

“Thus, SB 562 unquestionably has the effect of creating a new or revised water quality standard and cannot be implemented by WVDEP until approved by EPA,” the notice said.

The Clean Water Act requires EPA to review a state’s new or revised water quality standards and either approve the revisions within 60 days or notify the state of its disapproval within 90 days. In a Dec. 20 letter to EPA, WVDEP Secretary Randy Huffman maintained that the bill did not constitute a revision of water quality standards but merely “gives direction to DEP on the parameters for the future proposed rule.”

The groups said that if EPA does not take action in 60 days, they will file a lawsuit, but the venue has not been determined yet.

“We need someone to call a stream polluted when it is, and if the West Virginia DEP won’t do it then the EPA must,” Jim Sconyers, chairman of the Sierra Club’s West Virginia chapter, said in a statement Jan. 28.

EPA had previously instructed WVDEP to adopt a new genus-level method for testing biological impairment of aquatic life. John Wirts, assistant director of WVDEP’s division of water and waste management, told BNA Jan. 28 that the state’s new biological integrity test, expected this spring, could incorporate EPA’s suggestion. If EPA’s method had been used, the most recent list would have included 546 streams, the groups said.

BY ANDREA VITTORIO

The environmental groups’ notice of intent to sue EPA is available at <http://www.sierraclub.org/environmentallaw/lawsuits/docs/Notice.pdf>.

Energy

IRS: ‘Beginning Construction’ Guidelines For Renewable Energy Projects to Come

The Internal Revenue Service plans to issue guidelines to help taxpayers understand congressional changes to tax provisions for renewable energy projects, an IRS official said Jan. 25 at the 2013 midyear meeting of the American Bar Association Section on Taxation.

Brian J. Americus, an attorney in Branch 6 of IRS’s Office of Chief Counsel, told participants at the Orlando, Fla., conference that the agency has been “swamped” with inquiries about when guidance will be issued to explain changes to renewable energy tax credit programs that were included by Congress in the American Taxpayer Relief Act (Pub. L. No. 112-240), signed by President Obama Jan. 2 (03 DEN A-1, 1/4/13).

The legislation, designed to avoid the “fiscal cliff” and keep the income taxes of most Americans from rising, included a broad tax extenders package.

Renewable energy tax credits were extended for one year, through 2013. The definition of a qualified facility was expanded to include those projects in which construction begins before Jan. 1, 2014. The expanded definition replaced the requirement that a taxpayer must have a facility in service by the end of 2013.

The bill language begs the question of how exactly IRS will define “beginning construction,” panelists said.

“We’re working on it,” Americus said, adding that the agency is aware of the keen interest in the program. The guidelines will be issued “as soon as possible,” he said, declining to provide a specific date.

Another area of uncertainty for the investment community involves the Section 1603 program, which provides grants in lieu of tax credits to renewable energy developers.

If Congress is unable to avoid federal budget sequestration in March, it is unclear whether the Section 1603 program would be completely exempted or partially exempt depending on the timing of awards and distributions, panelists said.

The Section 1603 program, created as part of the economic stimulus package known as the American Recovery and Reinvestment Act of 2009, has funded several thousand renewable energy projects with \$13 billion to \$16 billion in total funding, according to government reports.

Nuclear Reactor Tax Credit. On other subjects, panelists said that while IRS has issued guidance (tax code Section 45J) for a \$6 billion nationwide program of income tax credits for nuclear energy production, the nuclear industry is facing major challenges that make it unlikely many electric utilities and financial investors will be able to utilize the program for some time to come.

The tax credit for nuclear energy production was authorized by Congress in Section 1306 of the Energy Policy Act of 2005 (Pub. L. No. 109-58) in an effort to promote the building of new nuclear power plants.

However, the only new reactors being built today are located in Georgia and South Carolina—and possibly in Florida in the future—where the states allow the engineering and construction costs to be recovered from electricity customers before the plants are completed and begin operating.

Construction costs have skyrocketed since the 2005 tax credit was established, panelists said, with a new nuclear reactor costing about \$12 billion today in a long licensing process.

Current regulations require a new nuclear facility to be placed in service before Jan. 1, 2021, to qualify for the credit, which will limit the number of projects that can qualify, panelists said.

Nuclear construction also has been slowed by the inability to resolve the nuclear waste issue and concerns about nuclear safety prompted by Japan’s Fukushima Daiichi nuclear disaster in 2011, panelists said. However, nuclear power could see a revival if Congress acts to limit carbon emissions through a carbon tax or a cap-and-trade program, they said.

BY LYNN GARNER

Drilling

NOAA Launches Expanded Study on Impacts Of Arctic Oil Exploration on Marine Mammals

ANCHORAGE, Alaska—The National Oceanic and Atmospheric Administration has announced that it will prepare a new analysis of potential impacts to marine mammals from Arctic offshore oil and gas activities.