

Hopping Green & Sams

Attorneys and Counselors

Environmental Update

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DEP Appoints Director and Deputy Director for Air Division

Contact: Brian Accardo

DEP has appointed Michael Halpin as Director of the Division of Air Resource Management and Trina Vielhauer as Deputy Director of the Division. Mr. Halpin has most recently served as the Administrator of DEP's Siting Coordination Office, which will be merged with the Division. Ms. Vielhauer has most recently served as the Chief of the Division's Bureau of Air Regulation.

DEP Issues Guidance on Requests for Additional Information

Contact: Amelia Savage

On March 22, 2011, Herschel Vinyard, Jr., the Secretary of the Florida Department of Environmental Protection (DEP), issued a new policy intended to reduce the number of Requests for Additional Information (RAIs) the DEP issues in response to permit applications. The policy memorandum applies to all permit programs administered by DEP. The new policy requires:

- 1st RAIs must be reviewed by the permitting supervisor;
- 2nd RAIs must be signed by the program administrator;
- 3rd RAIs must be signed by the district director or bureau chief and each district must provide a monthly report of 3rd round RAIs issued and an explanation for why each was issued; and
- 4th RAIs and beyond will require the Secretary's approval.

The concept of limiting RAIs that are sent in response to permit applications was borrowed from language Frank Matthews (of Hopping, Green & Sams) drafted which appears in HB 991 and SB 1404, both of which are still in committees.

EPA Publishes Final Rule Identifying Non-Hazardous Secondary Materials as Solid Wastes when Used in Combustion Units

**Contact: Mike Petrovich
Jake Cremer**

EPA has published its final rule determining that non-hazardous secondary materials are solid wastes under RCRA when used as fuels or ingredients in combustion units. 76 Fed. Reg. 15456 (March 21, 2011). EPA published the proposed rule on June 4, 2010. For the purposes of the new rule, secondary materials are defined as any material that is not the primary product of a manufacturing or commercial process. This could include post-consumer material, off-specification commercial chemical products, or manufacturing chemical intermediates. Some non-hazardous secondary materials are excepted, however, such as those materials remaining within the control of the generator and used as fuel, scrap tires and resinated used as fuel, materials used as ingredients, and materials used as fuels for which a non-waste determination has been granted. The rule becomes effective May 20, 2011.

EPA Extends Stay of 2008 Fugitive Emissions Rule

Contact: Brian Accardo

On March 30, 2011, EPA extended its existing stay of the agency's 2008 Fugitive Emissions Rule from October 3, 2011, to the date on which EPA completes its reconsideration of the Rule. 76 Fed. Reg. 17548. EPA intends to propose and finalize a rule based on the results of the reconsideration by October 4, 2012.

Additionally, EPA clarified that in staying the Fugitive Emissions Rule, EPA reinstated the New Source Review regulations as they existed prior to the Rule. The Fugitive Emissions Rule requires that fugitive emissions be included in determining whether a physical or operational change results in a major modification only for sources in industries that have been designated through rulemaking under section 302(j) of the Clean Air Act. Prior to the Fugitive Emissions Rule, EPA required that fugitive emissions be included in major modification applicability determinations for all source categories.

EPA Proposes to Defer PSD and Title V Permitting for Biogenic CO₂

Contact: Brian Accardo

On March 21, 2011, EPA proposed to defer for a period of three years the application of PSD and Title V permitting requirements to biogenic carbon dioxide (CO₂) emissions from bioenergy and other biogenic stationary sources. 76 Fed. Reg. 15249. This proposal would preclude the consideration of CO₂ emissions when determining whether biogenic stationary sources meet the PSD and Title V applicability thresholds. On July 1, 2011, under Step 2 of the Greenhouse Gas (GHG) Tailoring Rule, stationary sources can trigger PSD and Title V permitting requirements based solely on emissions of CO₂ and other GHGs.

EPA is accepting comments on the proposed deferral until May 5, 2011. The proposed deferral applies only to biogenic CO₂ emissions and does not affect non-GHG pollutants or other GHGs emitted from the combustion of biomass fuel. The proposed deferral does not affect any other EPA program that pertains to stationary sources, such as New Source Performance Standards or the GHG Reporting Program.

EPA Announces New GHG Reporting Deadline

Contact: Brian Accardo

As previously reported, EPA announced its intent to extend from March 31, 2011, the reporting deadline for calendar year 2010 greenhouse gas (GHG) emissions. EPA has now promulgated a final rule to extend the deadline until **September 30, 2011**. 76 Fed. Reg. 14812 (Mar. 18, 2011). The rule changes only the deadline for reporting of calendar year 2010 emissions; it does not change the reporting deadline for future years and does not change what data must be reported.

EPA Extends Stay of Title V Permitting for Certain Area Sources

Contact: Brian Accardo

On March 14, 2011, EPA extended its stay of the provision of the 2009 NESHAP for Chemical Manufacturing Area Sources (Subpart VVVVVV) that requires former major sources, which became area sources by installing control devices after November 15, 1990, to obtain a Title V permit. 76 Fed. Reg. 13515. The stay will be in force until EPA publishes its decision regarding final reconsideration of the provision in the *Federal Register*. EPA's action deals only with the

stay; EPA will request comment on the Title V permitting issue in a forthcoming reconsideration notice.

EPA Issues Modeling Guidance for 1-Hour NO₂ and SO₂ NAAQS

Contact: Brian Accardo

EPA has released a guidance memorandum that clarifies procedures for demonstrating compliance with the 1-hour nitrogen dioxide (NO₂) ambient air quality standard promulgated last year. This memorandum supplements the agency's June 2010 guidance memorandum addressing the application of EPA's *Guidance on Air Quality Models* (40 C.F.R. Part 51, Appendix W) for modeling NO₂ impacts in accordance with PSD permit requirements. The document also contains information that should apply to the 1-hour sulfur dioxide (SO₂) standard.

A copy of the guidance memorandum is available at http://www.epa.gov/ttn/scram/Additional_Clarifications_AppendixW_Hourly-NO2-NAAQS_FINAL_03-01-2011.pdf.

Corps Nationwide Permit Updates

Contact: Amelia Savage

On February 16, 2011, the United States Army Corps of Engineers (Corps) published a proposal to reissue 48 existing nationwide permits (NWP), not reissue one NWP, and issue two new NWPs. 76 Fed. Reg. 9174. The NWP that is not being proposed for reissuance is NWP 47 – *Pipeline Safety Program Designated Time-Sensitive Inspections and Repairs*. The two new NWPs are A (*Land-Based Renewable Energy Generation Facilities*) and B (*Water-Based Renewable Energy Generation Pilot Projects*). The Corps is seeking comments on the NWPs through April 18, 2011.

The Jacksonville District of the Corps is also seeking comments on proposed regional conditions for the NWPs. Many new regional conditions are being proposed. Many proposed regional conditions would require pre-construction notification to the Corps, some would prohibit certain NWPs from being used in the Florida Keys, and others would include additional requirements for projects impacting waters that may be used by certain endangered and threatened species. The Jacksonville District is accepting comments until April 11, 2011. All notices for the NWPs and tables briefly listing the proposed changes and regional conditions are available at: <http://www.saj.usace.army.mil/Divisions/Regulatory/news.htm>.