

Recent Developments

Information about Environmental Issues

January 2011

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

Air:

1. [76 Fed. Reg. 2832](#); [76 Fed. Reg. 2860](#) (Jan. 18, 2011). *National Emission Standards for Hazardous Air Pollutants ("NESHAP") and Standards of Performance ("NSPS"): Portland Cement Plants*. This Direct Final Rule clarifies that the emission limits currently in effect for existing sources remain in effect until the compliance date of the emission standards that were changed in the [final NESHAP](#) for the Portland Cement Manufacturing Industry and NSPS for Portland Cement Plants. Unless EPA receives written adverse comments on this action by February 17, 2011, the Direct Final Rule will become effective on March 21, 2011.

2. [76 Fed. Reg. 3517](#); [76 Fed. Reg. 3587](#) (Jan. 20, 2011). *NSPS: Fossil-Fuel-Fired, Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units*. EPA has issued a Direct Final Rule that amends the testing requirements for owners/operators of steam generating units that elect to install particulate matter continuous emission monitoring systems. The rule further amends the opacity monitoring requirements for owners/operators of affected facilities that are subject to an opacity standard that are exempt from the requirement to install a continuous opacity monitoring system, and also corrects editorial errors from previous rulemakings. Unless EPA receives written adverse comments on this Direct Final Rule by February 22, 2011, this rulemaking will become effective on March 21, 2011.

3. [76 Fed. Reg. 4156](#) (Jan. 24, 2011). *NESHAP: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; Gasoline Dispensing Facilities*. Amendments to the NESHAP for the Gasoline Distribution Bulk Terminals, Bulk Plants and Pipeline Facilities, and Gasoline Dispensing Facilities source categories clarify certain definitions and applicability provisions of the rules in response to petitions for reconsideration that EPA received on the rule. The effective date of these amendments is January 24, 2011.

Texas: State Implementation Plan ("SIP"):

4. [76 Fed. Reg. 15](#) (Jan. 3, 2011). *Emissions Banking and Trading Program*. EPA has approved portions of four revisions to the Texas SIP that create and amend the Emissions Banking and Trading of Allowances ("EBTA") Program, which establishes a cap and trade program to reduce NO_x and SO₂ emissions from participating electric generating facilities ("EGFs"). The effective date of this action is February 2, 2011.

5. [76 Fed. Reg. 1525](#) (Jan. 11, 2011). *Grandfathered and Electing EGFs*. This final action, effective February 10, 2011, partially approves and partially disapproves revisions to the Texas SIP relating to application and permitting procedures for grandfathered EGFs. The action approves the revisions, which address a mandate by the Texas Legislature to achieve particulate matter, NO_x and SO₂ emission reductions from grandfathered EGFs, except for a severable portion that would allow collateral emissions increases of carbon monoxide through a Standard Permit for Pollution Control Projects.

6. [76 Fed. Reg. 4342](#) (Jan. 25, 2011). *Adequacy Status of Houston-Galveston-Brazoria ("HGB")*. EPA has published notice that the motor vehicle emissions budgets contained in the HGB Reasonable Further Progress and Attainment Demonstration SIP revisions are adequate for transportation conformity purposes. As a result, the HGB area must use these budgets for future conformity determinations for the 1997 8-hour ozone standard. The effective date of this action is February 9, 2011.

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

There were no proposed or adopted rules published by the TCEQ during the month of January.

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UPCOMING CONFERENCES, MEETINGS, and WORKSHOPS



MARK THE DATE!

The annual Baker Botts Environmental Law Seminar will be held at the Hyatt Regency in Houston on Thursday, February 24, 2011 from 8:30 AM until 4:00 PM, with a networking breakfast at 7:30 AM. Please contact us if you would like more information on this event.

TCEQ's Environmental Trade Fair & Conference. The 2011 [TCEQ Environmental Trade Fair & Conference](#) will be held May 3-4, 2011, in Austin. Attendee registration will begin on February 7, 2011.

Emissions Inventory Workshop. The 2011 [TCEQ Emissions Inventory Workshop](#) will be held February 9, 2011 at the J.J. Pickle Center in Austin, Texas.

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

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ALSO OF INTEREST

TCEQ Personnel Changes. TCEQ Chairman Bryan Shaw has announced that Anne Idsal will become his new Executive Assistant/Special Counsel, replacing Kevin Patteson, who has accepted a position in Washington, D.C.

TCEQ Development Support Documents ("DSDs"). The TCEQ's Toxicology Division is accepting public comments on [proposed DSDs](#) for the following six chemicals until May 2, 2011: 4-Vinylcyclohexene; 1,1,1-Trichloroethane; Methylene Chloride; Nickel and Inorganic Nickel Compounds; Pentane, All Isomers; and Silica, Amorphous and Other non-Crystalline Forms.

NOx and Sulfur. EPA has released the *Policy Assessment for the Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Sulfur*, which contains staff analyses of the scientific bases for alternative policy options for consideration by EPA prior to rulemaking. (Note: This report has not yet been posted on [EPA's website](#), but is expected to be posted soon.)

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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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