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Recent Rules by Bush To Be Rolled-Back?

It was reported by the Associated Press on November 15, 2008 that the U.S. Congress may use the Congressional Review Act of 1996 to overturn federal regulations that have been recently issued by the Bush Administration. A spokesperson for Rep. Edward Markey (D - Mass) stated that Rep. Markey would consider repealing regulations he considers "egregious." Mentioned in the article are recent rules relating to global warming and greenhouse gases, rules easing hazardous waste restrictions, and rules relating to exemptions for water permits and oil refinery emissions.

New CAFO Rules (Env. Alert of 11/17)

In what may have an impact on Louisiana livestock, dairy farms, and similar operations, the EPA revised several aspects of EPA's regulations governing concentrated animal feeding operations (CAFOs). See 73 Fed. Reg. 70418 (November 20, 2008). The rule was issued in response to the decision by the US Second Circuit in *Waterkeeper Alliance, et. al. v. EPA*, 399 F.3d 486 (2d Cir. 2005). The rule will be effective thirty days after publication in the Federal Register.

The rule modifies several contested portions of the CAFO rule issued in February, 2003, which was the subject of the *Waterkeeper Alliance* suit. Two main revisions have been made. First, the new rule requires only those CAFOs which discharge or propose to discharge to apply for permits. The contested rule required all CAFOs that discharged or with a 'potential to discharge' to apply for a permit. EPA also deleted the requirement allowing CAFOs to demonstrate that they have no potential to discharge. Because EPA is not requiring CAFOs to seek permit coverage based merely on 'potential to discharge,' the provision was no longer relevant. Second, the new rule requires CAFOs to submit their Nutrient Management Plans (NMP) to EPA as part of the permit application. As part of the application, the public will be able to review and comment on the plan. EPA is empowered to include portions of the NMP as enforceable provisions in the permit.

Note: In the "Obama-Biden: Promoting a Healthy Environment" pamphlet on President-elect Obama's web-site (see www.barackobama.com), it is stated that Mr. Obama "will strictly monitor and regulate pollution from large CAFOs, with fines for those who violate tough air and water quality standards." It is possible that this rule may be reviewed under the Congressional Review Act of 1996 mentioned above.

Emergency Planning Changes

Finalizing portions of a rule first proposed in 1998, EPA revised certain portions of the reporting requirements. 73 Fed. Reg. 65452 (Nov. 3, 2008). The changes are detailed and technical. EPA provided a summary: "Specifically, the changes in this final action include: (1) Finalizing some of the proposed revisions on applying threshold quantity and the reporting of mixtures under EPCRA sections 311 and 312; (2) removing the Tier I and II inventory forms and instructions from the CFR ...; and (3) codifying certain existing policies and interpretations...." The revisions also re-wrote the rule in "plain language, using a question and answer format." *Id.*, at 65453. The rule is effective on December 3, 2008.



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