



Air Quality Committee Newsletter

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MESSAGE FROM THE COMMITTEE CHAIR

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As the chair of the Air Quality Committee for 2011–2012, I want to welcome you to our committee newsletter and to invite you to join us in committee activities. Building on the robust pace of Clean Air Act regulatory activity, we are planning another active year to provide you with information and opportunities to become a better air quality practitioner. In June, we conducted a Quick Teleconference discussing EPA’s proposed utility air toxics rule. Going forward, we are tracking and will alert members about revisions to National Ambient Air Quality Standards, recently proposed emissions standards for oil and gas production facilities, regulation of greenhouse gas emissions under the act, and EPA’s relationship with the states and Congress as it moves forward with its Clean Air Act regulatory agenda.

We continue to work to improve our tools to keep you up-to-date on developments that affect air quality law. With the help of the committee’s vice chairs and section staff, we recently updated our Web site adding new content and links. We are providing information regarding new developments through our list serve and, as part of the committee’s public service project, our Web site lists best practices for reducing ground-level ozone during the summer ozone season, with links to further information from state and local air pollution

control authorities. Our committee has traditionally benefited from active member participation and the quality of our programs and content results directly from your involvement. If you have an interest in getting more involved in our activities, please let me or any of the committee’s vice chairs know or send us your thoughts and ideas. The committee webpage lists all of our vice chairs and any of us would welcome your input. As always, we appreciate the efforts of all of our members and vice chairs to improve the services provided to committee members. If you have any ideas for, or would like to contribute to, future newsletters, please let us know.

MESSAGE FROM THE EDITOR OF THE COMMITTEE NEWSLETTER

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The committee newsletter would not be possible without the dedicated support of our colleagues who have once again done a magnificent job of summarizing developments at EPA headquarters and in the regions. If you are interested in writing an article or regional report for future issues, please contact me.

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Philip E. Karmel, Editor

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EPA REGIONAL REPORTS

EPA HEADQUARTERS

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I. Air Toxics—Utility MACT

In the proposed rulemaking establishing maximum achievable control technology (MACT) standards for electric generating units (utility MACT), published on May 3, 2011 (76 Fed. Reg. 24,976), EPA is proposing national emission standards for hazardous air pollutants from coal- and oil-fired electric utility steam generating units under section 112(d) of the Clean Air Act and standards of performance for fossil fuel-fired electric utility steam generating units under section 111(b) of the Clean Air Act. EPA held public hearings on the proposed utility MACT in Chicago, Philadelphia, and Atlanta on May 24 and 26, 2011 (76 Fed. Reg. 23,768, Apr. 28, 2011). Comments were originally due July 5, 2011. On July 1, 2011, EPA published notice of a 30-day extension of the public comment period on the proposed rule (76 Fed. Reg. 38,590), extending the comment period to August 4, 2011. The 30-day extension does not alter the timeline for promulgating final standards. EPA is obligated under a consent decree to promulgate the final utility MACT by November 2012.

II. Air Toxics—Portland Cement Manufacturing

On May 17, 2011, EPA published its denial in part and grant in part of petitions to reconsider the final revised national emission standard for hazardous air pollutants (NESHAP) for portland cement manufacturing industry and the new source performance standards (NSPS) for portland cement plants (76 Fed. Reg. 28,318). Among the technical issues on which EPA granted reconsideration are standards for open clinker storage piles; the methods for establishing site-specific compliance requirements for kilns that choose to comply with an organic air toxics limit as an alternative

to a total hydrocarbon limit; monitoring requirements during start-up and shutdown; the affirmative defense for exceedances of emission limits that are caused by malfunctions; whether to allow dry scrubbing systems to use hydrogen chloride (HCl) stack testing methods as an alternative to HCl continuous monitors; the formula used to calculate the particulate matter (PM) limit for combined kiln, clinker cooler, and coal mill exhaust streams, and the NSPS PM limit for modified kilns; the HCl emission limit of zero during start-up for facilities that have wet scrubbers; and the NSPS for PM emitted by modified cement kilns. Issues on which EPA denied reconsideration include whether EPA must recalculate the standards for sources that were cement kilns when EPA issued the August 2010 final rules in light of a February 2011 rule defining which nonhazardous secondary materials are considered solid waste when burned in combustion units; start-up, shutdown, and malfunction standards; PM limits; and monitoring provisions and their applicability to monovents. In addition, EPA denied requests for an administrative stay of the final rules. Thus, the rules remain in place during the reconsideration proceeding. EPA's action took effect immediately.

III. Air Toxics—Major Source Boiler MACT and CISWIs

On May 18, 2011, EPA published a final rule delaying the effective date for the February 2011 final major source boiler MACT and standards of performance and emission guidelines for new and existing commercial and industrial solid waste incineration (CISWI) units (76 Fed. Reg. 28,662). The final rules to regulate emissions of hazardous air pollutants from major source boilers and to regulate emissions of certain air pollutants from CISWI units were published on March 21, 2011 (76 Fed. Reg. 15,608 and 15,704). EPA is delaying the effective dates of these final rules “until the proceedings for judicial review of these rules are completed or the EPA completes its reconsideration of the rules, whichever is earlier.” Once judicial review or administrative reconsideration is completed, EPA will announce new effective dates for the rules in the *Federal Register*. EPA did not stay the effective date of the standards for boilers located at area sources of air toxic emissions. On June 24, 2011,

EPA announced, as part of a filing in *American Forest & Paper Association v. EPA*, No. 11-1125 (D.C. Cir.), its timeline for issuing its proposed reconsidered air toxics standards for boilers and solid waste incinerators. EPA states that it intends to sign a proposed rule by October 31, 2011, and to sign a final rule by April 30, 2012. On July 14, 2011, Sierra Club filed a complaint challenging the stay. *Sierra Club v. Jackson*, No. 1:11-cv-01278-PLF (D.D.C.).

IV. Air Toxics—Secondary Lead Smelting

On May 19, 2011, EPA published a proposed rule that would amend the national emissions standards for hazardous air pollutants for secondary lead smelting to address the results of the residual risk and technology review that EPA is required to conduct by the Clean Air Act (76 Fed. Reg. 29,032). The proposed amendments would apply to all operating facilities that use furnaces to recover lead from lead-bearing scrap, such as automobile batteries, and would require these facilities to control, for the first time, emissions of dioxins. EPA is proposing revisions to the stack emissions limits for lead ten times lower than the current standard; revisions to the fugitive dust emissions control requirements; the addition of total hydrocarbons emissions limits for reverberatory, electric, and rotary furnaces; the addition of emissions limits based on maximum achievable control technology and work practice requirements for dioxins and furans; and the modification and addition of testing and monitoring and related notification, record keeping, and reporting requirements. EPA is also proposing to revise provisions addressing periods of start-up, shutdown, and malfunction to ensure that the rules are consistent with the D.C. Circuit's recent decision. Comments were originally due July 5, 2011. On July 1, 2011, EPA published notice of a 21-day extension of the public comment period (76 Fed. Reg. 38,591). The comment period as extended closed July 26, 2011.

V. Air Toxics—Polyvinyl Chloride and Copolymers Production

On May 20, 2011, EPA published a proposed rule proposing to establish national emissions standards for

hazardous air pollutants from polyvinyl chloride and copolymers (PVC) production located at major and area sources (76 Fed. Reg. 29,528). PVC production includes the manufacture of resins that are used to make many commercial and industrial products, such as latex paints, coatings, adhesives, clear plastics, rigid plastics, and flooring. EPA is proposing maximum achievable control technology (MACT) standards for major sources and generally available control technology (GACT) standards for area sources of PVC production. EPA is proposing to set emission limits and work practice standards for total organic air toxics, vinyl chloride, chlorinated di-benzo dioxins and furans (CD/DF), and hydrogen chloride. The previous rule set an emission limit for only vinyl chloride and used vinyl chloride as a surrogate for all other air toxics, but environmental groups successfully challenged the rule, contending EPA failed to explain its methodology for using vinyl chloride as a surrogate to regulate other hazardous air pollutants. The proposed standards would apply at all times, including during periods of start-up, shutdown, and malfunctions. In addition, the proposed standards include continuous monitoring provisions and record keeping and reporting requirements. EPA held public hearings on the proposed rule on June 7 and 9, 2011 (76 Fed. Reg. 30,604, May 26, 2011). Comments were due July 19, 2011. EPA is obligated under a consent decree to promulgate the final rule by January 13, 2012.

VI. Air Toxics—Plating and Polishing

On June 20, 2011, EPA published a proposed rule (76 Fed. Reg. 35,806) and a direct final rule (76 Fed. Reg. 35,744) amending the 2008 NESHAP for plating and polishing area sources. These amendments clarify that the emission control requirements of the plating and polishing area source NESHAP do not apply to bench-scale activities. Bench-scale activities include any operation that is small enough to be performed on a bench, table, or similar structure so that the equipment is not in direct contact with the floor. Unless EPA received significant adverse comment by July 20, 2011, the final rule automatically takes effect September 19, 2011.

VII Air Toxics—Petroleum Refineries

On July 18, 2011, EPA published a final rule partially withdrawing the residual risk and technology review portions of the final rule amending the NESHAP for petroleum refineries signed by then Administrator Stephen Johnson on January 16, 2009 (76 Fed. Reg. 42,052).

VIII. Air Toxics—Oil and Natural Gas

On July 28, 2011, EPA issued a proposed rule proposing amendments to the NESHAP for oil and gas operations that were last promulgated in 1999. The most common organic hazardous air pollutants from oil and gas operations are n-hexane and BTEX compounds (benzene, toluene, ethylbenzene, and xylenes). In its fact sheet EPA states that a large volume of air emissions occur during a stage of well completion called “flowback” that lasts 3-to-10 days when fracturing fluids, water, and reservoir gas come to the surface at a high velocity and volume. Air toxics are also emitted from other processes and equipment. EPA is proposing standards for production and transmission and storage. For oil and natural gas production, EPA is proposing to remove the one ton per year benzene compliance option for large glycol dehydrators that are used to remove excess water vapor from natural gas. Under the revised requirements, all large dehydrators would have to reduce their air toxics emissions by 95 percent. In addition, EPA is proposing to establish emission limits for small glycol dehydrators (i.e., a dehydrator that has an annual average natural gas throughput of less than three million cubic feet per day, or actual annual average benzene emissions of less than one ton per year) located at major sources; require all crude oil and condensate tanks at major sources to control their air toxics by at least 95 percent; include emissions from these tanks toward determining whether a facility is a major source; tighten the definition of a leak for valves at natural gas processing plants. For natural gas and storage, EPA is proposing to remove the one ton per year benzene compliance alternative for large glycol dehydrators and establish emission limits for small glycol dehydrators (i.e., a dehydrator that has an annual average natural gas throughput of less than 10

million cubic feet per day or annual average benzene emissions of less than one ton) located at major sources. Comments on the proposed rule are due 60 days after publication in the *Federal Register*.

IX. GHG Reporting—Confidentiality Determinations

On May 26, 2011, EPA published final confidentiality determinations for data elements required to be reported under 34 subparts of the mandatory greenhouse gas (GHG) reporting rule (76 Fed. Reg. 30,782). EPA generally makes confidentiality determinations under the Clean Air Act on a case-by-case basis, but in the case of data reported under the mandatory GHG reporting rule, EPA decided to group data elements into categories and make confidentiality determinations on a category basis due to the number of entities expected to report. The data to be reported under the rule include information on GHG emissions and GHGs supplied, including information necessary to characterize, quantify, and verify the GHG emissions and GHGs supplied data. As part of the rulemaking, EPA evaluated whether data elements are “emission data,” which do not qualify for confidential treatment under the Clean Air Act. Examples of direct emitter data that EPA determined are not emission data but are confidential business information include production/throughput data and raw materials consumed that are not inputs to emission equations. For GHG suppliers, EPA’s confidentiality determinations include amount and composition of materials received and supplier customer and vendor information. EPA also finalized amendments to the regulations governing EPA’s handling of information obtained under the mandatory GHG reporting rule. These amendments authorize EPA to release or withhold as confidential data reported under the rule according to the final confidentiality determination for such data without taking further procedural steps; for example, the amendments eliminate notifications to facilities before EPA releases emission and nonconfidential data. The final rule does not include confidentiality determinations for data elements that are inputs to emission equations. Nor does it include final confidentiality determinations for the data elements to be reported under eight subparts: Electronics Manufacturing; Fluorinated Gas

Production; Petroleum and Natural Gas Systems; Sulfur Hexafluoride and Perfluorocarbons (PFCs) from Electrical Equipment at an Electric Power System; Importers and Exporters of Fluorinated Greenhouse Gases Contained in Pre-Charged Equipment or Closed-Cell Foams; Geologic Sequestration of Carbon Dioxide; Sulfur Hexafluoride and PFCs from Electrical Equipment Manufacturer or Refurbishment; and Injection of Carbon Dioxide. EPA plans to repropose determinations for these subparts. The final rule took effect July 25, 2011.

X. GHG Reporting—Electronics Manufacturing

On June 22, 2011, EPA published a proposed rule proposing changes to the calculation and monitoring provisions in the electronics manufacturing portion (subpart I) of the mandatory GHG reporting rule for the “largest” semiconductor manufacturing facilities (i.e., those that fabricate devices on wafers measuring 300 millimeters or less in diameter and that have an annual manufacturing capacity of greater than 10,500 square meters) (76 Fed. Reg. 36,472). Specifically, for reporting years 2011 and 2012, EPA proposes to allow the largest semiconductor facilities the option to calculate emissions using default emission factors already contained in subpart I, instead of recipe-specific utilization and by-product formation rates (recipe-specific emission factors) for the plasma etching process type. The proposed rule is in response to the Semiconductor Industry Association’s request for reconsideration of specific provisions. EPA states in the proposal that the proposed revisions would only apply to the initial years of compliance while the agency continues to understand industry’s concerns with subpart I and considers longer-term alternative options. Comments were due July 22, 2011.

On June 22, 2011, EPA published a final rule announcing the initiation of the reconsideration process in response to a request for reconsideration of provisions for the use of best available monitoring methods in the electronics manufacturing portion (subpart I) of the mandatory GHG reporting rule and the extension of the deadlines for the use of best available monitoring methods provisions (BAMM) for

electronics manufacturing (76 Fed. Reg. 36,339). In the final rule, EPA extends three of the deadlines in subpart I related to using BAMM provisions from June 30, 2011, to September 30, 2011. The final rule took effect June 30, 2011.

XI. GHG Reporting—Petroleum and Natural Gas Systems

On June 27, 2011, EPA published a proposed rule proposing to amend provisions related to best available monitoring methods (BAMM) of petroleum and natural gas systems in its mandatory GHG reporting rule for (76 Fed. Reg. 37,300). In the final subpart W (Petroleum and Natural Gas Systems) of the rule published November 30, 2010 (75 Fed. Reg. 74,458), EPA requires specified data-input requirements in its equations for determining GHG emissions but allows BAMM in lieu of the specified data-input requirements in certain circumstances for specified emissions sources. BAMM include supplier data, monitoring methods currently used by the facility that do not meet the specifications of a relevant subpart of the rule, engineering calculations, and/or other company records. Originally, EPA had allowed the use of BAMM only through June 30, 2011, and had required that a request for an extension to use BAMM during calendar year 2011 beyond June 30, 2011, be submitted by April 30, 2011, and that a request for an extension beyond 2011 be submitted by September 30, 2011. Earlier this year, EPA extended the April 30, 2011, deadline to July 31, 2011, and the June 30, 2011, deadline to September 30, 2011 (76 Fed. Reg. 22,825, Apr. 25, 2011). The proposed rule would extend the BAMM deadlines again.

Specifically, EPA is proposing to extend until December 31, 2011, the time period during which owners and operators of covered facilities with listed emissions sources would be permitted to use BAMM during calendar year 2011 without having to seek approval from EPA. In addition, EPA is proposing to allow use of BAMM beyond 2011 for unique or unusual circumstances provided the owner/operator makes an initial submission of a notice of intent to request use of BAMM beyond 2011 followed by a submission of a full request for approval to use

BAMM beyond 2011. The proposal would require that the initial notice of intent be submitted electronically by December 31, 2011, and the full extension request would be due March 30, 2012. Under the proposal, owners/operators submitting both a notice of intent and full extension request would be granted an automatic extension through June 30, 2012.

XII. PSD and Title V Permitting—Biogenic CO₂ Emissions

On July 20, 2011, EPA published a final rule deferring for a period of three years the application of the prevention of significant deterioration (PSD) and Title V permitting requirements to biogenic carbon dioxide (CO₂) emissions from bio-energy and other biogenic stationary sources (76 Fed. Reg. 43,490). Under the final rule, biogenic CO₂ emissions are not required to be counted for applicability purposes under the PSD and Title V permitting programs during the three-year period. The final rule defines “biogenic CO₂ emissions” as CO₂ emissions from a stationary source directly resulting from the combustion or decomposition of biologically based materials other than fossil fuels and mineral sources of carbon. Examples of “biogenic CO₂ emissions” include (1) CO₂ generated from the biological decomposition of waste in landfills, wastewater treatment, or manure management processes; (2) CO₂ from the combustion of biogas collected from biological decomposition of waste in landfills, wastewater treatment, or manure management processes; (3) CO₂ from fermentation during ethanol production or other industrial fermentation processes; (4) CO₂ from combustion of the biological fraction of municipal solid waste or biosolids; (5) CO₂ from combustion of the biological fraction of tire-derived fuel; and (6) CO₂ derived from combustion of biological material, including all types of wood and wood waste, forest residue, and agricultural material. For stationary sources co-firing fossil fuel and biologically based fuel, and/or combusting mixed fuels (e.g., tire-derived fuels, municipal solid waste), the biogenic CO₂ emissions from that combustion are included in the deferral, but the fossil or other non-biogenic CO₂ emissions are not included in the deferral. Also, emissions of CO₂ from processing of mineral feedstocks (e.g., calcium carbonate) are not

included in the deferral. The deferral is intended to be temporary while EPA completes its work and determines what, if any, treatment of biogenic CO₂ emissions should be in the PSD and Title V programs. EPA cautions in the preamble to the final rule that, depending upon its determinations, the deferral for biogenic CO₂ emissions may be less than three years. The final rule took effect July 20, 2011.

XIII. Mobile Sources—Renewable Fuel Standards

On July 1, 2011, EPA published a proposed rule that would establish renewable fuel standards for 2012 (RFS2) (76 Fed. Reg. 38,844). Refiners, importers, and non-oxygenate blenders of gasoline or diesel use the standards to determine the minimum volumes of renewable fuel that must be blended into transportation fuels. EPA is proposing a cellulosic volume for 2012 and annual standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and renewable fuels that would apply to all gasoline and diesel produced or imported in 2012. Each of the fuels must meet certain technology and feedstock requirements. Furthermore, each fuel type must demonstrate a specified percent reduction in GHG emissions. The Energy Independence and Security Act of 2007 (EISA), which amended section 211(o) of the Clean Air Act, established annual renewable fuel volume targets, which increase to an overall level of 36 billion gallons in 2022. To achieve these volumes, EPA calculates a percentage-based standard for the following year. For 2012, the agency is proposing to blend 15.2 billion gallons of renewable fuel or 1.25 billion gallons more than mandated for 2011. Stated another way, EPA is proposing that about 9 percent of all fuel used will be from renewable sources in 2012. The proposed volumes for 2012 are one billion gallons of biomass-based diesel; two billion gallons of advanced biofuels; 3.45 to 12.9 billion gallons of cellulosic biofuels. The cellulosic volume EPA is proposing for 2012 is below the EISA target for 2012 of 500 million gallons due to market availability; however, EPA is proposing to increase the biomass-based diesel minimum for 2013 and beyond from the current one billion to 1.28 billion gallons due to environmental, market, and other factors. Finally, EPA proposes to amend the gasoline

benzene regulations regarding inclusion of transferred blend stocks in a refinery's early benzene credit generation calculations. On July 12, 2011, EPA held a public hearing on the proposed 2012 renewable fuel standards (76 Fed. Reg. 37,703, June 28, 2011). Comments were due August 11, 2011.

XIV. Mobile Sources—Commercial Aircraft Engines

On July 6, 2011, EPA issued a proposed rule proposing to adopt oxides of nitrogen (NO_x) emission standards for engines used in large commercial passenger and freight aircraft, including Boeing 737s, 747s, and 767s. The proposed standards would apply to aircraft gas turbine engines with rated thrusts greater than 26.7 kilonewtons. The proposed requirements were either previously adopted by the United Nation's International Civil Aviation Organization (ICAO) or agreed upon by ICAO's Committee on Aviation Environmental Protection. EPA is proposing two more stringent emission standards for NO_x referred to as tier 6 and tier 8. Applicability of the proposed standards would depend upon the date the engine model received its original airworthiness certificate. If finalized, the standards would be phased in over the next two years, applying to all new engines in 2013. Engine models that were originally certificated before July 6, 2011, would be allowed to continue production without meeting the proposed tier 6 standards through December 31, 2011. After December 31, 2011, these engines would be required to comply with the tier 6 standards. Engine models that were originally certificated between July 6, 2011, and December 31, 2013, would be required to comply with the tier 6 standards. Engine models that were originally certificated on or after January 1, 2014, would be required to comply with the proposed tier 8 standards. In addition to the new NO_x standards, EPA is proposing to clarify when a design variation of a previously certified engine model causes the emission characteristics of the new version to become different enough from its parent engine that it must conform to the most current emissions standards. EPA is also proposing to amend the emission measurement procedures. Finally, EPA is proposing to require all gas turbine and turboprop engine manufacturers to report

emission data and other information necessary for the purpose of conducting emission analyses and developing appropriate public policy for the aviation sector. Comments are due 60 days after the date that the proposed rule is published in the *Federal Register*.

XV. Mobile Sources—Stage II Vapor Recovery

On July 8, 2011, EPA released a proposed rule proposing June 13, 2013, as the date the EPA administrator determines that there is widespread use of onboard refueling vapor recovery (ORVR) systems in gasoline-powered vehicles. By June 13, 2013, EPA estimates that 72 percent of vehicles on the road will be equipped with ORVR. EPA is also proposing that requirements for stage II gasoline vapor recovery at service stations would be waived as of June 13, 2013. Both stage II vapor recovery and ORVR are systems for capturing gasoline emissions that would otherwise be emitted into the air when vehicles are refueled at service stations. Stage II vapor recovery systems capture gasoline vapors at the pump and carry them back into the underground storage tanks at the service station, and ORVR systems are carbon canisters installed in automobiles to capture the vapors evacuated from the gasoline tank before they reach the pump nozzle. The Clean Air Act required service stations located in nonattainment areas to install stage II vapor recovery systems in the early 1990s and required automobile manufacturers to add ORVR systems to automobiles and other vehicles in a phased approach starting in 1998. All new automobiles and light- and medium-duty cars, vans, and trucks have been equipped with ORVR since 2006. Comments are due 60 days after the date that the proposed rule is published in the *Federal Register*.

XVI. Fuel Efficiency Standards

On July 29, 2011, President Obama announced an agreement with 13 car manufacturers to raise fuel efficiency standards to 54.5 miles per gallon for cars and light-duty trucks by model year 2025. According to EPA's press release, the new standards will save \$8000 per vehicle by 2025. EPA and the National Highway Traffic Safety Administration are developing a

joint proposed rulemaking. The press release states the agencies are considering “game changing” measures, such as incentives for electric vehicles, plug-in hybrid electric vehicles, and fuel cell vehicles. EPA states it plans to propose provisions for credits for improvements in air conditioning (A/C) systems, both for efficiency improvements and for use of alternative, lower global-warming potential refrigerant; treatment of compressed natural gas; continued credit banking and trading, including a one-time carryforward of unused MY 2010–2016 credits through MY 2021.

XVII. NAAQS—Lead

On July 1, 2011, EPA announced a two-week extension of the public comment period on the “First External Review Draft Integrated Science Assessment for Lead” (76 Fed. Reg. 38,650). EPA extended the public comment period from July 5, 2011, to July 19, 2011.

XVIII. NAAQS—NO_x and SO_x

On August 1, 2011, EPA published proposed secondary air quality standards for nitrogen oxides (NO_x) and sulfur oxides (SO_x) (76 Fed. Reg. 46,084). The proposed rule is significant because it marks the first time that EPA has reviewed the environmental impacts of NO_x and SO_x separately from their human health impacts and also marks the first time EPA has examined the effects of multiple criteria pollutants in one review. EPA states it did so here because the science supports the interrelated impacts of these pollutants on the environment. EPA is proposing to retain the existing secondary standards for NO_x and SO_x. The existing secondary standards for NO_x are 0.053 parts per million (ppm) averaged over a year and for SO_x are 0.5 ppm averaged over three hours, not to be exceeded more than once per year. EPA’s proposal to retain the existing secondary standards is consistent with the recommendation of the Clean Air Science Advisory Committee (CASAC). In addition, EPA is proposing to establish an additional set of secondary standards identical to the new health-based primary standards the agency set in 2010. For NO_x, the new secondary standards would be 100 parts per billion (ppb) averaged over one hour, and for SO₂, the

new secondary standards would be 75 ppb averaged over one hour. Secondary standards protect public welfare and the environment, whereas primary standards protect public health. Although CASAC supported the development of a new, multipollutant standard, EPA is not proposing to establish such a standard, explaining it lacks sufficient information at this time. A multipollutant standard supported by CASAC would help protect lakes and streams from acidifying deposition of NO_x and SO_x. Instead, EPA has developed an equation it calls the “Aquatic Acidification Index” (AAI) that is intended to relate levels of NO_x and SO_x in the air to water quality. EPA plans to use the AAI equation in a five-year field pilot program beginning in 2013 to collect and analyze data designed to inform the next NAAQS review for NO_x and SO_x. EPA expects that the data generated by this field study would also support development of a monitoring network for a multipollutant standard. EPA plans to use its existing Clean Air Status and Trends Network, called CASTNET, and to conduct the field study in three to five locations in selected acid-sensitive ecoregions from across the United States, including the east, upper Midwest, and west. Each of the pilot sites would be used to evaluate the performance of the established methods, data retrieval, and reporting procedures used in the AAI equation. Comments are due September 30, 2011. EPA is obligated under a consent decree to promulgate the final rule by March 20, 2012.

XIX. Reconsideration of 2008 Ozone NAAQS

On July 26, 2011, EPA announced that it would not issue the final ozone reconsideration rule on July 29, 2011, explaining that the reconsideration is currently going through interagency review led by the White House Office of Management and Budget. At that time EPA stated on its Web site that the agency “is fully committed to finalizing EPA’s reconsideration of the Clean Air Act health standard for ground level ozone . . . [and] look[s] forward to finalizing this standard shortly.” EPA further stated that the “new ozone standard will be based on the best science and meet the obligation established under the Clean Air Act to protect the health of the American people. In

implementing this new standard, EPA will use the long-standing flexibility in the Clean Air Act to consider costs, jobs and the economy.” On September 2, 2011, however, President Obama directed EPA to withdraw the proposed rule stating that it could impose an undue burden on the economy.

XX. Cross-State Air Pollution Rule

On July 7, 2011, EPA released its final transport rule to reduce interstate transport of emissions that contribute to fine particulate matter (PM_{2.5}) and ozone. The rule is intended to help states achieve the 1997 PM_{2.5} and ozone NAAQS and the 2006 24-hour PM_{2.5} NAAQS. The rule sets emissions budgets that cap emissions in 27 states in the eastern half of the United States and affects coal-fired power plants located in those states. Beginning as early as next year, the rule will require coal-fired power plants to reduce emissions of sulfur dioxide (SO₂) and nitrogen oxides (NO_x), both of which contribute to PM_{2.5} and ozone air pollution. The rule addresses emissions that EPA has identified under the “good neighbor” provision of the Clean Air Act as significantly contributing to nonattainment or interfering with maintenance of the 1997 PM_{2.5} and ozone National Ambient Air Quality Standards (NAAQS) and 2006 24-hour PM_{2.5} NAAQS in downwind states.

The final transport rule, called the Cross-State Air Pollution Rule (CSAPR), replaces a transport rule called the Clean Air Interstate Rule (CAIR) that EPA promulgated in 2005. CAIR was originally vacated as “fatally flawed,” but later remanded without setting aside the rule, by the U.S. Court of Appeals for the District of Columbia Circuit in 2008. Among the flaws identified by the D.C. Circuit were EPA’s compliance deadlines as too late to help downwind areas achieve attainment by their statutory deadlines and EPA’s emissions trading system, which the court said did not ensure that the required emissions reductions would occur within each covered state. While the agency returned to drawing board, power plants initiated costly construction programs to install controls necessary to come into compliance with CAIR and continue to comply with CAIR to the end of 2011.

CSAPR applies to power plants and includes separate requirements for annual SO₂ reductions, annual NO_x reductions, and ozone-season NO_x reductions. Unlike the proposal, the final rule does not include opt-in provisions. EPA projects that the rule will reduce power plant SO₂ emissions by 6.4 million tons per year (tpy) or 73 percent from 2005 levels and power plant NO_x emissions by 1.4 million tpy, including 340,000 tpy of NO_x during the ozone season (May 1—September 30), or 54 percent from 2005 levels.

Compliance deadlines are in 2012 and 2014. For SO₂ and annual NO_x, phase 1 reductions are required by January 1, 2012, and for ozone-season NO_x, phase 1 reductions are required by May 1, 2012. Phase 2 SO₂ and annual NO_x reductions are required by January 1, 2014, and phase 2 ozone-season NO_x reductions are required by May 1, 2014. The compliance deadlines are tied to the attainment deadlines for upwind nonattainment areas under the PM_{2.5} and ozone NAAQS.

The rule regulates annual SO₂ and annual NO_x emissions by states determined to contribute significantly to nonattainment or to interfere with maintenance of the 1997 PM_{2.5} NAAQSs and 2006 PM_{2.5} 24-hour NAAQS and regulates ozone-season NO_x emissions by states determined to contribute significantly to nonattainment or interference with maintenance of the 1997 eight-hour ozone NAAQS. EPA used 1 percent of each NAAQS as the threshold for determining which impacts were significant.

Under CSAPR, power plants in 27 states in the eastern half of the United States must reduce SO₂ and NO_x emissions. Twenty-one states are required to reduce annual SO₂ and NO_x emissions, and 20 states are required to reduce NO_x emissions during the ozone season. The 27 affected states are Alabama; Arkansas; Florida; Georgia; Illinois; Indiana; Iowa; Kansas; Kentucky; Louisiana; Maryland; Michigan; Minnesota; Mississippi; Missouri; Nebraska; New Jersey; New York; North Carolina; Ohio; Pennsylvania; South Carolina; Tennessee; Texas; Virginia; West Virginia; and Wisconsin.

EPA did make changes to the regulated states in the final rule. CSAPR adds Texas for both annual and 24-hour $PM_{2.5}$, while removing other states. EPA removed Delaware and the District of Columbia for both $PM_{2.5}$ standards and ozone; removed Florida, Louisiana, Minnesota, New Jersey, and Virginia for annual $PM_{2.5}$; removed Connecticut for both 24-hour $PM_{2.5}$ and ozone; and removed Massachusetts for 24-hour $PM_{2.5}$.

Under the final rule, a state's emissions budget is the quantity of emissions that remain after elimination of significant contribution to nonattainment and interference with maintenance but before accounting for variability. The variability limit is intended to provide a limited amount of flexibility in power system operations caused by fluctuations in electricity demand, weather, availability of low-emitting power sources, or other unanticipated factors affecting the grid. CSAPR imposes one-year variability limits for each state equal to a percentage of the applicable state budget. Variability percentages are based on the highest measured historic variability of annual heat input of any state covered by the rule between 2000 and 2010. That works out to 18 percent of the state budget for SO_2 and annual NO_x and 21 percent of the state budget for ozone-season NO_x . The variability limit plus the state budget equals the "assurance level."

The rule caps SO_2 emissions at 2.4 million tons per year annually and NO_x emissions at 1.2 million tons per year, including ozone-season NO_x emissions at 600,000 tons per year. The CSAPR budgets are more stringent than the CAIR budgets. Power plants will achieve annual SO_2 emissions around 1.8 million tons lower and annual NO_x emissions around 76,000 tons lower than what would have been achieved by 2014 under CAIR.

The rule allows trading and establishes four separate trading programs: SO_2 Group 1; SO_2 Group 2; annual NO_x ; and ozone-season NO_x . Power plants may trade emissions with other power plants within the same program in the same or different states. Banking of CSAPR allowances is permitted; however, CAIR allowances and Title IV SO_2 allowances may not be used for compliance with CSAPR. The trading

programs are described by EPA as "air quality-assured trading programs." The rule manages any emissions shifting that may occur as a result of interstate trading by including provisions to ensure that necessary reductions will occur within every covered state.

At the end of the control periods, EPA will evaluate whether a state's total affected power plant emissions exceeded the state's "assurance level." If the state's assurance level is exceeded, EPA will evaluate which groups of units at the common designated representative level had emissions exceeding that group's pro rata share of the state's assurance level. If emissions from the group of units with a common designated representative exceeded that group's pro rata share of the state's assurance level, owners of units in that group must surrender allowances in addition to the normal 1:1 allowance surrender to cover emissions. CSAPR requires a 2:1 surrender for excess emissions.

CSAPR will be implemented through federal implementation plans (FIPs) that EPA is imposing upon each of the 27 affected states. Each state may replace EPA's FIP with a state implementation plan (SIP) to achieve the required amount of emission reductions from sources selected by the state. The earliest control periods for which states may submit SIPs is 2013. The final rule added provisions for abbreviated or full SIP revisions.

By 2014, when CSAPR is fully implemented, EPA projects that only the Houston-Galveston metropolitan area will continue to violate the 1997 ozone standard and only the Liberty-Clairton, Pa., area will continue to violate the 24-hour $PM_{2.5}$ standards.

On July 11, 2011, EPA published a supplemental proposal to include six additional states—Iowa, Kansas, Michigan, Missouri, Oklahoma, and Wisconsin—in the CSAPR ozone-season control program (76 Fed. Reg. 40,662). Of those six states, only Oklahoma is not covered by the final CSAPR for $PM_{2.5}$. The supplemental proposal, if finalized, would bring the total number of states covered by CSAPR to 28. Comments on the supplemental proposal were due

August 22, 2011. EPA plans to finalize the supplemental proposal by late fall 2011.

On July 18, 2011, EPA published a notice of data availability (NODA) concerning CSAPR (76 Fed. Reg. 42,055). In CSAPR, EPA finalized allowance allocations for 2012 and thereafter to existing units subject to the CSAPR FIP trading programs in 27 eastern states. By the NODA, EPA is notifying the public that the detailed unit-by-unit data, calculations, and allowance allocation determinations are set forth in a technical support document titled “Unit Level Allocations Under the Transport Rule FIP” that is available on EPA’s Web site. Allowance allocations for existing units for 2012 must be recorded in the compliance accounts of existing units within 90 days of the publication of CSAPR in the *Federal Register*.

XXI. New Source Performance Standards—Stationary Compression Ignition and Spark Ignition Internal Combustion Engines

On June 28, 2011, EPA published a final rule revising the new source performance standards (NSPS) for stationary compression ignition and spark ignition internal combustion engines (76 Fed. Reg. 37,954). The final rule requires more stringent standards for stationary compression ignition engines with displacement greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder. In addition, the final rule revises the requirements for engines with displacement at or above 30 liters per cylinder to align more closely with recent standards for similar mobile source marine engines, and for engines in remote portions of Alaska that are not accessible by the Federal Aid Highway System. Further, the action provides additional flexibility to owners and operators of affected engines, and corrects minor mistakes in the original standards of performance. Finally, the action makes minor revisions to the standards of performance for new stationary spark ignition internal combustion engines to correct minor errors and to mirror certain revisions finalized for compression ignition engines, which provides consistency where appropriate for the regulation of stationary internal combustion engines. EPA estimates that the final standards will reduce nitrogen oxides by an estimated 1100 tons per year,

particulate matter by an estimated 38 tons per year, and hydrocarbons by an estimated 18 tons per year in the year 2030. The final rule took effect August 29, 2011.

XXII. New Source Performance Standards—Electric Steam Generating Units

On July 1, 2011, EPA extended the deadline for comments on the May 3, 2011, proposed NSPS for electric steam generating units (76 Fed. Reg. 38,590). The May 3, 2011, proposal also included proposed national emissions standards for hazardous air pollutants (NESHAP). Comments on both proposed standards were due August 4, 2011.

XXIII. New Source Performance Standards—Oil and Natural Gas

On July 28, 2011, EPA proposed new source performance standards for the oil and natural gas industry. EPA maintains that the costs of implementing the proposed NSPS will be offset by revenues from additional natural gas and condensate recovery. These proposed regulations are aimed at the 25,000 wells that are fractured and refractured each year, storage tanks, and other pieces of equipment used by the oil and gas industry. The rules, if finalized, will include the first national air standards for hydraulically fractured wells. For completions of new hydraulically fractured gas wells and recompletions of existing natural gas wells that are fractured or refractured, EPA is proposing operational standards. For nonexploratory and nondelineation wells, the proposed operational standards would require reduced emission completion, commonly referred to as “green completion,” in combination with pit flaring of gas not suitable for entering the gathering line. For exploratory and delineation wells (these wells generally are not in close proximity to a gathering line), EPA is proposing an operational standard that would require pit flaring. According to EPA, gas well completions involving hydraulic fracturing vent 20 times more volatile organic compound (VOC) emissions than wells using “green completion.” The two existing NSPS for the oil and gas industry source category were promulgated in

1985 and apply only to natural gas processing plants. One addresses VOC emissions from leaking equipment at onshore natural gas processing plants and the other addresses sulfur dioxide (SO₂) emissions from natural gas processing plants. In addition to updating requirements for controlling VOC emissions from natural gas processing plants by amending the leak and detection requirements, EPA is proposing VOC standards to cover additional processes at oil and natural gas operations. The additional processes for which EPA is proposing NSPS for VOC include gas well completions, pneumatic controllers, compressors, and storage vessels. For pneumatic devices at gas processing plants, EPA is proposing a zero VOC emission limit. For compressors, EPA is proposing standards for centrifugal and reciprocating compressors. Specifically, for centrifugal compressors, EPA is proposing an equipment standard that would require the use of dry seals to limit the VOC emissions from new centrifugal compressors, and for reciprocating compressors, EPA is proposing an operational standard that would require replacement of the rod packing based on hours of operation. For certain storage vessels (i.e., those with throughput of at least one barrel of condensate per day or 20 barrels of crude oil per day, EPA is proposing an NSPS of 95 percent reduction that could be met by a vapor recovery unit, flare control device, or other control device. For the SO₂ NSPS, EPA is proposing to strengthen the standards for plants with the highest sulfur feed rates and the highest hydrogen sulfide concentrations. Hydrogen sulfide (H₂S) and sulfur dioxide (SO₂) are emitted from production and processing operations that handle and treat “sour gas,” which EPA defines as natural gas with a maximum H₂S content of 0.25 gr/100 scf (4ppmv) along with the presence of CO₂. Comments are due 60 days after publication of the proposed rule in the *Federal Register*. EPA is obligated under a consent decree to promulgate a final rule by February 28, 2012.

XXIV. New Source Review—Fine Particulate Matter

On May 18, 2011, EPA published a final rule repealing the “grandfather” provision for particulate matter less than 2.5 micrometers (PM_{2.5}) under the federal

prevention of significant deterioration (PSD) permit program, which is administered by EPA in states that lack a PSD permit program in their approved state implementation plans (SIPs) (76 Fed. Reg. 28,646). The grandfather provision allowed facilities to satisfy the PSD permit program requirements for PM_{2.5} by meeting the requirements for controlling particulate matter less than 10 micrometers (PM₁₀) and analyzing impacts on PM₁₀ air quality as a surrogate approach based upon EPA’s 1997 PM₁₀ surrogate policy. EPA’s final PM_{2.5} new source review (NSR) implementation rule that was issued in 2008 (73 Fed. Reg. 28,321) allowed the continued use of the PM₁₀ surrogate policy until May 2011 due to technical issues at the time that made it infeasible to estimate PM_{2.5} and conduct the analyses necessary to demonstrate compliance with the applicable PM_{2.5} requirements under the PSD program as required by the Clean Air Act. The final rule affects those proposed new and modified major stationary sources subject to the federal PSD program that submitted a complete application for a PSD permit before the July 15, 2008, effective date of the final PM_{2.5} NSR implementation rule, but that have not yet received a final and effective permit authorizing the source to commence construction. In states with EPA-approved PSD programs, the 1997 PM₁₀ surrogate policy ended as originally scheduled on May 16, 2011. The final rule took effect July 18, 2011.

XXV. Federal Implementation Plan in Indian Country

On July 1, 2011, EPA published a final federal implementation plan (FIP) for review of new sources and modifications in Indian country (76 Fed. Reg. 38,748). The FIP fills a regulatory gap in the NSR permitting program in Indian country. The FIP includes two new source review (NSR) regulations. The first rule applies to new and modified minor stationary sources and to minor modifications at existing major stationary sources throughout Indian country. The rule establishes a preconstruction permitting program for new or modified minor sources and minor modifications at major sources. In addition, the rule establishes a minor source permitting mechanism for major sources that wish to limit emissions voluntarily to become synthetic minor sources and for approving

case-by-case maximum achievable control technology (MACT) determinations. The second rule (nonattainment major NSR rule) applies to new and modified major sources in areas of Indian country that are designated as not attaining the National Ambient Air Quality Standards (NAAQS). A rule already exists for EPA to issue permits to major sources in areas of Indian country that meet the NAAQS. The final FIP takes effect August 30, 2011.

EPA REGION 1

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I. Regional Updates

In March 2011, the Northeast States for Coordinated Air Use Management (NESCAUM), a nonprofit association of air quality agencies in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont, released a report entitled *Control Technologies to Reduce Conventional and Hazardous Air Pollutants from Coal-Fired Power Plants*. The report addresses the ability of coal-fired power plants to comply with EPA's recently proposed Clean Air Transport Rule (CSAPR) and the National Emission Standards for Hazardous Air Pollutants from Electric Utility Steam Generating Units (air toxics rule) through modern emission control technologies. The report concludes that proven pollution control technologies and methods, including scrubbers, baghouses, and dry sorbent injection, are widely available and will enable cost-efficient compliance with CSAPR and the air toxics rule by the electric power sector. Among other things, the report concludes that coal-fired power plants have extensive experience in installing and operating advanced pollution control systems, such controls can dramatically reduce toxic air emissions, and a wide range of control options are available to enable energy producers to comply with EPA's rules in a cost-effective manner. The full report can be accessed at NESCAUM's Web site at <http://www.nescaum.org/>

[documents/coal-control-technology-nescaum-report-20110330.pdf/](http://www.nescaum.org/documents/coal-control-technology-nescaum-report-20110330.pdf/).

The 12th Regional Greenhouse Gas Initiative (RGGI) auction took place on June 8, 2011, and resulted in total proceeds of \$83,425,588 for the participating states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. At the auction, 12,537,000 CO₂ allowances for 2009–2011 sold to 20 bidders at a price of \$1.89 per allowance, representing 30 percent of such allowances offered for sale. A total of 943,000 CO₂ allowances for the future control period of 2012–2014 sold to five bidders at the same price, representing 51 percent of the future control period allowances offered for sale. All of the participating states except for New Jersey offered future control period allowances. Cumulative proceeds from all 12 of the RGGI auctions now total more than \$886.4 million, which the participating states have invested in clean energy programs. Electric generators and their corporate affiliates have purchased approximately 85 percent of all CO₂ allowances sold since the initial RGGI auction in September 2008. RGGI has come under increased scrutiny recently following New Jersey Governor Chris Christie's announcement in May that he would end his state's participation in the program and legislative efforts to do the same in New Hampshire (as more specifically described below). The next RGGI auction is scheduled for September 7, 2011.

II. Connecticut—Wood Smoke Regulation

In February 2011, the Connecticut Department of Environmental Protection (CDEP) released a report evaluation of wood smoke contribution to particle matter in Connecticut. The report concludes, based on data from six sites, that on average over the entire year the contribution of wood smoke particulate matter to overall PM_{2.5} levels range from 1.7 to 17.3 percent. Not surprisingly, the highest percentages are during the colder winter months, with the peak monthly (January) average of 41.3 percent at one monitoring location.

III. Connecticut—Department Reorganization

As of July 1, 2011, CDEP, the Department of Public Utility Control, and the energy group from the Office of

Policy and Management have been consolidated to create the Department of Energy and Environmental Protection (DEEP).

IV. Maine—Change in State Air Quality Standards

The Maine legislature enacted legislation providing that the Maine Department of Environmental Protection (MDEP) must implement ambient standards as required by the Clean Air Act and EPA implementing regulations. P.L. 2011, c. 206, § 19 (amending 38 M.R.S.A. § 584-A). This legislation effectively repeals state-adopted ambient air quality standards that had been more stringent than the federal standards.

V. Maine—New CEM Rule

On April 21, 2011, the Maine Department of Environmental Protection adopted substantial revisions to its continuous emission monitoring (CEM) rule (ch. 117), entirely replacing the prior version of the rule. The new version of chapter 117 includes additional detail regarding quality assurance/quality control requirements, the amount of data constituting valid block averages, what constitutes an “out-of-control period,” definition of what constitutes an “excess emission,” and requirements for particulate matter monitoring systems. Sources operating opacity and/or gaseous continuous emission monitoring systems should carefully review their existing monitoring systems, QA programs, and required written QA plans to ensure they comply with the new chapter 117.

VI. Massachusetts—Change in Biomass-Related RPS Requirements

The Massachusetts Department of Energy Resources is in the final stages of amending the commonwealth’s renewable energy portfolio standard (RPS) as it relates to biomass. The proposed changes to 225 CMR 14.00 would limit the use of biomass as a fuel source for renewable energy. Once the amendments are adopted, the present moratorium on the use of biomass generation units for the RPS, in place since December 2009, will be lifted.

VII. Massachusetts—GHG Reporting

In June 2011, the Department of Environmental Protection proposed amendments to 310 CMR 7.71, which contain reporting requirements for greenhouse gas emissions.

VIII. New Hampshire—Transportation Conformity

The New Hampshire Department of Environmental Services (NHDES) has initiated rulemaking to update its current regulations that establish a consultative process relative to conformity determinations regarding transportation plans, transportation improvement programs, and projects funded or approved by the Federal Highway Administration or Federal Transit Administration in “nonattainment” or “maintenance” areas that do not meet or have not met air quality standards for ozone, carbon monoxide, particulate matter, or nitrogen oxide. The proposed rules would readopt the state’s existing conformity rules, which are required under the Clean Air Act and federal rules promulgated thereunder and are currently set to expire on October 14, 2011. In addition to certain technical and clarifying amendments, the proposed rulemaking would bring the existing regulations into conformity with current federal standards under the Clean Air Act and eliminate a requirement for a minimum 30-day comment period for conformity determinations.

IX. New Hampshire—RGGI

On July 6, 2011, Governor John Lynch vetoed a bill that would end New Hampshire’s participation in RGGI, indicating that repealing the program in the state would cost jobs, slow the economic recovery, and eliminate crucial cost savings. Although the New Hampshire House of Representatives passed the bill with a two-thirds majority, it does not appear that the state senate will have the votes necessary to override the veto. Despite the veto, another RGGI withdrawal bill is likely to be introduced in the next legislative session.

X. Rhode Island—Monitoring Network

As required by EPA, Rhode Island’s Department of Environmental Management (DEM) posted the state’s

2011 annual monitoring network plan for public comment on June 22, 2011. The 2011 plan provides a description of Rhode Island's current air monitoring network, demonstrates conformity of the network with EPA requirements, and summarizes planned modifications to the network. Among other things, the 2011 plan indicates that the DEM may increase the monitoring period for two of the state's three ozone monitoring stations and one of its nitrogen dioxide monitoring stations, and discontinue monitoring at two of its particulate matter monitoring sites. Comments on the 2011 plan must be submitted to the DEM by July 22, 2011.

XI. Vermont—Sulfur in Fuel Limits

The Vermont Department of Environmental Conservation (DEC) is proposing amendments to the state's air pollution control regulations, specifically section 5-221(1), to require lower sulfur limits for fuels used for heat or power generation. The proposed rule was filed with the secretary of state on May 13, 2011. Also, in February of this year, the DEC released revised source emission testing guidelines. The document is intended to promote uniformity and provide the owners and operators of stationary sources, subject to Vermont air pollution control regulations 5-401 and 5-404, with guidance on site preparation, acceptable process operating conditions, sampling protocols to be followed during compliance testing, and reporting requirements.

EPA REGION 2

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I. New York Enacts New Power Plant Siting Law

On June 22, 2011, the New York state legislature enacted the Power NY Act of 2011. 2011 N.Y. S.B. 5844. This legislation includes measures to promote energy efficiency and renewable energy, but its most significant provisions provide for a new approval

process, to be codified at article X of the public service law, for new and expanded power plants. The new article X is modeled after a prior version of the law that expired on January 1, 2003. With its expiration, new power plants have been subject to environmental review under the state Environmental Quality Review Act and a panoply of state and local permitting, siting and zoning laws, and procedures. The new article X governs the siting of "major electric generating facilities," defined as power plants with generating capacities of at least 25 megawatts. The 25 MW applicability threshold under the new article X is lower than the previous threshold of 80 MW under the old article X. As a result, smaller electric generating facilities, including some wind-powered facilities, will now be covered by article X. Further, because the new article X drops the earlier exemption for power plants that "generat[e] electricity from the combustion of solid waste or from fuel derived from solid waste" (1992 N.Y. Sess. Laws 1480), those plants now would be covered by the law. Projects sponsored by the New York Power Authority, the Long Island Power Authority and certain other public authorities will be subject to the new article X, as will those sponsored by independent power producers and utilities. The key provisions of article X are summarized below.

1. Composition of the Siting Board

Under the new article X, the siting board, a group of seven people empowered to grant a certificate of compatibility and public need for a proposed project, will be comprised of five government officials and two ad hoc members from the local community. The ad hoc members must reside in the affected municipality (outside the city of New York) and the affected community board district (within New York City).

2. Exclusive Authority of the Siting Board

Article X states that except as set forth therein, "no state agency, municipality or any agency thereof may . . . require any approval, consent, permit, certificate or other condition for the construction or operation of a major electric generating facility." 2011 N.Y. S.B. 5844 § 172. This provision preempts municipal boards from denying permits for a project certificated by the siting board.

3. NYSDEC's Role

The new article X, like the previous version of the law, does not preempt the permitting authority of the New York State Department of Environmental Conservation (NYSDEC) under air, water, and solid waste laws. However, it folds NYSDEC into the process in that (1) the commissioner of NYSDEC sits as an ex officio member of the board; (2) a NYSDEC hearing officer is to serve as associate hearing examiner in the article X proceeding; (3) article X certificate applications must include the information necessary for the issuance of permits by NYSDEC; (4) NYSDEC permits are to be issued based upon the record developed in the article X process; and (v) NYSDEC permits are to be issued prior to the issuance of an article X certificate.

4. Pre-application Requirements

The new article X (like the earlier version) includes mandatory pre-application requirements. Entities intending to seek an article X certificate must file a "preliminary scoping statement" with the board containing descriptions of (1) the proposed facility; (2) potential health and environmental impacts of the facility on the surrounding community; (3) proposed studies to evaluate potential health and environmental impacts; (4) proposed measures to minimize those impacts; (5) if applicable, a study of the sufficiency of on-site fuel storage for petroleum-based electric facilities; (6) reasonable alternatives to the facility; (7) other necessary state and federal permits needed for construction of the facility; and (8) any other required or relevant information. Submission of a pre-application preliminary scoping statement triggers a "pre-application process," overseen by an appointed hearing examiner, designed to define the scope and methodology for the studies to be included in the article X application. As under the previous article X, agreements reached with respect to such matters are to be documented in stipulations, which may define with some particularity the nature and extent of the analyses required with respect to the relevant issues.

5. Pre-application Phase Intervenor Accounts

Unlike the previous article X, the new legislation requires the funding of a "pre-application" intervenor account. This account is intended to fund pre-application expenses incurred by municipal and local parties (including individuals and community groups)

for expert witnesses, consultants, and legal and administrative fees. The new article X requires the applicant to pay \$350/MW of the proposed facility's generating capacity up to a maximum payment of \$200,000 for the pre-application phase fund. The intervenor fund may be used to pay legal fees, but it may not be used to pay fees incurred in litigation.

6. Application for a Certificate

The new article X adopts many of the same application requirements contained in its earlier version. Thus, detailed information assembled in conformity with stipulations entered into during the pre-application process is required with respect to the proposed facility; its environmental, public health, safety, economic and energy-related impacts; and "reasonable and available alternatives" to the project. However, the new article X includes additional application requirements for proposed facilities. The most significant new requirements concern:

- **Security:** A security plan must be prepared and submitted for the proposed plant, including "measures to be taken to ensure the safety and security of the local community. . . ." This plan is to be reviewed by the board in consultation with the New York State Division of Homeland Security and Emergency Services and, in New York City, the city's Office of Emergency Management.
- **Environmental Justice:** A report must be submitted with respect to environmental justice concerns, including a comprehensive description of the demographic, economic and physical characteristics of the community within a half-mile of the proposed facility (including available public health data), as compared to the characteristics of the county and adjacent areas.
- **Cumulative Impact Analysis of Air Quality:** A study of the cumulative impact of the existing and proposed sources that may deleteriously affect air quality within a half-mile of the proposed facility.
- **Wind-Powered Facilities:** Article X requires an analysis of the expected environmental impacts of a proposed wind-powered facility on avian and bat species, and a plan to mitigate those impacts.

7. Application Phase Intervenor Accounts

In addition to the pre-application intervenor account described above, the new article X requires the project sponsor to establish an application phase intervenor account to fund costs for municipal and local parties to a proceeding. Under the new article X, an application must be accompanied by a fee of \$1000/MW up to a maximum of \$400,000. This cap raises significantly the previous cap of \$150,000 under the earlier law.

8. Timeline Requirements

The new article X maintains the same 12-month final decision deadline for certificates that was included in the expired article X. However, the new article X streamlines the process further (by cutting down the decision time to six months) for owners who propose to modify an existing facility or build an additional plant adjacent to an existing facility, where the modification or new facility (in combination with the existing facility) would meet specified cooling water intake requirements and achieve lower air emissions and a lower heat rate.

9. Statutory Findings

To issue the certificate, the siting board must make a number of findings, including (1) findings relating to the impacts of the facility's construction and operation with respect to environmental, health, and safety, (2) a finding that adverse impacts have been minimized "to the maximum extent practicable," (3) a finding with respect to the cumulative impacts on air emissions; (4) findings with respect to environmental justice and potential offset provisions; and (5) a finding that the facility is in the public interest.

II. New Jersey Governor Seeks to Scuttle RGGI

On May 26, 2011, New Jersey Governor Chris Christie announced that he would pull the state out of the Regional Greenhouse Gas Initiative (RGGI). The New Jersey legislature subsequently enacted legislation (A4108/S2946) to keep the state in the program, but on August 19, 2011, Governor Christie vetoed the bill. New Jersey is expected to discontinue participation in RGGI by the end of the year.

EPA REGION 6

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I. EPA Region 6 Developments

EPA Region 6 is supporting efforts of the New Mexico Environment Department and other state and federal agencies to address possible issues associated with the Las Conchas wildfires that began on June 26, 2011, in the Santa Fe National Forest in New Mexico. At New Mexico's request, EPA has mobilized a team to assist with sampling and monitoring for chemicals and radiological materials in the air and smoke released from the fire.

II. Arkansas Challenge to EPA Boiler/ Incinerator Rules

The state of Arkansas is among petitioners that filed at least 38 separate lawsuits challenging EPA's adoption of the group of boiler and incinerator emissions rules published in the *Federal Register* on March 21, 2011. The rules include a new source performance standard for commercial and industrial solid waste incinerations (CISWI) units, a maximum achievable control technology (MACT) rule for industrial boilers, a rule defining solid waste for the purpose of determining whether a facility is subject to the CISWI rule or the boiler MACT, and a MACT for sewage sludge incinerators. On May 16, EPA indicated it will stay implementation of the rules to reconsider key provisions.

III. Louisiana—Baton Rouge Nonattainment Area Redesignation Request

On March 8, 2011, the Baton Rouge Clean Air Coalition (BRCAC), a group of local governments, state agencies, businesses, industries, academic institutions, and civil organizations, sent a letter to EPA Region 6 Administrator Dr. Al Armendariz requesting that EPA redesignate the five-parish Baton Rouge nonattainment area to attainment regarding the eight-hour ozone national ambient air quality standard (NAAQS). According to BRCAC, over three years of local air monitoring data have demonstrated that the area has attained that standard. BRCAC expressed

concern that the nonattainment designation causes stigma, uncertainty over legally applicable requirements, and negative economic impacts. EPA must redesignate an area promptly when five criteria contained in section 107(d)(3)(E) of the Clean Air Act are met. According to BRCAC, EPA has already made a timely decision with respect to two of the five necessary redesignation criteria. BRCAC urged EPA to address the remaining criteria and complete its approval of the redesignation.

IV. Louisiana—PVC Manufacturing Plants

On April 15, 2011, EPA issued a proposed rule to update the emissions limits applicable to toxic air pollutants from the country's 17 polyvinyl chloride (PVC) manufacturing plants, six of which are located in Louisiana. As part of a settlement agreement, EPA must issue a final rule by January 13, 2012. The proposed rule would set emission limits and work practice standards for total organic air toxics, and also for vinyl chloride, chlorinated di-benzo dioxins and furans, and hydrogen chloride. The proposed rule updates the existing toxic emissions standards, which were established in 1976. EPA's first attempt at revising the PVC standards in July 2002 was vacated by the U.S. Court of Appeals for the D.C. Circuit.

V. Louisiana—Proposed Iron and Steel Mill

On May 3, 2011, Sierra Club and Louisiana Environmental Action Network petitioned EPA to object to a Title V federal operating permit issued by the Louisiana Department of Environmental Quality to Nucor Corp. for a proposed iron and steel mill in St. James Parish. The authorization was the first prevention of significant deterioration (PSD) permit to include greenhouse gas (GHG) emission limits. Petitioners argued that the limits on natural gas consumption included in the permit do not constitute best available control technology (BACT) for GHGs. The petitioners also argued that the permit improperly failed to aggregate emissions from the facility's pig iron plant and the direct-reduced iron plant for PSD purposes. Finally, petitioners argued that the agency should object to the particulate matter and hazardous air pollutant emissions limits as well. EPA raised no objections to the permit during its own review. EPA must review the petition and respond to the objections within 60 days.

VI. New Mexico—GHG Regulation

On March 19, 2011, the Democratic-controlled New Mexico legislature adjourned without invalidating state regulations on GHG emissions. Six pieces of legislation up for consideration would have reversed the state's GHG emissions rule. All of these measures were defeated and cannot be considered again until January 2012, when the legislature next convenes. New Mexico's current GHG rule requires facilities that emit more than 25,000 metric tons of carbon dioxide per year to reduce those emissions by three percent per year from 2010 levels beginning in 2013. The legislature also rejected proposals to dilute the state renewable energy portfolio standard.

VII. New Mexico—Inspection Litigation

On April 6, 2011, the Tenth Circuit upheld a decision of the U.S. District Court for the District of New Mexico that employees from the New Mexico Environment Department who conducted an unannounced inspection of Copar Pumice Company's El Cajete Mine pumice screening plant violated the company's state constitutional rights because the inspectors did not comply with the state Air Quality Control Act (AQCA) and did not otherwise obtain consent to look at and take company documents. *Copar Pumice Co, Inc. v. Morris*, 639 F.3d 1025 (10th Cir. 2011). State inspectors visited the plant to conduct an unannounced inspection authorized under the AQCA, which grants an inspector at any reasonable time, upon presentation of credentials, the right to enter any premises on which an emissions source is located or records are maintained and copy any records. Only two day laborers were at the plant when the inspectors arrived. Although the inspectors stated that they presented credentials and were led to a pile of papers that they later took with them, copied, and returned, one of the laborers testified that he did not know or speak English and that the inspectors had not presented credentials. Copar sued the inspectors, alleging that the search and seizure of materials violated the company's rights under the Fourth and Fourteenth Amendments to the U.S. Constitution and two provisions of the New Mexico Constitution. The Tenth Circuit affirmed the October 27, 2009, district court determination that the defendants had violated Copar's state constitutional rights and award of \$16,218 to Copar.

VIII. Oklahoma—Installation of Control Equipment at Coal Plants

In a March 22, 2011, proposed rule, EPA partially disapproved the Oklahoma state implementation plan (SIP) and proposed a federal implementation plan (FIP) that would require three older coal-fired power plants to install modern air pollution equipment or switch to natural gas by 2026. EPA rejected the SIP because the 2026 deadline was too long and would miss statutory deadlines for states to reduce regional haze. In its proposed FIP for the state, the three plants must instead act within three years to reduce sulfur dioxide emissions by around 95 percent. The plants can choose to add sulfur dioxide scrubbers, switch to natural gas, or a combination of the two approaches to reduce emissions. EPA found the rules in the Oklahoma SIP for best available retrofit technology sufficient for all other sources of air pollution in the state but decided that stricter requirements were required for these three plants. On May 31, 2011, Oklahoma filed a suit challenging the FIP.

IX. Interstate Transport

On July 11, 2011, EPA published in the *Federal Register* its supplemental notice of proposed rulemaking (NPRM) to propose FIPs for Iowa, Kansas, Michigan, Missouri, Oklahoma, and Wisconsin to reduce the interstate transport of ozone. EPA concluded that emissions from these six states significantly contribute to downwind nonattainment or interfere with maintenance of the 1997 ozone National Ambient Air Quality Standards (NAAQS) in other states. EPA proposes FIPs to address (1) the emissions identified as significantly contributing to nonattainment and interference with maintenance and (2) the transport requirements with respect to the relevant NAAQS. The NPRM also identifies the budgets, associated variability limits, and allowances that would be used for each state if EPA finalizes the proposed FIPs. EPA is proposing to implement as FIPs for the six states the Cross-State Air Pollution Rule's (CSAPR) ozone-season NO_x program. As finalized, CSAPR does not include any requirements that apply to sources in Oklahoma, but the analysis conducted for the rule identifies Oklahoma as a state that significantly contributes to nonattainment or interferes with maintenance of the 1997 ozone NAAQS in Allegan County, Mich. At this time, EPA is

taking comment on the NPRM only on (1) its conclusions that the states identified have emissions that significantly contribute to nonattainment and interfere with maintenance of the 1997 ozone NAAQS, and (2) its decision to use the final CSAPR programs as the FIPs to address these emissions. With respect to Oklahoma, EPA requests comments on whether there are errors in the agency's application of the CSAPR methodologies about the state's significant contribution to nonattainment and interference with the 1997 ozone NAAQS.

X. Texas—Title V Permitting

On March 18, 2011, in an effort to begin moving towards resolution of its stock objections to scores of Texas Title V permits, EPA outlined in a letter to the Texas Commission on Environmental Quality (TCEQ) some of the methods it views as possible resolutions. During a two-year Title V permitting standoff, industry and TCEQ have criticized EPA's failure to identify concrete resolutions to its objections. In the March 18 letter, EPA identified 15 objections and outlined what the agency considers viable approaches to resolving them, including concrete examples of solutions and specific permit language developed to address objections. EPA acknowledges in the letter that there may be other ways to address the objections, but does not indicate to what extent it will accept alternative approaches.

XI. Texas—Lead Transport SIP

On April 6, 2011, the TCEQ commissioners approved the proposal of a lead transport SIP revision for the 2008 lead NAAQS. The proposal followed from EPA's October 15, 2008, adoption of a new NAAQS for lead of 0.15 micrograms per cubic meter measured as a rolling three-month average. The new standard is ten times more stringent than the previous standard of 1.5 micrograms per cubic meter measured as a quarterly average. Effective December 31, 2010, EPA designated a portion of Collin County, located in Frisco, Texas, as the only nonattainment area in Texas for the 2008 lead standard. In the proposal, TCEQ indicates that the purpose of the SIP revision "is to document that any emissions from sources in Texas do not interfere with attainment or maintenance of the 2008 lead NAAQs in another state." The proposal provides that "[b]ased on the control strategies already

in place to reduce lead emission in the Collin County nonattainment area, modeling that predicts that lead emissions from Texas will not impact surrounding states, and lack of nonattainment or maintenance areas in the four surrounding states, Texas has adequately addressed interstate transport of lead.”

XII. Texas—SO₂ Attainment Status Designations

At their April 20, 2011, agenda meeting, the TCEQ commissioners approved the executive director’s recommended attainment status designations for the 2010 sulfur dioxide (SO₂) primary NAAQS. The recommendation follows from EPA’s August 23, 2010, revisions of the SO₂ NAAQS to include a one-hour 75 parts per billion primary standard. With this approval, TCEQ recommends that Jefferson County be the only county designated nonattainment for that standard; that Dallas, Ellis, El Paso, Galveston, Gregg, Harris, Kaufman, McLennan, and Nueces Counties be designed attainment; and that all other Texas counties be identified as unclassifiable. After TCEQ sent its recommendation to Governor Perry for consideration, Perry submitted the designation recommendation to EPA by letter dated June 2, 2011. EPA is expected to issue final designations by June 2, 2012.

XIII. Texas—Title V General Permit for Oil and Gas Operations

During April 2011, TCEQ published proposed revisions to and renewal of the oil and gas Title V general operating permit nos. 511 through 514—each of which apply in different Texas counties. Along with other changes, the proposed revisions would include the addition of references to the standard permits for boilers; the non-rule standard permit for oil and gas handling and production facilities; the non-rule standard permit for pollution control projects; and requirements from the following three new source performance standards in 50 C.F.R. part 60: subpart IIII (Compression Ignited Internal Combustion Engines), subpart JJJJ (Spark Ignition Internal Combustion Engines), and subpart KKKK (Stationary Combustion Turbines). TCEQ held a public hearing on these revisions in Austin on April 28, 2011. Written comments were due on May 9, 2011. Additionally, the

deadline for comments following a series of stakeholder meetings that TCEQ held regarding the agency’s revision of the new source review oil and gas permit by rule and standard permit was extended until May 31, 2011. TCEQ provided opportunity for stakeholder input on amendments to the new oil and gas permit by rule and standard permit for oil and gas handling and production facilities that the commission adopted on January 26, 2011. The commission limited current applicability of these authorizations to counties in the Barnett Shale region and is considering expanding applicability to all Texas counties.

XIV. Texas—Challenge to EPA GHG Permitting

On May 4, 2011, Texas filed a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit the day after the EPA published a final rule extending that agency’s takeover of GHG permitting authority in Texas (76 Fed. Reg. 25,178, May 3, 2011). Texas’ lawsuit calls the rule “arbitrary and capricious, an abuse of discretion, and contrary to the Clean Air Act.” The rule replaced the December 2010 interim final rule pursuant to which EPA commenced promulgation of a FIP to issue PSD new source review permits in Texas for GHG emissions. Per the interim final rule, EPA acted as permitting authority for GHG-emitting sources in Texas in the absence of an EPA-approved Texas SIP that includes provisions to regulate GHG. EPA indicates that the “rulemaking is intended to assure that large GHG-emitting sources in Texas, which became subject to PSD on January 2, 2011, will continue to be able to obtain preconstruction permits under the CAA New Source Review (NSR) PSD program beyond the April 30, 2011, expiration date of the FIP that EPA put in place for this purpose via an interim Final Rule.” EPA said that Texas’ refusal to issue PSD permits for GHG emissions left the agency no choice but to resume its role as the permitting authority. EPA notes that the final rule also corrects its previous full approval of Texas’ PSD program into a partial approval and partial disapproval. The correction is based upon EPA’s determination that Texas’ PSD program was flawed because the state did not address how the program would apply to pollutants that become newly subject to CAA

regulation, including non-NAAQS pollutants such as GHGs.

XV. Texas—EPA Proposed Disapproval of Infrastructure SIP

On May 13, 2011, TCEQ submitted comments objecting to the EPA proposed rule to disapprove Texas' infrastructure SIP submission addressing the Clean Air Act § 110(a)(2)(D)(i)(I) transport requirements for the 2006 fine particulate matter (PM_{2.5}) NAAQS (76 Fed. Reg. 20,602, Apr. 13, 2011). In comments, TCEQ made the following three points. First, the September 25, 2009, EPA "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) NAAQS" was published four days after the CAA-required deadline for submittal of such SIPs and did not adequately describe how to complete the required technical analysis. Second, EPA failed to provide adequate notice and information necessary for the meaningful comment in the Cross-State Air Pollution Rule (CSAPR) proposal if it were to serve as the FIP that EPA intends to implement for Texas. Third, because CSAPR is EPA's intended remedy for certain SIP deficiencies, EPA should provide guidance for states whose participation in the CSAPR program is fundamentally different from their participation in the Clean Air Interstate Rule program.

XVI. Texas—Flare Study

On May 23, 2011, TCEQ posted and requested comment on its draft 2010 TCEQ flare study project final report. The draft study, prepared by the University of Texas Center for Energy and Environmental Resources, describes the results of the flare research study conducted at the Zink flare test facility in Tulsa, Oklahoma, during September 2010 as anticipated in the flare task force draft report that TCEQ issued in September 2009. The project involved field tests conducted to measure flare emissions and collect process and operational data in a semi-controlled environment to determine the relationship between flare design, operation, vent gas lower heating value and flow rate, destruction and removal efficiency (DRE), and combustion efficiency (CE). Three key objectives of the field tests were to (1) assess the impact of the high turndown (low flow) rate of vent gas on flare DRE and CE; (2) assess if flares operating within 40 C.F.R.

§ 60.18 parameters achieve the assumed hydrocarbon DRE of at least 98 percent at high turndown, varying assist ratios, and vent gas heat content; and (3) identify and quantify the hydrocarbon species in flare plumes. Along with other preliminary findings, the flare research study determined that existing assumed flare efficiency standards overestimate emissions reductions, including that a flare can be operated pursuant to 40 C.F.R. § 60.18 and not achieve 98 percent DRE. The findings could trigger proposed changes to programmatic and permitting requirements for flares.

XVII. Texas—TCEQ Sunset Bill

On June 17, 2011, the Governor Perry signed into law the TCEQ sunset bill, effective September 1, 2011. The new law reauthorizes the TCEQ until September 1, 2023, and abolishes the On-site Wastewater Treatment Council. With respect to compliance history, the new law stipulates that notices of violations (NOVs) shall be included as a component of compliance history, but for a period not to exceed one year from the date of issuance. Any NOVs administratively determined to be without merit may not be included in compliance history. The agency's set of standards for compliance history classification must take into account both positive and negative factors related to the operation, size, and complexity of the site, including whether the site is subject to Title V of the Clean Air Act. In classifying a repeat violator, the agency shall give consideration to the size and complexity of the site at which the violations occurred and limit consideration to violations of the same nature and environmental media. Before posting compliance history information about a site on the Internet, TCEQ must provide an owner or operator opportunity to review the information. Penalty enhancements attributed to compliance history may no longer exceed 100 percent of the base penalty for an individual violation. TCEQ's administrative penalty caps increased to match civil penalty amounts. TCEQ must also adopt a general enforcement policy by administrative rule. Proposed provisions that would have shifted the burden of proof to protestants in contested case hearings on permit applications were removed. However, the TCEQ executive director's participation in permit hearings is now mandatory, and state agencies, not including river authorities, may not contest the issuance of a TCEQ permit.