

Recent Developments

Information about Environmental Issues

June 2016

U.S. ENVIRONMENTAL PROTECTION AGENCY ("EPA")

RECENT RULEMAKING ACTIVITIES:

Air:

1. [81 Fed. Reg. 35622](#) (June 3, 2016). *Source Determination for Certain Emission Units in the Oil and Natural Gas Sector*. This final rule addresses when oil and gas wells or surface equipment are considered a single stationary source for Clean Air Act, New Source Review and Title V permitting purposes. Under the new framework, an operator must evaluate air permit requirements for a well or other equipment based not only on its emissions rate, but also on the emissions from other oil and gas facilities within a quarter mile. This final rule will become effective on August 2, 2016.
2. [81 Fed Reg. 35823](#) (June 3, 2016). *Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources*. EPA has finalized amendments to the current new source performance standards (NSPS) which will improve implementation of the current NSPS, and established new standards for the oil and natural gas source category for both greenhouse gases and volatile organic compounds. This final rule is effective on August 2, 2016.
3. [81 Fed. Reg. 35943](#) (June 3, 2016). *Federal Implementation Plan for True Minor Sources in Indian Country in the Oil and Natural Gas Sector; Federal Minor New Source Review Program in Indian Country for the Oil and Natural Gas Sector*. EPA is finalizing a federal implementation plan (FIP) that applies to new true minor sources and minor modifications at existing true minor sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector that are locating or expanding in Indian reservations or in other areas of Indian country over which an Indian tribe, or the EPA, has demonstrated the tribe's jurisdiction. In many respects, the FIP has a similar function to the FIP established for the Fort Berthold reservation in North Dakota (see TIP 2013-45). EPA is also finalizing several amendments to the Federal Indian Country Minor NSR rule, including revising the applicability provision to establish that oil and natural gas sources are required to comply with the FIP unless they either opt to obtain a source-specific permit or are otherwise required to do so, and revising the source registration provision for oil and natural gas sources constructing under this FIP. They are also revising the applicability of the Federal Indian Country Minor NSR rule to comport with a court decision that addressed the scope of EPA's jurisdiction to implement the Federal Indian Country Minor NSR rule in Indian country: *Oklahoma Dept. of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014). This final rule is effective on August 2, 2016.
4. [81 Fed. Reg. 38085](#); [81 Fed. Reg. 38122](#) (June 13, 2016). *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Secondary Aluminum Production*. EPA has published a Direct Final Rule amending the NESHAP for Secondary Aluminum Production, to correct errors and clarify rule requirements to the final rule published in the Federal Register on September 18, 2015. Unless EPA receives adverse comments to the Proposed Rule, published concurrently, on or before July 28, 2016, the direct final rule will become effective on September 12, 2016.

5. [81 Fed. Reg. 38640](#) (June 14, 2016). *Rescission of Preconstruction Permits Issued Under the Clean Air Act*. This proposed rule would revise a limitation on the rescission of stationary source preconstruction permits that is contained in the federal New Source Review regulations, and would amend EPA's federal Prevention of Significant Deterioration regulations to remove a date restriction from the current permit rescission provision. The proposal would also add a corresponding permit rescission provision in the federal regulations that apply to major sources in nonattainment areas of Indian Country. The comment period on this proposed rule has closed.

6. [81 Fed. Reg. 38645](#) (June 14, 2016). *Removal of Title V Emergency Affirmative Defense Provisions from State and Federal Operating Permit Programs*. EPA is proposing revisions to its Title V operating permit program regulations to remove the affirmative defense provisions for emergencies. Comments are due on August 15, 2016.

7. [81 Fed. Reg. 40955](#) (June 23, 2016). *Commercial and Industrial Solid Waste Incineration Units*. EPA has taken final action on reconsideration of certain aspects of the February 7, 2013, final rule titled "Standards of Performance for New Stationary Sources and Emissions Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units." EPA finalized proposed actions on 1) definition of "continuous emission monitoring system data during startup and shutdown periods," 2) particulate matter limit for the waste-burning kiln subcategory; 3) fuel variability factor for coal-burning energy recovery units; and 4) the definition of "kiln." Requests for reconsideration on all other issues were denied. This final rule is effective in part on June 23, 2016 and the remainder on December 23, 2016.

[Waste:](#)

8. [81 Fed. Reg. 37565](#) (June 10, 2016). *Hazardous Waste Management System*. EPA has extended the comment period from June 10, 2016 to December 7, 2016, on the tentative denial of a petition to revise the Resource Conservation and Recovery Act corrosivity hazardous waste characteristic regulation, which was published in the Federal Register on April 11, 2016. EPA tentatively denied the rulemaking petition because materials submitted in support of the petition failed to demonstrate that the requested revisions were warranted.

[Water:](#)

9. [81 Fed. Reg. 41507](#) (June 27, 2016). *National Pollutant Discharge Elimination System: Applications and Program Updates*. EPA is extending the comment period on the proposal published in the Federal Register on May 18, 2016. The proposed rule would revise the NPDES regulations to eliminate inconsistencies, improve permit documentation, transparency and oversight, clarify existing regulations, remove outdated provisions and further align NPDES regulations with statutory requirements from the 1987 CWA Amendments and more recent case law requirements. The comment period has been extended from July 18, 2016 to August 2, 2016.

10. [81 Fed. Reg. 41535](#) (June 27, 2016). *Preliminary 2016 Effluent Guidelines Program Plan*. EPA has announced the availability of its Preliminary 2016 Effluent Guidelines Program Plan, which identifies any new or existing industrial categories selected for effluent guidelines or pretreatment standards and provides a schedule for their development. The comment period on the preliminary plan has closed.

11. [81 Fed. Reg. 41845](#) (June 28, 2016). *Effluent Limitations Guidelines and Standards for the Oil and Gas Extraction Point Source Category*. This final Clean Water Act regulation protects human health, the environment and the operational integrity of publicly owned treatment works (POTWs) by establishing pretreatment standards that prevent the discharge of pollutants in wastewater from onshore unconventional oil and gas extraction facilities to POTWs. The final rule is effective on August 29, 2016.

Miscellaneous:

12. [81 Fed. Reg. 38104](#) (June 13, 2016). *Hazardous Chemical Reporting*. EPA has amended its hazardous chemical reporting regulations to conform to recent revisions in OSHA's Hazard Communication Standard (HCS), due to its adoption of the United Nations Globally Harmonized System of Classification and Labeling of Chemicals (GHS). The revised HCS requires chemical manufacturers and importers to evaluate their chemicals according to the new criteria adopted from GHS to ensure appropriate classification and labeling. They are also required to develop standardized Safety Data Sheets (formerly "Material Safety Data Sheets") and distribute them to downstream users of their chemicals. The HSC modifications affect the reporting requirements under EPCRA Sections 311 and 312. This final rule is effective June 13, 2016, and the compliance date is January 1, 2018.

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ("TCEQ")
RECENT RULEMAKING ACTIVITIES

Waste:

1. [41 Tex. Reg. 4259](#) (June 10, 2016). *30 T.A.C. Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste*. TCEQ has adopted amendments, effective June 16, 2016, that reflect changes made to the federal rules by incorporating the generator controlled exclusion, the verified recycler exclusion, and the manufacturing exclusion into the Texas definition of "solid waste," authorizing the use of electronic manifests that will become available when EPA establishes a new electronic hazardous waste manifest system, and establishing certain standards for management of hazardous secondary materials.

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ALSO OF INTEREST

EPA's Semiannual Regulatory Agenda. EPA has published its [semiannual regulatory agenda](#), which provides information concerning regulations under development, completed, or canceled since the last agenda; reviews of existing regulations; and reviews of regulations with small business impacts under Section 610 of the Regulatory Flexibility Act.

EPA Air Pollution Control Cost Manual. EPA has provided [notice of availability](#) of two updated chapters of the [EPA Air Pollution Control Cost Manual](#). The updated chapters are "Chapter 1—Selective Non-Catalytic Reduction" and "Chapter 2—Selective Catalytic Reduction."

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UPCOMING CONFERENCES, MEETINGS, and WORKSHOPS

28th Annual Texas Environmental Superconference. The annual [Texas Environmental Superconference](#) will be held on Thursday and Friday – August 4th and 5th, 2016 – in Austin at the Four Seasons Hotel. This year's theme is Yogi Berra quotes and the conference is entitled "It's like déjà vu all over again";

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

Pollution Prevention Waste Management Workshop. TCEQ will host a one-day [Pollution Prevention Waste Management workshop](#) in Austin on September 7, 2016. The workshop will provide training to businesses, government, and other entities to help prevent pollution from hazardous waste and toxic chemicals.

TCEQ Work Session. The next Commissioners' Work Session is scheduled to be held in Austin on September 8, 2016.

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.

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CONTACT INFORMATION

For copies of any information referenced in this newsletter, please contact Susie McKithan at 713.229.2047, or by e-mail at 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:

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