

Recent Developments

Information about Environmental Issues

November 2014

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

Air:

1. [79 Fed. Reg. 65482](#) (Nov. 4, 2014). *Carbon Pollution Emission Guidelines for Existing Stationary Sources*. EPA has published a Supplement to its proposed emission guidelines for states to follow as they develop plans addressing greenhouse gas ("GHG") emissions from existing fossil fuel-fired electric generating units ("EGUs"), which was published on June 18, 2014 ([79 Fed. Reg. 34830](#)). This supplemental action proposes rate-based goals for carbon dioxide ("CO₂") emissions for territories and areas of Indian country in the United States and includes guidelines for the development, submission and implementation of plans to achieve the goals. Areas of Indian country that are affected by this Supplemental Proposal are Lands of the Navajo Nation, lands of the Ute Tribe of the Uintah and Ouray Reservation, and lands of the Fort Mojave Tribe; the two U.S. territories with affected EGUs are Puerto Rico and Guam. Comments on the Supplemental Proposed Rule must be submitted to EPA on or before December 19, 2014.
2. [79 Fed. Reg. 66512](#) (Nov. 7, 2014). *National Emission Standards for Hazardous Air Pollutants ("NESHAP"): Phosphoric Acid Manufacturing and Phosphate Fertilizer Production; New Source Performance Standards ("NSPS"): Phosphate Processing*. EPA has proposed amendments to the NESHAP for the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production source categories and to the NSPS for several phosphate processing categories. The proposed amendments, which address the results of the residual risk and technology reviews ("RTR") that were conducted under the federal Clean Air Act ("CAA"), include numeric emission limits for mercury and work practice standards for hydrogen fluoride ("HF") from calciners; work practice standards for hazardous air pollutant ("HAP") emissions from gypsum dewatering stacks and cooling ponds; emission standards requiring HF testing from various affected sources; removal of the exemptions for startup, shutdown and malfunction; work practice standards for periods of startup and shutdown; and revised provisions to address recordkeeping and reporting requirements applicable to periods of startup, shutdown and malfunction. EPA must receive comments on the Proposed Rule by December 22, 2014.
3. [79 Fed. Reg. 68012](#) (Nov. 13, 2014). *NESHAP: Mineral Wool and Wool Fiberglass Sources*. EPA has published a Supplemental Notice of Proposed Rulemaking in addition to the proposals published on November 25, 2011 ([76 Fed. Reg. 72770](#)) and April 15, 2013 ([78 Fed. Reg. 22369](#)) amending the NESHAP for the Mineral Wool Production and Wool Fiberglass Manufacturing source categories. The supplemental action addresses comments received on the 2011 and 2013 proposals and explains changes to the previously proposed limits for these sources. The Supplemental Notice also clarifies EPA's use of the upper prediction limit in setting maximum achievable control technology ("MACT") floors. Comments on the proposed amendments contained in the Supplemental Notice may be submitted to EPA until December 15, 2014.

4. [79 Fed. Reg. 68777](#) (Nov. 19, 2014). *Mercury and Air Toxics Standards (“MATS”)*. This Final Rule, effective November 19, 2014, amends certain startup and shutdown provisions of the MATS and finalizes changes to the NSPS for fossil fuel-fired electric utility, industrial-commercial-institutional, and small industrial-commercial-institutional steam generating units (“Utility NSPS”) that were published simultaneously with the MATS on February 16, 2012 ([77 Fed. Reg. 9304](#)). Challenges to this rule must be filed in the U.S. Court of Appeals for the D.C. Circuit by January 20, 2015.

5. [79 Fed. Reg. 68795](#) (Nov. 19, 2014). *NESHAP: Coal- and Oil-Fired Electric Steam Generating Units*. This Direct Final Rule amends the reporting requirements in the MATS rule by temporarily requiring affected sources to submit all required emissions and compliance reports to EPA through the Emissions Collection and Monitoring Plan System (“ECMPS”) Client Tool. In addition, this rulemaking temporarily suspends the requirement for affected sources to submit certain reports using the Electronic Reporting Tool and the Compliance and Emissions Data Reporting Interface (“CEDRI”). This Direct Final Rule will become effective on January 5, 2015, unless EPA receives adverse written comment on the [Proposed Rule](#), published concurrently, by December 19, 2014.

6. [79 Fed. Reg. 68821](#) (Nov. 19, 2014). *NESHAP: Portland Cement Manufacturing Industry; NSPS: Portland Cement Plants*. EPA has published a Proposed Rule that corrects minor technical errors in [amendments](#) to the NESHAP for new and existing Portland cement manufacturing industry at major sources of HAPs. In addition, this proposal would remove rule provisions establishing an affirmative defense. EPA must receive comments to this Proposed Rule by January 20, 2015.

7. [79 Fed. Reg. 70352](#) (Nov. 25, 2014). *GHG Reporting Rule; Confidentiality Determinations for Petroleum and Natural Gas Systems*. This Final Rule, effective January 1, 2015, revises certain calculation methods, amends certain monitoring and data reporting requirements, clarifies certain terms and definitions, and corrects technical and editorial errors for the Petroleum and Natural Gas Systems source category and the General Provisions of the GHG Reporting Rule. The rule also finalizes the confidentiality determinations as proposed for all but seven of the new and substantially revised data elements, for which EPA has subsequently identified potential confidentiality concerns. The seven data elements with revised confidentiality determinations apply to onshore natural gas plants and natural gas transmission facilities.

8. [79 Fed. Reg. 70102](#) (Nov. 25, 2014). *NESHAP: Delegation of Authority to Texas*. EPA has published a Direct Final Rule delegating authority to Texas for the implementation and enforcement of NESHAPs for all sources (both part 70 and non-part 70 sources) promulgated by EPA at 40 C.F.R. part 63, as amended between April 13, 2004 and April 24, 2013 (other than sources located in Indian Country). Unless EPA receives adverse written comment to the proposed approval, published concurrently, by December 26, 2014, delegation will be effective on January 26, 2015.

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

9. [79 Fed. Reg. 66626](#) (Nov. 10, 2014). *Greenhouse Gas Tailoring Rule Revisions*. EPA has approved revisions to the Texas SIP that incorporate GHG, with concurrent rescission of the Texas GHG Federal Implementation Plan (“FIP”). By this action, the Texas Commission on Environmental Quality (“TCEQ”) becomes the sole permitting authority for emissions of GHGs by Texas sources, with the exception of those sources with pending PSD GHG applications at EPA Region 6 that did not elect TCEQ as their permitting authority. The effective date of this Final Rule is November 10, 2014.

10. [79 Fed. Reg. 67068](#) (Nov. 12, 2014). *Dallas-Fort Worth (“DFW”) 1997 8-Hour Ozone Nonattainment Area; Transportation Conformity*. This Final Rule, effective December 12, 2014, approves revisions to the Texas SIP that contain a reasonable further progress (“RFP”) plan and associated contingency measures and motor vehicle emission budgets; a revised 2002 base year emissions inventory for the RFP; enhanced ambient monitoring; and the clean-fuel fleet programs for the DFW

Serious nonattainment area under the 1997 8-hour ozone standard. This action also approves revisions to the DFW Moderate area attainment demonstration SIP that address failure-to-attain contingency measures, as well as revisions that address the Texas transportation conformity rules and the Texas Diesel Emissions Reduction Incentive Program for On-Road and Non-Road Vehicles.

Miscellaneous:

11. [79 Fed. Reg. 65897](#) (Nov. 6, 2014). *Consolidated Rules of Practice*. This Direct Final Rule revises EPA's Consolidated Rules of Practice governing the administrative assessment of civil penalties in order to encompass the assessment of civil penalties under the air pollution control provisions of the Act to Prevent Pollution from Ships. This Direct Final Rule will become effective on January 5, 2015, unless EPA receives adverse written comment to the [Proposed Rule](#), published concurrently, by December 8, 2014.

* * * * *

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ("TCEQ")

Air:

1. [39 Tex. Reg. 8715](#) (Nov. 7, 2014). *30 T.A.C. Chapter 101, General Air Quality Rules*. The TCEQ has adopted new §§101.600 - .602 that allows applicants to request, and the TCEQ executive director to grant, expedited processing of applications if the applicant demonstrates the purpose of the application will benefit the State or local economy. The rules allow the TCEQ to authorize the use of overtime or contract labor to process expedited applications and to add a surcharge to cover expenses incurred by the expediting process. The effective date of this rule is November 13, 2014.

Water:

2. [39 Tex. Reg. 8720](#); [39 Tex. Reg. 8725](#); [39 Tex. Reg. 8730](#) (Nov. 7, 2014). *30 T.A.C. Chapter 290, Public Drinking Water; 30 T.A.C. Chapter 291, Utility Regulations; 30 T.A.C. Chapter 293, Water Districts*. This rulemaking package implements H.B. 738, H.B. 1050, H.B. 1461, H.B. 2704, and S.B. 902 (Acts of the 83rd Legislature, 2013) relating to customer notification of water loss by a retain public utility and the powers, duties and administration of water districts, specifically in the following areas: creation provisions (municipal water districts), contracting, issuance of bonds and bond anticipation notes, audit filings, impact fees, and recreational facilities. The effective date of these rules is November 13, 2014.

Waste:

3. [39 Tex. Reg. 8682](#) (Nov. 7, 2014). *30 T.A.C. Chapter 336, Radioactive Substance Rules*. TCEQ is proposing to amend §336.1310 by reducing the maximum disposal rate that a licensee may charge party-state generators for disposal of Class A low-level radioactive waste - Shielded from \$250 per cubic foot to \$180 per cubic foot. Written comments on this proposal rule may be submitted to the TCEQ until December 8, 2014.

* * * * *

* * * * *

ALSO OF INTEREST

EPA Technical Support Document (“TSD”): Carbon Pollution Emission Guidelines. EPA has issued a new TSD, [Translation of the Clean Power Plan Emission Rate-Based CO₂ Goals to Mass-Based Equivalents](#). The TSD is being made available to support EPA’s [Proposed Rule](#) that would set existing source performance standards for CO₂ emissions from power plants.

Integrated Review Plan: Sulfur Dioxide (“SO₂”) National Ambient Air Quality Standards (“NAAQS”). EPA has released its [Final Integrated Review Plan](#), which sets forth the schedule, process, and key policy-relevant science issues that will guide EPA’s review of the air quality criteria for health for sulfur oxides and the primary NAAQS for SO₂.

* * * * *

UPCOMING CONFERENCES, MEETINGS, and WORKSHOPS

TCEQ Work Session. The next Commissioners’ Work Session is scheduled to be held in Austin on January 23, 2015.

TCEQ Emissions Inventory Workshop. This [workshop](#) will focus on basic and advanced topics for submitting a point source emissions inventory, updates to the point source emissions inventory, and submitting an emissions inventory update through the TCEQ’s web-based reporting system. The workshop will be held at the Commons Learning Center at the J.J. Pickle Center in Austin on January 14-15, 2015.

2014 Central Texas Environmental Summit. The [Central Texas Environmental Summit](#), sponsored by the TCEQ, will be held on December 8, 2014 in Bastrop, Texas. The purpose of the Summit is to discuss solutions to environmental issues in Central Texas.

Technical Research Workshop. The National Highway Traffic Safety Administration (“NHTSA”) and EPA are sponsoring a [technical workshop](#) at the Southwest Research Institute (“SwRI”) in San Antonio on December 10-11, 2014. SwRI researchers will present technical work completed under the direction of EPA and NHTSA to assist in developing Phase 2 medium- and heavy-duty GHG and fuel efficiency standards.

TCEQ Environmental Trade Fair. Next year’s TCEQ Environmental Trade Fair will be held in Austin on May 5-6, 2015.

* * * * *

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:

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 |
| Lisa Bennett | 512.322.2627 |
| Nick Graham | 512.322.2538 |
| Samia Rogers | 512.322.2676 |
| 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 |
| William Airhart | 713.229.1169 |
| Devi Chandrasekaran | 713.229.1384 |
| Zachary Craft | 713.229.1133 |
| Kim Tuthill | 713.229.1166 |
| Kathleen Weir | 713.229.2108 |
| Cathy Yang | 713.229.1349 |

WASHINGTON, D.C.:

| | |
|-----------------------|--------------|
| 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 |
| Daniel Steinway | 202.639.7902 |
| Thomas Jackson | 202.639.7710 |
| J. Barton Seitz | 202.639.7895 |
| Michael McGovern | 202.639.7797 |
| Christopher Danley | 202.639.7842 |
| Shani Harmon | 202.639.1124 |
| Megan Heuberger Berge | 202.639.1308 |
| Gabe Maser | 202.639.7805 |
| Michael Schon | 202.639.7707 |
| Martha Thomsen | 202.639.7863 |
| Allison Watkins | 202.639.7754 |
| Christine Wyman | 202.639.7767 |

* * * * *