

TEXAS ENVIRONMENTAL UPDATE



November 2012

TEXAS DEVELOPMENTS

Sunset Advisory Commission Releases Staff Report on Railroad Commission of Texas

This month, the Texas Sunset Advisory Commission (“Sunset Commission”) released its staff report recommending changes at the Railroad Commission of Texas (“RRC”), the state’s primary oil and gas regulator. The Sunset Commission is a legislative body that seeks to identify and eliminate waste, duplication, and inefficiency in Texas state government. To do so, it reviews the policies and programs of state agencies every 12 years and makes recommendations to the Texas Legislature.

The Sunset Commission’s recommendations with respect to the RRC touched on a broad range of issues. Its key recommendations include:

- changing the name of the RRC to the Texas Energy Resources Commission;
- continuing the agency for 10 years;
- enacting ethics reforms with respect to RRC commissioner elections and recusals;
- requiring the RRC to use the State Office of Administrative Hearings (“SOAH”) rather than its own staff to preside over hearings in contested gas utility and enforcement cases;
- eliminating the \$20 million cap on the Oil and Gas Regulation and Cleanup Fund, which funds the oversight of oil and gas production and the cleanup of pollution caused by such activities;
- abolishing the Oil Field Cleanup Fund Advisory Committee, which is no longer needed to advise on the plugging of abandoned oil wells;
- authorizing the RRC to create a pipeline permit fee to help support its Pipeline Safety Program;
- requiring the RRC to develop an enforcement policy to guide staff in evaluating and ranking oil- and natural gas-related violations;
- requiring the RRC to formally adopt penalty guidelines;
- eliminating the RRC’s statutory authority to promote the use of propane, which purportedly conflicts with the agency’s responsibility to ensure the safe handling and distribution of propane;
- authorizing the RRC to enforce damage prevention requirements for interstate pipelines;
- authorizing a party affected by forced pooling of mineral interests for an oil or gas well to request a local hearing;
- directing the RRC to develop an increased fee for applicants who re-file applications for forced pooling exceptions to field spacing rules;
- continuing to require the RRC to submit reports to the Legislature on the Oil and Gas Regulation and Cleanup Fund.

On November 20, the RRC released its response to the Sunset Commission’s staff report. The RRC agreed with many of the report’s recommendations, though it did not agree with the proposed ethics reforms or the use of SOAH to conduct hearings in contested gas utility and enforcement cases.

Texas Office

98 San Jacinto Boulevard
Suite 1420
Austin, TX 78701
(512) 391-8000

Daniel Berner

dberner@bdlaw.com

Edward M. Grauman

egrauman@bdlaw.com

Karen Hansen

khansen@bdlaw.com

Maddie Kadas

mkadas@bdlaw.com

Laura LaValle

llavalle@bdlaw.com

Bryan Moore

bmoore@bdlaw.com

For more information about our firm, please visit www.bdlaw.com

If you do not wish to receive future issues of Texas Environmental Update, please send an e-mail to: jmilitano@bdlaw.com

The Sunset Commission's staff report is available at: http://www.sunset.state.tx.us/83rd/RC/RC_SR.pdf

And the RRC's response to the Sunset Commission's staff report is available at: <http://www.rrc.state.tx.us/awareness/notices/ResponsetoSunset.pdf>

EPA Denies States' Request for Waiver of Renewable Fuel Standards Program Requirements

On November 16, 2012, Environmental Protection Agency ("EPA") Administrator Lisa Jackson signed a notice (the "Notice") denying a request by the governors of several states, including Texas, to waive the national volume requirements for the Renewable Fuel Standard ("RFS") program. The states requesting the waiver had asserted that, due to the effects of the drought on feedstocks used to produce renewable fuel, the 2012-2013 RFS program would have a negative impact on the states' economies by diverting corn to production of ethanol to meet RFS requirements. The states claimed that this would lead to increased corn prices and a negative impact on the livestock industry and overall food prices. The EPA Notice stated that the evidence collected showed that it was very likely that the RFS volume requirements would have no impact on ethanol production volumes in the 2012-2013 time frame and would, therefore, have no impact on corn, fuel, or food prices. The Notice further stated that, even if the RFS mandate did have an impact on corn and other markets, "its nature and magnitude would not be characterized as severe." EPA thus concluded that the high statutory threshold for a waiver had not been met.

The Notice was published in the Federal Register at 77 Fed. Reg. 70,752 (Nov. 27, 2012) and is available on the Government Printing Office website at www.gpo.gov/fdsys/search/home.action in Docket No. EPA-HQ-OAR-2012-0632. Petitions for the Notice's review must be filed by January 28, 2013.

TCEQ Adopts State Implementation Plan ("SIP") Revision for Beaumont-Port Arthur ("BPA") Attainment Area

On November 14, 2012, TCEQ adopted the BPA Attainment Area On-Road Mobile Source Emissions Inventory ("MSEI") and Motor Vehicle Emissions Budget ("MVEB") Update SIP Revision (the "SIP Revision"). The SIP Revision replaces the MSEI for nitrogen oxides ("NOx") and volatile organic compounds ("VOC") for 2005, 2011, 2014, 2017, and 2021 that were adopted for BPA in 2008 based on EPA's MOBILE model with MSEI based on EPA's latest mobile emissions estimation model, the Motor Vehicle Emission Simulator ("MOVES"). The SIP Revision also updates the 2021 NOx and VOC MVEBs based on the MOVES-based emissions inventories. The MOVES model, which was released by EPA on March 2, 2010, to replace the MOBILE model for SIPs, is to be used in transportation conformity processes beginning on March 2, 2013. The updated MVEBs may help the BPA area meet the transportation conformity requirements of the Clean Air Act.

The public comment period on the SIP Revision was opened on June 29, 2012 and closed on August 3, 2012. No comments were received.

More information on the BPA Sip Revision is available at: <http://www.tceq.texas.gov/airquality/sip/bpa/bpa-latest-ozone>.

TCEQ Adopts Infrastructure and Transport SIP Revision for 2010 Nitrogen Dioxide Standard

On November 14, 2012, TCEQ adopted the Federal Clean Air Act ("CAA"), Section 110(a)(1) and (2) Infrastructure and Transport SIP Revision for the 2010 Nitrogen Dioxide National Ambient Air Quality Standard ("NAAQS"). The 2010 Nitrogen Dioxide NAAQS tightens the NAAQS for nitrogen dioxide ("NO2"), setting a new primary one-hour NO2 standard at 100 parts per billion (no previous standard existed).

The adopted SIP revision has been drafted to meet the requirements of the 2010 Nitrogen Dioxide NAAQS. Pursuant to Section 110(a)(1), states must submit a SIP revision to provide for the implementation, maintenance, and enforcement of the NAAQS. Section 110(a)(2) sets forth the elements that new SIP submissions must contain, including a requirement that a state's emissions not interfere significantly with the NAAQS of other states. The SIP Revision adopted by Texas will outline the State's provisions supporting the requirements of Section 110(a)(2)(A) through (M) and include a technical demonstration indicating that Texas meets the interstate transport requirements of the CAA.

More information on the SIP Revision for the 2010 Nitrogen Dioxide NAAQS is available at <http://www.tceq.texas.gov/airquality/sip/criteria-pollutants/sip-no2>.

TCEQ Issues Revised Title V Deviation Reporting and Permit Compliance Certification Guidance

TCEQ has revised its Title V Deviation Reporting and Permit Compliance Certification guidance document as of November 2012. All CAA Title V Federal Operating Permit ("Title V permit") holders are required to submit deviation reports for any six-month period in which deviations occur, and must submit permit compliance certifications at least annually. This guidance document is designed to assist Title V permit holders in the development and submission of these documents. The revised guidance replaces the April 2011 version of the document.

TCEQ explains that this newly revised version of the guidance document contains updated or revised guidance based on input from the regulated community and investigation experience. The revised guidance is intended to:

1. Clarify permit holders' obligations relating to credible evidence.
2. Clarify when agreed orders and consent decrees are reportable as deviations.
3. Clarify what New Source Review application representations are reportable as deviations.
4. Simplify guidance on liquid spills, drips, and leaks.
5. Simplify guidance on open-ended lines.
6. Clarify "calibration drift" deviation guidance.
7. Clarify that reasonable inquiry is part of the review process for deviations based on permit information.
8. Allow for not including alleged violations that are successfully repealed.
9. Clarify that emergency responses that should be considered under deviation reporting are those that result in an unauthorized emission.

The revised guidance document is available at: http://www.tceq.texas.gov/assets/public/compliance/field_ops/guidance/Title_V_Guidance_2012_November.pdf

Upcoming TCEQ Meetings and Events

TCEQ will hold its **Industrial Emissions Inventory Workshop** on January 15, 2012, from 9:00 a.m. to 3:30 p.m. at the J.J. Pickle Center in Austin. The workshop, which is designed for engineers, geoscientists, environmental managers, business owners, and consultants, will be focused on topics related to the accurate and timely reporting of emissions inventory. Additional information about the meeting is available at: http://www.tceq.texas.gov/p2/events/etfc/Emissions_Inventory_Workshop.

TCEQ is holding a rule stakeholder meeting to obtain input from the public on the rulemaking

required by House Bill (“HB”) 3 and Senate Bill (“SB”) 3, 80th Legislature, 2007. That legislation requires TCEQ to adopt by rule appropriate environmental flow standards for each river basin and bay system in the State. To comply with HB 3/SB 3, TCEQ staff is proposing the creation of new Subchapters F, G, and H in 30 Texas Administrative Code Chapter 298, Environmental Flows, for the Nueces River and Corpus Christi and Baffin Bays, the Rio Grande, the Rio Grande estuary, and the Lower Laguna Madre, and the Brazos River and its associated bay and estuary system.

The rule stakeholder meeting will be held on Thursday December 6, 2012, at 2:00 p.m., at TCEQ headquarters in Austin at 12100 Park 35 Circle, Building E, Room 201. If you are unable to attend the meeting, you may submit written comments by December 10, 2012. Address mailed comments to Kathy Alexander, TCEQ, P.O. Box 13087, MC 160, Austin, Texas 78711-3087, or submit electronic comments to wras@tceq.texas.gov.

TCEQ Enforcement Orders

TCEQ announcements for enforcement orders adopted in November can be found on the TCEQ website at <http://www.tceq.texas.gov/news/releases/commissionersagenda111412>.

Recent Texas Rules Updates

For information on recent TCEQ rule developments, please see the TCEQ website at <http://www.tceq.state.tx.us/rules/whatsnew.html>.

FIRM NEWS & EVENTS

Benjamin F. Wilson Again Receives Wiley A. Branton Award

Beveridge & Diamond, P.C. is proud to announce that our Firm’s Managing Principal, Benjamin F. Wilson, has received the National Bar Association’s (NBA) 2012 Wiley A. Branton Award.

The award was presented to Mr. Wilson, along with fellow recipients Eleanor Holmes Norton, U.S. Congresswoman for the District of Columbia, and Larry Gibson, professor of law at the University of Maryland’s Francis King Carey School of Law, on Thursday, November 1 at a reception following the NBA’s 24th Annual Wiley A. Branton Issues Symposium in Washington, DC. The recipients were cited for their leadership “on the cutting edge of law for civil, social and economic justice” by the NBA in this award named for attorney and civil right activist Wiley A. Branton. It is a major award in the civil rights community and reflects Mr. Wilson’s long standing commitment to pro bono work, and his hands-on undertaking of such work for many years. To read the NBA press release, please [click here](#).

A native of Jackson, Mississippi, Mr. Wilson’s present litigation practice encompasses a wide range of activities in both state and federal courts, including environmental litigation matters, commercial litigation, employment litigation, and regulatory matters. Mr. Wilson is chairman of the NBA’s Environmental, Energy and Public Utilities Section.

This is the second time Mr. Wilson has received the Wiley A. Branton Award; in 2009, the Washington Lawyers Committee for Civil Rights and Urban Development also named him a recipient of the award.

Beveridge & Diamond Again Named a Top National Environmental and Litigation Firm by U.S. News/Best Lawyers

U.S. News Media Group and Best Lawyers have once again awarded Beveridge & Diamond’s environmental and litigation practices a Tier 1 nationwide ranking in the 2012 Best Law Firms list. With nearly 100 lawyers in offices in six states and the District of



Columbia, the firm helps clients from a range of industries solve complex environmental and natural resource challenges across the U.S. and internationally.

The Firm's practice in Washington, D.C., was recognized with Tier 1 rankings for environmental law and litigation, and the San Francisco office with a Tier 1 ranking for environmental law. The Firm's Boston office was recognized for its land use practice.

"We thank U.S. News and Best Lawyers for again recognizing our firm's focused depth and strength of expertise that we bring to bear across the U.S. and indeed the world. Our clients and our lawyers make our success possible, and I want to thank and honor them for this recognition," said Benjamin F. Wilson, Beveridge & Diamond's Managing Principal.

The "Best Law Firms" rankings are now in their third year and feature law firms that are given consistently impressive performance ratings by clients and peers. Beveridge & Diamond has been repeatedly recognized as a top tier firm by U.S. News & World Report/Best Lawyers.

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