

Recent Developments

Information about Environmental Issues

September 2013

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

Air:

1. [78 Fed. Reg. 54606](#) (Sept. 5, 2013). *National Emission Standards for Hazardous Air Pollutants ("NESHAP"): Reciprocating Internal Combustion Engines; New Source Performance Standards ("NSPS"): Stationary Internal Combustion Engines.* On January 30, 2013, EPA published a Final Rule amending the 2010 NESHAP for reciprocating internal combustion engines, and also amended requirements for emergency and non-emergency engines. Subsequently, three petitions for review were submitted to EPA for reconsideration of the Final Rule, relating to (a) the timing for compliance with the ultra low sulfur diesel fuel requirement for emergency compression ignition engines that operate or are contractually obligated to be available for more than fifteen hours per calendar year for emergency demand response and deviations of voltage or frequency of 5% or more, or that operate for local system reliability; (b) the timing and required information for the reporting requirement for emergency engines that operate or are contractually obligated to be available for more than fifteen hours per calendar year for emergency demand response and deviations of voltage or frequency of 5% or more, or that operate for local system reliability; and (c) conditions for operation for up to fifty hours per calendar year in non-emergency situations as part of a financial arrangement with another entity. EPA will accept comments on these three specific issues until November 4, 2013.

2. [78 Fed. Reg. 55994](#) (Sept. 11, 2013). *Greenhouse Gas Reporting Program.* This proposal would amend recordkeeping and reporting requirements, and enhance verification procedures for certain reporters in 24 subparts of the Greenhouse Gas Reporting Program. The proposed changes address concerns that public disclosure of certain data elements that are inputs to the equations used to calculate emissions and deferred from reporting until 2015 would reveal business sensitive information and maintain EPA's ability to verify emissions. Comments on the Proposed Rule may be submitted to EPA until November 12, 2013.

3. [78 Fed. Reg. 58416](#) (Sept. 23, 2012). *NSPS: Oil and Natural Gas.* Following reconsideration of certain provisions of the August 2012 NSPS for the oil and natural gas sector, EPA has published final amendments that clarify notification and compliance dates, ensure control of all storage vessel affected facilities, and update key definitions. The effective date of this rulemaking is September 23, 2013.

Texas: State Implementation Plan ("SIP"):

4. [78 Fed. Reg. 55029](#) (Sept. 9, 2013). *Houston 1997 8-Hour Severe Ozone Nonattainment Area.* EPA has proposed approval of revisions to the Texas SIP related to the emissions inventory, the reasonable further progress plan and contingency measures, the vehicle miles traveled offset analysis, and transportation conformity motor vehicle emissions budgets associated with the reasonable further

progress portion of these revisions. EPA will accept comments on this proposed approval until October 9, 2013.

5. [78 Fed. Reg. 55037](#) (Sept. 9, 2013). *Houston-Galveston-Brazoria ("HGB") 1997 8-Hour Ozone Nonattainment Area*. EPA also has proposed to approve the attainment demonstration for the 1997 ozone National Ambient Air Quality Standard ("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 for the HGB 1997 8-hour ozone nonattainment area. EPA will accept comments on this proposed approval until October 9, 2013.

6. [78 Fed. Reg. 55221](#); [78 Fed. Reg. 55234](#) (Sept. 10, 2013). *Federal Operating Permits*. EPA has published a Direct Final Rule approving revisions to the Texas SIP concerning the Title V Operating Permit program. Unless EPA receives adverse written comment to the Proposed Rule, published concurrently, by October 10, 2013, this rule will become effective on November 12, 2013.

7. [78 Fed. Reg. 59250](#) (Sept. 26, 2013). *Emergency Orders*. EPA has disapproved revisions to the Texas SIP relating to Emergency Orders, saying that the program could not be SIP-approved because it did not require public participation or issuance of a permit before construction began. Although the Emergency Orders program will not be a part of the Texas SIP, it will remain in place under Texas law.

Water:

8. [78 Fed. Reg. 54518](#) (Sept. 4, 2013). *Water Quality Standards*. EPA has proposed changes to the federal water quality standards ("WQS") that would (a) establish a more transparent process for EPA to announce a determination that new or revised WQS are necessary under section 303(c)(4)(B) of the Clean Water Act ("CWA"); (b) ensure states and tribes are striving to meet the highest attainable water quality goals, even where CWA goals are unattainable; (c) ensure states and tribes consider updating their WQS to reflect EPA's latest criteria recommendations; (d) enhance state and tribal implementation of antidegradation policies and help maintain and protect high quality waters; (e) provide regulatory flexibility and boundaries to allow states and tribes to achieve water quality improvements before resorting to a use change; and (f) clarify that states and tribes must first authorize compliance schedules in their WQS regulations in order to issue compliance schedules. EPA will accept public comments on this proposal until December 3, 2013.

9. [78 Fed. Reg. 59672](#) (Sept. 27, 2013). *General Permit for Stormwater Discharges from Industrial Activities*. EPA Regions 1, 2, 3, 5, 6, 7, 8, 9 and 10 have released the draft 2013 National Pollutant Discharge Elimination System ("NPDES") general permit for stormwater discharges from industrial activity. This draft permit, which is also referred to as the Multi-Sector General Permit ("MSGP"), will replace the existing permit covering stormwater discharges from industrial facilities in EPA Regions 1, 2, 3, 5, 6, 9 and 10, which will expire on September 29, 2013, and will provide coverage for industrial facilities in areas where EPA is the NPDES permitting authority in EPA Regions 7 and 8. Comments on the draft general permit must be received by EPA on or before November 26, 2013.

* * * * *

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ("TCEQ")

Water:

1. [38 Tex. Reg. 5880](#) (Sept. 6, 2013). *30 T.A.C. Chapter 290, Public Drinking Water*. Amendments to §§ 290.42, 290.44, and 290.109 have been adopted that allow water collected by a

rainwater harvesting system that is connected to a public water system to be used for indoor potable use. The effective date of these amendments is September 12, 2013.

2. [38 Tex. Reg. 5998](#) (Sept. 13, 2013). *30 T.A.C. Chapter 307, Texas Surface Water Quality Standards ("TSWQS")*. Proposed amendments to the TSWQS include numerous substantive changes and clarifications in all sections of the rulemaking except for §307.1 and §307.5. The proposed revisions to the TSWQS incorporate new information and studies on the appropriate uses and criteria of individual water bodies, incorporate new scientific data on the effects of specific chemicals and pollutants, and address new provisions in the TWC, federal regulations, and EPA guidance. A public hearing on these proposed amendments will be held in Austin on October 17, 2013, and written comments may be submitted until October 24, 2013.

3. [38 Tex. Reg. 6176](#) (Sept. 20, 2013). *30 T.A.C. Chapter 298, Environmental Flow Standards for Surface Water*. This proposed rulemaking is to implement the directive in § 11.1471 of the Texas Water Code by establishing appropriate environmental flow standards for the river basin and bay systems consisting of the Nueces River and Corpus Christi and Baffin Bays; the Rio Grande, Rio Grande estuary, and Lower Laguna Madre; and the Brazos River and its associated bay and estuary system. The TCEQ will conduct a public hearing on this proposal on October 15, 2013, and written comments may be submitted until October 21, 2013.

Miscellaneous:

4. [38 Tex. Reg. 6215](#) (Sept. 20, 2013). *30 T.A.C. Chapter 7, Memoranda of Understanding ("MOU")*. This adopted amendment to § 7.119, effective September 26, 2013, revises the current MOU between the Texas Department of Transportation ("TxDOT") and TCEQ addressing the TCEQ's environmental reviews of TxDOT transportation projects.

* * * * *

UPCOMING CONFERENCES, MEETINGS, and WORKSHOPS

TCEQ Work Session. The next Commissioners' Work Session is scheduled to be held in Austin on November 15, 2013.

Environmental Trade Fair and Conference. The TCEQ's 2014 [Environmental Trade Fair and Conference](#) will be held in Austin on May 6-7, 2014.

* * * * *

* * * * *

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
Zachary Craft	713.229.1133
Kim Tuthill	713.229.1166
Kathleen Weir	713.229.2108

WASHINGTON, D.C.:

Pat Berry	202.639.7746
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
Christopher Danley	202.639.7842
Brook Detterman	202.639.7763
Megan Heuberger Berge	202.639.1308
Michael McGovern	202.639.7797
Michael Schon	202.639.7707
Martha Thomsen	202.639.7863
Allison Watkins	202.639.7754
Christine Wyman	202.639.7767

* * * * *