

Recent Developments

Information about Environmental Issues

June 2013

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

Air:

1. [78 Fed. Reg. 33266](#) (June 4, 2013). *Tribal Minor New Source Review Program*. This Proposed Rule would clarify and streamline the New Source Review ("NSR") program applicable to Tribal lands. The proposal includes (a) additions to the list of insignificant units and activities that are exempt from the Tribal minor NSR program; (b) clarification of minor NSR requirements relating to "beginning construction" and "commencing construction"; and (c) reconsideration of the requirement that certain minor sources in Tribal lands must provide a 30-day advance notice prior to relocation. EPA will accept comments until August 5, 2013.
2. [78 Fed. Reg. 34178](#) (June 6, 2013). *National Ambient Air Quality Standards ("NAAQS"): Ozone*. EPA has proposed a rule that addresses a range of state implementation plan ("SIP") requirements for the 2008 ozone NAAQS, including requirements for attainment demonstrations, reasonable further progress, reasonably available control measures, new source review requirements in nonattainment areas, emission inventories, and the timing of SIP submissions and of compliance with emission control measures in a SIP. In addition, the proposal addresses anti-backsliding requirements that would apply upon revocation of the 1997 ozone NAAQS. Comments may be submitted to EPA on or before August 5, 2013.
3. [78 Fed. Reg. 36135](#); [78 Fed. Reg. 36370](#) (June 17, 2013). *Heavy-Duty Engine and Vehicle, and Nonroad Technical Amendments*. EPA and the National Highway Traffic Safety Association ("NHTSA") have published a Direct Final Rule that adopts corrections to the agencies' respective Medium- and Heavy-Duty Greenhouse Gas ("GHG") Emissions and Fuel Efficiency Final Rule issued on September 15, 2011. In addition, the Direct Final Rule amends several EPA regulations, including adjustments to the replacement engine exemption. This Direct Final Rule will become effective on August 16, 2013, unless EPA or NHTSA receives adverse comment to the proposal, published concurrently, by July 17, 2013.
4. [78 Fed. Reg. 37133](#) (June 20, 2013). *National Emission Standards for Hazardous Air Pollutants ("NESHAP"): Petroleum Refineries*. This Final Rule, effective June 20, 2013, amends the NESHAP for heat exchange systems at petroleum refineries. In addition to finalizing reconsideration issues related to the maximum achievable control technology standards ("MACT") for heat exchange systems as promulgated by EPA in 2009, this rule clarifies rule provisions and provides additional flexibility.

5. [78 Fed. Reg. 37164](#) (June 20, 2013). *Air Emissions Reporting Requirements: Lead*. This Proposed Rule would lower the current threshold for reporting lead sources as point sources and replace a requirement for reporting emissions from mobile sources with a requirement for reporting the input parameters used to run emissions estimate models. The proposal also would eliminate the requirement for reporting emissions from wildfires and prescribed fires. EPA will accept comments on this proposal until August 19, 2013.

Water:

6. [78 Fed. Reg. 34432](#) (June 7, 2013). *Effluent Limitations Guidelines and Standards: Steam Electric Power Generating Point Source Category*. This Proposed Rule addresses the regulation of wastewater and surface impoundments containing coal combustion residuals, or coal ash, for the steam electric power generating point source category. In addition to requesting comments on these proposed regulations, EPA has requested comments related to the alignment of proposed effluent limitations guidelines with the related rulemaking for coal combustion residuals under the Resource Conservation and Recovery Act ("RCRA"). EPA will accept comments on the proposal until August 6, 2013.

7. [78 Fed. Reg. 38591](#) (June 27, 2013). *National Pollutant Discharge Elimination System ("NPDES"): Pesticides*. In response to the 2009 Sixth Circuit Court of Appeals ruling that vacated EPA's 2006 NPDES Pesticides Rule, EPA has issued a Final Rule that removes exemptions for the application of pesticides from NPDES permitting requirements in two situations: (a) when the application of the pesticide is made directly to United States waters to control pests that are present in the water; and (b) when the pesticide application is made to control pests that are over, including near, waters of the United States. The effective date of this Final Rule is June 27, 2013.

Toxics:

8. [78 Fed. Reg. 34820](#) (June 10, 2013). *Formaldehyde Emissions Standards*. EPA has proposed rules to implement the statutory formaldehyde emission standards for hardwood plywood, medium-density fiberboard, and particleboard sold, supplied, offered for sale, or manufactured in the United States. Comments on the Proposed Rule may be submitted to EPA until August 9, 2013.

Fuels:

9. [78 Fed. Reg. 36042](#) (June 14, 2013). *Fuels and Fuel Additives*. EPA has published a Notice of Proposed Rulemaking that would amend three separate sets of fuel-related regulations: (a) amendments to the renewable fuels standard ("RFS2") program regulations; (b) amendments to the E15 misfueling mitigation regulations; and (c) amendments to the survey requirements associated with the ultra-low sulfur diesel program. Comments must be received by EPA on or before July 15, 2013.

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ("TCEQ")

Air:

1. [38 Tex. Reg. 3499](#) (June 7, 2013). *30 T.A.C. Chapter 115, Control of Air Pollution from Volatile Organic Compounds*. The TCEQ has proposed amendments to § 115.453 that would allow the use of airless and air-assisted airless spray application systems for the coating of miscellaneous metal parts and products, miscellaneous plastic parts and products, automotive/transportation and business machine plastic parts, and motor vehicle materials in the Dallas-Fort Worth and Houston-Galveston-Brazoria 1997 eight-hour ozone nonattainment areas. The proposed rulemaking implements reasonably available control technology requirements consistent with EPA's 2008 Miscellaneous Metal and Plastic Parts Coatings Control Techniques Guidelines recommendations.

2. [38 Tex. Reg. 3610](#) (June 7, 2013). *30 T.A.C. Chapter 101, General Air Quality Rules*. Adopted amendments to Chapter 101 implement the provisions of CAA § 182(d)(3) and (e) and § 185, which require each SIP for ozone nonattainment areas classified as severe or extreme to include a requirement for the imposition of a penalty fee for major stationary sources of volatile organic compounds ("VOC") located in the area if the area fails to attain the ozone NAAQS by the applicable attainment date. The rulemaking also implement CAA § 182(f), which requires all SIP requirements that apply for VOC to also apply for emissions of nitrogen oxides ("NO_x"). The rulemaking also provides for alternative options for the fee obligation and baseline amount calculations. Major stationary sources are subject to paying a fee of \$5,000, as adjusted by the consumer price index, per ton in excess of 80% of a baseline amount of VOC and NO_x. The fee will be due annually until the area is redesignated attainment or has three years of data demonstrating attainment. The effective date of these amendments is June 12, 2013.

Waste:

3. [38 Tex. Reg. 3885](#) (June 21, 2013). *30 T.A.C. Chapter 336, Radioactive Substance Rules*. Proposed new § 336.1310 would set the maximum disposal rates that a licensee may charge generators for disposal of low-level radioactive waste ("LLRW"). Both the licensee and generators of LLRW would be affected by this rule proposal. The disposal rates serve as a floor for rates charged by the licensee to non-party generators and the ceiling for rates charged to party state generators for disposal of LLRW. A public hearing on the proposed rule will be held in Austin on July 19, 2013, and written comments may be submitted to the TCEQ until July 22, 2013.

Miscellaneous:

4. [38 Tex. Reg. 3495](#) (June 7, 2013). *30 T.A.C. Chapter 7, Memoranda of Understanding ("MOU")*. This proposed rulemaking would revise the current MOU between the Texas Department of Transportation ("TxDOT") and TCEQ addressing the TCEQ's environmental reviews of TxDOT transportation projects.

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TCEQ Work Session

The following issues were discussed at the TCEQ's Work Session held in Austin on Friday, June 14, 2013:

1. Monthly Enforcement Report. Lynley Doyen, Special Assistant to the Director of TCEQ's Enforcement Division, presented the monthly enforcement report for Fiscal Year 2013 through the end of April 2013.

2. Enforcement Initiative Criteria ("EIC") Guidance. Lynley Doyen continued the presentation with an update on the EIC revision process. The current EIC, Version 14 (December 2012), is being reviewed by staff and is on schedule to be revised in calendar year 2014. No specific changes have been identified at this time, but it is expected to focus on water rights, aggregate production operations, oil and gas activities, and any revisions necessary to comply with legislative changes. A preliminary draft of Version 15 should be provided to the commissioners in late Summer/early Fall. Because the EIC does not go through a formal public comment process, the commissioners directed staff to make use of outreach programs, as well as to work with the three watermaster advisory committees on any changes in the next revision.

3. Supplemental Environmental Projects ("SEPs"). Kathleen Decker, Director of TCEQ's Litigation Division, briefed the Commission on the current status of the SEP program. There currently are 49 SEPs, 22 of which are air projects and 27 of which are water projects. A new draft SEP guidance document was presented that contains revisions to reflect current practices in the SEP Program, as well as the allowance of up to 10% of the SEP budget to be used as administrative costs. Commissioner Carlos Rubenstein inquired about the ability of the agency to transfer portions of SEP funds between any third-party administrators. Stephanie Bergeron Perdue, Special Counsel to the TCEQ Executive Director, will prepare a Commission Resolution that allows the transfer of SEP money for projects in Resource Conservation and Development Areas ("RC&D") on a case-by-case basis. Former Commissioner Ralph Marquez commented that incremental costs, which primarily have been applied in air SEPs, are the biggest issue in the application of SEPs and encouraged the Commission to conduct a comparison of projects to review trends concerning a decreased use of SEPs that could be related to a change in agency policy.

4. State and Federal Legislative Issues. Jim Harrison, Director of TCEQ's Intergovernmental Relations Division, reviewed legislation passed during the 83rd Texas Legislature.

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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 30, 2013.

TCEQ Public Drinking Water Conference. The TCEQ's 2013 [Public Drinking Water Conference](#) will be held in Austin on August 6-7, 2013. This free conference will provide information and tools for public water systems and utilities.

TCEQ Advanced Air Permitting Seminar and Oil & Gas Facilities Workshop. This [Seminar and Workshop](#), which will be held on September 25-26, 2013, will provide updates on air permitting rules, requirements, and issues for a variety of industries. The Workshop will focus on current air permitting issues as they relate to oil and gas facilities.

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ALSO OF INTEREST

Integrated Science Assessment for Lead. EPA has released its final [Integrated Science Assessment for Lead](#), which was prepared in connection with its review of the NAAQS for lead.

Public Health and the Environment. This comprehensive review on how the manner in which our cities and towns are built directly affects the environment and public health has been released by EPA. The report, [Our Built and Natural Environments: A Technical Review of the Interactions among Land Use, Transportation, and Environmental Quality](#), indicates that certain kinds of land use and transportation strategies can reduce the environmental and human health impacts associated with development.

U.S. Environmental Solutions Toolkit. EPA and the Department of Commerce have launched an interactive online reference tool, the [U.S. Environmental Solutions Toolkit](#), which connects EPA environmental analysis and regulatory structure to U.S. solutions providers.

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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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