

## *Recent Developments*

### *Information about Environmental Issues*

### *January 2016*

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

##### *Air:*

1. [81 Fed. Reg. 2535](#) (Jan. 15, 2016). *Greenhouse Gas ("GHG") Reporting Rule*. This proposed rule would amend specific provisions in the GHG reporting rule to streamline and improve implementation of the rule, improve quality and consistency of data collected under the rule, and clarify or update certain provisions that have been the subject of questions from reporting entities. Confidentiality determinations for reporting of certain data element to the program are also being proposed. Comments are due February 29, 2016.

2. [81 Fed. Reg. 4239](#) (Jan. 26, 2016). *National Emission Standards for Hazardous Air Pollutants*. On [November 27, 2015](#), EPA requested information related to hazardous air pollutant emissions from sources in the oil and natural gas production and natural gas transmission and storage segments of the oil and natural gas sector. EPA is extending the comment period from January 26, 2016 to March 11, 2016.

3. [81 Fed. Reg. 4987](#) (Jan. 29, 2016). *Greenhouse Gas Reporting Rule*. EPA has proposed (1) revisions and confidentiality determinations for the petroleum and natural gas systems source category of the Greenhouse Gas Reporting Program, (2) to add new monitoring methods for detecting leaks from oil and gas equipment in the petroleum and natural gas systems source category consistent with the leak detection methods in the recently proposed NSPS for the oil and gas industry, (3) to add emission factors for leaking equipment to be used in conjunction with these monitoring methods to calculate and report GHG emissions resulting from equipment leaks, and (4) reporting requirements and confidentiality determinations for nine new or substantially revised data elements. Comments on this Proposed Rule are due February 29, 2016.

##### *State Implementation Plan ("SIP"):*

4. [81 Fed. Reg. 295](#) (Jan. 5, 2016). *Regional Haze Program*. This Final Rule, effective February 4, 2016, partially approves and partially disapproves a revision to the Texas SIP submitted March 31, 2009, to address the regional haze requirements of the Clean Air Act ("CAA"). EPA partially approved the SIP revision as meeting certain requirements of the regional haze program, including Best Available Retrofit Technology requirements for facilities other than Electric Generating Units (EGUs). The agency partially disapproved the Texas SIP revision for not adequately addressing other requirements of the regional haze program related to reasonable progress, long-term strategy, and the calculation of natural visibility condition. EPA is promulgating a Federal Implementation Plan ("FIP"), which includes sulfur dioxide emission limits for 15 EGUs located at 8 coal-fired power plants. EPA is also finalizing its

## BAKER BOTTS LLP

proposed partial disapproval of a revision to the Oklahoma SIP submitted to address regional haze requirements of the CAA and is promulgating a FIP to address the deficiencies.

5. [81 Fed. Reg. 1127](#) (Jan. 11, 2016). *Sulfur Dioxide National Ambient Air Quality Standards (NAAQS)*. This final rule, effective February 10, 2016, approves elements of a Texas SIP submittal for the Sulfur Dioxide (“SO<sub>2</sub>”) NAAQS, addressing how the existing SIP provides for implementation, maintenance, and enforcement of the 2010 SO<sub>2</sub> NAAQS.

6. [81 Fed. Reg. 1184](#) (Jan. 11, 2016). *Dallas-Fort Worth, Texas (“DFW”) Reasonable Further Progress (“RFP”) 8-Hour Ozone Motor Vehicle Emission Budgets (“MVEBs”)*. EPA has notified the public that it has found that the MVEBs in the DFW RFP SIP revision, submitted by TCEQ on July 10, 2015, are adequate for transportation conformity purposes. These budgets are effective January 26, 2016.

7. [81 Fed. Reg. 1881](#) (January 14, 2016). *Infrastructure and Interstate Transport for the 2008 Lead National Ambient Air Quality Standards (“NAAQS”)*. EPA has approved a SIP submission from the State of Texas for the 2008 Lead (Pb) NAAQS, which addresses how the existing SIP provides for implementation, maintenance, and enforcement of the 2008 Pb NAAQS. The effective date of this final rule is February 16, 2016.

### [Waste](#)

8. [81 Fed. Reg. 1365](#) (Jan. 12, 2016). *TSCA Substances Control Act (“TSCA”)*. EPA has announced the availability of its response to a Section 21 petition received on October 7, 2015 under TSCA, requesting EPA to promulgate a rule pursuant to TSCA section 8 that would “establish a process to amend the list of natural sources of oil and fat in the ‘Soap and Detergent Association’ (SDA) nomenclature system by considering the chemical equivalency of additional natural sources.” EPA denied the TSCA section 21 petition on December 31, 2015.

9. [81 Fed. Reg. 3982](#) (Jan. 25, 2016). *National Oil and Hazardous Substances Pollution Contingency Plan*. EPA is proposing revisions to the National Oil and Hazardous Substances Pollution Contingency Plan, which align the National Oil and Hazardous Substances Pollution Contingency Plan with the Department of Homeland Security’s National Response Framework and National Incident Management System. The revisions also update the descriptions of federal agency organizational structures and capabilities and how they operate, and recognize the establishment of the Department of Homeland Security. Comments on the Proposed Rule are due March 25, 2016.

### [Water:](#)

10. [81 Fed. Reg. 13](#) (Jan. 4, 2016). *Final Regulatory Determinations for Contaminants on the Third Drinking Water Contaminant Candidate List*. EPA has announced final regulatory determinations not to issue national primary drinking water regulations for four of the 116 contaminants listed on the Third Contaminant Candidate List. EPA made final determination not to regulate dimethoate, 1,3-dinitrobenzene, terbufos and terbufos sulfone, but delayed final regulatory determination on strontium. These regulatory determinations were issued as of January 4, 2016.

11. [81 Fed. Reg. 2791](#) (Jan. 19, 2016). *Treatment of Indian Tribes in a Similar Manner as States for Purposes of Section 303(d) of the Clean Water Act*. EPA is proposing to establish regulatory procedures for eligible tribes to obtain TAS for the CWA Section 303(d) Impaired Water Listing and TMDL Program. The proposed rule would enable eligible tribes to obtain authority to identify impaired waters on their reservations and to establish TMDLs, which serve as plans for attaining and maintaining applicable water quality standards (WQS). Comments are due March 21, 2016.

12. [81 Fed. Reg. 4289](#) (Jan. 26, 2016). *NPDES General Permit for Point Source Discharges from the Application of Pesticides*. All ten EPA Regions are proposing for comment the draft 2016 National Pollutant Discharge Elimination System (“NPDES”) pesticide general permit. This draft permit covers point source discharges from the application of pesticides to waters of the United States. When finalized, it will replace the existing permit which will expire on October 31, 2016, and will authorize certain point source discharges from the application of pesticides to waters of the United States in all areas of the country where EPA is the NPDES permitting authority. Comments are due March 11, 2016.

\* \* \* \* \*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (“TCEQ”)

There were no proposed/adopted rules published by the TCEQ during the month of January.

\* \* \* \* \*

## ALSO OF INTEREST

**Guidelines for Human Exposure Assessment.** EPA has released an [External Review Draft](#) of the *Guidelines for Human Exposure Assessment*, and issued a [Notice of Availability](#) for public comment prior to external peer review. Comments received in the docket by February 22, 2016 will be shared with the external peer review panel for their consideration.

**Draft Human Health and Ecological Risk Assessments.** EPA has announced the availability of its [draft human health and ecological risk assessments](#) for the registration review of a group of pesticides identified in the document. EPA will accept comments on the draft risk assessments until March 7, 2016.

**Ambient Air Monitoring Reference and Equivalent Methods.** EPA has designated one [new reference method](#) for measuring concentrations of PM<sub>10</sub> in the ambient air. As a designated reference or equivalent method, this method is acceptable for use by states and other agencies under the requirements of 40 CFR part 58, *Ambient Air Quality Surveillance*.

**National Coastal Condition Assessment 2010.** EPA has announced the availability of the final [National Coastal Condition Assessment \(NCCA\) 2010](#), which describes the results of a nationwide coastal probabilistic survey conducted in the summer of 2010 by the EPA and its state, tribal, and federal partners. Results, presented nationally and regionally for the Northeast, Southeast, Gulf of Mexico, West, and Great Lakes coasts, include estimates of coastal area with good, fair, and poor biological quality, water quality, sediment quality, and ecological fish tissue quality

**Integrated Science Assessment for Oxides of Nitrogen -- Health Criteria.** EPA announced the availability of a final document titled, [“Integrated Science Assessment for Oxides of Nitrogen—Health Criteria.”](#) The Integrated Science Assessment (ISA), in conjunction with additional technical and policy assessments, provides the scientific basis for decisions by the EPA on the adequacy of the current NAAQS and the appropriateness of possible alternative standards.

\* \* \* \* \*

\* \* \* \* \*

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

[TCEQ Work Session](#). The next scheduled TCEQ Work Session will be held in Austin on April 7, 2016.

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

[TCEQ Public Drinking Water Conference 2016](#). TCEQ has scheduled its [Public Drinking Water Conference](#), which provides information and tools for public water systems, for August 9-10, 2016 in Austin, Texas.

[TCEQ Advanced Air Permitting Seminar](#). The TCEQ's [2016 Advanced Air Permitting Seminar](#) will be held in Austin on October 10-11, 2016.

[TCEQ Water Quality/Stormwater Seminar](#). This TCEQ [seminar](#), to be held in Austin on October 12-13, 2016, will provide updates on permitting rules and upcoming regulations.

\* \* \* \* \*

\* \* \* \* \*

**CONTACT INFORMATION**

For copies of any information referenced in this newsletter, please contact Susie McKithan at 713.229.7947, or by e-mail at [susie.mckithan@bakerbotts.com](mailto:susie.mckithan@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:

**AUSTIN:**

Molly Cagle	512.322.2535
Pam Giblin	512.322.2509
Aileen Hooks	512.322.2616
Jennifer Keane	512.322.2594
Derek McDonald	512.322.2667
Samia Broadway	512.322.2676
Ty'Meka Reeves	512.322.2515
Carlos Romo	512.322.2579
Kevin Vickers	512.322.2634
Paulina Williams	512.322.2543

**HOUSTON:**

Scott Janoe	713.229.1553
Matt Kuryla	713.229.1114
Devi Chandrasekaran	713.229.1384
Zachary Craft	713.229.1133
Harrison Reback	713.229.1567
Kim Tuthill White	713.229.1166
Cathy Yang	713.229.1349

**WASHINGTON, D.C.:**

Megan H. Berge	202.639.1308
William Bumpers	202.639.7718
Joshua Frank	202.639.7748
Debra Jezouit	202.639.7728
Steve Leifer	202.639.7723
Kent Mayo	202.639.1122
J. Barton Seitz	202.639.7895
Daniel Steinway	202.639.7902
Thomas Jackson	202.639.7710
Michael McGovern	202.639.7797
Christopher Danley	202.639.7842
Leslie Couvillion	202.639.7829
Shani Harmon	202.639.1124
Allison Watkins Mallick	202.639.7754
Martha Thomsen	202.639.7863

\* \* \* \* \*