

Recent Developments

Information about Environmental Issues

December 2014

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

Air:

1. [79 Fed. Reg. 71663](#) (Dec. 3, 2014). *Cross-State Air Pollution Rule ("CSAPR")*. This Interim Final Rule, which addresses the tolling of CSAPR compliance deadlines by three years, amends the text of the Code of Federal Regulations to correctly indicate that Phase 1 emissions budgets apply in 2015 and 2016, and that Phase 2 emissions budgets and assurance provisions apply in 2017 and beyond. Additional amendments in this Interim Final Rule toll specific deadlines for sources to certify monitoring systems and to begin reporting emissions, for EPA to allocate and record emission allowances, and for states to take optional steps to modify or replace their CSAPR Federal Implementation Plan through State Implementation Plan ("SIP") revisions. Dates also are tolled in the regulatory provisions that sunset the Clean Air Interstate Rule ("CAIR") upon its replacement by CSAPR, and a new deadline is set for removal of CAIR NO_x allowances from allowance tracking system accounts. The effective date of this Interim Final Rule is December 3, 2014. EPA will consider comments on this rule that it receives on or before February 2, 2015.

2. [79 Fed. Reg. 71674](#) (Dec. 3, 2014). *CSAPR: Allocations of Allowances to Existing Electricity Generating Units ("EGUs")*. This Notice of Data Availability addresses unit-specific default allocations of CSAPR allowances for EGUs that commenced commercial operation prior to 2010, but only to the extent that states do not provide alternative allowance allocations following procedures set forth in the rule, which is effective December 3, 2014.

3. [79 Fed. Reg. 72873](#) (Dec. 8, 2014). *National Emission Standards for Hazardous Air Pollutants ("NESHAP"): Secondary Aluminum Production*. EPA has published a Supplement to its [2012 proposed NESHAP](#) concerning the residual risk and technology review for the Secondary Aluminum Production source category and proposed amendments to correct and clarify rule requirements. The Supplemental Proposal includes a revised risk review and a revised technology review for this source category; withdraws EPA's previous proposal to include affirmative defense provisions in the regulation; proposes alternative compliance options for the operating and monitoring requirements for sweat furnaces; and provides a revised cost analysis for compliance testing. Comments on the Supplemental Notice of Proposed Rulemaking must be submitted to EPA on or before January 22, 2015.

4. [79 Fed. Reg. 72913](#) (Dec. 8, 2014). *NESHAP: Primary Aluminum Reduction Plants*. This action supplements EPA's [2011 proposed amendments](#) to the NESHAP for the Primary Aluminum Production source category, which included a proposal of certain emission limits reflecting performance of Maximum Achievable Control Technology ("MACT"). The Supplemental Proposal reflects a revised technology review and a revised residual risk analysis for the Primary Aluminum Production source

category and proposes new and revised emission standards based on those analyses, newly obtained emissions test data, and comments that EPA received in response to the 2011 proposal. In addition, the Supplemental Proposal includes new compliance requirements to meet the revised standards. EPA must receive comments on the Supplemental Proposal by January 22, 2015.

5. [79 Fed. Reg. 73147](#) (Dec. 9, 2014). *Greenhouse Gas (“GHG”) Reporting Rule*. EPA has proposed revisions and confidentiality determinations for the Petroleum and Natural Gas Systems source category of the GHG Reporting Program that would add calculation methods and reporting requirements for GHG emissions from gathering and boosting facilities, completions and workovers of oil wells with hydraulic fracturing, and blowdowns of natural gas transmission pipelines between compressor stations. This action includes confidentiality determinations for new data elements in the proposed amendments, and well identification reporting requirements that would improve EPA’s ability to verify reported data and enhance transparency. Comments on this Proposed Rule must be submitted to EPA on or before February 9, 2015.

6. [79 Fed. Reg. 73749](#) (Dec. 11, 2014). *GHG Reporting Program: Fluorinated Gas Production*. This Final Rule, effective January 1, 2015, adds chemical-specific and default global warming potentials for a number of fluorinated GHGs and fluorinated heat transfer fluids to the General Provisions of the GHG Reporting Rule. The rule further amends certain provisions of the Fluorinated Gas Production source category to reduce the level of detail in which emissions are reported, eliminate the mass-balance emission calculation method, and clarify the emission factor method. The amendments also include an alternative verification approach in lieu of collecting certain data elements for which the reporting deadline was deferred until March 31, 2015 and for which EPA identified disclosure concerns, and establishes confidentiality determinations for certain reporting requirements of this source category.

7. [79 Fed. Reg. 74639](#) (Dec. 16, 2014). *Ethylene Glycol Ethers*. EPA has promulgated a Significant New Use Rule (“SNUR”) for several ethylene glycol ethers that requires persons intending to manufacture, import, or process any of the seven ethylene glycol ethers for an activity designated as a significant new use by this rule to notify EPA at least ninety days prior to commencing such manufacture or processing. The effective date of this Final Rule is February 17, 2015.

8. [79 Fed. Reg. 74656](#) (Dec. 16, 2014). *Completion of Requirement to Promulgate Emissions Standards*. EPA has proposed that it has completed its statutory obligation under the federal Clean Air Act (“CAA”) to promulgate emissions standards for source categories accounting for not less than 90% of the aggregated emissions of each of the seven hazardous air pollutants enumerated in section 112(c)(6) of the CAA. EPA will accept comments on the Proposed Rule until February 17, 2015.

9. [79 Fed. Reg. 75233](#) (Dec. 17, 2014). *National Ambient Air Quality Standards (“NAAQS”): Ozone*. EPA has published a Proposed Rule that would revise the primary and secondary NAAQS for ozone to a level within the range of 65-70 parts per billion. EPA currently is obligated to finalize its decision on revising the ozone NAAQS by October 1, 2015. EPA must receive written comments on this proposal by March 17, 2015.

10. [79 Fed. Reg. 75621](#) (Dec. 18, 2014). *NESHAP: Brick and Structural Clay Products Manufacturing and Clay Ceramics Manufacturing*. EPA is proposing NESHAPs for Brick and Structural Clay Products Manufacturing and Clay Ceramics Manufacturing to require that all major sources in these categories meet maximum achievable control technology (“MACT”) standards for mercury, non-mercury metal hazardous air pollutants (“HAP”) and dioxins/furans; health-based standards for acid gas HAP; and work practice standards, where applicable. Comments must be received by EPA on or before February 17, 2015.

11. [79 Fed. Reg. 79017](#) (Dec. 31, 2014). *New Source Performance Standards (“NSPS”): Oil and Natural Gas*. Effective December 31, 2014, EPA finalized amendments to the NSPS for the oil and

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natural gas sector resulting from its reconsideration of certain issues related to well completions, storage vessels, and other issues that were raised for reconsideration of the [2012 NSPS](#), as well as technical corrections and amendments to further clarify the NSPS.

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

12. [79 Fed. Reg. 73842](#); [79 Fed. Reg. 73872](#) (Dec. 12, 2014). *Lead Emission Rules*. EPA has approved a revision to the Texas SIP that repeals lead emission rules covering stationary sources that no longer exist in El Paso and Dallas counties. Unless EPA receives adverse written comment on the Proposed Rule, published concurrently, by January 12, 2015, the Direct Final Rule will become effective on February 10, 2015.

13. [79 Fed. Reg. 74817](#) (Dec. 16, 2014). *Visibility and Regional Haze*. This Proposed Rule would partially approve and partially disapprove a revision to the Texas SIP that addresses regional haze for the first planning period of 2008 through 2018. EPA is proposing to partially approve the SIP revision as meeting certain requirements of the regional haze program, including the majority of the requirement to procure and install the Best Available Retrofit Technology ("BART") at certain categories of existing major stationary sources built between 1962 and 1977. EPA is proposing to partially disapprove the SIP revision for not adequately addressing other requirements of the regional haze program related to reasonable progress, the long-term strategy, and the calculation of natural visibility conditions. Finally, this action would disapprove the Texas SIP revisions regarding interference with other states' programs for visibility protection for the 1997 fine particulate matter ("PM_{2.5}") NAAQS, the 1997 ozone NAAQS, the 2006 PM_{2.5} NAAQS, the 2008 ozone NAAQS, the 2010 NO₂ NAAQS, and the 2010 SO₂ NAAQS. Comments on this proposal must be submitted to EPA on or before February 17, 2015.

14. [79 Fed. Reg. 78752](#) (Dec. 31, 2014). *Flexible Permit Program ("FPP")*. EPA is proposing to find that the Texas Commission on Environmental Quality ("TCEQ") has satisfied all of the elements identified in EPA's conditional approval of the TCEQ's FPP, and is proposing to convert the conditional FPP to a fully approved FPP. Comments on the proposed action must be received by EPA on or before January 30, 2015.

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[TEXAS COMMISSION ON ENVIRONMENTAL QUALITY \("TCEQ"\)](#)

[Air:](#)

1. [39 Tex. Reg. 9468](#) (Dec. 5, 2014). *30 T.A.C. Chapter 114, Control of Air Pollution from Motor Vehicles*. This proposal would establish a formal procedure to allow any county that is eligible to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program ("LIRAP") to opt out of the LIRAP, have the LIRAP fee collection be discounted, and end the contract between the county and the TCEQ executive director. Comments may be submitted to the TCEQ until January 9, 2015.

2. [39 Tex. Reg. 10186](#) (Dec. 26, 2014). *30 T.A.C. Chapter 101, General Air Quality Rules*. This proposed rulemaking would amend or repeal most sections of the Emission Banking and Trading Program rules (Chapter 101, Subchapter H). For both the Emission Reduction Credit ("ERC") and Discrete Emission Reduction Credit ("DERC") programs, the proposed amendments would clarify how reductions are surplus to the SIP; update federal standard changes; repeal provisions for generating credits from area and mobile sources and for use by mobile sources; clarify provisions for substituting

credits from one ozone precursor for another; remove the requirement to submit original certificates for trade and use; revise the equations for generating credits; and clarify that limitations on protocols apply to both generation and use. For the ERC program only, the revisions would extend the deadline for applying to certify credits; amend rounding procedures for generation and use; and allow sources in the Highly Reactive Volatile Organic Compound (“HRVOC”) Emissions Cap and Trade Program (“HECT”) to generate volatile organic compound (“VOC”) ERCs from HRVOC reductions if HECT allowances are retired. For the DERC program only, the proposal would change the DERC limit in the Dallas-Fort Worth (“DFW”) 1997 ozone nonattainment area from an annually calculated value to a fixed value. Public hearings on this proposed rulemaking will be held in Arlington on January 15, 2015 and in Houston on January 20, 2015. Comments may be submitted to the TCEQ until January 30, 2015.

3. [39 Tex. Reg. 10246](#) (Dec. 26, 2014). *30 T.A.C. Chapter 115, Control of Air Pollution from Volatile Organic Compounds*. The TCEQ has published a proposed rule that would implement reasonably available control technology (“RACT”) as required by the federal CAA for emission source categories that have been identified as potentially being affected in the DFW area and extend the same RACT requirements currently applicable in the nine-county 1997 DFW eight-hour ozone nonattainment area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant counties) to Wise County. Compliance would be required for these sources by January 1, 2017. The rulemaking also would add control, inspection, and recordkeeping requirements for storage tank openings, including thief hatches and pressure relief valves; revoke exemptions for pre-1982 floating roof storage tanks; and alter the applicability of control requirements for storage tanks at pipeline breakout stations in the DFW area. The TCEQ and other concerned parties currently are challenging whether EPA’s inclusion of Wise County in the DFW 2008 eight-hour ozone nonattainment area was lawful. If the inclusion of Wise County is overturned, the TCEQ will take appropriate action to revise this rulemaking. Hearings on this proposed rulemaking will be held in Arlington on January 15, 2015 and in Austin on January 22, 2015; written comments may be submitted to the TCEQ until January 30, 2015.

4. [39 Tex. Reg. 10337](#) (Dec. 26, 2014). *30 T.A.C. Chapter 117, Control of Air Pollution from Nitrogen Compounds*. This proposed rulemaking would implement RACT requirements for all major sources of NO_x in the DFW area. The rulemaking would add compliance dates for new or revised RACT rules and add compliance dates for sources that become subject to these rules after the initial compliance date. The proposal also would provide compliance flexibility to owners or operators of a site that use temporary boilers or process heaters for less than sixty consecutive calendar days by allowing the use of previous stack test results conducted on the unit that would be newly installed or relocated at the account or a manufacturer’s guarantee of performance. In addition, the proposal would revise the definition of “electric power generating system” to clarify the applicability of independent power producers in the ozone nonattainment areas. Hearings on this proposed rulemaking will be held in Arlington on January 15, 2015 and in Austin on January 22, 2015; written comments may be submitted to the TCEQ until January 30, 2015.

[Miscellaneous:](#)

5. [39 Tex. Reg. 9463](#); [39 Tex. Reg. 9484](#) (Dec. 5, 2014). *30 T.A.C. Chapter 37, Financial Assurance*; *30 T.A.C. Chapter 336, Radioactive Substance Rules*. The TCEQ has proposed amendments to Chapters 37 and 336 to implement Senate Bill 347 (Acts of the 83rd Legislature, 2013). The proposed rulemaking would revise these chapters to reflect the new dedicated general revenue account created by S.B. 347 (the “Environmental Radiation and Perpetual Care Account”). The proposal also would add new § 336.739 to implement volume reduction requirements, prohibiting the disposal of any low-level radioactive waste in Texas which originated from outside of Texas or Vermont and has not been volume-reduced by a factor of three, or to the greatest extent possible, with limited exceptions. A public hearing on this proposal will be held in Austin on January 13, 2015, and written comments may be submitted to the TCEQ until January 20, 2015.

6. [39 Tex. Reg. 9578](#); [39 Tex. Reg. 9581](#); [39 Tex. Reg. 9586](#) (Dec. 5, 2014). *30 T.A.C. Chapter 55, Requests for Reconsideration and Contested Case Hearings, Public Comment*; *30 T.A.C. Chapter 305, Consolidated Permits*; *30 T.A.C. Chapter 331, Underground Injection Control*. The TCEQ has adopted amendments to Chapters 55, 305 and 331 to implement H.B. 1079 (Acts of the 83rd Legislature, 2013). This rulemaking requires that all new, amended, or renewed Class III Underground Injection Control (“UIC”) permits include a permit range table that provides concentration ranges for each of the groundwater quality parameters listed in the restoration table of each production area authorization (“PAA”) associated with a permit, and specifies the conditions under which an application for a PAA may be subject to a contested case hearing. The effective date of these amendments is December 11, 2014.

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[ALSO OF INTEREST](#)

EPA’s Semiannual Regulatory Agenda. EPA has published its [semiannual regulatory agenda](#), which provides information concerning regulations and major policies currently under development, reviews of existing regulations and major policies, and rules and major policymakings completed or canceled since the last agenda.

Renewable Fuel Standard (“RFS”) Program. EPA [announced](#) that it would not finalize 2014 applicable percentage standards under the RFS program by the end of 2014; therefore, the compliance demonstration deadline for the 2013 RFS standards will take place in 2015.

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[UPCOMING CONFERENCES, MEETINGS, and WORKSHOPS](#)

TCEQ Work Session. The next Commissioners’ Work Session is scheduled to be held in Austin on February 20, 2015.

TCEQ Emissions Inventory Workshop. This [workshop](#) will focus on basic and advanced topics for submitting a point source emissions inventory, updates to the point source emissions inventory, and submitting an emissions inventory update through the TCEQ’s web-based reporting system. The workshop will be held at the Commons Learning Center at the J.J. Pickle Center in Austin on January 14-15, 2015.

TCEQ Environmental Trade Fair. Next year’s TCEQ Environmental Trade Fair will be held in Austin on May 5-6, 2015.

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CONTACT INFORMATION

For copies of any information referenced in this newsletter, please contact Jan Williamson at 512.322.2563, or by e-mail at jan.williamson@bakerbotts.com. Questions you may have regarding these or any other matters may be directed to any of the attorneys in our environmental section. For your convenience, their names and telephone numbers are listed below:

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