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## ENVIRONMENTAL UPDATE - AUGUST, 2009

### **Environmental Justice Efforts Renewed**

Environmental justice was touted by then-candidate Obama as central to his environmental platform. See Environmental Update, Dec. 12, 2008 (attached). Now, President Obama has required the EPA, acting through Administrator Lisa Jackson, to make environmental justice a 'focus' of the agency's activities. Ms. Jackson stated that the agency should focus on "the poor and underserved" so that environmental issues "connect with people's brain space on the things they deal with every day." BNA, Vol. 40, No. 30, p. 1785, July 24, 2009.

This focused effort has already begun. The redefinition of solid waste, published in October, 2008, will be re-examined in light of environmental justice concerns to ensure that the rule will not have an adverse impact on minority communities. You will recall (see Environmental Update, November 12, 2008) that the re-definition is designed to promote recycling and lessen the hazardous waste regulatory burden on businesses. Additionally, EPA has stated that it will ensure that environmental justice concerns are incorporated from the beginning of the rule-making process. Enforcement has also taken steps to ensure that environmental justice is a factor in all of its actions.

As stated in the prior Environmental Update, environmental justice will add a level of complexity to facility siting decisions and the contents of permit application (e.g., including more control technology to potentially lessen a potential impact). Recall that the environmental justice investigation process, which could slow down an application's progress, is initiated by an easy-to-file complaint. Obviously, a prospective permittee, and now a potential respondent, must be aware of environmental justice concerns as they navigate through the regulatory shoals.

### **Clean Water Restoration Act, S.787**

Currently, a bill is making its way through Congress, S. 787, the *Clean Water Restoration Act*, which suggests an expansion of the definition of 'waters of the United States,' and thus the regulatory power of the EPA and Corps of Engineers, to the "maximum extent of the legislative authority of Congress under the Constitution." S. 787, Sec. 2. The proposed definition: "all waters subject to the ebb and flow of the tide, the territorial seas, and all interstate and intrastate waters and their tributaries, including lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, natural ponds, and all impoundments of the foregoing, to the fullest extent that these waters, or activities affecting these waters, are subject to the legislative power of Congress under the Constitution.." S. 787, Sec. 4. The definition does look familiar as it contains many of the elements of the regulatory definition in place for years. But, the inclusion of all interstate and intrastate waters and the assertion of authority to the extent of Congress' constitutional power could serve to expand federal jurisdiction.



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