

Hicks-Ray Associates



August 23, 2010

TO: WESTCAS Membership

FROM: Fred B. Hicks and Tom Ray

SUBJECT: Executive Branch Action Concerning Environmental Regulation

Many of you will have read Fred Andes update this morning, “EPA Draft, Strategy for Achieving Clean Water.” We were struck in particular by the first item on the list of actions that EPA is proposing to take in support of its regulatory program:

“Support legislation **and consider Administrative Action** to restore the CWA protections for our waters and the ecological systems.”

The color emphasis is ours and not EPA’s. But it reminds us yet again that EPA is reserving for itself the ability to order and implement wide-ranging environmental policies through the use of Executive Orders issued by the White House. Or by Secretarial Orders issued by Cabinet secretaries. Or Administrative Orders issued by Federal Administrators such as Lisa Jackson at EPA.

The prospect of Executive Orders is very troubling to many in the water community, most especially since the legislative process that would have mandated sweeping environmental changes now appears to be hopelessly mired in the 111th Congress. In addition, the prospect of Republican gains in the November elections may make passage of these bills even harder than in the upcoming 112th Congress.

That leaves the very tempting option of Executive Orders in what some in the Administration are calling “the third golden year” of their term, meaning the period after the Congressional mid-term elections and the period before their 4th year in office which will have to be devoted entirely to running for a second term.

The scariest thing about Executive Orders is that they can appear with little or no warning and have the full effect of law and policy as long as an Administration is in office. WESTCAS works daily to stay in touch with people who work in the Executive Branch of government so that we can give the membership the earliest possible warning that an Executive Order on a particular issue is under active consideration.

So stay tuned. It may be August in Washington, but these issues have not and won’t go away.

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