

Recent Developments

Information about Environmental Issues

July 2015

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

Air:

1. [80 Fed. Reg. 37758](#) (July 1, 2015). *Greenhouse Gas ("GHG") Emissions from Aircraft*. EPA has published a Proposed Rule and an Advance Notice of Proposed Rulemaking ("ANPR") finding that GHG emissions from certain classes of engines used in aircraft contribute to air pollution that endangers public health and welfare under the federal Clean Air Act ("CAA"). The ANPR provides an overview of and seeks input on a variety of issues related to setting an international standard for carbon dioxide ("CO₂") for aircraft. Entities potentially interested in this proposed action are those that manufacture and sell aircraft and aircraft engines in the United States. Comments on these rules must be received by EPA on or before August 31, 2015.
2. [80 Fed. Reg. 38628](#) (July 7, 2015). *Hydrogen Chloride; Performance Specification 18*. EPA has finalized performance specifications and test procedures for hydrogen chloride ("HCl") continuous emission monitoring systems ("CEMS") that includes requirements for initial acceptance, including instrument accuracy and stability assessments. The Final Rule, effective July 7, 2015, also finalizes quality assurance procedures for HCl CEMS used for compliance determination at stationary sources.
3. [80 Fed. Reg. 40138](#) (July 13, 2015). *GHG Emissions and Fuel Efficiency Standards*. EPA and the Department of Transportation National Highway Traffic Safety Administration ("NHTSA") have proposed rules that would establish a comprehensive Phase 2 Heavy-Duty National Program that would reduce GHG emissions and fuel consumption for new on-road heavy-duty vehicles. EPA's CO₂ emission standards and NHTSA's proposed fuel consumption standards are tailored to four regulatory categories of heavy-duty vehicles: combination tractors; trailers used in combination with those tractors; heavy-duty pickup trucks and vans; and vocational vehicles. Comments on all aspects of this Proposed Rule may be submitted to either EPA or NHTSA on or before September 11, 2015.
4. [80 Fed. Reg. 42053](#) (July 16, 2015). *Significant New Alternatives Policy ("SNAP") Program*. This determination of acceptability expands the list of acceptable substitutes pursuant to EPA's SNAP Program for use in the refrigeration and air conditioning, foam blowing, solvent cleaning, aerosols, and adhesives/coatings/inks sectors. This determination became effective on July 16, 2015.
5. [80 Fed. Reg. 42870](#) (July 20, 2015). EPA has changed the listing status for certain hydrofluorocarbons in various end-uses in the aerosols, refrigeration and air conditioning, and foam blowing sectors. The action also changes the status for certain hydrochlorofluorocarbons being phased out of production under the Montreal Protocol on Substances that Deplete the Ozone Layer and section

605(a) of the CAA from acceptable to unacceptable. The effective date of this Final Rule is August 19, 2015.

6. [80 Fed. Reg. 44771](#) (July 27, 2015). *Portland Cement Manufacturing Industry and Portland Cement Plants*. Amendments to the National Emission Standards for Hazardous Air Pollutants (“NESHAP”) for the Portland Cement Manufacturing Industry and to the Standards of Performance for Portland Cement Plants have been finalized by EPA, effective July 27, 2015. Included in this action is the removal of affirmative defense provisions from the [2013 rule](#) to be consistent with the U.S. Court of Appeals for the D.C. Circuit’s decision vacating such provisions.

7. [80 Fed. Reg. 44882](#) (July 28, 2015). *Allocations of Cross-State Air Pollution Rule Allowances*. EPA has published a Final Rule, effective July 28, 2015, concerning emission allowance allocations for certain units under the new unit set-aside (“NUSA”) provisions of the Cross-State Air Pollution Rule (“CSAPR”), under which NUSA allowances are allocated annually to units that commenced commercial operations on or after January 1, 2010. No changes were made to the final allowance allocations from the [preliminary calculations](#) EPA published previously. EPA will record the allowances in the Allowance Management System accounts for all sources by August 1, 2015.

8. [80 Fed. Reg. 45280](#) (July 29, 2015). *Mineral Wool Production and Wool Fiberglass Manufacturing*. EPA has issued final risk and technology review amendments to the NESHAP for mineral wool and wool fiberglass facilities and a new air toxics standard for area sources in the wool fiberglass manufacturing industry. The Final Rule eliminates the exemptions to emission limits and standards during periods of startup, shutdown and malfunction (“SSM”) to ensure that the standards are consistent with the U.S. Court of Appeals for the D.C. Circuit’s vacatur of similar provisions in other rules. The SSM provisions are effective July 29, 2015. Existing impacted wool fiberglass plants will have two years to comply with the revised standards, and existing mineral wool plants will have three years to comply.

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

9. [80 Fed. Reg. 42443](#) (July 17, 2015). *Revisions to the Minor New Source Review (“NSR”) SIP for Portable Facilities*. EPA has proposed approval of revisions to the Texas SIP that revise the minor NSR program to provide for the relocation and change of location of permitted portable facilities, establish definitions related to portable facilities, and establish public participation for changes of location to portable facilities. Written comments on this proposed approval must be received by EPA on or before August 17, 2015.

10. [80 Fed. Reg. 42727](#) (July 20, 2015). *Flexible Permit Program*. EPA has fully approved revisions to the Texas NSR SIP to establish the Texas Minor NSR Flexible Permits Program. The effective date of this action is August 19, 2015.

11. [80 Fed. Reg. 42730](#); [80 Fed. Reg. 42763](#) (July 20, 2015). *Low Reid Vapor Pressure (“RVP”) Fuel Regulations*. EPA has published a Direct Final Rule that approves revisions to the Texas SIP related to Low RVP Fuel regulations. Unless EPA receives adverse written comment to the Proposed Rule, published concurrently, on or before August 19, 2015, this Direct Final Rule will become effective on September 18, 2015.

[Waste:](#)

12. [80 Fed. Reg. 37992](#) (July 2, 2015). *Organization for Economic Cooperation and Development (“OECD”) Member Countries*. This Final Rule, effective July 2, 2015, updates the list of OECD member countries to add Estonia, Israel, and Slovenia. This action applies to all persons who export or import hazardous waste or universal waste, or who export spent lead-acid batteries destined for recovery operations in OECD Member countries, except for Mexico and Canada. Any transboundary

movement of hazardous wastes between the U.S. and either Mexico or Canada will continue to be governed by their respective bilateral agreements and applicable regulations.

13. [80 Fed. Reg. 41566](#) (July 15, 2015). *Underground Storage Tank (“UST”) Regulations*. This Final Rule adds secondary containment requirements for new and replaced USTs and piping; adds operator training requirements; adds periodic operation and maintenance requirements for UST systems; addresses UST systems deferred in the 1988 UST regulation; adds new release prevention and detection technologies; updates codes of practice; makes editorial corrections and technical amendments; and updates state program approval requirements to incorporate these new changes. The effective date of this Final Rule is October 13, 2015.

14. [80 Fed. Reg. 42739](#) (July 20, 2015). *Toxic Substances Control Act (“TSCA”)*. This Direct Final Rule amends the TSCA electronic reporting regulations in TSCA section 5 by providing users with new methods to access the software for submitting electronic premanufacture notice (“e-PMN”) forms, adding new procedures for completing the e-PMN form, making change to the Central Data Exchange registration process, adding a requirement for the electronic submittal of *bona fide intents to manufacture*, and changing the procedure for notifying EPA of any new manufacturing site of a chemical substance for which EPA had granted an exemption. Unless EPA receives adverse written comments by August 19, 2015, this Direct Final Rule will become effective on January 19, 2016.

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (“TCEQ”)

Air:

1. [40 Tex. Reg. 4767](#) (July 24, 2015). *30 T.A.C. Chapter 101, General Air Quality Rules*. The TCEQ has adopted amendments to §§ 101.201 and 101.211 that remove certain requirements for emission sources not otherwise required to report an annual emissions inventory in certain areas of the State. The amendments, effective July 30, 2015, affect sources that experience at least one emissions event or maintenance, startup and shutdown activity and are located in nonattainment areas, maintenance areas, early action compact areas, Nueces County, or San Patricio County.

Water:

2. [40 Tex. Reg. 4769](#) (July 24, 2015). *30 T.A.C. Chapter 290, Public Drinking Water*. Amendments to Chapter 290 reflect changes related to the transfer of the utilities and rates program to the Public Utility Commission of Texas, and also address federal changes to the lead and E. coli thresholds, desalination, chloramination, modification of the public water system plan review submittal process, enforceability of exceptions, and other drinking water matters. The effective date of these amendments is July 30, 2015.

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[ALSO OF INTEREST](#)

On the Move. Dan Friedkin has been named Chairman of the Texas Parks and Wildlife Commission. Mr. Friedkin currently is chairman and chief executive officer of Friedkin Companies Inc., a holding company with investments principally in the automotive industry. He received a Bachelor of Science in Business Administration from Georgetown University and a Master of Business Administration from Rice University.

EPA's Report on the Environment. This [Report](#) is a comprehensive source of scientific indicators that describe the status and trends in the environmental and human health conditions of the United States.

Air Quality Models. EPA has proposed revisions to the [Guideline on Air Quality Models](#), which include enhancements to the formulation and application of EPA's AERMOD near-field dispersion modeling system and the incorporation of a tiered demonstration approach to address the secondary chemical formulation of ozone and fine particulate matter associated with precursor emissions from single sources. Comments on the proposed revisions must be received by EPA on or before October 27, 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 August 28, 2015.

TCEQ Public Drinking Water Conference 2015. TCEQ has scheduled its [Public Drinking Water Conference](#), which provides information and tools for public water systems and utilities, for August 11-12, 2015 in Austin, Texas.

TCEQ Water Quality/Stormwater Seminar. This TCEQ [seminar](#), to be held in Austin on September 23-24, 2015, will provide updates on permitting rules and upcoming regulations.

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. Early registration will open in July 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.

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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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