***EPA Agenda Includes Actions Related to Stormwater, Fly Ash and Lead Paint***

As 2014 gets into gear, the U.S. Environmental Protection Agency (EPA) is expected to make some significant regulatory decisions.  From revisions to the construction stormwater management rules for active and completed sites and expanded federal jurisdiction under the Clean Water Act to new rules governing the management and disposal of fly ash – read on to identify and evaluate U.S. EPA activities so you are “one step ahead” of new requirements.

The White House Office of Management and Budget recently published its semi-annual [**Unified Agenda of Federal Regulatory Actions**](http://resources.regulations.gov/public/component/main?main=UnifiedAgenda), which includes rulemaking priorities for EPA. EPA’s companion Regulatory Plan explains that it intends for its rulemaking efforts to support six “guiding priorities,” which are (1) making a visible difference in communities; (2) addressing climate change and improving air quality; (3) taking action on toxics and chemical safety; (4) protecting water; (5) launching a new era of state, tribal, and local partnership; and (6) working toward a sustainable future.

EPA currently has more than 150 regulations in some stage of development. In the coming months, AGC will be closely tracking and/or reporting on dozens of anticipated actions. Below are summaries of EPA actions with a potentially significant or direct impact on construction activities.

**Water & Wetlands**

* **Remove the** [**nationwide turbidity limit on construction stormwater runoff**](http://water.epa.gov/scitech/wastetech/guide/construction/index.cfm) **(final rule signed Feb. 21, publication in *Federal Register* soon).**  In 2009, EPA promulgated the Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category (C&D ELG), which directs permitting authorities to require operators of construction sites to employ certain best management practices (BMPs), *as a bare minimum,* to control stormwater during active construction. Industry petitioners challenged the final rule – particularly, the numeric limitation on the allowable level of turbidity of stormwater discharges from certain construction sites (and related monitoring requirements), culminating in litigation consolidated before the Seventh Circuit. [**As previously reported**](http://news.agc.org/2013/04/19/epa-proposes-to-withdraw-numeric-limit-from-construction-stormwater-rule/), to resolve the lawsuit, EPA committed to withdraw the turbidity limit and to revise certain aspects of the non-numeric BMP requirements. EPA proposed such actions in April 2013. AGC filed supporting [**comments**](http://news.agc.org/2013/07/05/agc-supports-epa-proposal-to-withdraw-nationwide-numeric-limit-on-dirt-in-stormwater/), but prior to that, AGC also took significant steps to ensure that [**EPA’s 2012 Construction General Permit**](http://news.agc.org/2012/02/22/agc-steers-epa-clear-of-environmental-extremes-in-2012-stormwater-permit/) did not include any limits or discharge monitoring requirements. While not a named party in the case, AGC has been heavily involved in EPA’s efforts to develop appropriate controls for construction site stormwater runoff for more than 15 years.
* **Reissue** [**EPA’s Multi-sector General Permit**](http://news.agc.org/2013/10/30/epa-proposes-reissuance-of-general-permit-for-stormwater-discharges-from-industrial-activities/) **(MSGP) (final permit expected in the spring of 2014).** Construction companies that perform activities associated with cement or concrete manufacturing, asphalt paving, minerals mining, or landfill operations will all likely be impacted by upcoming changes to EPA’s MSGP. AGC recently submitted [**comments**](http://news.agc.org/2014/01/24/epa-requesting-greater-citizen-participation-in-stormwater-permit-review-enforcement-processes/) on EPA’s proposed draft permit. Once re-issued, EPA’s MSGP will be directly applicable in all or part of ten states and the District of Columbia, on Indian lands, and in some territories. It will also serve as a model for other state-issued general permits, as it is looked to and cited by water regulatory agencies as an authority on EPA’s industrial stormwater permitting strategy. (A separate Construction General Permit is the legal mechanism to authorize stormwater discharges from active construction sites that disturb one acre or more of land.)
* **Expand the universe of regulated stormwater discharges and, at a minimum,** [**regulate stormwater discharges from newly developed and redeveloped sites**](http://news.agc.org/2013/12/02/epa-sets-the-stage-for-new-stormwater-rule-with-green-infrastructure-strategy-and-case-studies-2/) **(long-term action; local requirements beginning to appear in EPA’s MS4 permits).** EPA has long regulated stormwater discharges from active construction sites but most recently has begun to focus its attention on stormwater discharges from already developed sites. In a 2010 settlement of a lawsuit brought by the Chesapeake Bay Foundation, EPA agreed to propose a post-construction stormwater rule by June 2013; the agency has missed its deadline. It appears that EPA has initiated a “piecemeal” approach via mandates in municipal stormwater permits that restrict stormwater flow and force green infrastructure techniques designed to capture/retain runoff. In related news, 10 environmental groups have [**filed legal petitions**](http://news.agc.org/wp-content/uploads/2013/12/Enviro-Grps-Petition-SW-Retrofit-Existing-Sites4.pdf) aimed at forcing EPA to take action to require owners to alter/retrofit their already built sites.
* **Revise the federal regulations that define the** [**scope of “waters of the United States” under the Clean Water Act**](http://news.agc.org/2013/12/03/agc-briefs-congressional-staff-about-federal-clean-water-act-issues-2/) **(CWA) (proposal possible in 2014; draft leaked to public and undergoing strict scrutiny).**  It is anticipated that EPA and the U.S. Army Corps of Engineers soon will release a proposal to significantly expand the universe of streams, wetlands, and other waters subject to federal jurisdiction. This critical definition or description will determine when the permitting, enforcement, and citizen suit regimes of the CWA are activated. AGC has [**commented**](https://laxcr9.callinfo.com/interface/flashView.jsp?uri=services/laxcr9/core&uid36=v5oai4&simple=true&mmid=0&flashSk=q9excn&flashDL=pond8-core&signed=null&jvm=FlashWIN_12_0_0_70) that the draft rulemaking relies on a flawed economic cost/benefit analysis and fails to clarify the limits to federal control.
* **Finalize a new** [**electronic reporting rule**](http://news.agc.org/2013/08/29/proposed-federal-rule-would-give-public-online-access-to-stormwater-permit-information/) **for companies that are required to report certain information under their National Pollutant Discharge Elimination System (NPDES) permits (long-term action; expect EPA to re-propose in 2014)**. AGC recently submitted extensive [**comments**](http://news.agc.org/2014/01/24/epa-requesting-greater-citizen-participation-in-stormwater-permit-review-enforcement-processes/) on EPA’s July 2013 proposed rule that would require construction site operators covered by a Construction General Permit or a Multi-sector General Permit to submit a variety of permit-related information electronically, instead of using paper reports. AGC’s letter objects to an eReporting mandate that would make every construction company’s stormwater permit records, pollutant monitoring results and compliance history accessible to the public.

**Waste, Recycling & Beneficial Use**

* **Finalize a rule on the management and disposal of coal combustion residuals (CCR), including coal ash (final action anticipated in Dec. 2014).**  EPA first proposed a regulation in 2010, and a coalition of environmental groups sued in 2012 seeking a deadline, among other issues, for EPA to complete its review of the proposed coal ash regulation. In late 2013, the U.S. District Court for the District of Columbia ordered EPA to commit to a timeline for finalizing the regulation; EPA recently announced that the rule will be out by the end of 2014. In early February 2014, EPA officially reiterated its support of the use of certain CCRs in concrete and wallboard—two applications that represent 50 percent of the beneficial use of CCRs. (See article this issue of the *Observer*.) [AGC has widely voiced its concerns](http://news.agc.org/2013/07/29/house-passes-agc-supported-coal-ash-bill/) of how classifying coal combustion waste as a hazardous material would negatively impact the beneficial use of fly ash and significantly increase road building costs.
* **Decide whether or not to expand the Lead Renovation, Repair & Painting Program (LRRP) rules to cover work in public and commercial (P&C) buildings (information collection survey distributed in the spring of 2014).** Back in April 2008, EPA issued the final LRRP rule to address lead-based paint hazards created by construction activities that disturb lead-based paint in pre-1978 housing and child-occupied facilities. EPA is bound by a 2009 settlement of a lawsuit – brought by environmental and health advocacy groups – to propose a P&C buildings rule by July 1, 2015, unless it determines that no lead-based paint hazards exits. AGC has commented repeatedly that EPA lack the data and legal basis to expand the program. Most recently, [AGC responded to a draft survey](http://news.agc.org/2014/02/11/agc-comments-on-epas-draft-lead-survey-for-building-contractors/) to solicit information fro commercial builders on renovation and remodeling practices.
* **Develop an electronic system for tracking hazardous waste shipments, called** [**e-Manifests**](http://news.agc.org/2014/02/11/epa-finalizes-first-of-two-e-manifest-rules/) **(system online by October 2015).** EPA recently [**finalized a rule**](https://www.federalregister.gov/articles/2014/02/07/2014-01352/hazardous-waste-management-system-modification-of-the-hazardous-waste-manifest-system-electronic?utm_campaign=subscription+mailing+list&utm_medium=email&utm_source=federalregister.gov) to authorize the use of electronic manifests (e-Manifests); a subsequent rule will establish fees. The agency is up against an October 2015 statutory deadline to have the system operational, per the 2012 Hazardous Waste Electronic Manifest Establishment Act. The electronic system will apply in lieu of inconsistent state programs.

**Air & Climate**

* **Establish new source performance standards (NSPS) for carbon dioxide emissions from existing and modified power plants (timeline uncertain pending judicial review).** EPA has attempted for some time to set greenhouse gas (GHG) emissions limits for new power plants that have yet to be built. EPA issued a revised proposal Jan. 8 that replaces one from April 2012 that, if finalized, could open the door for wide-ranging regulation of GHG emissions from sources already subject to an NSPS. The schedule and content of this regulation may be affected by the U.S. Supreme Court’s anticipated decision in *Utility Air Regulatory Group v. U.S. Environmental Protection Agency.* EPA has also turned its attention to existing power plants. In addition, EPA will need to consider how best to regulate carbon-dioxide [**from other stationary sources**](http://www.newrepublic.com/article/politics/the-substitute), including oil and gas refineries and cement kilns.

***If you have questions, please contact AGC’s Senior Environmental Advisor Leah Pilconis at*** [***pilconisl@agc.org***](mailto:pilconisl@agc.org)***.***

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