

Recent Developments

Information about Environmental Issues

November 2015

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

Air:

1. [80 Fed. Reg. 68808](#) (Nov. 6, 2015). *Standards of Performance: Stationary Compression Ignition Internal Combustion Engines*. EPA has proposed amendments to the standards of performance for stationary compression ignition internal combustion engines that would allow manufacturers to design the engines so that operators can temporarily override performance inducements related to the emission control system for these engines that are operating during emergency situations, where the operation of the engine or equipment is needed to protect human life. The amendments also would require compliance with Tier 1 emission standards during such emergencies. EPA will accept comments on the proposed rule until December 21, 2015.

2. [80 Fed. Reg. 72789](#) (Nov. 20, 2015). *National Emission Standards for Hazardous Air Pollutants ("NESHAP") for Major Sources*. EPA has published a Final Rule regarding its reconsideration of the NESHAP for industrial, commercial, and institutional boilers ("boilers") and process heaters located at major sources promulgated under Section 112 of the Clean Air Act (the "[Boiler MACT](#)"). After reconsideration, the Final Rule includes the following actions:

- The minimum carbon monoxide limit of 130 parts per million has been retained;
- The continuous parameter monitoring systems requirement for particulate matter has been retained;
- Minor changes to the definitions of startup and shutdown periods, and the work practices that apply during such periods, have been made; and
- The affirmative defense to civil penalties for violations caused by malfunctions has been eliminated.

EPA denied requests for reconsideration with respect to all issues raised in the petitions for reconsideration of the final Boiler MACT for which it did not grant reconsideration. The effective date of the Final Rule is November 20, 2015.

3. [80 Fed. Reg. 72839](#) (Nov. 20, 2015). *Exceptional Events*. This Proposed Rule would revise the [Exceptional Events Rule](#) to address certain substantive issues raised by state, local, and tribal co-regulators and other stakeholders since the rule was promulgated in 2007, as well as increase the administrative efficiency of the rule criteria and process. EPA also has developed a document, [Draft Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May](#)

[Influence Ozone Concentrations](#), which applies the proposed Exceptional Events Rule revisions to wildfire/ozone events. EPA is seeking comment on whether the concepts in the draft guidance should be finalized as rule text. EPA will accept comments on both the Proposed Rule and the draft guidance until January 19, 2016.

[Water:](#)

4. [80 Fed. Reg. 67837](#) (Nov. 3, 2015). *Effluent Limitations Guidelines and Standards*. EPA has issued a Final Rule that establishes the first nationally applicable limits on the amount of toxic metals and other harmful pollutants allowed to be discharged by steam electric power plants. The effective date of this rule is January 4, 2016.

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[TEXAS COMMISSION ON ENVIRONMENTAL QUALITY \("TCEQ"\)](#)

[Water:](#)

1. [40 Tex. Reg. 8172](#) (Nov. 20, 2015). *30 T.A.C. Chapter 293, Water Districts*. Proposed amendments to Chapter 293, Subchapter C, *Special Requirements for Groundwater Conservation Districts*, would implement changes made by House Bill 2767 (Acts of the 84th Texas Legislature, 2015) related to the powers, duties, and administration of groundwater conservation districts and amending provisions that authorize fees. This rulemaking would update the definition of "affected person" and correct citations within Chapter 293 to bring the definition and citations into agreement with the changes made by the legislation. A public hearing will be held in Austin on December 15, 2015, and the TCEQ will accept comments on the proposal until January 4, 2016.

2. [40 Tex. Reg. 8254](#) (Nov. 20, 2015). *30 T.A.C. Chapter 217, Design Criteria for Domestic Wastewater Systems*. Amendments to Chapter 217 add new definitions and clarify existing definitions; add design criteria and approval requirements for rehabilitation of existing infrastructure; add design criteria for new technologies; update existing requirements or develop new requirements to reflect current commission and industry practices, standards and trends; and modify rule language to enhance understanding and clarity. The effective date of these amendments is December 4, 2015.

3. [40 Tex. Reg. 8341](#) (Nov. 20, 2015). *30 T.A.C. Chapter 317, Design Criteria Prior to 2008*. This rulemaking reinstates regulations that were repealed in 2008 after new rules were adopted at 30 T.A.C. Chapter 217, *Design Criteria for Domestic Wastewater Systems*. The repeal of 30 T.A.C. Chapter 317 created regulatory uncertainty for owners and operators of existing wastewater collection and treatment facilities not subject to Chapter 217, which applies to facilities constructed or renovated after its adoption, but does not otherwise apply to existing facilities. The rulemaking, effective December 4, 2015, "re-adopts" Chapter 317, amends the applicability section to clarify which facilities are subject to Chapter 317, and clarifies the TCEQ's initial and ongoing position that facilities must be installed, operated, and maintained in accordance with the approved specifications, plans, and design criteria of Chapter 317.

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ALSO OF INTEREST

National Wetland Condition Assessment. EPA has released a [draft report](#) on the National Wetland Condition Assessment, which is the first national assessment of the ecological conditions of wetlands in the United States. EPA will accept comments on the draft report until December 7, 2015. **11.5.2015**

Allocations of Cross-State Air Pollution Rule (“CSAPR”) Allowances. EPA has completed [final calculations](#) for the second round of new unit set-aside (“NUSA”) allowance allocations for the 2015 compliance year of the CSAPR NO_x Ozone Season Trading Program. States with units affected by the NUSA allocations are 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.

Ambient Air Monitoring Reference and Equivalent Methods. EPA has designated one new reference method for measuring concentrations of carbon monoxide and one new equivalent method for measuring concentrations of ozone in the ambient air. As a designated reference or equivalent method, these [methods](#) are acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, *Ambient Air Quality Surveillance*.

Draft Integrated Science Assessment (“ISA”) for Sulfur Oxides (“SO₂”). As part of its review of the primary National Ambient Air Quality Standards (“NAAQS”) for SO₂, EPA has released a [draft ISA](#) that will provide the scientific basis for EPA’s decisions on the adequacy of the current SO₂ NAAQS and the appropriateness of possible alternative standards. EPA will accept comments on the draft ISA until January 25, 2016.

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UPCOMING CONFERENCES, MEETINGS, and WORKSHOPS

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 27-28, 2016.

State of the Bay Symposium. This [seminar](#), which provides training and understanding of Galveston Bay and associated habitats, will be held in Galveston on January 13-14, 2016.

TCEQ Work Session. The next scheduled TCEQ Work Session will be held in Austin on January 21, 2016.

TCEQ Environmental Trade Fair and Conference. The next TCEQ 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:

AUSTIN:

Molly Cagle	512.322.2535
Pam Giblin	512.322.2509
Aileen Hooks	512.322.2616
Jennifer Keane	512.322.2594
Derek McDonald	512.322.2667
Samia Broadway	512.322.2676
Ty'Meka Reeves	512.322.2515
Carlos Romo	512.322.2579
Kevin Vickers	512.322.2634
Paulina Williams	512.322.2543

HOUSTON:

Scott Janoe	713.229.1553
Matt Kuryla	713.229.1114
Devi Chandrasekaran	713.229.1384
Zachary Craft	713.229.1133
Kim Tuthill White	713.229.1166
Cathy Yang	713.229.1349

WASHINGTON, D.C.:

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
J. Barton Seitz	202.639.7895
Daniel Steinway	202.639.7902
Thomas Jackson	202.639.7710
Michael McGovern	202.639.7797
Christopher Danley	202.639.7842
Megan Heuberger Berge	202.639.1308
Leslie Couvillion	202.639.7829
Shani Harmon	202.639.1124
Allison Watkins Mallick	202.639.7754
Harrison Reback	202.639.1567
Martha Thomsen	202.639.7863

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