

Recent Developments

Information about Environmental Issues

March 2011

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

Air:

1. [76 Fed. Reg. 12863](#); [76 Fed. Reg. 12923](#) (March 9, 2011). *National Emission Standards for Hazardous Air Pollutants ("NESHAP"): Reciprocating Internal Combustion Engines*. This action would amend the NESHAP for existing stationary spark ignition reciprocating internal combustion engines by clarifying the compliance requirements related to continuous parameter monitoring systems and correcting minor typographical errors in the [final NESHAP](#) that was published on August 20, 2010. Unless EPA receives significant adverse written comment to the Proposed Rule, published concurrently, by April 8, 2011, the Direct Final Rule will become effective on May 9, 2011.

2. [76 Fed. Reg. 13514](#) (March 14, 2011). *NESHAP: Chemical Manufacturing Area Sources*. On June 15, 2010, EPA announced that it would reconsider a requirement in the NESHAP for Chemical Manufacturing Area Sources that certain affected sources obtain a Title V permit. On December 14, 2010, EPA issued a 90-day stay of this requirement, pending reconsideration of the rule. EPA has now further extended the stay for affected sources to obtain a Title V permit until the final reconsideration rule is published in the *Federal Register*. The effective date of this action is March 14, 2011.

3. [76 Fed. Reg. 13852](#) (March 14, 2011). *NESHAP: Mercury Cell Chlor-Alkali Plants*. This supplemental proposal presents two options for amending the NESHAP for mercury emissions from mercury cell chlor-alkali plants. The first option would require the elimination of mercury emissions to encourage the conversion to non-mercury technology; the second option would require the measures that were proposed in a [June 2008 proposal](#), which includes significant improvements in work practices to reduce fugitive emissions from the cell room. These proposed amendments would apply to periods of startup, shutdown, and malfunction and would correct compliance errors in the rule that is currently effective. EPA must receive comments on or before May 13, 2011.

4. [76 Fed. Reg. 14812](#) (March 18, 2011). *Mandatory Reporting of Greenhouse Gases) Rule*. This Final Rule, effective March 18, 2011, extends the reporting deadline for 2010 data required under the Mandatory Reporting of Greenhouse Gases rule until September 30, 2011. This extension will allow time for EPA to refine the electronic data reporting system, stakeholder testing of that system, and reporter access to the reporting system in advance of the reporting deadline.

5. [76 Fed. Reg. 15554](#) (March 21, 2011). *NESHAP: Industrial, Commercial, and Institutional Boilers*. EPA has promulgated the NESHAP for industrial boilers and for commercial and institutional boilers. The Final Rule, which establishes standards to address emissions of mercury, particulate matter (as a surrogate for non-mercury metals), and carbon monoxide (as a surrogate for organic air toxics), covers boilers located at area source facilities that burn coal, oil, or biomass, or non-waste materials. The rule does not cover boilers that burn only gaseous fuels or any solid waste. The effective date of this Final Rule is May 20, 2011.

6. [76 Fed. Reg. 15608](#) (March 21, 2011). *NESHAP: Industrial, Commercial, and Institutional Boilers and Process Heaters*. This Final Rule, effective May 20, 2011, establishes a work practice standard instead of numeric emission limits for all new and existing “limited use” boilers. The Final Rule also establishes numeric emission limits for mercury, dioxin, particulate matter (as a surrogate for non-mercury metals), hydrogen chloride (as a surrogate for acid gases), and carbon monoxide (as a surrogate for non-dioxin organic air toxics) for all other existing and new boilers and process heaters located at major sources, including those that burn coal and biomass.

7. [76 Fed. Reg. 15372](#) (March 21, 2011). *Sewage Sludge Incineration Units*. EPA has issued the Final Rule promulgating new source performance standards and emission guidelines for multiple hearth and fluidized bed sewage sludge incineration (“SSI”) units located at wastewater treatment facilities designed to treat domestic sewage sludge. The Final Rule, effective May 20, 2011, establishes emission limits for mercury, lead, cadmium, hydrogen chloride, particulate matter, carbon monoxide, dioxins/furans, nitrogen oxides, and sulfur dioxide, and require provisions for testing, monitoring, recordkeeping, reporting, and operator training.

8. [76 Fed. Reg. 15704](#) (March 21, 2011). *Commercial and Industrial Solid Waste Incineration (“CISWI”) Units*. This Final Rule covers four subcategories of CISWI units: incinerators, energy recovery units, waste-burning kilns, and small incinerators in very remote locations. The rule establishes emission limits for mercury, lead, cadmium, hydrogen chloride, particulate matter, carbon monoxide, dioxins/furans, nitrogen oxides, and sulfur dioxide, and also requires stack testing, monitoring, additional monitoring for new sources, annual inspections of emission control devices, annual visible emissions testing of ash handling operations, and procedures to be followed for submitting test data. CISWI units must either comply with the emission limits in the rule or use alternative waste disposal options, such as diverting waste to a landfill. The effective date of this Final Rule is May 20, 2011.

9. [76 Fed. Reg. 15249](#) (March 21, 2011). *Deferral for Emissions of Carbon Dioxide (“CO₂”)*. This Proposed Rule would defer consideration of CO₂ emissions from bioenergy and other biogenic sources when determining whether a stationary source meets the Prevention of Significant Deterioration (“PSD”) and Title V applicability thresholds related to GHG emissions for a 3-year period. EPA plans to further examine biogenic CO₂ emissions from stationary sources during this 3-year period. Biomass sources would still need to consider emissions of other GHGs (e.g. methane). GHG reporting and NSPS standards would remain in place for these sources. Comments on this Proposed Rule must be submitted to EPA on or before May 5, 2011.

10. [76 Fed. Reg. 15266](#) (March 21, 2011). *Notice of Reconsideration*. EPA has announced that it will reconsider certain aspects of the boiler and CISWI rules, as some of the issues identified in comments received on these rules raised difficult technical issues that EPA believes would benefit from additional public involvement. As a result, EPA is developing a proposal that will request additional comment on specific elements of the final rules that would benefit from additional public review and comment, and any provisions that EPA proposes to modify or add after more fully evaluating the data and comments already received.

Waste:

11. [76 Fed. Reg. 15456](#) (March 21, 2011). *Non-Hazardous Secondary Materials*. EPA has published a Final Rule, effective May 20, 2011, that identifies which non-hazardous secondary materials, when used as fuels or ingredients in combustion units, are *solid wastes* under the Resource Conservation and Recovery Act ("RCRA"). The definition of *non-hazardous solid waste* potentially could affect some units currently considered boilers by moving them into the category of commercial and industrial solid waste incinerators if they burn solid waste.

Texas' Hazardous Waste Management Program:

12. [76 Fed. Reg. 12283](#); [76 Fed. Reg. 12307](#) (March 7, 2011). *State-Initiated Changes*. EPA has published a Direct Final Rule authorizing revisions to Texas' Hazardous Waste Management Program that make State rules more clear or conform more closely to equivalent federal regulations. As a result, a Texas facility subject to RCRA will now have to comply with the authorized Texas requirements instead of the equivalent federal requirements. Unless EPA receives adverse written comment to the Proposed Rule, published concurrently, this rule will become effective on May 6, 2011.

Water:

13. [76 Fed. Reg. 11713](#) (March 3, 2011). *Public Water Systems*. This rulemaking proposes the design for the third cycle of Unregulated Contaminant Monitoring Regulations ("UCMR 3"). Included in the Proposed Rule are six analytical methods developed by EPA and four equivalent methods developed by consensus organizations to monitor for 28 new UCMR chemical contaminants. EPA also is proposing monitoring for two viruses, for a total of thirty UCMR 3 contaminants, and would amend regulations concerning inorganic chemical sampling and analytical requirements. Comments on the Proposed Rule must be received by EPA on or before May 2, 2011.

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

Air:

1. [36 Tex. Reg. 1641](#) (March 11, 2011). *30 T.A.C. Chapter 101, General Air Quality Rules*. The TCEQ collects annual fees from sources that are subject to Title V air permitting requirements to cover costs for preparing applicable regulations, reviewing and issuing permits, ambient monitoring, modeling, implementing Title V permits, and preparing emissions inventories. This proposed amendment to § 101.27 would increase a base rate from \$25 per ton to \$35 per ton in the emissions fee calculation for fiscal year 2012 and would allow annual adjustments of the base rate, as required for adequate fee revenue up to a predetermined cap of \$45 per ton. The base rate may be further adjusted based on the January 2011 consumer price index and emissions amounts. Comments on the proposal may be submitted to the TCEQ until April 11, 2011.

2. [36 Tex. Reg. 1673](#) (March 11, 2011). *30 T.A.C. Chapter 116, Control of Air Pollution by Permits for New Construction or Modification*. 30 T.A.C. § 116.118 allowed grandfathered facilities to make facility changes under the qualified facility rules. However, all grandfathered facilities must now be permitted, and the new rules adopted on September 15, 2010 require an application for a permit revision to make qualified facility changes. Because § 116.118 has no further application in the air permitting rules, it has been repealed, effective March 17, 2011.

Water:

3. [36 Tex. Reg. 1985](#); [36 Tex. Reg. 1988](#) (March 25, 2011). 30 T.A.C. Chapter 213, *Edwards Aquifer*; 30 T.A.C. Chapter 311, *Watershed Protection*. This rulemaking adds Subchapter C to Chapter 213 and Subchapter I to Chapter 311 to allow the continued use of pesticides in areas where discharges or increases in pollutant loading will be prohibited after April 9, 2011. The affected areas include the Highland Lakes area and Edwards Aquifer recharge, contributing and transition zones. The effective date of this rulemaking is March 31, 2011.

4. [36 Tex. Reg. 1990](#) (March 25, 2011). 30 T.A.C. Chapter 319, *General Regulations Incorporated Into Permits*. These amendments, effective March 31, 2011, clarify instructions to the regulated community and to the general public concerning what information must be included in a notice of a wastewater spill and to clarify precautionary language that may be contained in a wastewater spill notice for the general public. The amendment also replaces the existing spill notification form from the rule with minimum reporting requirements for the regulated entity in the event of a wastewater spill.

Waste:

5. [36 Tex. Reg. 1675](#) (March 11, 2011). 30 T.A.C. Chapter 334, *Underground and Aboveground Storage Tanks*. Amendments to Chapter 334 create a new Subchapter N, *Operator Training*, that establishes operator training requirements for underground storage tanks (“USTs”). In addition, the amendments clarify existing technical rules related to secondary containment, sumps and corrosion protection. The rules also incorporate federal requirements mandated by the Energy Policy Act of 2005, which require the training of persons responsible for the on-site operation and maintenance of UST systems by August 8, 2012. The effective date of these amendments is March 17, 2011.

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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, May 20, 2011, in Austin, Texas.

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ALSO OF INTEREST

Commissioner Carlos Rubinstein. On March 9, 2011, the Texas Senate unanimously confirmed the appointment of Carlos Rubinstein as a commissioner of the TCEQ for a term ending August 31, 2015. Commissioner Rubinstein was appointed to serve as a TCEQ commissioner by Governor Rick Perry on August 31, 2009.

Non-Rule Standard Permit for Pollution Control Projects. The TCEQ has authorized a new non-rule [standard permit](#) that replaces the Air Quality Standard Permit for Pollution Control Projects (“PCPs”) previously authorized under 30 T.A.C § 116.617 for pollution control projects. All new PCPs that start construction after February 9, 2011 must meet the requirements of the new non-rule standard permit. PCP projects that started construction prior to February 9, 2011 can be authorized under the previous version of the PCP Standard Permit. Also, authorizations under the previous versions of the PCP Standard Permit under 30 TAC § 116.617 shall be renewed under the new non-rule PCP Standard Permit upon their ten-year anniversary.

Vapor Intrusion. EPA is accepting public comment on the development of a final guidance entitled, *Evaluating Vapor Intrusion to Indoor Air Pathway from Contaminated Groundwater and Soil (Subsurface Vapor Intrusion Guidance)*. EPA first released a [draft of this guidance](#) in November 2002 and plans to issue a second draft in the Spring of 2012, with the final guidance to be issued by November 30, 2012.

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

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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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