

Recent Developments

Information about Environmental Issues

July 2014

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

Air:

1. [79 Fed. Reg. 37850](#) (July 2, 2014). *National Emission Standards for Hazardous Air Pollutants ("NESHAP"): Off-Site Waste and Recovery Operations*. Following its residual risk and technology review conducted under the federal Clean Air Act ("CAA"), EPA is proposing to amend the requirements for leak detection and repair and the requirements for certain tanks utilized by off-site waste and recovery operations. In addition, the proposal would revise regulatory provisions pertaining to emissions during periods of startup, shutdown and malfunction; would require electronic reporting of performance test results; would revise routine maintenance provisions; would clarify provisions pertaining to open-ended valves and lines; would add monitoring requirements for pressure relief devices; and would clarify provisions for some performance test methods and procedures. EPA must receive comments on this Proposed Rule by August 18, 2014.
2. [79 Fed. Reg. 38811](#) (July 9, 2014). *Refrigerant Substitutes*. This Notice of Proposed Rulemaking would list a number of flammable refrigerants as acceptable substitutes, subject to use conditions, for ozone-depleting substances in the following end-uses: household refrigerators and freezers; stand-alone commercial refrigerators and freezers; very low temperature refrigeration; non-mechanical heat transfer; vending machines; and room air-conditioning units. Comments on this proposed rulemaking action must be received by EPA on or before September 8, 2014.
3. [79 Fed. Reg. 39242](#) (July 9, 2014). *Grain Elevators*. EPA has proposed amendments to the standards of performance for grain elevators that includes a new subpart DDa applicable to affected facilities that commence construction, modification or reconstruction after July 9, 2014. Comments must be submitted to EPA by October 7, 2014.
4. [79 Fed. Reg. 41772](#) (July 17, 2014). *Municipal Solid Waste ("MSW") Landfills*. EPA is requesting public input on methods to reduce emissions from existing MSW landfills to evaluate whether additional changes beyond those in the proposed revisions for new sources are necessary. This Advanced Notice of Proposed Rulemaking also addresses other regulatory issues, including the definition of "landfill gas" treatment systems and requirements for closed areas of landfills. EPA will accept comments until September 15, 2014.

5. [79 Fed. Reg. 41846](#) (July 17, 2014). *Indian Country Minor NSR*. EPA has proposed general permits for use in Indian Country pursuant to the Indian Country Minor NSR rule for new or modified true minor sources in the following categories: concrete batch plants; boilers; stationary spark ignition engines; stationary compression ignition engines; graphic arts and printing operations; and sawmills. EPA must receive comments on this Proposed Rule on or before August 18, 2014.

6. [79 Fed. Reg. 41752](#) (July 17, 2014). *Oil and Natural Gas Sector*. Following publication of the final new source performance standards for the oil and natural gas sector on August 16, 2012, EPA received petitions for administrative reconsideration of issues related to certain storage vessel and well completion provisions. After reconsideration of issues related to implementation of the storage vessel provisions, EPA published final amendments on September 23, 2013, after which EPA received additional petitions for administrative reconsideration pertaining to the storage vessel provisions. This rulemaking action grants reconsideration of, proposes, and requests comment on a limited set of issues that includes provisions for well completions that clarify existing requirements for handling flowback gases and liquids; definition of “low pressure gas well”; requirements pertaining to determination of the potential emission of storage vessels that employ vapor recovery; requirements for thief hatches; provisions for storage vessels that are removed from service; routing of emissions from reciprocating compressor rod packing to a process; leak detection requirements at small natural gas processing plants and natural gas processing plants on the Alaskan North Slope; equipment subject to leak detection requirements under the standards; and definition of “responsible official” for compliance certification purposes. Comments must be received by EPA on or before August 18, 2014.

7. [79 Fed. Reg. 43661](#) (July 28, 2014). *State and Federal Operating Permits Programs*. This Final Rule, effective August 27, 2014, restores a sentence that clarifies that other material information known by the owner or operator must be identified and addressed in compliance certifications consistent with the federal CAA and the 1997 Credible Evidence Revisions rule. This sentence was removed inadvertently from the compliance certification requirements for state and federal operating programs that were published on June 27, 2003.

8. [79 Fed. Reg. 44302](#) (July 31, 2014). *Protection of Stratospheric Ozone*. This Final Rule, effective July 31, 2014, authorizes uses that qualify for the critical use exemption and the amount of methyl bromide that may be produced or imported for those uses for both the 2014 and 2015 control periods. The rule also removes provisions related to the sale of pre-phaseout inventory for critical uses.

9. [79 Fed. Reg. 44332](#) (July 31, 2014). *Greenhouse Gas Reporting Program*. EPA has proposed to add chemical-specific and default global warming potentials for a number of fluorinated greenhouse gases (“GHGs”) and fluorinated heat transfer fluids (“HTFs”) to the general provisions of the Greenhouse Gas Reporting Rule. The Proposed Rule would increase the completeness and accuracy of the carbon dioxide (“CO₂”)-equivalent emissions that are calculated and reported by suppliers and emitters of fluorinated GHGs and HTFs, and also would make conforming changes to the provisions for the Electronics Manufacturing and Fluorinated Gas Production source categories. Comments on the Proposed Rule should be submitted to EPA by September 2, 2014.

[State Implementation Plans \(“SIP”\) - Texas:](#)

10. [79 Fed. Reg. 40666](#) (July 14, 2014). *Flexible Permit Program*. EPA has published a Final Rule, effective August 13, 2014, which conditionally approves revisions to the Texas SIP to establish the Texas Minor New Source Review (“NSR”) Flexible Permits Program. This conditional approval is based on a commitment from the TCEQ to adopt certain minor clarifications to its Flexible Permit Program by November 30, 2014.

11. [79 Fed. Reg. 41906](#); [79 Fed. Reg. 41949](#) (July 18, 2014). *Conformity of General Federal Actions*. EPA has approved revisions to the Texas SIP removing the general conformity provisions so that federal rules will govern conformity of general federal actions in Texas. Unless EPA receives adverse written comments to the Proposed Rule, published concurrently, by August 18th, the Direct Final Rule will become effective on September 16, 2014.

12. [79 Fed. Reg. 43264](#) (July 25, 2014). *Motor Vehicle Emissions Inspection and Maintenance ("I/M") Program; Locally Enforced Motor Vehicle Idling Limitations*. This Final Rule, effective August 25, 2014, approves revisions to the Texas SIP related to the implementation of the State's motor vehicle I/M program and the locally enforced motor vehicle idling limitations.

13. [79 Fed. Reg. 44299](#) (July 31, 2014). *Control of Air Pollution from Nitrogen Oxides*. EPA has finalized its proposal to approve revisions to the Texas SIP related to the control of air pollution from nitrogen compounds (30 T.A.C. Chapter 117). The effective date of this action is September 2, 2014.

[Fuels and Fuel Additives:](#)

14. [79 Fed. Reg. 42128](#) (July 18, 2014). *Regulation of Fuels and Fuel Additives*. This Final Rule, effective August 18, 2014, amends the renewable fuels standard ("RFS") program regulations; the misfueling mitigation regulations for gasoline that contains 10-15 volume percent ethanol; and to the survey requirements associated with the ultra-low sulfur diesel program. Entities potentially affected by this rule include petroleum refiners, manufacturers of ethyl alcohol, petroleum bulk stations and terminals, and fuel dealers.

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[TEXAS COMMISSION ON ENVIRONMENTAL QUALITY \("TCEQ"\)](#)
[RECENT RULEMAKING ACTIVITIES:](#)

[Air:](#)

1. [39 Tex. Reg. 5777](#) (July 25, 2014). *30 T.A.C. Chapter 116, Control of Air Pollution by Permits for New Construction or Modification*. Amendments to Chapter 116 have been adopted to satisfy EPA's conditional approval of the TCEQ's Flexible Permit Program and to ensure that the Flexible Permit Program is fully approved as part of the Texas SIP. The effective date of these amendments is July 31, 2014.

[Water:](#)

2. [39 Tex. Reg. 5102](#) (July 4, 2014). *30 T.A.C. Chapter 331, Watershed Protection*. In response to a petition filed by the Tarrant Regional Water District, the TCEQ has proposed amendments to Chapter 311 that would require an effluent limit of 1.0 milligram per liter for total phosphorus for new or amended domestic wastewater discharge to the Benbrook Lake water quality area and Benbrook Lake watershed, based on discharge flow volume and location. The comment period for this proposed rulemaking will close on August 4, 2014.

3. [39 Tex. Reg. 5188](#) (July 4, 2014). *30 T.A.C. Chapter 305, Consolidated Permits*. The TCEQ has adopted an amendment to § 305.541 that adopts by reference federal effluent limitation guidelines associated with the de-icing of airfield pavement at airports that have at least 1,000 annual jet departures and discharges associated with aircraft de-icing at new airports in cold climate zones that have more than 10,000 total annual departures. These effluent limitation guidelines and new source performance standards will be incorporated into the Multi-Sector General Permit TXR050000 upon its renewal in 2016 and any applicable individual permits for airports during their next permit action. The effective date of this amendment is July 10, 2014.

4. [39 Tex. Reg. 5786](#) (July 25, 2014). *30 T.A.C. Chapter 321, Control of Certain Activities by Rule*. Amendments to Chapter 321, Subchapter B, implement the federal Concentrated Animal Feeding Operation (“CAFO”) regulations and effluent guidelines that were finalized by EPA in July 2012. The effective date of the amendments is July 31, 2014.

5. [39 Tex. Reg. 5799](#) (July 25, 2014). *30 T.A.C. Chapter 339, Groundwater Protection Recommendation Letters and Fees*. Because the TCEQ’s Surface Casing Program was transferred to the Railroad Commission of Texas (“RRC”) on September 1, 2011, the executive director no longer provides groundwater protection letters to the RRC for use in various oil and gas activities and applications. As rules related to these groundwater protection letters are no longer needed, the TCEQ has repealed §§ 339.1 - 339.3, effective July 31, 2014.

Waste:

6. [39 Tex. Reg. 5796](#) (July 25, 2014). *30 T.A.C. Chapter 330, Municipal Solid Waste*. The TCEQ has adopted amendments to Chapter 330 that authorize a county or municipality with 12,000 people or less and that is located in an arid-exempt area to dispose of demolition waste from nuisance and abandoned buildings under a permit by rule (“PBR”). The increase in the population limit from 10,000 to 12,000 people is estimated to allow six additional counties and six additional municipalities to apply for the PBR and to reduce disposal fees assessed to municipal solid waste disposal facilities by 25%. These amendments became effective on July 31, 2014.

Miscellaneous:

7. [39 Tex. Reg. 5181](#) (July 4, 2014). *30 T.A.C. Chapter 30, Occupational Licenses and Registrations*. As required by several bills passed by the Texas Legislature during the 83rd Legislative Session (2013), the TCEQ has adopted amendments to several sections of Chapter 30, as well as the repeal and simultaneous adoption of new § 30.33 regarding License or Registration Denial, Warning, Suspension or Revocation. The adopted rules enable the TCEQ to exclude Class C misdemeanor convictions when reviewing applications for an occupational license (H.B. 798); prohibit certain registered sex offenders from providing services in a person’s residence unless supervised (H.B. 1302); consider individuals whose proceedings have been dismissed to have a conviction if registered as a sex offender (H.B. 1659); suspend or refuse the application of an individual who has not made a minimum payment of child support (H.B. 1846); recognize verified military service, training, or education when considering applications for an occupational license from military service members or military veterans, and expedite occupational licensing applications from military spouses (S.B. 162). The effective date of this rulemaking package is July 10, 2014.

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ALSO OF INTEREST

On the Move. EPA Deputy Administrator Robert Perciasepe has resigned his position to become president of the Center for Climate and Energy Solutions, which is an independent, non-profit organization that promotes policy and action addressing energy and climate change.

Air Quality Modeling Guidelines. The TCEQ Air Permits Division has issued [draft air quality modeling guidelines](#) that would supersede the Air Dispersion Modeling Guidelines issued by the agency in February 1999. These guidelines would be used by TCEQ staff to evaluate and determine air quality impacts analysis requirements for case-by-case permit reviews. Comments on the draft guidelines may be submitted to the TCEQ until August 31, 2014.

Water Utility Programs. On September 1, 2014, the TCEQ will transfer responsibility for the water utility rate and certificate of convenience and necessity (“CCN”) programs to the Public Utility Commission of Texas (“PUC”). Although the PUC will handle applications for the programs they will be regulating, applicants must comply with all associated TCEQ rules and requirements. Utilities affected by this transfer include investor-owned utilities, water supply corporations, and city and county-owned utilities.

Risk Management Programs. In response to [Executive Order 13650](#), *Improving Chemical Facility Safety and Security*, EPA is requesting comments on potential revisions to its Risk Management Program regulations and related programs, including information and data on specific regulatory elements and process safety management approaches. EPA must receive comments and additional material on or before October 29, 2014.

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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 August 15, 2014.

Water Quality/Stormwater Annual Seminar. The TCEQ has scheduled its annual [Water Quality/Stormwater Seminar](#) in Austin on September 16-17, 2014. This seminar will provide updates on permitting rules and upcoming regulations, as well as cover the technical aspects of municipal, industrial, stormwater, and sludge permits.

Advanced Air Permitting Seminar and Oil and Gas Facilities Workshop. TCEQ’s next [Advanced Air Permitting Seminar and Oil and Gas Facilities Workshop](#) will be held at the Austin Convention Center, October 15-16, 2014.

Health Risks of Lower Olefins. The International Institute of Synthetic Rubber Producers, Inc., American Chemistry Council’s Olefins Panel, and the TCEQ are co-sponsoring an [International Symposium on the Health Risks of Lower Olefins](#), which will take place in Austin on November 5-6, 2014.

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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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