

## Recent Developments

### Information about Environmental Issues

### August 2015

#### U.S. ENVIRONMENTAL PROTECTION AGENCY ("EPA") RECENT RULEMAKING ACTIVITIES:

##### Air:

1. [80 Fed. Reg. 46271](#) (Aug. 4, 2015). *2008 Ozone National Ambient Air Quality Standard ("NAAQS")*. EPA has released updated interstate ozone transport modeling and associated data and methods, which it will use to develop a proposed rule that will address interstate ozone transport for the 2008 ozone NAAQS later this year. Comments on the modeling, data and methods may be submitted to EPA until September 23, 2015.
2. [80 Fed. Reg. 48262](#) (Aug. 12, 2015). *Oil and Natural Gas Sector*. EPA has finalized amendments to new source performance standards ("NSPS") for the Oil and Natural Gas Sector that revise the definitions of *low pressure gas well* and *storage vessel*. This Final Rule, effective August 12, 2015, also amends the NSPS to remove provisions concerning storage vessels connected or installed in parallel.
3. [80 Fed. Reg. 50386](#) (Aug. 19, 2015). *Phosphoric Acid Manufacturing*. EPA has finalized the residual risk and technology review for the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production source categories. The Final Rule, effective August 19, 2015, also finalizes an 8-year review of the current NSPS for five source categories, and addresses provisions under the Clean Air Act related to the national emission standards for hazardous air pollutants ("NESHAP"), review and revision of emission standards, and work practice standards.
4. [80 Fed. Reg. 50199](#) (Aug. 19, 2015). *Greenhouse Gases ("GHG"): Prevention of Significant Deterioration ("PSD") and Title V Permitting*. This Final Rule, effective August 19, 2015, removes several provisions from the PSD and Title V regulations that were specifically identified as vacated by the U.S. Court of Appeals for the District of Columbia ("D.C. Circuit") when the D.C. Circuit implemented the U.S. Supreme Court's ruling on the Tailoring Rule. *Coalition for Responsible Regulation v. EPA*, Nos. 09-1322, 10-073, 10-1092 and 10-1167 (D.C. Cir. April 10, 2015). In its ruling, the U.S. Supreme Court held that EPA can only require sources that otherwise would be subject to review under the PSD program to obtain PSD permits for GHG emissions. *Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427 (2014). Accordingly, this Final Rule removes certain regulatory provisions from the PSD regulations that require a stationary source to obtain a PSD permit solely on the basis of the source's GHG emissions, and eliminates provisions requiring EPA to consider further phasing-in of GHG permitting requirements into the PSD and Title V permitting programs at lower GHG emissions thresholds.

5. [80 Fed. Reg. 50250](#) (Aug. 19, 2015). *Regional Consistency Regulations*. Proposed revisions to EPA's Regional Consistency Regulations would exclude locally or regionally applicable federal court decisions from a requirement that EPA's rules, guidance, and directives under the Clean Air Act be consistent across all EPA regional offices. Comments on the proposed amendments must be submitted to EPA by October 19, 2015.

6. [80 Fed. Reg. 51052](#) (Aug. 21, 2015). *Data Requirements Rule: 2010 1-hour Sulfur Dioxide ("SO<sub>2</sub>") Primary NAAQS*. This Final Rule, effective September 21, 2015, directs states to provide data to characterize current air quality in areas with large sources of SO<sub>2</sub> emissions to identify maximum 1-hour SO<sub>2</sub> concentrations in ambient air that will then be used by EPA in future rounds of area designations for the 2010 1-hour SO<sub>2</sub> NAAQS. By January 15, 2016, states must submit a list to EPA identifying sources that are not located in a designated nonattainment area and that have actual SO<sub>2</sub> emissions that exceed a 2,000 tons-per-year annual threshold during the most recent year for which emissions data is available, or that are identified by the state or EPA Regional Administrator regarding these additional sources.

7. [80 Fed. Reg. 52100](#) (Aug. 27, 2015). *Municipal Solid Waste ("MSW") Landfills: Emission Guidelines and Compliance Times*. EPA has proposed revisions to the Emission Guidelines and Compliance Times for MSW Landfills that would result in additional reductions of landfill gas and its components, including methane, by lowering the emissions threshold at which a landfill must install controls. The proposed revised Emission Guidelines would ultimately apply to landfills that accepted waste after November 8, 1987 and that commenced construction, reconstruction, or modification on or before July 17, 2014 (the date on which proposed revisions to the landfills NSPS were published). Comments on the proposal must be submitted to EPA on or before October 26, 2015.

8. [80 Fed. Reg. 52162](#) (Aug. 27, 2015). *MSW Landfills: Standards of Performance*. This Supplemental Proposal for the Standards of Performance for MSW Landfills addresses the non-methane organic compound ("NMOC") emission rate threshold at which an affected MSW landfill must install controls. This rulemaking supplements the [proposal](#) by further lowering, from 40 megagrams per year ("MG/yr") to 34 Mg/yr, the proposed NMOC emissions threshold at which controls would be required. Comments must be received by EPA on or before October 26, 2015.

[State Implementation Plan \("SIP"\): Texas:](#)

9. [80 Fed. Reg. 49187](#) (Aug. 17, 2015). *Houston-Galveston-Brazoria ("HGB") 1997 Ozone Nonattainment Area*. EPA has issued a "clean data determination" for the HGB area under the 1997, 84-ppb ozone NAAQS, which recognizes that the area has attained that standard and would lift further state planning requirements under that standard as long as the area continues to attain the 1997 ozone NAAQS. Comments on this proposal must be submitted to EPA on or before September 16, 2015.

10. [80 Fed. Reg. 49970](#) (Aug. 18, 2015). *HGB 1-Hour Ozone Nonattainment Area*. This Proposed Rule would approve a redesignation substitute demonstration submitted for the HGB area that, if finalized, would function like a redesignation to attainment for the 1-hour ozone NAAQS. The redesignation substitute procedure entails a demonstration that the area attained the ozone standard due to permanent and enforceable emission reductions and will continue to attain in the future. This action would also terminate the area's penalty fee obligations under Clean Air Act section 185 for the 1-hour ozone NAAQS. EPA must receive any comments on this proposal on or before September 17, 2015.

11. [80 Fed. Reg. 50248](#) (Aug. 19, 2015). *El Paso Particulate Matter ("PM") Contingency Measures*. EPA has proposed to approve SIP revisions pertaining to contingency measures for PM in El Paso, Texas that relate to the paving of alleys and sweeping of streets. Comments on the proposed approval may be submitted to EPA on or before September 18, 2015.

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12. [80 Fed. Reg. 51992](#) (Aug. 27, 2015). *HGB 8-Hour Ozone Nonattainment Area*. EPA has proposed to extend the HGB area's attainment date for the 2008 8-hour ozone standard by one year, to July 20, 2016, and to take actions on other areas. Comments on this proposal are due September 28, 2015.

### Water:

13. [80 Fed. Reg. 46280](#) (Aug. 4, 2015). *2014 Effluent Guidelines Program Plan*. EPA has published its final 2014 Effluent Guidelines Program Plan and 2014 Annual Review Report. These documents indicate that EPA plans to proceed with studies of both petroleum refineries and centralized waste treatment systems that receive oil and gas waste to determine whether new or revised effluent limitation guidelines are warranted.

14. [80 Fed. Reg. 51020](#) (Aug. 21, 2015). *Water Quality Standards ("WQS") Regulatory Revisions*. This Final Rule updates six key areas of the federal WQS regulation by (a) clarifying what constitutes an Administrator's determination that new or revised WQS are necessary; (b) refining how states and authorized tribes assign and revise designated uses for individual water bodies; (c) revising triennial review requirements to clarify the role of new or updated Clean Water Act section 304(a) criteria recommendations in the development of WQS by states and authorized tribes and applicable WQS that must be reviewed triennially; (d) establishing stronger antidegradation requirements to enhance protection of high quality waters and promoting public transparency; (e) adding new regulatory provisions to promote the appropriate use of WQS variances; and (f) clarifying that a state or authorized tribe must adopt, and EPA must approve, a permit compliance schedule authorizing provision prior to authorizing the use of schedules of compliance for water quality-based effluent limits in NPDES permits. The effective date of this rulemaking is October 20, 2015.

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## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ("TCEQ")

### Water:

1. [40 Tex. Reg. 5268](#) (Aug. 21, 2015). *30 T.A.C. Chapter 290, Public Drinking Water*. Proposed amendments to Chapter 290 would clarify existing rules to allow public water systems to use volunteer licensed operators. The proposal would require a volunteer to be licensed by the TCEQ and would require an owner or manager of a water system that is operated by a volunteer to maintain a record of each volunteer, including the volunteer's contact information and the time period for which the volunteer is responsible for operating the water system. A public hearing on this proposal will be held in Austin on September 14, 2015, and written comments may be submitted until September 21, 2015.

### Procedural Rules:

2. [40 Tex. Reg. 5225](#); [40 Tex. Reg. 5228](#); [40 Tex. Reg. 5235](#); [40 Tex. Reg. 5240](#); [40 Tex. Reg. 5250](#); [40 Tex. Reg. 5254](#) (Aug. 21, 2015). *30 T.A.C. Chapter 1, Purpose of Rules, General Provisions*; *30 T.A.C. Chapter 39, Public Notice*; *30 T.A.C. Chapter 50, Action on Applications and Other*

*Authorizations; 30 T.A.C. Chapter 55, Requests for Reconsideration and Contested Case Hearings, Public Comment; 30 T.A.C. Chapter 70, Enforcement; 30 T.A.C. Chapter 80, Contested Case Hearings.* The TCEQ has proposed a series of amendments to Chapters 1, 39, 50, 55, 70 and 80 to implement Senate Bill 709 and Senate Bill 1267 (Acts of the 84<sup>th</sup> Texas Legislature, 2015), which made several changes to the current contested case hearing (“CCH”) process for applications for air quality; water quality; municipal, industrial and hazardous waste; and underground injection control permits.

Senate Bill 709. The proposed rule amendments for Chapters 39, 50, 55 and 80 primarily would apply to applications filed on or after September 1, 2015, and include the following:

- Specifying that requests for CCH by individual entities and groups or associations cannot rely on comments submitted by others, and groups or associations must timely provide the name and physical address of its member(s) who would be an affected person in their own right;
- Adding discretionary information that the TCEQ may consider in its determinations of “affected persons”;
- Requiring the TCEQ to determine that someone is an affected person only if the person timely submitted comments on the application;
- Requiring the TCEQ executive director’s response to comments be filed before a preliminary hearing is held;
- Amending other hearing procedures in Chapter 80, including:
  - Requiring copies of the application from the applicant for certification as part of the administrative record;
  - Specifying that the administrative record will be provided to SOAH when the notice of hearing is issued;
  - Limiting the deadline for submittal of the SOAH Administrative Law Judge’s Proposal for Decision to 180 days from date of preliminary hearing, with extensions only to address constitutional concerns of the parties, or by agreement of the parties with approval by the Administrative Law Judge;
  - Providing for the prima facie case; and
  - Amending the role of the TCEQ executive director in the hearing;
- Requiring the TCEQ to provide written notification of draft permits to State senators and representatives and to also provide web-based notice of administratively complete applications for permits and licenses; and
- Establishing criteria for the TCEQ executive director’s consideration for determination of “substantially similar” re-filed applications.

Senate Bill 1267. Proposed new §80.276 and rule amendments for Chapters 1, 55, 70 and 80 update procedures for providing notice of the TCEQ’s decisions or orders and the procedures and timelines concerning motions for rehearing to ensure consistency with the Texas Administrative Procedure Act. The proposed amendments also would provide that the effective date of an agreed order shall be the date the order is signed by the commission or the executive director, unless stated otherwise in the agreed order.

The TCEQ will conduct a public hearing on this proposed rulemaking in Austin on September 15, 2015. Written comments may be submitted until September 21, 2015.

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## ALSO OF INTEREST

**Final Update V of SW-846.** EPA has released for public comment [Final Update V](#) to the 3<sup>rd</sup> edition of the manual, *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods* (SW-846). This update contains eight new and fifteen revised analytical methods that may be used to monitor or comply with hazardous waste regulations in the Resource Conservation and Recovery Act (“RCRA”).

**TCEQ Required Use of SW-846, Method 5035.** Effective January 1, 2016, the TCEQ Remediation Division will require the use of [EPA SW-846, Method 5035A](#), *Purge-and-Trap and Extraction for Volatile Organics in Soil and Waste Samples*, as amended, for the collection and preparation of solid samples for volatile organic compound (“VOC”) analysis using purge-and-trap technology. After December 31, 2015, the TCEQ will reject VOC data reported for solid samples that was collected and prepared using another method when the data are intended to demonstrate compliance with 30 T.A.C. Chapters 334, 335, or 350.

**Core Data Form.** The Texas Commission on Environmental Quality (TCEQ) has updated the data standards for the TCEQ Core Data Form. This [guidance](#) is intended to assist the regulated community with completing the Core Data Form in accordance with data standards for the Central Registry Program. This supersedes all previous guidance provided by the TCEQ Central Registry. The TCEQ Air Permits Division may revise the Site/Area Names as necessary to meet current data standards.

**TCEQ STEERS ePermitting System.** The TCEQ STEERS ePermitting system has been updated to help provide applicants with faster reviews of certain oil and gas applications by using information provided by the applicant to determine if the representations in the application comply with the authorization(s) being registered. In specific instances, upon completion of the STEERS ePermit submittal and based on the information provided by the applicant, an approval letter may be issued within that same day. Application submittals that receive approval in this manner will be periodically reviewed by staff. Non-automated reviews will also be conducted if the system is not able to confirm that an application meets all of the requirements. All facilities must be in compliance and operate in accordance with all applicable rules and regulations.

**Texas Emissions Reduction Plan (“TERP”).** The TCEQ has announced that up to \$5.9 million in [grants](#) is being made available through TERP Texas Clean Fleet Program to encourage entities that operate large fleets of vehicles in Texas to replace diesel-powered vehicles with alternative fuel or hybrid vehicles. Eligible entities include those that own fleets of 75 or more vehicles operated in Texas that will commit to replace at least 20 diesel-powered light-duty or heavy-duty vehicles with a new alternative fuel or hybrid vehicle of the same weight classification and use. Qualifying alternative fuels include electricity, compressed natural gas, liquefied natural gas, hydrogen, propane, and methanol (85% by volume). Applications will be accepted for consideration only if received at the front desk of Room 1301, Building F, of the TCEQ by no later than 5:00 p.m. on November 10, 2015.

**Tier II Chemical Reporting Program.** The [Tier II Chemical Reporting Program](#) was transferred to the TCEQ from the Department of State Health Services (House Bill 942, Acts of the 84<sup>th</sup> Texas Legislature, 2015).

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## UPCOMING CONFERENCES, MEETINGS, and WORKSHOPS

TCEQ Water Quality/Stormwater Seminar. This TCEQ [seminar](#), to be held in Austin on September 22-23, 2015, will provide updates on permitting rules and upcoming regulations. [Note that the TCEQ recently has changed the date of this seminar.]

Pollution Prevention Waste Management Workshop. TCEQ staff will host a one-day [Pollution Prevention Waste Management workshop](#) in Austin on September 30, 2015. The workshop will include discussions on toxic release inventories and hazardous waste management.

RESTORE Act Listening Sessions. The TCEQ is hosting [four listening sessions](#) to provide an opportunity for public comment on the implementation of the federal RESTORE Act and the distribution of RESTORE funds stemming from the 2010 Deepwater Horizon Oil Spill. These sessions will be held in Galveston on September 14<sup>th</sup>, in Beaumont on September 15<sup>th</sup>, in Brownsville on September 28<sup>th</sup>, and in Corpus Christi on September 29<sup>th</sup>. Specifically, the public is invited to comment on the [Priorities Document](#), which outlines the criteria for awarding RESTORE funds and is based on elements of grant review processes currently accepted by the federal government. In addition to receiving comments at the listening sessions, written comments will be accepted until October 9, 2015.

TCEQ Advanced Air Permitting Seminar. The TCEQ's [2015 Advanced Air Permitting Seminar](#) will be held in Austin on October 28-29, 2015.

Light Nonaqueous-Phase Liquids ("LNAPL"). The TCEQ will host a [2-day training course](#) presented by the Interstate Technology and Regulatory Council to discuss solutions to the problems LNAPL present and how to understand and manage risks from LNAPL contamination. The course, designed for environmental professionals, consultants, regulatory and industry staff, will be held in Austin on November 18-19, 2015.

TCEQ Emissions Inventory ("EI") Workshop. This [workshop](#), which will focus on basic and advanced topics for submitting a point source EI, updates to the point source EI, and submitting an EI update through the TCEQ's web-based reporting system, will be held at the J.J. Pickle Research Campus in Austin on January 27, 2016.

TCEQ Environmental Trade Fair and Conference. The TCEQ's annual [Environmental Trade Fair and Conference](#) has been scheduled for May 3-4, 2016.

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**CONTACT INFORMATION**

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