


The Update

November 2008

 **AES** Think Big. Go Beyond.

Utilities Must Comply with FACTAct by May 1, 2009

Identify theft has become a growing and well-publicized problem in recent years. The Federal Trade Commission (FTC) issued Identity Theft Red Flag and Address Discrepancies regulations under the Fair and Accurate Credit Transaction Act of 2003 (FACTAct), requiring financial institutions and creditors with covered accounts to implement a written Identity Theft Prevention Program by November 1, 2008. In late October 2008, the FTC extended the deadline for implementation to May 1, 2009. These regulations, published in the November 9, 2008, Federal Register, are commonly referred to as the "Red Flag Rules". Utility companies fall under the definition of "creditor with covered accounts." The regulation is intended to help protect consumers from fraud and identity theft by identifying and responding to potential red flags in a timely manner.

There are four main components of the Red Flag Rules: identify relevant red flags, detect red flags, prevent and mitigate identity theft, and administrate the program. A complete article was published in the fourth quarter 2008 issue of *AE2S' The Source*. Please refer to this article for specific guidelines. For more information, visit the following web sites:

- <http://www.ae2s.com/thesource.asp>
- www.ftc.gov/bcp/edu/business/alerts/alt050/shtm
- www.ftc.gov/os/fedreg/2007/november/071109redflags.pdf ■

Now that the Presidential election is over, speculation on what the change in Administration will mean has begun. Prior to installation of the new Administration, it is anticipated that Congress will meet to wrap up selected year-end business, possibly including debate of an economic stimulus package. If Congress does not successfully pass an economic stimulus package before year-end, it is expected to be the first order of business when Congress convenes in January.

Post Election Infrastructure Funding and Drinking Water Issues Outlook

Both the American Water Works Association (AWWA) and the Water Environment Federation (WEF) have provided correspondence to Congress urging them to include infrastructure funding as part of an economic stimulus package. The U.S. Conference of Mayors has also weighed in, asking Congress to consider \$18.75 billion in water infrastructure grant funding. AWWA reports that in meetings with Congressional staff, AWWA has advocated that funding for water and wastewater projects be provided equally. Democrats are reportedly looking for projects that will be ready to go within 120 days of funding becoming available, to immediately induce economic activity. Republicans are said to be generally opposed to public works spending as an economic stimulus, fearing the projects take too long to have a near-term effect.

WEF has reported that the key issues yet to be resolved in structuring any potential economic stimulus for public works projects include 1) whether funds will be distributed through the State Revolving Loan Funds or directly to the utilities, 2) what mixture of grant and loan dollars should be allowed, 3) strategies to address matching requirements in the event that cities and states encounter difficulties in borrowing funds in the current market environment, 4) the possibility of an expanded list of eligible projects, and 5) the need to streamline procurement procedures to get the money in the hands of utilities as soon as possible.

In addition to infrastructure funding, AWWA also anticipates that drinking water issues that will get more focus again in the new year will include chemical security and emerging contaminants. There is support from members of the Senate Committee on Environment and Public Works to toughen requirements on water systems. It also appears that senior committee members in the House also favor tougher chemical security requirements for water systems. Democratic leaders in both the House and the Senate have expressed disappointment with the United States Environmental Protection Agency's (USEPA's) regulatory determination not to establish a primary drinking water standard for perchlorate. As a result, it is expected that the decision may be overturned and the USEPA may be directed to set a standard. AWWA feels it is also likely that similar action may be taken toward pharmaceuticals and personal care products. ■

Potential Lawsuit Against USEPA

On September 12, the Center for Food Safety (CFS), a public advocacy organization, filed a notice of intent to sue the USEPA to halt the land application of biosolids to farmland as fertilizer. The CFS is hoping that other organizations will join in the lawsuit, which is a follow-up to the administrative petition filed in October 2003 by 72 organizations. The previous petition was denied by the USEPA, stating there was no scientific evidence to support a land application ban.

The lawsuit aims to stop the issuance of any new National Pollutant Discharge Elimination System (NPDES) permits that allow land application of biosolids. The CFS's goal is for existing NPDES permits to be rewritten to require a biosolids disposal method other than land application. For more information, see www.centerforfoodsafety.org. ■

Proposal for Regulation of "Down the Drain" Antimicrobial Pesticides

In early October, the USEPA proposed a rule to revise and update the existing data requirements for antimicrobial pesticides. Existing data requirements for antimicrobial pesticides were implemented in 1984. The USEPA has since determined that the tables and test notes in the 1984 rule failed to adequately address the unique applications, use patterns, and other factors germane to antimicrobial pesticides. In October 2007, the USEPA finalized rules establishing data requirements for conventional pesticides and biochemical and microbial pesticides and extended the interim coverage for antimicrobial pesticides until a final regulation for antimicrobial pesticides could be developed.

Antimicrobials are generally considered to be chemicals that disinfect and sanitize. The USEPA is proposing, for the purpose of this rule, to also include antifoulant coatings and paints and wood preservatives in the definition. The proposed rule puts forth four new data requirements for use in a screening-level assessment on the rate of antimicrobials discharged to wastewater treatment plants. The USEPA is seeking input as to the potential impact of antimicrobial pesticide chemicals on wastewater treatment plant operations and non-target organisms in receiving water bodies. The proposal, published in the Federal Register on October 8, contains four case studies for review and comment by the public. The USEPA is requesting comments from the public until January 9, 2009. ■

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www.ae2s.com

Advanced Engineering and Environmental Services, Inc. (AE2S)
2016 Washington Street South
Grand Forks, ND 58201

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