

Recent Developments

Information about Environmental Issues

May 2015

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

Air:

1. [80 Fed. Reg. 25068](#) (May 1, 2015). *Federal Minor New Source Review ("NSR") in Indian Country*. EPA has finalized general permits for use in Indian country pursuant to the federal Minor NSR program for new or modified minor sources in two source categories: (1) hot mix asphalt plants, and (2) stone quarrying, crushing and screening facilities. The Final Rule also authorizes the use of general permits established under the federal Minor NSR program to create synthetic minor sources for these two source categories. In addition, EPA has finalized permits by rule for use in Indian country for new or modified minor sources in three source categories: (1) auto body repair and miscellaneous surface coating operations, (2) gasoline dispensing facilities (except in California), and (3) petroleum dry cleaning facilities. The effective date of this rule is June 1, 2015.

2. [80 Fed. Reg. 26183](#); [80 Fed. Reg. 26210](#) (May 7, 2015). *Prevention of Significant Deterioration ("PSD") Permitting for Greenhouse Gases ("GHG")*. EPA has published a Direct Final Rule that will authorize EPA to rescind GHG PSD permits issued to "Step 2" or "Non-Anyway" sources, which were required to obtain a GHG PSD permit following Step 2 of the Tailoring Rule based on emissions of GHGs prior to the ruling by the U.S. Supreme Court in *Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427 (2014) that EPA cannot compel a source to undergo PSD permitting based exclusively on the source's GHG emissions. Unless EPA received adverse written comment on the Proposed Rule, published concurrently, before June 8, 2015, the Direct Final Rule will become effective on July 6, 2015.

State Implementation Plan ("SIP"): Texas:

3. [80 Fed. Reg. 27251](#); [80 Fed. Reg. 27275](#) (May 13, 2015). *Volatile Organic Compounds ("VOC") Emissions from Storage Tanks and Transport Vessels*. This Direct Final Rule approves a revision to the Texas SIP for control of VOC emissions from storage tank, transport vessel and marine vessel degassing operations. Specifically, the revisions (a) modify VOC control requirements that apply in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant and Waller counties; (b) make changes to provide additional flexibility for affected owners and operators allowing for the use of alternative control options; and (c) reformat the existing rule to simplify and clarify rule requirements. Unless EPA receives adverse written comment on the Proposed Rule, published concurrently, by June 12, 2015, the Direct Final Rule approving this SIP revision will become effective on July 13, 2015.

Fuels:

4. [80 Fed. Reg. 26463](#) (May 8, 2015). *Tier 3 Motor Vehicle Fuel and Quality Assurance Plan Provisions*. Because EPA received adverse comments on certain technical elements of the [Direct Final Rule](#) related to Tier 3 motor vehicle fuel and quality assurance plan provisions, those elements of the rule have been withdrawn, effective May 5, 2015. The amendments for which EPA did not receive adverse comment are not withdrawn and became effective on May 5, 2015. EPA will consider the comments that were received and proceed with a new final rule for those elements.

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ("TCEQ")

Air:

1. [40 Tex. Reg. 2670](#) (May 15, 2015). *30 T.A.C. Chapter 114, Control of Air Pollution from Motor Vehicles*. Adopted amendments to Chapter 114 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. The effective date of these amendments is May 21, 2015.

Water:

2. [40 Tex. Reg. 2670](#) (May 29, 2015). *30 T.A.C. Chapter 217, Design Criteria for Domestic Wastewater Systems*. The TCEQ has proposed amendments to Chapter 217 that add new definitions and clarify existing definitions; add design criteria and approval requirements for rehabilitation of existing infrastructure; add design criteria for new technologies; update existing requirements or develop new requirements to reflect current commission and industry practices, standards and trends; and modify rule language to enhance understanding and clarity. A public hearing on this proposal will be held in Austin on June 23, 2015, and written comments may be submitted until June 29, 2015.

3. [40 Tex. Reg. 3070](#) (May 29, 2015). *30 T.A.C. Chapter 317, Design Criteria Prior to 2008*. This proposal would reinstate regulations that were repealed in 2008 after new rules were adopted at 30 T.A.C. Chapter 217, *Design Criteria for Domestic Wastewater Systems*. The repeal of 30 T.A.C. Chapter 317 created regulatory uncertainty for owners and operators of existing wastewater collection and treatment facilities not subject to Chapter 217, which applies to facilities constructed or renovated after its adoption, but does not otherwise apply to existing facilities. This proposal would "re-adopt" Chapter 317, amend the applicability section to clarify which facilities are subject to Chapter 317, and would clarify the TCEQ's initial and ongoing position that facilities must be installed, operated, and maintained in accordance with the approved specifications, plans, and design criteria of Chapter 317. The TCEQ has scheduled a public hearing on this proposal in Austin on June 23, 2015; written comments may be submitted until June 29, 2015.

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ALSO OF INTEREST

On the Move. Zak Covar has resigned from his position as a TCEQ Commissioner to accept an opportunity in the private sector. The effective date of his resignation was June 1, 2015.

Risk and Exposure Assessment: Nitrogen Dioxide. EPA has released its [Review of the Primary National Ambient Air Quality Standards for Nitrogen Dioxide: Risk and Exposure Assessment Planning Document](#), on which EPA will accept comments until July 3, 2015.

Clean Power Plan. The U.S. Energy Information Administration has released a report, [Analysis of the Impacts of the Clean Power Plan](#), which analyzes the impacts of EPA's proposed GHG existing source performance standards for power plants.

VOC Emissions Factors. EPA has issued [new and revised emission factors](#) for flares and other refinery process units, and also has made its final determination that revisions to existing emissions factors for tanks and wastewater treatment systems are not necessary. These actions are in compliance with a consent decree entered into by EPA with Air Alliance Houston, Community In-Power and Development Association, Inc., Louisiana Bucket Brigade, and Texas Environmental Justice Advocacy Services. As these actions constitute final agency action of national applicability for purposes of §307(b)(1) of the federal Clean Air Act, judicial review may only be sought in the U.S. Court of Appeals for the D.C. Circuit. Petitions for review of these actions must be filed by July 10, 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.

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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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