

## Recent Developments

### Information about Environmental Issues

### May / April 2016

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

##### Air:

1. [81 Fed. Reg. 32241](#) (May 23, 2016). *Protection of Stratospheric Ozone*. This determination of acceptability expands the list of acceptable substitutes pursuant to EPA's Significant New Alternatives Policy program for use in the refrigeration and air conditioning sector. This determination became effective on May 23, 2016.
2. [81 Fed. Reg. 31515](#), [81 Fed. Reg. 31577](#) (May 19, 2016). *Performance Specifications and Test Procedures*. EPA has published a Direct Final Rule making several minor technical amendments to the performance specifications and test procedures for hydrogen chloride (HCl) continuous emission monitoring systems (CEMS), as well as several minor amendments to the quality assurance procedures for HCl CEMS used for compliance determination at stationary sources. Unless EPA receives adverse written comments to the Proposed Rule, published concurrently, by July 5, 2016, the Direct Final Rule will become effective on August 17, 2016.
3. [81 Fed. Reg. 30224](#) (May 16, 2016). *Near-Road Nitrogen Dioxide ("NO<sub>2</sub>") Monitoring Requirements*. This Proposed Rule would revise the minimum monitoring requirements for near-road NO<sub>2</sub> monitoring by removing existing requirements for monitoring stations in Core Based Statistical Areas having populations between 500,000 and 1,000,000 persons. Current near-road NO<sub>2</sub> monitoring data indicate air quality levels in the near-road environment are well below the NAAQS for the oxides of nitrogen. Comments are due on June 30, 2016.
4. [81 Fed. Reg. 30182](#) (May 16, 2016). *National Emission Standards for Hazardous Air Pollutants (NESHAP): Off-Site Waste and Recovery Operations*. On May 16, 2016, EPA published notice of its final decision to deny a petition for reconsideration of the NESHAP for Off-Site Waste and Recovery Operations which was published in the Federal Register [March 18, 2015](#). The final date for challenges to EPA's denial of the petition for reconsideration was July 15, 2016.
5. [81 Fed. Reg. 29821](#) (May 13, 2016). *National Emission Standards for Hazardous Air Pollutants (NESHAP): Site Remediation*. EPA is proposing to amend the NESHAP Site Remediation Rule by removing exemptions for site remediation activities performed under authority of CERCLA or under a RCRA corrective action or other required RCRA order. EPA is also proposing to remove the applicability requirement that site remediations be co-located with at least one other stationary source regulated by another NESHAP, and is seeking comment on these issues. Comments are due on June 27, 2016.

6. [81 Fed Reg. 27442](#) (May 6, 2016). *Standards of Performance for Greenhouse Gas Emissions*. EPA has provided notice that it is denying five of the six petitions for reconsideration of the final Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, which was published in the Federal register on [October 23, 2015](#). Five of the petitions were denied as not satisfying the statutory conditions for compelled reconsideration, and the sixth was deferred pending ongoing consideration of the underlying issue. The final date for challenges to EPA's denial of the petitions for reconsideration was July 5, 2016.

7. [81 Fed Reg. 26942](#) (May 4, 2016). *Protection of Visibility*. EPA is proposing to amend requirements under the Clean Air Act for state plans for protection of visibility in mandatory Class I federal areas. The proposed amendments would clarify the relationship between long-term strategies and reasonable progress goals in state plans, and the long-term strategy obligation of all states. Comments are due on July 5, 2016.

8. [81 Fed. Reg. 24419](#) (April 25, 2016). *Hazardous Air Pollutants (HAPs) from Coal- and Oil-Fired Electric Utility Steam Generating Units (EGUs)*. This action responds to the U.S. Supreme Court decision in *Michigan v. EPA*, 135 S. Ct. 2699 (2015), and explains how EPA has taken cost into account in evaluating whether it is appropriate and necessary to regulate coal- and oil-fired EGUs under section 112 of the Clean Air Act. After consideration of public comments, EPA concluded that a consideration of cost did not cause them to change their determination that regulation of HAP emissions from coal- and oil-fired EGUs is appropriate and necessary. This Final Supplemental Finding became effective on April 25, 2016.

9. [81 Fed. Reg. 23641](#) (April 22, 2016). *Tier 3 Motor Vehicle Emission and Fuel Standards*. EPA is taking final action on technical corrections and clarifications that were withdrawn from a previous direct final rule amending provisions from the April 2014 Tier 3 final rulemaking and the July 2014 Quality Assurance Program final rulemaking. This Final Rule corrects errors identified by commenters and provides more clarity in the regulations to ensure they properly reflect the requirements established in the rules. The effective date of the Final Rule is June 21, 2016.

10. [81 Fed. Reg. 23187](#) (April 20, 2016). *Clarification of Requirements for Method 303 Certification Training*. Because adverse comments were received, EPA is withdrawing the Direct Final Rule for Clarification of Requirements for Method 303 Certification Training, which was published on February 25, 2016.. EPA will address the comments in any subsequent final action. The withdrawal was effective April 20, 2016.

11. [81 Fed. Reg. 22809](#) (April 18, 2016). *Protection of Stratospheric Ozone*. This action proposes new listings of substitutes, changes of listing status, reinterpretation of unacceptability for closed cell foam products under the Significant New Alternatives Policy program, and revision of Clean Air Act Section 608, venting prohibition for propane. The comment period on this Proposed Rule has closed.

12. [81 Fed. Reg. 20171](#) (April 6, 2016). *NESHAP: Coal- and Oil-Fired Electric Utility Steam Generating Units (the Mercury and Air Toxics Standards, or "MATS") and New Source Performance Standards ("NSPS") for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units (the "Utility NSPS")*. In addition to finalizing technical corrections proposed by EPA on February 15, 2015, to make clarifications and corrections to certain text of the 2012 MATS and Utility NSPS, EPA is also taking final action to remove provisions establishing an affirmative defense for malfunction. The effective date of this Final Rule is April 6, 2016.

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

13. [81 Fed. Reg. 33166](#) (May 25, 2016). *Redesignation Substitute for Houston-Galveston-Brazoria ("HGB")*. EPA is proposing to approve a redesignation substitute and make a finding of attainment for the 1997 8-hour ozone NAAQS for the HGB ozone nonattainment area. Final approval of the redesignation substitute would result in the area no longer being subject to anti-backsliding requirements and nonattainment new source review requirements associated with the revoked NAAQS. Comments are due June 24, 2016.

14. [81 Fed. Reg. 33161](#) (May 25, 2016). *Redesignation Substitute for Dallas-Fort Worth ("DFW")*. EPA is proposing to approve a redesignation substitute and make a finding of attainment for both the 1-hour ozone and the 1997 8-hour ozone NAAQS for the DFW ozone nonattainment area. Final approval of the redesignation substitute would result in the area no longer being subject to anti-backsliding requirements and nonattainment new source review requirements associated with the revoked NAAQS. Comments are due June 24, 2016.

15. [81 Fed. Reg. 26697](#) (May 4, 2016). *HGB 8-Hour Ozone Nonattainment Area*. EPA has published a Final Rule to extend the HGB area's attainment date for the 2008 8-hour ozone standard by one year, to July 20, 2016. The Final Rule also grants similar attainment date extensions for 7 other ozone nonattainment areas, determines that 17 areas have attained by their attainment dates, and determines that 11 area have not attained by their attainment dates and reclassifies these areas to moderate ozone nonattainment areas. The effective date of this Final Rule is June 3, 2016.

16. [81 Fed. Reg. 26180](#) (May 2, 2016). *Texas New Source Review program*. EPA is proposing to approve and disapprove portions of revisions to the Texas SIP pertaining to the Texas NSR program. EPA is proposing to approve severable portions of the amendments to the General Definitions for the Texas NSR program and the Minor NSR Qualified Facilities Program, and disapprove a severable portion of the General Definition of "modification of existing facility." The comment period on this Proposed Rule has closed.

17. [81 Fed. Reg. 21747](#) (April 13, 2016). *Control of Air Pollution from Nitrogen Compounds*. EPA has finalized its proposal to approve revisions to the Texas SIP related to the control of air pollution from nitrogen compounds (30 T.A.C. Chapter 117) to assisted the DFW moderate nonattainment area in attaining the 2008 eight-hour ozone NAAQS. The effective date of this Final Rule is May 12, 2016

18. [81 Fed. Reg. 21290](#) (April 11, 2016). *Interstate Transport of Air Pollution for the 2008 Ozone NAAQS*. EPA has proposed a disapproval of the portion of the Texas SIP submittal pertaining to interstate transport of ozone. Disapproval will establish a two-year clock to develop a Federal Implementation Plan ("FIP"), although disapproval would not initiate a sanctions clock. The comment period on this Proposed Rule has closed.

[Waste:](#)

19. [81 Fed. Reg. 30452](#) (May 16, 2016). *Significant New Use Rules ("SNUR")*. EPA has finalized SNURs under the Toxic Substances Control Act for 55 chemical substances which were subject of premanufacture notices. This Final Rule, which is effective July 15, 2016, requires anyone who intends to manufacture or process any of these 55 chemical substances for an activity that is designated as a significant new use to notify EPA at least 90 days before commencing that activity.

20. [81 Fed. Reg. 21295](#) (April 11, 2016). *Hazardous Waste Management System*. EPA is tentatively denying a rulemaking petition requesting revision of the Resource Conservation and Recovery Act corrosivity hazardous waste characteristic regulation, because materials submitted in support of the petition failed to demonstrate that the requested revisions were warranted. The comment period on the tentative denial has closed.

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### Water:

21. [81 Fed. Reg. 31344](#) (May 18, 2016). *National Pollutant Discharge Elimination System (NPDES): Applications and Program Updates*. EPA is proposing to revise the NPDES regulations to eliminate inconsistencies, improve permit documentation, transparency and oversight, clarify existing regulations, and remove outdated provisions. The revisions would further align NPDES regulations with statutory requirements from the 1987 CWA Amendments and more recent case law requirements. Comments are due July 18, 2016.

22. [81 Fed. Reg. 21328](#) (April 11, 2016). *General Permit for Stormwater Discharges from Construction Activities*. All 10 EPA Regions have released the draft 2017 National Pollutant Discharge Elimination System (“NPDES”) general permit for stormwater discharges from construction activities. This draft permit, also referred to as the “2017 Construction General Permit (CGP)”, will replace the existing general permit covering stormwater discharges from construction activities, which will expire on February 16, 2017. The comment period on the draft general permit has closed.

### Fuels:

23. [81 Fed. Reg. 34778](#) (May 31, 2016). *Renewable Fuel Standard Program*. This regulatory action proposes to establish the annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuels that apply to all gasoline and diesel produced or imported in the year 2017. EPA is proposing a cellulosic biofuel volume below the applicable volume specified in the Act, and is also proposing to reduce the applicable volumes of advanced biofuel and total renewable fuel. Comments on the Proposed Rule are due July 11, 2016.

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## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (“TCEQ”) RECENT RULEMAKING ACTIVITIES

### Water:

1. [41 Tex. Reg. 3906](#) (May 27, 2016). *30 T.A.C. Chapter 290, Public Drinking Water*. TCEQ has adopted amendments, effective June 2, 2016, that increase the public health service fee to generate sufficient revenue to cover the costs of its water programs beginning in FY 2017, as authorized by H.B. 1, General Appropriations Act, Article IX, Section 18.01, Contingency Appropriation: Water Resource Management Account, (84th Texas Legislature, 2015). The effective date of the rule is June 2, 2016.

2. [41 Tex. Reg. 3911](#); [41 Tex. Reg. 3914](#) (May 27, 2016). *30 T.A.C. Chapter 305, Consolidated Permits; Chapter 327, Spill Prevention and Control*. TCEQ adopted new §305.132 and §327.32, and amended §327.1 to implement the requirements of S.B. 912 (Acts of the 84th Legislature, 2015) for permitted wastewater treatment facilities. S.B. 912 requires TCEQ to establish standard methods for calculating the volume of accidental discharges or spills of treated or untreated wastewater related to this section, to consider compliance history of the individual, and to establish procedures for formatting and submitting a monthly summary. The effective date of the rules is June 2, 2016.

3. [41 Tex. Reg. 3839](#), [41 Tex. Reg. 3845](#), [41 Tex. Reg. 3852](#), [41 Tex. Reg. 3857](#) (May 27, 2016). *30 T.A.C. Chapter 39, Public Notice; Chapter 295, Water Rights, Procedural; Chapter 297, Water Rights, Substantive; Chapter 318, Marine Seawater Desalination Discharges*. TCEQ is proposing new sections to Chapters 39, 295, 297, and 318 to implement H.B. 2031 and H.B. 4097 (Acts of the 84th Legislature, 2015), relating to the diversion, treatment, and use of marine seawater, the discharge of treated marine seawater and waste resulting from desalination of marine seawater, and seawater desalination for industrial purposes. Comments on these proposals are due July 5, 2016.

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4. [41 Tex. Reg. 3500](#); [41 Tex. Reg. 3508](#); [41 Tex. Reg. 3511](#); [41 Tex. Reg. 3513](#) (May 13, 2016). *30 T.A.C. Chapter 39, Public Notice; Chapter 295, Water Rights, Procedural; Chapter 297, Water Rights, Substantive; Chapter 331, Underground Injection Control.* As mandated by H.B. 655 (Acts of the 84th Legislature, 2015), the TCEQ has adopted rules related to regulation of aquifer storage and recovery projects in Texas, which involves the use of injection wells for the purpose of placing a water supply into a subsurface geologic formation, or aquifer, for storage so that the water may be subsequently recovered and used by the project operator.. The effective date of these rules is May 19, 2016.

5. [41 Tex. Reg. 3506](#) (May 13, 2016). *30 T.A.C. Chapter 293, Water Districts.* TCEQ has adopted amendments to the rule language in Chapter 293 to ensure the Texas Water Code (TWC) citations included in the chapter are current and conform language to the TWC as amended by H.B. 2767 (Acts of the 84th Legislature, 2015), relating to powers, duties, and administration of groundwater conservation districts. The effective date of the rule is May 19, 2016.

### Waste:

6. [41 Tex. Reg. 3697](#); [41 Tex. Reg. 3735](#); [41 Tex. Reg. 3739](#) (May 20, 2016). *30 T.A.C, Chapter 326, Medical Waste Management; Chapter 330, Municipal Solid Waste; Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste.* As required by H.B. 2244 (Acts of the 84th Legislature, 2015), TCEQ has adopted new Chapter 326, specific for the handling, transportation, storage, and disposal of medical waste. The adopted rulemaking involves moving the rules related to medical waste from Chapters 330 to adopted new Chapter 326. Chapter 335 was amended to update a reference to the medical waste provision from Chapter 330 to adopted new Chapter 326. The effective date of these rules is May 26, 2016.

### Miscellaneous:

7. [41 Tex. Reg. 2827](#) (April 22, 2016). *30 T.A.C. Chapter 30, Occupational Licenses and Registrations.* As required by Senate Bills 807 and 1307 from the 84th Legislative Session (2015), the TCEQ proposes to amend several sections of Chapter 30, as well as repeal § 30.247, and repeal and simultaneously propose new § 30.28 regarding Approval of Training. The proposed rules will enable the TCEQ to waive licensing and examination fees for military service members, military veterans, or military spouses, and extend renewal deadlines for military service. The proposed rules will also remove redundant citations; identify approved training delivery methods; increase examination security; add relevant statutory citations; remove historical dates which no longer pertain to occupational licenses due to agency rule changes; remove citations which no longer pertain to occupational licenses due to historical legislative statutory changes; and improve readability of rules by removing redundant wording and making non-substantive changes to grammar, punctuation, and organization. The comment period for this proposed rulemaking closed on May 23, 2016.

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## ALSO OF INTEREST

**Stormwater Management in Response to Climate Change Impacts.** EPA has [announced the availability](#) of the document titled [Stormwater Management in Response to Climate Change Impacts: Lessons from the Chesapeake Bay and Great Lakes Regions](#), which was prepared by the National Center for Environmental Assessment within EPA's Office of Research and Development.

**National Wetland Condition Assessment 2011 Final Report.** EPA has [announced the availability](#) of its report on the [National Wetland Condition Assessment 2011](#), describing the results of the nationwide probabilistic survey conducted in 2011 by EPA and its state and tribal partners.

**Ambient Air Monitoring Reference and Equivalent Methods.** EPA has designated three [new reference methods](#) (one for measuring concentrations of PM<sub>10</sub>, one for measuring PM<sub>10-2.5</sub>, and one for measuring ozone in ambient air) and three new equivalent methods (for measuring PM<sub>2.5</sub> concentrations in ambient air.) The designations are made under the provisions of 40 CFR part 53.

**Draft Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter (draft IRP).** EPA has announced the availability for public review of its [draft IRP](#). Comments on the draft IRP will be accepted through June 23, 2016.

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### **UPCOMING CONFERENCES, MEETINGS, and WORKSHOPS**

**TCEQ Work Session.** The next Commissioners' Work Session is scheduled to be held in Austin on August 4, 2016.

**TCEQ Public Drinking Water Conference 2016.** TCEQ has scheduled its [Public Drinking Water Conference](#), which provides information and tools necessary to operate a public drinking water system in Texas, for August 9-10, 2016 in Austin, Texas.

**Pollution Prevention Waste Management Workshop.** TCEQ will host a one-day [Pollution Prevention Waste Management workshop](#) in Austin on September 7, 2016. The workshop will provide training to businesses, government, and other entities to help prevent pollution from hazardous waste and toxic chemicals.

**TCEQ Advanced Air Permitting Seminar.** The TCEQ's [2016 Advanced Air Permitting Seminar](#) will be held in Austin on October 10-11, 2016.

**TCEQ Water Quality/Stormwater Seminar.** This TCEQ [seminar](#), to be held in Austin on October 12-13, 2016, will provide updates on permitting rules and upcoming regulations.

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**CONTACT INFORMATION**

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