

Recent Developments Information about Environmental Issues February 2011

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

Air:

1. [76 Fed. Reg. 8158](#) (Feb. 11, 2011). *National Ambient Air Quality Standards ("NAAQS"): Carbon Monoxide ("CO")*. EPA has published a proposal that would change the ambient air quality modeling requirements for CO, including those related to network design, but would otherwise retain the existing NAAQS for CO. Comments on the Proposed Rule must be submitted to EPA by April 12, 2011.

2. [76 Fed. Reg. 9410](#) (Feb. 17, 2011). *National Emission Standards for Hazardous Air Pollutants ("NESHAP"): Primary Lead Smelting*. Proposed amendments to the NESHAP for the Primary Lead Smelting sector would revise the emission limits for lead, add a lead concentration in air standard, and modify/add testing and monitoring and related notification, recordkeeping, and reporting requirements. The proposal also would revise provisions addressing periods of startup, shutdown, and malfunction. Comments on the proposal must be received by EPA on or before April 4, 2011.

3. [76 Fed. Reg. 9450](#) (Feb. 17, 2011). *NESHAP: Gold Mine Ore Processing and Production*. This Final Rule, effective February 17, 2011, promulgates the NESHAP to regulate mercury emissions from the gold mine ore processing and production area source category.

Texas: State Implementation Plan ("SIP"):

4. [76 Fed. Reg. 10249](#) (Feb. 24, 2011). *Revisions to Control Volatile Organic Compound ("VOC") Emissions from Consumer-Related Sources*. EPA has approved revisions to the Texas SIP that remove the Texas Portable Fuel Container rule as an ozone control strategy. This rule will become effective on April 25, 2011 unless EPA receives adverse comments to the proposal, published concurrently at [76 Fed. Reg. 10295](#), by March 28, 2011.

* * * * *

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

Air:

1. [36 Tex. Reg. 708](#) (Feb. 11, 2011). *30 T.A.C. Chapter 114, Control of Air Pollution from Motor Vehicles.* This proposed rulemaking would remove the expired prohibition for drivers using sleeper berths to idle in residential areas, school zones, and near hospitals; and would remove expiration dates that are no longer applicable. The proposal also would remove the duplicative exemption for a motor vehicle that has a gross vehicle weight rating of 14,000 pounds or less and replace it with a new exemption for armored vehicles and also would retain the exemption for a motor vehicle when idling for heating or air conditioning while a driver is using the vehicle's sleeper berth for a government-mandated rest period and not within two miles of a facility offering external heating or conditioning, which expired on September 1, 2009. Comments on this Proposed Rule may be submitted to the TCEQ until March 11, 2011.

2. [36 Tex. Reg. 809](#) (Feb. 11, 2011). *30 T.A.C. Chapter 115, Control of Air Pollution from Volatile Organic Compounds.* Amendments to Chapter 115, effective February 17, 2011, clarify requirements and facilitate the implementation and enforcement of rules for degassing and cleaning of storage tanks, transport vessels, and marine vessels. The rules also provide additional options to control VOC emissions and add necessary monitoring, testing, and recordkeeping requirements for those controls, as well as allowing the use of additional test methods to demonstrate compliance with agency rules.

3. [36 Tex. Reg. 943](#) (Feb. 18, 2011). *30 T.A.C. Chapter 106, Permits By Rule ("PBR").* The TCEQ has adopted amendments to the PBR and standard permit that authorize upstream oil and gas production activities. New projects in the Barnett Shale are subject to the new PBR and Standard Permit (or to case-by-case NSR permitting, if the terms of the PBR and Standard Permit cannot be met), starting April 1, 2011; existing facilities in the Barnett Shale will become subject to some of the new PBR and Standard Permit requirements, often on a graduated schedule. Projects and facilities outside the Barnett Shale are subject to the current PBR and Standard Permit until TCEQ completes a separate rulemaking. The effective date of this rule is February 27, 2011.

4. [36 Tex. Reg. 1294](#); [36 Tex. Reg. 1305](#) (Feb. 25, 2011). *30 T.A.C. Chapter 101, General Air Quality Rules; 30 T.A.C. Chapter 116, Control of Air Pollution by Permits for New Construction or Modification.* Adopted amendments to Chapter 101 remove language regarding specific maintenance and nonattainment areas and provide direction regarding the federal one-hour ozone standard. Adopted amendments to Chapter 116 address issues identified by the EPA in its September 23, 2009 disapproval notice and ensure that TCEQ regulatory requirements regarding the NSR permitting program meet the requirements of the federal Clean Air Act and are approvable into the Texas SIP. This includes changes to the Plant-Wide Applicability Limit ("PAL") rules, including the conditions for reopening PAL permits. The rulemaking also amends §116.617, State Pollution Control Standard Permit, to limit when existing registrations can be amended or renewed and to provide the deadline for final registrations under this specific standard permit. The effective date of these amendments is March 3, 2011.

Water:

5. [36 Tex. Reg. 713](#) (Feb. 11, 2011). *30 T.A.C. Chapter 293, Water Districts.* In response to a petition for rulemaking, the TCEQ has proposed a rule that would allow a district to fund the *pro rata* share of oversized facilities serving areas outside the district, as long as it is the most cost-effective means of providing service. Comments on this proposal may be submitted to the TCEQ until March 14, 2011.

Waste:

6. [36 Tex. Reg. 719](#) (Feb. 11, 2011). *30 T.A.C. Chapter 328, Waste Minimization and Recycling.* This proposed amendment to §328.66(a)(11) would require applicants for Land Reclamation Projects Using Tires to publish notice only in the county in which the facility is located, rather than all counties adjoining the county where the facility is proposed to be located. Comments may be submitted to the TCEQ until March 11, 2011.

7. [36 Tex. Reg. 723](#) (Feb. 11, 2011). *30 T.A.C. Chapter 334, Underground and Aboveground Storage Tanks.* A proposed amendment to §334.560, "Reimbursable Cost Specifications," would increase certain reimbursable amounts relating to offsite access fees charged by municipalities, waste disposal costs, and per diem costs, which would allow eligible owners of Leaking Petroleum Storage Tanks to receive reimbursement payments that are more representative of current market rates for these corrective action activities. The comment period for this proposed rulemaking will close on March 13, 2011.

* * * * *

UPCOMING CONFERENCES, MEETINGS, and WORKSHOPS

TCEQ's Environmental Trade Fair & Conference. The 2011 [TCEQ Environmental Trade Fair & Conference](#) will be held May 3-4, 2011, in Austin.

TCEQ Work Session. The next TCEQ Work Session currently is scheduled to be held Friday, March 25, 2011, in Austin, Texas.

* * * * *

* * * * *

ALSO OF INTEREST

National Response Center (“NRC”) Notifications. Please note the following updated telephone and fax numbers to provide notification to the NRC when there is a release of a hazardous substance from a vessel or facility in a quantity equal to or exceeding the reportable quantity in any 24-hour period:

National Response Center:	1-800-424-8802
In Washington, D.C.:	202-267-2675
Facsimile:	202-267-1322

Perchlorate in Drinking Water. EPA has made a [regulatory determination](#) that perchlorate meets the criteria in the Safe Drinking Water Act for regulating a contaminant, and will initiate the development of a proposed national primary drinking water regulation (“NPDWR”) for perchlorate. EPA intends to publish a proposed NPDWR for perchlorate within two years.

Secondary NAAQS for Oxides of Nitrogen and Sulfur. EPA has released a final document, [Policy Assessment for the Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Sulfur](#), which is part of EPA's first time joint review of the existing secondary (welfare based) standards for NO_x and SO_x. EPA is considering setting a single secondary standard for both pollutants based on an acidification index that would indicate the potential for an ecosystem to become acidified from depositions of NO_x and SO_x. EPA plans to issue a proposed rule revising the secondary NAAQS for NO_x and SO_x by July 2011, with a final rule issued by March 2012.

Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2009. The [Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks](#), which summarizes annual emissions from 1990 through 2009, is available for public review and comment.

* * * * *

* * * * *

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:

Pam Giblin	512.322.2509
Aileen Hooks	512.322.2616
Jennifer Keane	512.322.2594
Derek McDonald	512.322.2667
Matt Paulson	512.322.2582
Sara Burgin	512.322.2649
Whitney Swift	512.322.2672
Brian Faulkner	512.322.2617
Nick Graham	512.322.2538
Amber MacIver	512.322.2597
Carlos Romo	512.322.2579

HOUSTON:

Scott Janoe	713.229.1553
Matt Kuryla	713.229.1114
Zachary Craft	713.229.1133
Colette Fields	713.229.1118
Rebecca H. Moring	713.229.1835
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
Will Cleveland	202.639.7882
Christopher Danley	202.639.7842
Brook Detterman	202.639.7763
Matthew Droz	202.639.7863
Lauren Edwardson	202.639.7905
Laura Fleischmann	202.639.1306
Michael Heister	202.639.1140
Megan Heuberger Berge	202.639.1308
Michael McGovern	202.639.7797
Michael Schon	202.639.7707
Kendrea Tannis	202.639.7716
Allison Watkins	202.639.7754

* * * * *