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Current and Trending Environmental Issues for Wind Energy

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Clean Power Plan

- Additional impetus pushing operators, utilities and states to ramp up use of wind energy
- State by state plans to result in reduction of CO2 emission from power plants by 30% between 2005 and 2030
- Wind energy is one of the ways to reduce the CO2 footprint

Renewable Portfolio Standards or Renewable Electricity Standard

- Promulgated at the state level
- Renewable Energy Credits ("REC's") are typically created under the program. These and similar wind project benefits are often defined as "environmental attributes"
- Renewable Portfolio Standards ("RPS") program is an electric regulatory program in Texas as well as many other states

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Noise, Setbacks, Health

- Noise is typically not regulated at the state or county level. Some cities or towns may have ordinances
- Issues are often addressed in leases, tax abatement agreements or siting certificates
- In Texas, county judges or commissioner's courts will often issue letters supporting a lack of such ordinances
- Over the last several years, lawsuits have been filed alleging health hazards associated with wind farms primarily due to noise, vibrations and flicker. Suit is often a form of NIMBYism or desire for setbacks
- In February 2015, Governor Walker offered up a budget that included funds to study health impacts of wind turbines. In December 2015, a Wisconsin county health director refused to shut down a wind farm after the local health board declared it a health hazard finding no evidence of health issues
- Michigan has reacted by filing legislation to curb such lawsuits

Protected Species

- Bald and Golden Eagle Protection Act
 - Prohibits take of bald and golden eagles
 - Criminal and Civil penalties
 - Incidental take provision
 - No citizen suit provision
- Migratory Bird Treaty Act
 - Prohibits take of more than 1,000 migratory bird species including eagles
 - Criminal liability, strict liability (no proof of intent)
 - No incidental take provision
 - No citizen suit provision
- Endangered Species Act
 - Prohibits take of threatened or endangered species. Over 1,500 species (over 100 birds) are listed
 - Criminal and Civil penalties
 - Incidental take provision
 - Citizen suit provision

Permit Programs

- Eagle Permit Program
 - Established in 2009 for 5-year permits
 - A 30 year rule was promulgated in 2013
 - In August 2015, a California district court vacated the 30-year aspect for failure to comply with NEPA
 - In January, the US Fish and Wildlife Service (“FWS”) dropped its appeal of the 30-year portion
 - FWS has begun the NEPA process
 - Only one 5-year permit has been issued since 2009

Permit Programs (continued)

- Migratory Bird Treaty Act (“MBTA”) Permit Program
 - In May 2015, FWS issued a notice of intent to consider authorizing ITPs under the MBTA
 - Three options are delineated:
 - a general permit covering certain activities such reserve pits, waste water ponds and other oil and gas production related activities. Wind energy generation may be covered under the general permit.
 - Individual Take Permits
 - MOUs
 - FWS continues to rely on enforcement discretion and will seek to create additional voluntary guidance
 - Courts in the 8th, 9th and most recently 5th Circuits have determined that MBTA only covers purposeful activities such as hunting. The 2nd and 10th Circuit have held that incidental take is covered
 - FWS has announced plans to issue an interpretive rule defining unauthorized “take”

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