

Recent Developments ***Information about Environmental Issues*** ***January 2014***

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

Air:

1. [79 Fed. Reg. 367](#); [79 Fed. Reg. 379](#) (Jan. 3, 2014). *National Emissions Standards for Hazardous Air Pollutants ("NESHAP"): Secondary Lead Smelting*. This Direct Final Rule clarifies that secondary lead smelters that commenced construction or reconstruction before May 19, 2011 are still subject to the requirements of 40 CFR part 63, subpart X, for new and existing sources that were effective prior to the January 5, 2012 amendments to the NESHAP for existing and new secondary lead smelters. This Direct Final Rule will become effective on March 4, 2014 unless EPA has received adverse written comments to the proposal, which was published concurrently.

2. [79 Fed. Reg. 1352](#); [79 Fed. Reg. 1429](#) (Jan. 8, 2014). *New Source Performance Standards ("NSPS"): Electric Utility Generating ("EUG") Units*. In response to comments on the proposal for NSPS for emissions of carbon dioxide ("CO₂") that was published on April 13, 2012 for new affected fossil fuel-fired EUG units, EPA has withdrawn that proposal and has issued new proposed requirements for new fossil-fuel-fired EUG units. The new rulemaking proposes a separate standard of performance for fossil fuel-fired electric utility steam generating units and integrated gasification combined cycle units that burn coal, petroleum coke and other fossil fuels that is based on partial implementation of carbon capture and storage as the best system of emission reduction. The proposal also would add applicability criteria that would require a unit to supply more than one-third of its potential electric output to the grid. Comments on this Proposed Rule should be submitted to EPA on or before March 10, 2014.

3. [79 Fed. Reg. 1675](#) (Jan. 9, 2014). *NESHAP: Generic Maximum Achievable Control Technology ("Generic MACT") Standards and Manufacture of Amino/Phenolic Resins*. EPA has proposed amendments to the NESHAP for the Generic MACT and Manufacture of Amino/Phenolic Resins industrial source categories. The rule also proposes decisions concerning the residual risk and technology reviews for the Acrylic and Modacrylic Fibers Production, Polycarbonate Production, and Amino/Phenolic Resins Production source categories. Comments on the Proposed Rule should be received by EPA on or before March 10, 2014.

Texas: State Implementation Plan ("SIP"):

4. [79 Fed. Reg. 51](#) (Jan. 2, 2014). *Approval of Two Texas SIP Revisions*. EPA has published final approval of two Texas SIP revisions that include a reasonable further progress ("RFP") plan, RFP contingency measures demonstration, motor vehicle emission budgets, and a vehicle miles traveled offset analysis for the Houston-Galveston-Brazoria ("HGB") 1997 8-hour ozone severe nonattainment area. The effective date of this Final Rule is February 3, 2014.

5. [79 Fed. Reg. 57](#) (Jan. 2, 2014). *Attainment Demonstration for the HGB 1997 8-Hour Ozone Nonattainment Area*. This Final Rule, effective February 3, 2014, approves the following Texas SIP submittals for the HGB 1997 8-hour ozone nonattainment area: the attainment demonstration for the 1997 ozone National Ambient Air Quality Standards (“NAAQS”), the reasonably available control measures demonstration for the NAAQS, the contingency measures plan in the event of failure to attain the NAAQS by the applicable attainment date, and a motor vehicle emissions budget for 2018, which is the attainment year for the HGB area. The approval includes revisions to the Mass Emissions Cap and Trade program for nitrogen oxides, revisions to the highly reactive volatile organic compound (“HRVOC”) emissions cap and trade (“HECT”) program, Voluntary Mobile Emissions Program measures, and Transportation Control Measures.

6. [79 Fed. Reg. 551](#); [79 Fed. Reg. 631](#) (Jan. 6, 2014). *FutureGen Program*. EPA has published a withdrawal of its Direct Rule approving portions of two revisions to the Texas SIP concerning the Permits for Specific Designated Facilities Program, which is also referred to as the FutureGen program, as EPA received a letter from the Texas Commission on Environmental Quality (“TCEQ”) in December 2013 advising that SIP revisions specific to the FutureGen program have been withdrawn. The effective date of this withdrawal is January 6, 2014.

7. [79 Fed. Reg. 551](#) (Jan. 6, 2014). *Public Participation for Air Quality Permit Applications*. This Final Rule, effective February 5, 2014, approves Texas’ Public Participation rules for air quality permits into the Texas SIP.

8. [79 Fed. Reg. 577](#) (Jan. 6, 2014). *Grandfathered Facilities*. EPA has approved Texas SIP revisions that require all grandfathered facilities to obtain specific permits that include emission control methods to achieve mandated emission reductions as required, or shutdown. The rules also require that dockside vessel emissions resulting from operations at grandfathered land-based facilities be included in specific permits, and also outline additional permitting procedures for certain grandfathered pipeline equipment located in an ozone nonattainment area.

9. [79 Fed. Reg. 1596](#); [79 Fed. Reg. 1608](#) (Jan. 9, 2014). *Environmental Speed Limit*. This Direct Final Rule approves a revision to the Texas SIP for the Dallas/Fort Worth (“DFW”) area to recategorize a local environmental speed limit control measure as a transportation control measure. Unless EPA receives adverse written comment on the proposal, published concurrently, the rule will become effective on March 10, 2014.

10. [79 Fed. Reg. 1612](#) (Jan. 9, 2014). *Reasonably Available Control Technology (“RACT”)*. EPA is proposing to approve revisions to the Texas SIP as meeting certain RACT requirements for volatile organic compounds in the HGB 1997 8-hour ozone nonattainment area.

11. [79 Fed. Reg. 5287](#); [79 Fed. Reg. 5363](#) (Jan. 31, 2014). *Texas Motor Vehicle Rule Revisions*. This Direct Final Rule approves the removal of the Texas clean fuel fleet program’s repealed low emission vehicle rules and mobile emission reduction credit rules from the Texas SIP. The rule also approves as part of the Texas SIP a new Texas Clean Fleet program to incentivize replacement of diesel vehicles and engines with alternatively fueled vehicles and engines, including hybrids. This rule will become effective on April 1, 2014 unless EPA receives adverse comment to the proposal, published concurrently, by March 3, 2014.

[Waste:](#)

12. [79 Fed. Reg. 350](#) (Jan. 3, 2014). *Hazardous Waste Management System*. EPA has published a Final Rule, effective March 4, 2014, that excludes CO₂ that is injected underground via underground injection control (“UIC”) Class VI wells that have been approved for geologic sequestration under the Safe Drinking Water Act, and that meet certain other conditions, from EPA’s hazardous waste regulations under the Resource Conservation and Recovery Act (“RCRA”). This rule also clarifies that CO₂ that is injected underground via UIC Class II wells for enhanced oil recovery is not expected to be a waste management activity.

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ("TCEQ")

Air:

1. [39 Tex. Reg. 497](#) (Jan. 31, 2014). *30 T.A.C. Chapter 111, Control of Air Pollution from Visible Emissions and Particulate Matter*. The TCEQ has adopted an amendment to § 111.211 that adds prescribed burning for wildfire hazard mitigation as an exception to the State's prohibition on outdoor burning. The effective date of this rulemaking is February 6, 2014.

Waste:

2. [39 Tex. Reg. 466](#) (Jan. 31, 2014). *30 T.A.C. Chapter 330, Municipal Solid Waste*. The TCEQ is proposing amendments to §§ 330.7, 330.671, 330.673 and 330.675 that would authorize a county or municipality with 12,000 people or less and that is located in an arid-exempt area to dispose of demolition waste from nuisance and abandoned buildings under a permit by rule ("PBR"). The increase in the population limit from 10,000 to 12,000 people is estimated to allow six additional counties and six additional municipalities to apply for the PBR. The proposed rules would also reduce by 25% the disposal fees assessed to municipal solid waste disposal facilities and provide waste disposal fee exemptions or credits for material diverted from landfills and processed into compost or mulch. A hearing on this proposal will be held in Austin on February 18, 2014, and written comments may be submitted to the TCEQ until March 3, 2014.

Water:

3. [39 Tex. Reg. 478](#) (Jan. 31, 2014). *30 T.A.C. 339, Groundwater Protection Recommendation Letters and Fees*. The TCEQ is proposing to repeal §§ 339.1 - .3, which authorized the executive director to provide groundwater protection letters to the Railroad Commission of Texas ("RRC") for use in various oil and gas activities and applications before the RRC and to collect a fee for the expedited processing of a request for a groundwater protection recommendation. The TCEQ's Surface Casing Program and staff transferred to the RRC on September 1, 2011, and because the executive director no longer provides the groundwater protection letters to the RRC, these rules are no longer necessary and are proposed to be repealed. A public hearing on this proposal will be held in Austin on February 18, 2014, and written comments may be submitted to the TCEQ until March 3, 2014.

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ALSO OF INTEREST

TCEQ Staff - On the Move. On January 10, 2014, Governor Rick Perry appointed Zak Covar to serve as a TCEQ Commissioner for a term to expire August 31, 2015. Zak Covar replaces Carlos Rubinstein, who was appointed Chairman of the Texas Water Development Board in September 2013. As a result of this appointment, the following key staff positions were named: Richard Hyde, as the TCEQ's Executive Director; Stephanie Bergeron Perdue, as Deputy Executive Director; and Dale Kohler, who will work in the Critical Infrastructure Division within the TCEQ's Office of Compliance and Enforcement.

EPA's Toxic Release Inventory ("TRI") Data. EPA has made available the [TRI data](#) for the 2012 reporting year. This annual report provides citizens with critical information about their communities, including data on certain toxic chemical releases to the air, water, and land, as well as information on waste management and pollution prevention activities by U.S. facilities. Also available is an expanded

TRI Pollution Prevention (“P2”) Search Tool, which allows users to graphically compare facilities within the same industry using a variety of environmental metrics.

EPA’s Regulatory Agenda. EPA has published its [semiannual regulatory agenda](#) for Fall 2013, which provides information concerning regulations and major policies currently under development, reviews of existing regulations and major policies, and rules and major policymakings completed or canceled since the last agenda.

EPA’s 2018 Emissions Modeling Platform. The [2018 Emissions Modeling Platform](#), which consists of emissions inventory data, supporting data used to develop 2018 emission inventories, and methods and data used to process emission inventories representing the year 2018 into a form that can be used for air quality modeling, is available for public review and comment until June 30, 2014.

Draft Ozone NAAQS Review Documents. EPA will accept public comments until March 24, 2014 on the following draft documents prepared as part of its current review of the NAAQS for ozone: (1) [Health Risk and Exposure Assessment for Ozone, Second External Review Draft](#); (2) [Welfare Risk and Exposure Assessment for Ozone, Second External Review Draft](#); and (3) [Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards, Second External Review Draft](#).

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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 April 25, 2014.

Emissions Banking and Trading Stakeholder Group Meetings. The TCEQ has scheduled [Emissions Banking and Trading Stakeholder Group meetings](#) to seek input on issues for consideration during upcoming revisions to the Emissions Banking and Trading rules. The meetings, which are open to the public, will be held in Fort Worth on February 27th and February 28th, in Houston on March 3rd and March 4th, and in Austin on March 5th.

Environmental Trade Fair and Conference. Registration is now open for the TCEQ’s [2014 Environmental Trade Fair and Conference](#) will be held in Austin on May 6-7, 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. Registration will open in Spring 2014.

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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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