

Recent Developments

Information about Environmental Issues

May 2011

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

Air:

1. [76 Fed. Reg. 24976](#) (May 3, 2011). *National Emission Standards for Hazardous Air Pollutants ("NESHAP"): Coal- and Oil-Fired Electric Utility Steam Generating Units ("EGUs"); New Source Performance Standards ("NSPS"): Fossil Fuel-Fired EGUs.* EPA has published its proposed rule that would establish Maximum Achievable Control Technology ("MACT") and NSPS for coal- and oil-fired EGUs. The proposal would subject all source operating modes, including startup, shutdown and malfunction emissions, to coverage under the rule. Comments must be submitted to EPA by July 5, 2011.
2. [76 Fed. Reg. 28318](#) (May 17, 2011). *NESHAP: Portland Cement Plants.* In response to petitions for reconsideration submitted in response to the [final revised NESHAP](#) for the Portland Cement Industry and the NSPS for Portland Cement Plants, EPA published notice that it is denying all requests that an administrative stay of the rule be issued. However, EPA has granted reconsideration of certain issues, including the standard for hydrogen chloride during startup and shutdown for kilns equipped with wet scrubbers but that do not use a continuous emissions monitor to measure compliance, the status of coal mills under the cement NESHAP, the types of continuous monitoring allowed during startup and shutdown for mercury and particulate matter ("PM"), and the NSPS for PM standards for modified kilns.
3. [76 Fed. Reg. 28646](#) (May 18, 2011). *Particulate Matter Less than 2.5 Micrometers ("PM_{2.5}").* EPA has issued a Final Rule that repeals the grandfather provision for PM_{2.5} under the federal Prevention of Significant Deterioration ("PSD") program, which EPA administers in states that lack a PSD permit program in their approved state implementation plan ("SIP"). Although EPA also originally proposed to end early the 1997 PM₁₀ Surrogate Policy that may be used by states with EPA-approved PSD programs until May 2011, EPA has decided to take no action on that aspect of the proposed rule. The effective date of this final action is July 18, 2011.
4. [76 Fed. Reg. 28662](#) (May 18, 2011). *Industrial, Commercial, and Institutional Boilers and Process Heaters and Commercial and Industrial Solid Waste Incineration Units.* The May 20, 2011 effective date of these final [rules](#) has been delayed until judicial review is no longer pending or until EPA completes its reconsideration of the rules, whichever is earlier.

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5. [76 Fed. Reg. 28664](#) (May 18, 2011). *Method 301*. Method 301, Field Validation of Pollutant Measurement Methods from Various Waste Media, has been revised to correct errors and to make it more flexible, less expensive, and easier to use. The effective date of this final action is May 18, 2011.

6. [76 Fed. Reg. 29032](#) (May 19, 2011). *NESHAP: Secondary Lead Smelting*. EPA has proposed amendments to the NESHAP for Secondary Lead Smelting that include revisions to the stack emissions limits for lead; revisions to the fugitive dust emissions control requirements; the addition of total hydrocarbons emissions limits for reverberatory, electric, and rotary furnaces; the addition of emissions limits and work practice requirements for dioxins and furans; and the modification and addition of testing and monitoring and related notification, recordkeeping, and reporting requirements. Comments on these proposed amendments must be submitted to EPA on or before July 5, 2011.

7. [76 Fed. Reg. 29528](#) (May 20, 2011). *NESHAP: Polyvinyl Chloride and Copolymers Production*. This Proposed Rule would establish emission standards for hazardous air pollutants from polyvinyl chloride and copolymers production located at major and area sources. The proposed standards, which include continuous monitoring provisions and recordkeeping and reporting requirements, would apply at all times, including during periods of startup, shutdown, and malfunctions. Comments on the proposal must be received by EPA on or before July 19, 2011.

Texas-Specific Issues:

8. [76 Fed. Reg. 25178](#) (May 3, 2011). *Texas' PSD Program*. This Final Rule, effective May 1, 2011, partially disapproves the Texas PSD program and promulgates a Federal Implementation Plan ("FIP") through which EPA will assume PSD permitting authority for greenhouse gas ("GHG") emitting sources in Texas.

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

Air:

1. [36 Tex. Reg. 2817](#) (May 6, 2011). *30 T.A.C. Chapter 101, General Air Quality Rules*. The TCEQ is proposing to repeal § 101.30, *Conformity of General Federal Actions to State Implementation Plans*, to meet the requirements of the federal Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ("SAFETEA-LU"), which eliminated the requirement for states to adopt and submit general conformity SIP revisions. The comment period for this proposed action closes on June 6, 2011.

2. [36 Tex. Reg. 2841](#); [36 Tex. Reg. 2852](#) (May 6, 2011). *30 T.A.C. Chapter 101, General Air Quality Rules; 30 T.A.C. Chapter 106, Permits by Rule ("PBR")*. These amendments, effective May 15, 2011, add specific definitions related to regulation of PM_{2.5} and address known requirements for implementation. The amendments to Chapter 106 reflect the significant emission threshold for particulate matter to be 25 tons per year ("tpy"), for PM₁₀ to be 15 tpy, and for PM_{2.5} to be 10 tpy in order to provide clarity to the permitting process for PM by including these significant levels. This action does not affect existing claims and only applies to new or modified claims under Chapter 106. The adopted rules also provide guidance as TCEQ implements PM_{2.5} as a PSD requirement for the New Source Review program.

3. [36 Tex. Reg. 2855](#) (May 6, 2011). *30 T.A.C. Chapter 117, Control of Air Pollution from Nitrogen Compounds*. Amendments to Chapter 117 have been adopted that expand the emission specification for lean-burn engines fired on landfill gas to include lean-burn engines fired on biogas at minor sources of NO_x in the Dallas-Fort Worth 1997 8-hour ozone nonattainment area. The rules, which became effective May 15, 2011, require owners or operators of stationary gas-fired lean-burn internal combustion engines that are installed, modified, reconstructed, or relocated on or after June 1, 2007 to comply with a NO_x emission limit of 0.60 grams per horsepower-hour.

Water:

4. [36 Tex. Reg. 2837](#); [36 Tex. Reg. 2908](#) (May 6, 2011). *30 T.A.C. Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; 30 T.A.C. Chapter 298, Environmental Flow Standards for Surface Water*. Amendments to Chapters 35 and 298 implement environmental flow standards for the river and bay systems consisting of the Sabine and Neches Rivers and Sabine Lake Bay, and the Trinity and San Jacinto Rivers and Galveston Bay. The rulemaking adds emergency authority to temporarily make water set aside for beneficial inflows to affected bays and estuaries and instream uses available during emergency conditions and also establishes procedures for implementing an adjustment of conditions if included in a permit or amended water right in those river and bay systems. The effective date of these rules is May 15, 2011.

5. [36 Tex. Reg. 2860](#) (May 6, 2011). *30 T.A.C. Chapter 290, Public Drinking Water*. Adopted amendments to Chapter 290 incorporate EPA's Lead and Copper Short Term Regulatory Revisions and Clarification rule, which provides enhanced public education on the effects of lead and copper and makes minor changes for consistency with the adopted federal rules to retain primacy for the Safe Drinking Water Act and its amendments. This rule requires public water systems that exceed the lead action level to provide expanded public notice and allows the smallest public water systems the option of reduced sampling. The effective date of these amendments is May 15, 2011.

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UPCOMING CONFERENCES, MEETINGS, and WORKSHOPS

TCEQ Work Session. The next TCEQ Work Session currently is scheduled to be held Thursday, June 30, 2011, in Austin, Texas.

Texas Environmental Superconference. The Texas Environmental Superconference will be August 4-5, 2011 at the Austin Four Seasons Hotel. A "boot camp" course on air issues will be held the evening before. [Additional information](#) will be available soon.

Public Drinking Water Conference. The TCEQ will sponsor the [2011 Public Drinking Water Conference](#) on August 9-10, 2011 in Austin. This is a free seminar that provides information on operating a public drinking water system or water utility in Texas.

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ALSO OF INTEREST

TCEQ Sunset Legislation. [House Bill 2694](#), the TCEQ's "Sunset Legislation" that extends the TCEQ until September 1, 2023 and implements various changes to the agency's statutory enabling authority, was enrolled by the Texas Legislature and has been sent to Governor Perry for signature. Unless the bill is unexpectedly vetoed by the Governor within 20 days of his receipt, it will take effect on September 1, 2011.

TCEQ Chief Clerk. LaDonna Castañuela resigned as Chief Clerk of the TCEQ to pursue other opportunities. Melissa Chao will serve as Acting Chief Clerk until a permanent replacement is named.

EPA/U.S. Army Corps of Engineers ("Corps") Proposed Guidance. EPA and the U.S. Army Corps of Engineers have developed [draft guidance](#) for determining whether a waterway, water body, or wetland is protected by the Clean Water Act. This guidance would replace previous guidance to reaffirm protection for critical waters and would provide more predictable guidelines for determining which water bodies are protected by the Clean Water Act.

Toxic Substances Control Act ("TSCA") Reporting. The next submission period for TSCA Inventory Update Reporting ("IUR") has been [suspended](#) to allow additional time for EPA to finalize proposed modifications to the IUR regulations and to avoid finalizing changes to the reporting requirements in the midst of the 2011 submission period.

Draft Integrated Science Assessment ("ISA") for Lead. EPA has released a [draft ISA for lead](#) that provides the scientific basis for EPA to determine whether the current lead NAAQS adequately protects the public health and welfare.

Gulf Ecosystem Restoration Task Force. At a meeting of the [Gulf Ecosystem Restoration Task Force](#) held in Mobile, Alabama on May 6, 2011, a strategy background document outlining the priorities of the ongoing gulf restoration was released and a citizens' advisory committee was created to help guide the group's efforts. All information related to the actions of this task force area available online.

Drinking Water Violations. The EPA has added a feature to its Enforcement and Compliance History Online ("[ECHO](#)") tool that will allow the public to search whether drinking water in their community meets the standards required under the Safe Drinking Water Act and to see which drinking water systems have had serious noncompliance.

TCEQ Development Support Documents ("DSDs"). The TCEQ's Toxicology Division has finalized [DSDs for Trichloroethane, 1,1,1-; Methylene Chloride; and Nickel and Inorganic Nickel Compounds](#). The [Air Monitoring Comparison Values List](#) also has been updated.

EPA's Blue Book. EPA has updated its *Radiogenic Cancer Risk Models and Projections for the U.S. Population*, also known as the [Blue Book](#). EPA will use the scientific information on radiation risks provided in the *Blue Book* when considering potential modifications and updates to radiation protection rules and guidance.

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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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