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Environmental Update

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Court Stays CSAPR; CAIR Remains in Effect

Contact: Joseph Brown

On December 30, 2011, the D.C. Circuit Court issued an order staying the U.S. Environmental Protection Agency's (EPA) recently finalized Cross-State Air Pollution Rule (CSAPR), leaving the Clean Air Interstate Rule (CAIR) in place pending the Court's review. Along with granting the stay, the Court ordered the parties to submit a briefing schedule that would allow the case to be heard by April 2012. The anticipated expedited schedule suggests that the Court will issue a decision on the merits this summer. The stay also impacts other regulatory matters connected to CAIR and CSAPR; in particular, it may affect the timing and nature of EPA's action on the many state implementation plans (including Florida's) pending before EPA that rely on CAIR to satisfy certain Regional Haze requirements.

EPA Proposes to Determine that CSAPR Equals BART

Contact: Joseph Brown

EPA is proposing to find that the recently finalized Cross-State Air Pollution Rule (CSAPR) satisfies separate Regional Haze Best Available Retrofit Technology (BART) requirements for those states covered by CSAPR. 76 Fed. Reg. 82219 (December 30, 2011). CSAPR replaces EPA's Clean Air Interstate Rule (CAIR), which EPA had similarly determined satisfied Regional Haze BART requirements for covered states.

EPA is also proposing a limited disapproval of pending Regional Haze State Implementation Plans (SIPs), including Florida's, which rely on CAIR to satisfy Regional Haze BART requirements. To address the disapproved portions of the pending SIPs, EPA is proposing Federal Implementation Plans (FIPs) that would replace reliance on CAIR with reliance on CSAPR to satisfy Regional Haze BART requirements. These proposed FIPs would be withdrawn for states submitting SIP revisions that incorporate reliance on CSAPR.

For Florida, CSAPR would not satisfy all the Regional Haze BART requirements CAIR does. In Florida, CAIR satisfies both the SO₂ and NO_x requirements of BART, but CSAPR will only satisfy the NO_x portion. Thus, EPA's replacement of CAIR with CSAPR creates SO₂ related deficiencies in Florida's Regional Haze SIP that will not be corrected merely by Florida incorporating reliance on CSAPR. However, it appears likely that EPA will revisit these actions since the D.C. Circuit Court stayed CSAPR on December 30, 2011, and CAIR currently remains in place. **Comments on the proposal are due by February 13, 2012.**

EPA Revisits Boiler MACT, CISWI, and Non-Hazardous Secondary Materials Rule

Contact: Joseph Brown

As noted in the December 20, 2011, edition of the HGS *Environmental Update*, on December 2nd EPA released proposed revisions to its national emission standards for hazardous air pollutants (NESHAP) for major and area source industrial, commercial and institutional boilers (Boiler MACT); to its NESHAP for commercial/industrial solid waste incinerators (CISWI); and to its non-hazardous secondary materials rule (NHSM). These proposed revisions were published in the December 23, 2011, edition of the *Federal Register* and **a comment deadline of February 21, 2012 has now been set.** See 76 Fed. Reg. 80532; 80598; 80314. In addition, public hearings may held on January 9, 2012, regarding CISWI, NHSM, and/or the area source Boiler MACT, and at a date and time yet to be determined by EPA for the major source Boiler MACT.

EPA Proposes Amendments to Pulp and Paper NESHAP

Contact: Joseph Brown

On December 27, 2011, EPA published proposed amendments to the National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry. 76 Fed. Reg. 81328. The proposed amendments would change emission control measures for kraft pulping process condensates, but would not affect emission control measures for chemical pulping and bleaching. Also, among other things, the proposed amendments affect how startup, shutdown, and malfunctions are treated and include a 5-year repeat emissions testing requirement. Comments on the proposal are due by February 27, 2012.