

Recent Developments

Information about Environmental Issues

September 2015

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

Air:

1. [80 Fed. Reg. 54146](#) (Sept. 8, 2015). *Air Emission Sources*. EPA is proposing technical and editorial corrections and revisions to regulations related to source testing of air emissions, including alternatives to existing testing regulations. The proposal will not impose new substantive requirements on source owners or operators. EPA must receive comments on the Proposed Rule by November 9, 2015.
2. [80 Fed. Reg. 55061](#) (Sept. 14, 2015). *Cross-State Air Pollution Rule ("CSAPR") Allowances*. Preliminary lists of units eligible for allocations of emission allowances in the second round of the new unit set-aside allocation process for the CSAPR NO_x Ozone Season Trading Program have been made available for comment through October 14, 2015. This notice of availability may concern CSAPR-affected units in the following states: Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.
3. [80 Fed. Reg. 56700](#) (Sept. 18, 2015). *National Emission Standards for Hazardous Air Pollutants ("NESHAP"): Secondary Aluminum Production*. Final amendments to the NESHAP for secondary aluminum production include a requirement to report performance testing through the Electronic Reporting Tool; provisions allowing owners and operators to change furnace classifications; requirements to account for unmeasured emissions during compliance testing for group 1 furnaces that do not have add-on control devices; alternative compliance options for the operating and monitoring requirements for sweat furnaces; compliance provisions for hydrogen fluoride; provisions addressing emissions during periods of startup, shutdown, and malfunction ("SSM"); and other corrections and clarifications to the testing requirements. The effective date of this Final Rule is September 18, 2015.
4. [80 Fed. Reg. 56579](#) (Sept. 18, 2015). *Emission Units in the Oil and Natural Gas Sector*. This Proposed Rule would clarify the term *adjacent* in the definitions of *building*, *structure*, *facility* or *installation* used to determine the stationary source for purposes of the Prevention of Significant Deterioration ("PSD") and Nonattainment New Source Review ("NNSR") programs and major source in the title V program as applied to the oil and natural gas sector. Specifically, the proposal would clarify how properties in the oil and natural gas sector are determined to be adjacent in order to assist permitting authorities and permit applicants in making consistent source determinations. EPA must receive comments on this proposal on or before November 17, 2015.

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5. [80 Fed. Reg. 56593](#) (Sept. 18, 2015). *Emission Standards for New and Modified Sources in the Oil and Natural Gas Sector*. EPA is proposing to amend the New Source Performance Standards (“NSPS”) for the oil and natural gas source category by setting standards for methane and volatile organic compounds (“VOC”) for certain equipment, processes and activities in that sector. Comments on this Proposed Rule must be received by EPA on or before November 17, 2015.

6. [80 Fed. Reg. 56577](#) (Sept. 18, 2015). *Draft Control Techniques Guidelines for the Oil and Natural Gas Industry*. EPA has released a draft Control Techniques Guidelines (“CTG”) document for select oil and natural gas industry emission sources that, when finalized, will provide state, local, and tribal air agencies information to assist in determining reasonably available control technology (“RACT”) for VOC emissions from such sources. EPA will accept comments on the draft CTG until November 17, 2015.

[State Implementation Plan \(“SIP”\): Texas:](#)

7. [80 Fed. Reg. 52630](#) (Sept. 1, 2015). *Dallas-Fort Worth (“DFW”) Ozone SIP*. This Final Rule, effective October 1, 2015, announced EPA’s disapproval of portions of the DFW ozone SIP but finds that the area has attained the 1997 8-hour ozone standard of 84 parts per billion. Although an ozone SIP disapproval normally would trigger an 18-month clock for imposition of federal offset sanctions and a 2-year clock for highway-funding sanctions and a federal implementation plan (“FIP”), EPA’s finding that the DFW area has attained the ozone standard defers such sanctions and FIP clocks, as long as the area continues to attain the 1997 ozone standard.

8. [80 Fed. Reg. 53467](#); [80 Fed. Reg. 53484](#) (Sept. 4, 2015). *Infrastructure Requirements*. EPA has published a Direct Final Rule revising the Code of Federal Regulations (“CFR”) to reflect EPA’s approval of a revision to the Texas SIP regarding the regulation of greenhouse gases (“GHG”) in Texas’ PSD permitting program and to show that the SIP deficiency identified in a prior partial disapproval for the 1997 ozone and the 1997 and 2006 PM_{2.5} National Ambient Air Quality Standards (“NAAQS”) has been addressed. This rule is effective on November 3, 2015, unless EPA received adverse comments to the Proposed Rule, published concurrently, by October 5, 2015.

9. [80 Fed. Reg. 57302](#) (Sept. 23, 2015). *VOC Emissions from Storage Tanks and Transport Vessels*. EPA has approved a Texas SIP revision for control of VOC emissions from degassing of storage tanks, transport vessels, and marine vessels. The revision reformats the existing requirement to comply with current rule-writing standards, adds additional control options for owners and operators to use when complying, clarifies the monitoring and testing requirements of the rule, and makes non-substantive changes to VOC control provisions applicable in the Beaumont-Port Arthur nonattainment area, four counties in the DFW nonattainment area (Collin, Dallas, Denton and Tarrant counties), El Paso County, and the Houston-Galveston-Brazoria (“HGB”) nonattainment area. The effective date of this final action is October 23, 2015.

[Waste:](#)

10. [80 Fed. Reg. 57918](#) (Sept. 25, 2015). *Hazardous Waste Generator Improvements*. EPA is proposing to revise certain components of the hazardous waste generator regulatory program by addressing gaps in the regulations; providing greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner; reorganizing the hazardous waste generator regulations to make them more user-friendly; and making technical corrections and conforming changes to address inadvertent errors, removing obsolete references to programs that no longer exist, and improving the readability of the regulations. Comments on this Proposed Rule must be received by EPA on or before November 24, 2015.

11. [80 Fed. Reg. 58014](#) (Sept. 25, 2015). *Hazardous Waste Pharmaceuticals*. This proposal would revise hazardous waste regulations to improve the management and disposal of hazardous waste pharmaceuticals and tailor them to address specific issues that hospitals, pharmacies, and other healthcare-related facilities face. The revisions also would clarify the regulation of the reverse distribution mechanism used by healthcare facilities for the management of unused and/or expired pharmaceuticals. Comments must be submitted to EPA on or before November 24, 2015.

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ("TCEQ")

Procedural Rules:

1. [40 Tex. Reg. 5720](#) (Sept. 4, 2015). *30 T.A.C. Chapter 20, Rulemaking*. This rulemaking would implement House Bill 763 (84th Texas Legislature, 2015), concerning the definition of "interested person" for the purposes of filing a petition for rulemaking. The rulemaking would clarify that rule petitions must be filed by an *interested person*, which is defined as a Texas resident, a business entity located in Texas, a governmental subdivision located in Texas, or a public or private organization located in Texas that is not a State agency.

Waste:

2. [40 Tex. Reg. 5722](#) (Sept. 4, 2015). *30 T.A.C. Chapter 336, Radioactive Substance Rules*. Proposed revisions to Subchapters A and D of Chapter 336 would ensure compatibility with federal regulations promulgated by the Nuclear Regulatory Commission ("NRC") in order to preserve Texas' status as an Agreement State under 10 CFR part 150 and under the *Articles of Agreement between the United States Atomic Energy Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended*. Specifically, the proposal would add 21 definitions to §336.2 and would replace current §336.357 with a new rule relaxing some requirements, authorizing exemptions to the rules for specific types of radioactive waste, and adding rules requiring fingerprinting and an FBI criminal background check for individuals who have unescorted access to quantities of significant concern. The proposal also would implement requirements related to volume reduction, as required by Senate Bill 347 (83rd Texas Legislature, 2013) and would prohibit the compact waste disposal facility license holder from accepting non-party compact waste for disposal at the facility unless the waste has been volume reduced.

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ALSO OF INTEREST

Appointment of TCEQ Commissioner. Governor Abbott has appointed Jon Niermann to the TCEQ for a term to expire August 31, 2021, filling the position recently vacated by Zak Covar. Jon most recently served as Chief of the Attorney General's Environmental Protection Division.

EPA's National Enforcement Initiatives ("NEIs"). EPA is soliciting public comment and recommendations on its [NEIs for fiscal years 2017-2019](#). For the six current NEIs, EPA is requesting comment on whether each initiative should continue into the fiscal year 2017-2019 cycle or return to the standard enforcement program for completion of remaining work. The six current initiatives recommended for extension are: (1) reducing air pollution from the largest sources; (2) cutting toxic air pollution; (3) assuring energy extraction and production activities comply with environmental laws; (4) reducing pollution from mineral processing operations; (5) keeping raw sewage and contaminated stormwater out of the nation's waters; and (6) preventing animal waste from contaminating surface and groundwater. Comments must be received by EPA on or before October 14, 2015.

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UPCOMING CONFERENCES, MEETINGS, and WORKSHOPS

Edwards Aquifer Protection Program. The TCEQ will conduct [public hearings](#) to receive comments from the public on actions it should take to protect the Edwards Aquifer. The hearings will be held in Austin on October 19, 2015 and in San Antonio on October 20, 2015. In addition, written comments may be submitted to the TCEQ until November 20, 2015.

TCEQ Advanced Air Permitting Seminar. The TCEQ's [2015 Advanced Air Permitting Seminar](#) will be held in Austin on October 28-29, 2015.

Light Nonaqueous-Phase Liquids ("LNAPL"). The TCEQ will host a [2-day training course](#) presented by the Interstate Technology and Regulatory Council to discuss solutions to the problems LNAPL present and how to understand and manage risks from LNAPL contamination. The course, designed for environmental professionals, consultants, regulatory and industry staff, will be held in Austin on November 18-19, 2015.

TCEQ Emissions Inventory ("EI") Workshop. This [workshop](#), which will focus on basic and advanced topics for submitting a point source EI, updates to the point source EI, and submitting an EI update through the TCEQ's web-based reporting system, will be held at the J.J. Pickle Research Campus in Austin on January 27, 2016.

TCEQ Environmental Trade Fair and Conference. The TCEQ's annual [Environmental Trade Fair and Conference](#) has been scheduled for May 3-4, 2016.

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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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