

TEXAS ENVIRONMENTAL UPDATE



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TEXAS DEVELOPMENTS

Texas Office

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

Maddie Kadas

mkadas@bdlaw.com

Laura LaValle

llavalle@bdlaw.com

Bryan Moore

bmoore@bdlaw.com

Texas Railroad Commission Adopts Hydraulic Fracturing Chemical Disclosure Rule

On December 13, 2011, the Railroad Commission of Texas ("Commission") adopted a Hydraulic Fracturing Chemical Disclosure Requirements rule. The rule requires oil and gas well operators to disclose information about the chemical ingredients and volume of water used in hydraulic fracturing, with specified protections for trade secrets. Information must be disclosed by entry into the "FracFocus" hydraulic fracturing chemical registry website developed by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission. The disclosure requirement will apply to hydraulic fracturing performed in Texas for which an initial drilling permit is issued on or after February 1, 2012. The Commission adopted the rule to implement Texas Natural Resources Code Section 91.851, as enacted by House Bill 3328 (82nd Legislature (Regular Session, 2011)). The Commission's press release regarding the rule is available at <http://www.rrc.state.tx.us/pressreleases/2011/121311.php>, and the rule is available at <http://www.rrc.state.tx.us/rules/proposed.php>.

EPA Region 6 Launches Voluntary Emissions Reduction Initiative with Environmental Justice Focus

EPA Region VI has initiated a new voluntary emissions reduction initiative on the Gulf Coast. Dubbed the Episodic Release Reduction Initiative (see www.bdlaw.com/assets/assets/attachments/Draft%20ERRI%20Strategy%20-%202012.7.11.pdf), the new program has roots in a similar program in 1999 viewed as successful by the Agency. The kick-off meeting for the new initiative will be held on January 12, 2012 in Addison, Texas. EPA has invited seventeen facilities to the meeting who were selected based on two factors: (a) the facility belonged to a group with allegedly the largest number of episodic releases to the NRC over the past 5 years and (b) the facility had allegedly high impacts to environmental justice communities. EPA anticipates that those facilities who participate will meet periodically over the next 18 months to share and perhaps develop new best practices -- both with respect to reductions of emissions events and communications to communities about those events.

Environmental Integrity Project Petitions EPA Alleging Louisiana Title V Program Deficiencies

On December 14, 2011, the Environmental Integrity Project ("EIP") and the Louisiana Bucket Brigade submitted a joint petition to EPA Region 6 alleging Louisiana Department of Environmental Quality ("LDEQ") failure to properly implement and enforce Louisiana's Title V permitting program. The petition alleges that LDEQ does not comply with Federal Clean Air Act requirements for collecting fees to administer and enforce the state's Title V program, and that such failure to properly fund the program has resulted in various program deficiencies. The asserted resulting deficiencies include failure to issue permits on a timely basis, failure to monitor and assure permit compliance, and failure to take timely and adequate enforcement action. The petition, which was filed days after EPA's inspector

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general released a report noting flaws in Louisiana's program, compares Texas' Title V permitting program favorably to Louisiana's program with respect to money spent on the program and spending level per regulated facility. The petition is available on EIP's website at http://www.environmentalintegrity.org/12_14_2011.php.

Texas SIP Update

On December 7, 2011, the Texas Commission on Environmental Quality ("TCEQ") commissioners adopted a Houston-Galveston-Brazoria ("HGB") Reasonably Available Control Technology ("RACT") Analysis Update State Implementation Plan ("SIP") Revision for the 1997 Eight-Hour Ozone Standard. This SIP revision provides a RACT analysis update that includes seven Control Techniques Guidelines ("CTGs") that were not addressed in the HGB Attainment Demonstration SIP Revision for the 1997 Eight-Hour Ozone Standard. The revision also incorporates concurrent CTG-related rulemaking for volatile organic compounds ("VOCs") in the HGB area. TCEQ determined that all or a portion of the CTG recommendations for the following activities are RACT for the HGB area, and adopted rules to implement VOC emission-limiting CTG recommendations: Flexible Package Printing; Industrial Cleaning Solvents; Large Appliance Coatings; Metal Furniture Coatings; Paper, Film, and Foil Coatings; Miscellaneous Industrial Adhesives; and Miscellaneous Metal and Plastic Parts Coatings.

On December 7 the commissioners also adopted Dallas-Fort Worth ("DFW") SIP Revisions for the 1997 Eight-Hour Ozone Standard to submit to EPA by January 19, 2012 an attainment demonstration SIP revision consistent with FCAA requirements serious ozone nonattainment areas. This SIP revision is required based upon the reclassification of the DFW 1997 eight-hour ozone nonattainment area from moderate to serious effective January 19, 2011. The SIP revision references photochemical modeling that indicates the DFW area is expected to attain the 1997 eight-hour ozone standard by the June 15, 2013, attainment deadline. The two rulemakings incorporated into this revision to meet RACT requirements update control requirements for certain coatings operations and VOC storage tanks.

Additionally, the TCEQ commissioners postponed consideration of adoption of a Collin County Lead Attainment Demonstration SIP revision and the associated Agreed Order with Exide Technologies, Inc. from December 7, 2011 to spring 2012 to address comments from the public and EPA. The commission approved proposal of the SIP revision on June 22, 2011. The commission has indicated it is committed to meeting the June 30, 2012 deadline for submitting that attainment demonstration SIP to EPA.

Information regarding the referenced SIP actions is available on TCEQ's website at <http://www.tceq.texas.gov/airquality/sip/Hottop.html>.

Upcoming TCEQ Meetings and Events

- TCEQ will host free **TCEQ Point Source Emissions Inventory Web Reporting Workshops** in three cities during January 2012 (January 12 in Austin; January 25 in Fort Worth; and January 30 in Houston). The workshops will provide a brief overview of emissions inventory reporting requirements and a detailed demonstration of the Web-based submittal process. Additional information and registration forms are available at <http://www.tceq.texas.gov/airquality/point-source-ei/psei.html>.
- TCEQ's **2012 Environmental Trade Fair & Conference** will be held on May 1 2 in Austin at the Austin Convention Center. The event will feature more than 10 concurrent training tracks and 100 educational sessions, including a track addressing issues specific to oil and gas operations. Attendee registration will begin on February 6, 2012. Additional information is available at <http://www.tceq.texas.gov/p2/events/etfc/etf.html>.

TCEQ Enforcement Orders

TCEQ announcements for enforcement orders adopted in December can be found on the TCEQ website at <http://www.tceq.texas.gov/news/releases/12-12Agenda12-7>.

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>.

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