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# Environmental Protection Agency Targets Key Industries In 2015

By **JEFF WOOD**  
AND **STEVEN BURNS**

The year 2015 promises to be a contentious one for environmental policy, as the U.S. Environmental Protection Agency (EPA) aims to cement key parts of President Obama's legacy, while both houses of Congress—united under Republican majorities—seek to chart a different course. Industries the nation's waterways serve are at the top of EPA's agenda.

For starters, EPA will continue efforts to reduce coal usage domestically and abroad. According to industry data, EPA initiatives in recent years—such as the "Utility MACT" and the "Cross-State Air Pollution Rule"—are playing a role in the closure of at least 330 coal-fired units across 33 states. If EPA's path remains unimpeded by Congress or the courts, additional closures seem certain. By this summer, EPA intends to issue regulations un-

der section 111 of the Clean Air Act to substantially cut carbon dioxide (CO<sub>2</sub>) emissions from new and existing coal-fired power plants. In December, the Administration will seek further reductions in greenhouse gas emissions at the United Nations climate conference in Paris, France. Coal companies are also concerned about EPA's plans this year to finalize new effluent guidelines for coal-fired power plants.

American manufacturers are bracing for EPA action that would impact the siting and operation of industrial and manufacturing facilities. In particular, EPA plans to tighten the air quality standard for ozone in 2015, even though much of the nation does not even meet the current ozone standard set in 2008. With annual compliance costs in the billions of dollars nationally, the new ozone rule could be among the most expensive environmental regulations ever adopted, and is facing stiff

opposition by the nation's manufacturers and business community. EPA also intends to impose new air standards and regulations on aluminum manufacturers and the fertilizer sector.

A top EPA priority for the agriculture community—another major customer of the waterways industry—is opposing the upcoming "Waters of the United States" rule. As the American Farm Bureau and National Waterways Conference demonstrated in written comments to EPA last year, this rule would vastly expand regulatory control of wetlands and streams with limited connection to "navigable" waterways. That means restrictions or costly mitigation for otherwise lawful, economically productive activities on farmland and other areas. Farmers are also closely monitoring EPA's renewable fuel targets for corn-based ethanol, which EPA says it will issue later this year.

Another major user of our nation's waterways—the chemical industry—is pressing Congress to modernize the Toxic Substances Control Act of 1976 (TSCA), the federal law governing the manufacture and use of chemicals in the

United States. Bipartisan TSCA legislation was proposed last year but failed to gain traction. The year 2015 brings much improved odds. If TSCA reform is enacted, EPA would have a central role in crafting new chemical regulations that, it is hoped, would promote safer chemicals while helping to enhance the global competitiveness of the U.S. chemical industry.

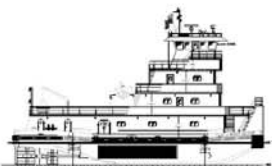
By comparison, EPA's agenda this year for waterway carriers is less intensive. In fact, most recent EPA rules aimed directly at waterway companies have now become fully integrated with the industry's compliance programs. Nonetheless, at least two areas of EPA action in 2015 directly impacting waterway operators deserve mention.

First, with regard to water discharges, EPA will continue to administer the Vessel General Permit (VGP), and with several years of experience with the VGP now behind the industry, vessel operators should be aware of the increased likelihood of enforcement actions for violations. In that regard, readers should keep in mind that the VGP annual reports are due February 28, 2015.

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Additionally, EPA recently proposed a new rule for electronic reporting and recordkeeping. This rule, which could be finalized in 2015, may add new measures to the existing VGP electronic reporting requirements. Importantly, The American Waterways Operators is continuing to seek uniform national discharge standards (including for ballast water)—a goal that could be accomplished with the enactment of the Vessel Incidental Discharge Act (VIDA). While Congress recently extended the moratorium on EPA regulation of small commercial vessels, VIDA did not make it across the finish line before the end of the last Congress. There is, however, increased optimism that VIDA will fare better this year. And just last week, EPA proposed new requirements for the use of dispersants when oil is released into oceans and waterways.

Second, with regard to diesel emissions, implementation of marine diesel engine emissions standards is nearing completion and most key deadlines have now passed. Beyond that, Diesel Emissions Reduction Act (DERA) programs are an area of environmental focus for ports and vessel owners as DERA funds can support voluntary diesel engine emissions reduction projects. Recent recipients of these funds include the Alabama State Port Authority, the Port of Seattle, and the Southeast Missouri Regional Planning Commission, among others.

Oceangoing shipowners will also continue preparing for EPA's Tier 3 emission standards that take effect in 2016, and new sulfur content restrictions for fuel used in oceangoing ships went into effect this year under MARPOL Annex VI.

Other important environmental issues, perhaps outside EPA's direct purview, are worth following in the year ahead, such as control of aquatic invasive species like the Asian carp, the impact of offshore wind production on commercial navigation routes, and state-based "no discharge zones" and other restrictions that could hinder interstate commercial navigation. Likewise, a variety of federal, state, and international bodies will continue to focus attention on issues related to climate change and CO<sub>2</sub> emissions—prompting actions that could present new regulatory challenges for the waterway industry in 2015 and beyond.

As in years past, members of Congress need to hear from you about the economic—and yes, environmental—benefits of waterway transportation, and how federal agencies like EPA—that are under the oversight of Congress—should seek to strike the right balance between environmental quality and economic activity. Your customers in the coal, chemicals, agriculture, and manufacturing sectors will likely appreciate your support of their efforts as well.

*Jeff Wood previously served as legal counsel to U.S. Sen. Jeff Sessions (R-AL) and as in-house counsel at Ingram Barge Company. Steven Burns currently serves as Secretary and Counsel to the National Waterways Conference. Both are attorneys with the law firm of Balch & Bingham LLP.*

## Corps To Cut Operating Hours At Two Minneapolis Locks

The St. Paul Engineer District, announced January 9 that it will cut the hours of operation at Lower St. Anthony Falls Lock and Dam and Lock and Dam 1 following the closure of Upper St. Anthony Falls Lock and Dam.

The hours of operation for both locks will be from 10 a.m. to 8 p.m. The change won't go into effect until Upper St. Anthony Lock and Dam is closed, as required by the Water Resources Reform

and Development Act of 2014. The act mandates that the lock be closed no later than June 10.

The district had previously announced it would be considering reducing operations at the two facilities once the Upper St. Anthony Falls facility is closed.

In the course of making the final decision, Corps staff evaluated many factors, including a significantly higher-than-average number of lock closure days the

past two years, impacts to staff, environmental concerns, navigation industry concerns and the impending closure of the Upper St. Anthony Falls Lock and Dam to navigation.

Level of service determinations are reviewed on an annual basis. If actual usage trends in future years are different from what is anticipated, the level of service may be adjusted, the district said.

## Burns Harbor

(CONTINUED FROM PAGE 5)

### Project Cargoes Shine

The port continues to serve as a preferred inland hub for large dimensional specialty cargoes, including beer tanks, wind turbines and fuel processing equipment. In 2014, 29 beer fermentation tanks, each with over 20,000-gallon capacity, were shipped from Germany through the port to Lagunitas Brewing

Company in Chicago—one of the largest craft breweries in the U.S.

The port also received an \$85,000-pound project cargo shipment via barge that contained a fuel processing unit being transported from Oklahoma to Ohio. The entire unit was off-loaded at the port's specialized Ro-Ro dock, which is used to roll-on and roll-off specially-designed trailers that are too large or cumbersome for cranes.

Two port companies announced major expansions in 2014: NLMK invested

\$8 million to expand its steel mini-mill operation, and Carmeuse Lime & Stone pumped \$11 million into its limestone processing facility.

Established in 1961, the Ports of Indiana is a self-funded enterprise dedicated to growing Indiana's economy by developing and maintaining a world-class port system. Maritime operations at the Port of Indiana-Burns Harbor generate \$4.3 billion per year in economic activity and support 33,000 total jobs.



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