

Recent Developments

Information about Environmental Issues

September 2014

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

Air:

1. [79 Fed. Reg. 54356](#) (Sept. 11, 2014). *Ambient Monitoring Quality Assurance*. This Proposed Rule would revise EPA's ambient air monitoring requirements for criteria pollutants by reorganizing and clarifying quality assurance requirements, simplifying and reducing data reporting and certification requirements, clarifying the annual monitoring network plan public notice requirements, revising certain network design criteria for non-source lead monitoring, and addressing other issues in the ambient air quality surveillance requirements contained in 40 C.F.R. part 58. EPA will accept comments on this proposal until November 10, 2014.

State Implementation Plans ("SIP") - Texas:

2. [79 Fed. Reg. 53299](#); [79 Fed. Reg. 53355](#) (Sept. 9, 2014). *Volatile Organic Compound ("VOC") Emissions from Storage Tanks*. This Direct Final Rule approves a Texas SIP revision for the control of VOCs from storage tanks by implementing additional controls in the Dallas-Fort Worth ("DFW") 1997 ozone nonattainment area; modifying control requirements in the DFW area, the Houston-Galveston-Brazoria ("HGB") ozone nonattainment area, the Beaumont-Port Arthur ("BPA") area, and El Paso, Gregg, Nueces and Victoria counties; and making non-substantive changes to VOC control provisions applicable in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis counties. This rule includes a requirement for the DFW and HGB areas that a vapor recovery unit used for VOC control must be designed to process all VOC vapor generated by the maximum crude oil and condensate throughput of the storage tank and must transfer recovered vapors to a pipe or container that is vapor-tight. This Direct Final Rule will become effective on November 10, 2014, unless EPA receives adverse written comment to the Proposed Rule, published concurrently, by October 9, 2014.

3. [79 Fed. Reg. 55920](#) (Sept. 17, 2014). *SIPs: Excess Emissions During Periods of Startup, Shutdown and Malfunction ("SSM"); Affirmative Defense Provisions*. EPA has published a Supplemental Notice of Proposed Rulemaking that would revise a Proposed Rule published on February 22, 2013 (78 Fed. Reg. 12460). The 2013 proposal would require 36 states (including Texas) to revise SIP provisions related to air emissions from sources during periods of SSM. This Supplemental Notice of Proposed Rulemaking also would require these states to remove all existing affirmative defense provisions for periods of equipment malfunction from their SIP. EPA must receive any comments on or before November 6, 2014.

Waste:

4. [79 Fed. Reg. 52220](#); [79 Fed. Reg. 52275](#) (Sept. 3, 2014). *Texas: Hazardous Waste Management Program*. EPA has published a Direct Final Rule that approves Texas' proposed changes to its hazardous waste program under the Resource Conservation and Recovery Act ("RCRA"), as submitted to EPA in March 2013. Unless EPA receives adverse written comment to the Proposed Rule, published concurrently, by October 3, 2014, this final authorization will become effective on November 3, 2014.

Water:

5. [79 Fed. Reg. 53702](#) (Sept. 10, 2014). *National Pollutant Discharge Elimination System ("NPDES"): Small Vessel General Permit ("sVGP")*. EPA regions 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 have issued the sVGP, which provides coverage under the NPDES for discharges that are incidental to the normal operation of non-military and non-recreational vessels less than 79'. Unless specifically excluded in the sVGP, all discharges incidental to the normal operation of these vessels are eligible for coverage beginning December 19, 2014, which is when the NPDES permit requirement for these discharges goes into effect. The effective date of this permit is December 19, 2014.

6. [79 Fed. Reg. 56576](#) (Sept. 22, 2014). *NPDES: General Permit TXG330000*. EPA Region 6 has issued the final modification for General Permit TXG330000 that restores eligibility for certain inland dischargers that existed in the previous version of the permit and adds freshwater toxicity tests for discharge to fresh waters. General Permit TXG330000 regulates discharges from oil and gas wells in the Coastal Subcategory in Texas and in the Stripper Subcategory that discharges into Texas waters. The effective date of this permit modification is September 22, 2014, with an expiration date of July 6, 2017.

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

Air:

1. [39 Tex. Reg. 7740](#) (Sept. 26, 2014). *30 T.A.C. Chapter 114, Control of Air Pollution from Motor Vehicles*. Adopted amendments to Chapter 114 remove the prohibition on the increased use of methyl-tertiary-butyl-ether ("MTBE") in gasoline to conform to the Low Reid Vapor Pressure ("RVP") gasoline requirements. The amendments also remove the registration requirements for gasoline producers and importers that supply low RVP gasoline to the 95 Texas counties affected by the Regional Low RVP Gasoline Program and remove the annual reporting and certification requirements on the use of MTBE in low RVP gasoline. The effective date of these amendments is October 2, 2014.

2. [39 Tex. Reg. 7745](#) (Sept. 26, 2014). *30 T.A.C. Chapter 115, Control of Air Pollution from Volatile Organic Compounds*. The TCEQ has adopted amendments to Chapter 115, effective October 2, 2014, which (1) add definitions for "dual-point vapor balance system," "coaxial system," and "gasoline dispensing facility"; (2) remove language regarding Stage II vapor recovery systems, which are required to be decommissioned; (3) require owners and operators of affected gasoline dispensing facilities ("GDFs") to comply with new testing and inspection procedures for their Stage I vapor recovery system that are consistent with the federal Stage I rule; (4) require owners and operators of affected GDFs to maintain compliance with the Stage I vapor recovery requirements through annual testing; (5) reduce the throughput level for exemption from Stage I in the 95 affected Texas counties from 125,000 gallons per month to 100,000 gallons per month; and (6) make minor changes to improve clarity in the rule language.

Water:

3. [39 Tex. Reg. 7145](#); [39 Tex. Reg. 7168](#) (Sept. 5, 2014). *30 T.A.C. Chapter 290, Public Drinking Water*; *30 T.A.C. Chapter 291, Utility Regulations*. Amendments to Chapter 290 and new Chapter 291 have been adopted by the TCEQ to implement H.B. 1814 (Acts of the 82nd Texas Legislature, 2011) and H.B. 252/H.B. 1973/S.B. 1086 (Acts of the 83rd Texas Legislature, 2013). The rules require retail public utilities and the system(s) that provide the utility's wholesale water service to submit a report to the TCEQ on the status of their water supply once the supply is less than 180 days. The adopted rules also include standards for municipalities to require a utility to maintain a sufficient water flow and pressure to fire hydrants in a residential area or an industrial district located in the municipality or the municipality's extraterritorial jurisdiction for purposes of emergency fire suppression. The effective date of this rulemaking package is September 11, 2014.

4. [39 Tex. Reg. 7726](#) (Sept. 26, 2014). *30 T.A.C. Chapter 305, Consolidated Permits*. The TCEQ is proposing an amendment to §305.541 to adopt by reference revisions to 40 C.F.R. part 450, as published in the *Federal Register* on March 6, 2014 ([79 Fed. Reg. 12661](#)). A public hearing on this proposal will be held in Austin on October 23, 2014, and written comments may be submitted to the TCEQ until October 27, 2014.

5. [39 Tex. Reg. 7756](#) (Sept. 26, 2014). *30 T.A.C. Chapter 312, Sludge Use, Disposal, and Transportation*. Amendments to Chapter 312, effective October 2, 2014, establishes new core requirements applicable to all classes of sewage sludge to address nuisance odors and unauthorized discharges of bulk sewage sludge. The amendments establish a new classification structure with corresponding requirements based upon treatment processes, and clarify the executive director's authority to include additional requirements as needed to address nuisance odors and unauthorized discharges.

Miscellaneous:

6. [39 Tex. Reg. 7142](#); [39 Tex. Reg. 7144](#) (Sept. 5, 2014). *30 T.A.C. Chapter 11, Contracts*; *30 T.A.C. Chapter 14, Grants*. The TCEQ has adopted new §11.102(b)(9) to add an exemption from sovereign immunity for state-related breach of contract for engineering, architectural, or construction services or for material related to those professional services. In addition, new §14.9(f) has been adopted to make grant awards in excess of \$25,000 available to the public on TCEQ's website and to state the purpose for which the grant was awarded. The effective date of these amendments is September 11, 2014.

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ALSO OF INTEREST

Carbon Pollution Emission Guidelines. EPA has extended the period for providing public comment on its Proposed Rule, *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, by 45 days to December 1, 2014.

EPA's Effluent Guidelines Program. EPA's [Final 2012 and Preliminary 2014 Effluent Guidelines Program Plans](#), which establish schedules for EPA's review of and revisions to existing effluent guidelines and identify industrial categories for potential new effluent guidelines have been made available. In addition, EPA has released its 2012 and 2013 Annual Effluent Guidelines Review Reports. Comments on the Preliminary 2014 Effluent Guidelines Program Plan and the 2012 and 2013 Annual Effluent Guidelines Review Reports may be submitted to EPA until November 17, 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 November 14, 2014.

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.

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