
- Enforcement trends and initiatives
- Watch out for regulatory cliff
- Rules relevant to construction
- “Sue & Settle” Tactics
- Steps for Congress
- Resources to help you survive
Costly Regulations Looming
Number of pending rules expected to cost $100 million+ annually has doubled in 5 yrs

http://www.reginfo.gov/public/do/eAgendaAdvancedSearch
More and Costlier

Major Regulations Under Obama: More and Costlier than Under Bush

Figures shown are for first three years of the George W. Bush and Obama Administrations.

Regulatory Activity by Agency

AGENCIES WITH THE MOST REGULATORY ACTIONS CURRENTLY UNDER REVIEW

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<tr>
<th>AGENCY</th>
<th>NUMBER OF PENDING ACTIONS</th>
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<tr>
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Most Active Agency

http://yosemite.epa.gov/opei/RuleGate.nsf/
Note: EPA's Rulemaking Gateway tracks the status of priority regulations under development and existing regulations under retrospective review.
Timid Regulatory Review

- President Obama EO 13563 – Improving Regulation and Regulatory Review, January 18, 2011
  - Reported $1 Billion in Potential Annual Savings, *if implemented*
  - Counteracts Small Fraction of New Regulatory Burdens Being Added
  - Represents “Low-hanging Fruit”
  - Too Little, Too Late
“In FY 2011, EPA enforcement actions required companies to pay over $152 million in civil penalties (administrative and judicial) – highest in last five years.” [emphasis in original]
A Closer Look

ADMINISTRATIVE PENALTIES ASSESSED (WITH STATUTORY BREAKOUT) FY 2007 - FY 2011

CIVIL JUDICIAL PENALTIES ASSESSED (WITH STATUTORY BREAKOUT) FY 2007 – FY 2011

Source: EPA Presentation : Slide Title: FY 2011 Enforcement & Compliance Annual Results - Civil Penalties Assessed (Inflation/Deflation Adjusted to FY 11 Dollars)
Find and Fine?
The Regulatory Cliff
NEW Stormwater / ELG Requirements – Effective date per state’s permit

PM2.5 NAAQS Final
Nonattainment Designations
State Implementation Plans

Wetlands “Section 404” Permits – Scope Fed Jurisdiction

Fly Ash Use & Disposal

Ozone NAAQS Proposal
Final
Nonattainment Designations

Chesapeake Bay “Model for the Nation” – Trading and Offsets Program for New Growth

Post-Construction Stormwater Runoff

LRRP – Commercial Buildings

Step 4 of GHG Tailoring Rule – Will Permit Programs Extend to Small Stationary Sources?
…Piled on-top-of Existing Requirements

- Stormwater Permits
- CWA Section 404 Permits
- Clean-up Plans for Impaired Waters
- LRRP Requirements
- Spill Prevention Planning and Response
- Fuel and Equipment Use
- Engine Standards
- Dust Control

- Noise Control
- Waste Disposal and Transport Requirements
- Hazardous Materials Management
- Brownfields
- Superfund Sites
- Threatened or Endangered Species
- NEPA Requirements/Mitigation Efforts
- Mandated Green Building Measures
How Did We Get Here?
Sue & Settle Strategy

- Environmental Groups Sue EPA
- EPA Surrenders to Demands without a Fight
- Closed Door Negotiations of Settlement Terms
- Terms Ratified by Consent Decree
- EPA Legally Bound to Engage in Rulemaking
- Recoup Legal Fees from Taxpayers

SUE. SETTLE. REPEAT.
Sue & Settle Fall-out

- Within Past Three Years—
  - 60 Settlements with Special Interest
  - Resulting in 29 Agreements for Major Policy Changes

- Reoccurring Plaintiffs: Sierra Club, NRDC, Defenders of Wildlife, Wild Earth Guardians, Center for Biological Diversity

- 13 state attorneys general sent FOIA request to US EPA for docs related to settlements
Sue & Settle in Action

- Chesapeake Bay TMDL: Model Clean-up Plan for Impaired Waters Nationwide
  - Settlement Agreement with Chesapeake Bay Foundation (CBF)

- Post-Construction Stormwater Runoff
  - Settlement Agreement with CBF Referenced Basis for this New Rulemaking
Sue & Settle in Action – cont.

- Expansion of Lead-Based Paint Program to Commercial Buildings
- Particulate Matter Air Quality Standards
- Effluent Limitations Guidelines for the “Construction and Development” Industry
Open Government?

  - Calls for open government, transparency and sound science
  - Sue & Settle is at odds with this policy
Steps for Congress

Potential Solutions

1. Require congressional approval of new major rules promulgated by agencies (REINS Act)
2. Create a Congressional Office of Regulatory Analysis
3. Establish a sunset date for federal regulations
AGC Advocacy Message

- EPA actions must better reflect enormous risks as well as environmental benefits:
  - Transparency
  - Public participation in decision-making process
  - Sound science
  - Limits on excessive costs, burdens, uncertainty
  - Protection for small business
AGC Environmental Forum
AGC Members Participate in Association Policymaking

- **Educate** the Government
- **Strengthen** AGC’s Message
- **See** **Results** … we have made significant gains—
  - Compelled EPA to reconsider numeric limits for stormwater
  - Significantly scaled back Calif.’s off-road diesel rule
  - Secured millions in federal diesel retrofit funds
  - Delayed consideration of tighter ozone NAAQS
  - Delayed consideration of post-construction runoff rules
  - Streamlined oil spill planning requirements
  - Averted costly and excessive lead-based paint sampling/ testing
  - Preserved the use of fly ash
Environmental Forum

http://www.agc.org/environment
For More Information

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