

Hopping Green & Sams

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Environmental Update

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Scott Makes Reappointment to ERC

Contact: Amelia Savage

On June 21, 2011, Cari L. Roth was reappointed to the Environmental Regulation Commission. Roth is an attorney with Bryant Miller Olive P.A. Her term ends July 1, 2013. Senate confirmation is required.

Scott Makes Further Appointments to WMD Governing Boards

Contact: Amelia Savage

On June 8, 2011, Governor Rick Scott appointed Juan Portuondo to the Governing Board of the South Florida Water Management District. Portuondo is the President of IP Group, Inc., and he succeeds Eric Buermann for the Dade County seat. Portuondo's term ends March 1, 2015.

On June 23, 2011, Michael A. Babb was appointed to the Governing Board of Southwest Florida Water Management District. Babb is the president of Two Rivers Ranch, Inc., and he succeeds Martiza V. Rovira-Fornino. Babb's term ends March 1, 2014. Senate confirmation is required for both.

DEP Appoints New Deputy Director for Division of Air Resource Management

Contact: Robert Manning

On June 29, 2011, DARM Director Mike Halpin announced that Brian Accardo will become the Division's Deputy Director effective August 1st. Brian started his legal career as an associate at Hopping Green & Sams, P.A., after graduating from the University of Miami School of Law in 2008. Prior to law school, Brian obtained a degree in Environmental Science from the University of Florida and worked as an environmental consultant for over eight years in Miami and Atlanta.

Trina Vielhauer, the current DARM Deputy Director, is transferring into another role at the Department. Effective July 21st, Trina will become the Deputy Director of the Division of Environmental Assessment and Restoration.

DEP Proposes to Increase PSD Thresholds for Ethanol Production Facilities

Contact: Joe Brown

On June 24th, DEP published a combined notice of rule development and notice of proposed SIP revisions. The rule amendments would revise the definition of "chemical process plant" in both Rule 62-210.200, F.A.C., and Rule 62-212.400, F.A.C., to exclude ethanol production facilities that produce ethanol by natural fermentation included in the North American Industry Classification System (NAICS) codes 325193 or 312140. As a result, such ethanol production facilities would only be considered "Major Stationary Sources" under Rule 62-201.200, F.A.C., and therefore only subject to PSD permitting if they have the potential to emit 250 tons per year or more of a PSD pollutant (as opposed to the 100 ton per year threshold applicable to chemical process plants). Further, such facilities would not have their fugitive emissions considered in determining whether such sources are a "Major Source of Air Pollution" for Title V permitting or for purposes of PSD or Nonattainment New Source Review. A combination rule workshop/SIP hearing will be held July 27th at Florida Department of Environmental Protection,

Division of Air Resource Management, 111 South Magnolia Drive, Suite 23, Director's Conference Room, Tallahassee, Florida.

Recent Amendments to Chapters 62-210 and 62-213, F.A.C., Become Effective June 29th

Contact: Joe Brown

As described in the October 14, 2010, HGS Environmental Update, DEP recently adopted rule amendments to Chapters 62-210 and 62-213, F.A.C., primarily involving non-Title V air general permits and exemption criteria for internal combustion engines. DEP filed these with the Secretary of State, making them effective June 29, 2011.

U.S. Supreme Court Holds Clean Air Act Displaces Nuisance Action for CO₂ Emissions from Power Plants

Contact: Joe Brown

On June 20, 2011, the United States Supreme Court issued its opinion in *American Electric Power Co., Inc., v. Connecticut*, 564 U.S. ___, No. 10-174, slip op., (2011), holding that the Clean Air Act displaces any federal common-law right to seek abatement of Carbon Dioxide (CO₂) emissions from fossil-fuel fired power plants. In *American Electric Power*, eight states, New York City, and three nonprofit land trusts sought to have the Court impose limits on CO₂ emissions from defendant electric power companies, on the basis that the defendants' CO₂ emissions contributed to global warming and constituted a federal common law interstate nuisance. Relying on its recent decision in *Massachusetts v. EPA*, 549 U.S. 497 (2007), wherein the Court held the Clean Air Act authorizes EPA to regulate CO₂ emissions, the Court held that the Clean Air Act displaces any federal common law right to seek abatement of CO₂ emissions from fossil-fuel fired power plants. The Court held that such federal common law right was displaced regardless of whether EPA has actually exercised its authority to set CO₂ emission standards for the defendant electric utilities. In other words, so long as Congress delegated EPA the authority to regulate CO₂ emissions, the delegation displaces federal common law.

EPA Revises NSPS for Stationary Compression Ignition and Spark Ignition Internal Combustion Engines

Contact: Robert Manning

On June 28, 2011, EPA published a final rule revising the standards of performance for new stationary compression ignition and spark ignition internal combustion engines. 76 Fed. Reg. 37954. The final rule requires more stringent standards for compression ignition engines with greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder. EPA has based the new standards on the technologies applied in the June 2008 rulemaking for mobile source marine engines. For compression ignition engines with displacement at or above 30 liters per cylinder, EPA has revised the standards for the stationary engines to align more closely with the standards for the marine engines.

The rule also makes minor revisions to the NSPS for spark ignition engines, which correct minor errors and provide consistency with combustion ignition standards. The final rule becomes effective on August 29, 2011.

EPA Announces Timeline for Reconsideration of Boiler MACT and CISWI Rule

Contact: Robert Manning

As previously reported, EPA postponed the effectiveness of the final rules titled “National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters,” commonly referred to as the “Boiler MACT,” and “Standards of Performance for New Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units,” commonly referred to as the “CISWI Rule,” until EPA completes reconsideration of these rules. On June 24, EPA released a deadline for that reconsideration. According to the EPA, reconsideration of the rules will be completed by the end of October 2011. EPA anticipates issuing final standards by the end of April 2012.

EPA Issues Final Rule Deferring PSD for Biogenic CO₂ Emissions

Contact: Joe Brown

On July 1, 2011, EPA Administrator, Lisa Jackson, signed a final rule deferring the application of PSD and Title V permitting requirements to biogenic carbon dioxide (CO₂) emissions from bioenergy and other biogenic sources. AS a result, for the next three-year period, subject biogenic and bioenergy sources will not have to account for biogenic CO₂ emissions in determining the applicability of PSD and Title V permitting programs. However, the deferral is temporary, and it is possible that a subsequent EPA rulemaking addressing biogenic CO₂ could become effective and supersede this final deferral rule in less than three years. The new rule will be effective for PSD and Title V permit programs implemented by EPA once it is published. State, local and tribal permitting authorities may adopt the deferral at their option.