

Texas Environmental Update

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The environmental practice of Bracewell & Giuliani LLP offers seamless, front-rank representation in local, state, national, and cross-border regulatory, enforcement, and litigation matters, as well as experienced counsel on the environmental aspects of transactions and operations across the country and around the world. We are dedicated to helping clients successfully navigate complex and costly environmental issues and to building longstanding client relationships founded on superior advice, integrity, and value. We are pleased to provide you with this issue of Bracewell & Giuliani's Texas Environmental Update, offering the latest news about permitting, enforcement, regulatory developments, and other matters of interest to the regulated community in Texas.

BRACEWELL & GIULIANI ALERTS AND PUBLICATIONS

Industry Responds to DOE Electric Reliability Report and EPA Power Sector Rules

Bracewell & Giuliani Energy Legal Blog, December 2, 2011

On December 1, the Department of Energy (DOE) and the US Environmental Protection Agency (EPA) had a teleconference to discuss reliability of the electric grid in the context of pending EPA regulations. DOE's new review limited itself only to resource adequacy, which DOE admits is just one component of reliability assessment. Indeed, Commissioner Phil Moeller [...]

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY - AGENDAS AND WORK SESSIONS

Commissioners' December 7, 2011 Agenda Meeting Webcast

TexasAdmin.com

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY - NEWS REPORTS

Enforcement

TCEQ Approves Fines Totaling \$1,177,802

TCEQ Web Site, December 7, 2011

"The Texas Commission on Environmental Quality today approved penalties totaling \$1,177,802 against 166 regulated entities for violations of state environmental regulations."

Permitting

Judge Rejects Environmental Groups Efforts to Overturn Air Quality Permits for Proposed Tenaska Power Plant

Abilene Reporter-News, December 7, 2011

"A district judge has rejected appeals from environmental groups seeking to overturn air quality permits granted to Tenaska's proposed coal-fired power plant near Sweetwater, the company announced Wednesday."

Regulatory Developments

What's New in TCEQ Rules

TCEQ Web Site, December 9, 2011

Water

As Texas Waits, Water Plan Costs Rise

Houston Chronicle, December 14, 2011

"Texas water planners stand ready to approve a \$53 billion road map for satisfying the state's thirst over the next half-century but have not resolved how to pay for it."

Vote Sinks Aquifer Funding

San Antonio Express-News, December 14, 2011

"The Edwards Aquifer Authority board failed Tuesday to approve funding for a plan to assure continued pumping from the region's main aquifer and protect springflows in San Marcos and New Braunfels."

LCRA Plan to Allow Cutting Off Water to Rice Farmers Gets State Approval

Austin American-Statesman, December 7, 2011

"State regulators gave their final approval Wednesday to the Lower Colorado River Authority for an emergency measure that could cut off all water to downstream rice farmers in 2012."

Aransas Project Lawsuit Blaming State for Whooping Crane Die-off Goes to Trial Monday

Corpus Christi Caller-Times, December 5, 2011

"CORPUS CHRISTI - The state's river water management is being challenged by an Aransas County group that claims the state is partially to blame for a 2009 whooping crane die off."

Other TCEQ News

Tax Exemption Request From Refinery Giant Stirs Debate

Fort Worth Star-Telegram, December 11, 2011

"The possibility that Texas schools could lose tens of millions in taxes from refineries is drawing the attention and concern of lawmakers, environmental activists and educators."

BUREAU OF OCEAN ENERGY MANAGEMENT

Request for Information on the State of the Offshore Renewable Energy Industry - Auction Format Information Request (AFIR)

76 Federal Register 76174, December 6, 2011

COUNCIL ON ENVIRONMENTAL QUALITY

Notice of Availability, Draft Guidance on Improving the Process for Preparing Efficient and Timely Environmental Reviews Under the National Environmental Policy Act

76 Federal Register 77492, December 13, 2011

DEPARTMENT OF ENERGY

Notice of Proposed Rulemaking, Coordination of Federal Authorizations for Electric Transmission Facilities

76 Federal Register 77432, December 13, 2011

EPA

Notice of Public Comment Period, Draft Research Report: Investigation of Ground Water Contamination Near Pavillion, Wyoming

76 Federal Register 77829, December 14, 2011

Matagorda County May Join List of Smog Violators

Houston Chronicle, December 9, 2011

"The Environmental Protection Agency intends to add Matagorda County to the list of Texas' smog violators - a move that would place the site of a fight over a proposed coal-fired power plant under the nation's toughest clean-air rules."

Environmental Protection Agency Adds Wise, Hood Counties to DFW Ozone-Nonattainment Area

Fort Worth Star-Telegram, December 9, 2011

"The Environmental Protection Agency has informed Texas officials that it plans to add Wise and Hood counties to the Dallas-Fort Worth nonattainment area that has failed to meet federal ozone standards, with Barnett Shale natural gas operations cited as a major factor in increasing air pollution in the counties."

Withdrawal of Proposed Disapproval, Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); General Definitions; Definition of Modification of Existing Facility

76 Federal Register 76673, December 8, 2011

EPA Annual Enforcement Results Highlights Commitment to Address Largest Pollution Problems With Greatest Community Impact

EPA Web Site, December 8, 2011

Correction, Air Quality Designations for the 2008 Lead (Pb) National Ambient Air Quality Standards

76 Federal Register 76048, December 6, 2011

EPA REGION 6

EPA Region 6 Enforcement and Compliance Results for 2011

Region 6 Web Site, December 8, 2011

Fertilizer Company Agrees to Pay \$1.8 Million Penalty to Resolve Hazardous Waste Violations

Region 6 Web Site, December 7, 2011

Direct Final Rule, National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the State Marine of Port Arthur Superfund Site

76 Federal Register 76048, December 6, 2011

FISH AND WILDLIFE SERVICE

Notice of Availability; Request for Comments; Deepwater Horizon Oil Spill; Draft Phase I Early Restoration Plan and Environmental Assessment

76 Federal Register 78016, December 15, 2011

Request for Public Comments, Draft Policy on Interpretation of the Phrase 'Significant Portion of Its Range' in the Endangered Species Act's Definitions of 'Endangered Species' and 'Threatened Species'

76 Federal Register 76987, December 9, 2011

TEXAS RAILROAD COMMISSION

Texas Agency OKs Rule Requiring Drillers to Disclose Chemicals Used in Fracking

Fort Worth Star-Telegram, December 14, 2011

"The Texas Railroad Commission adopted a rule Tuesday that will require oil and natural gas operators to publicly disclose the chemicals used and water volumes required for hydraulic fracturing of wells starting Feb. 1."

Railroad Commission to Analyze Rules on Oilfield Water Recycling

MyWestTexas.com, December 2, 2011

"Saying that she wants to make sure her agency does not hinder producers' use of new water recycling technologies, Texas Railroad Commission Chairman Elizabeth Ames Jones has directed commission staff to review its rules in that category."

OTHER TEXAS ENVIRONMENTAL NEWS

Hydraulic Fracturing Expected to Be Significant Issue for Oil and Gas Operators

MyWestTexas.com, December 14, 2011

"Water - the oil and gas industry's use of it and the industry's impact on water supplies - could well dominate the industry's list of concerns in the future."

Plan Is Set to Block Well Access in County

Houston Chronicle, December 6, 2011

"The political tug of war involving Conroe waste company TexCom Gulf Disposal could be near its end if Montgomery County officials are given rare control of TxDOT's access management authority."

REPORTS

Risky Business: Coal Ash Threatens America's Groundwater Resources at 19 More Sites

Environmental Integrity Project, December 12, 2011

"In this report, we identify an additional 19 sites where coal combustion waste appears to have contaminated groundwater with arsenic or other pollutants at levels above primary Safe Drinking Water Act Maximum Contaminant Limits (MCL) for pollutants like arsenic."

EPA Must Improve Oversight of State Enforcement

EPA Office of Inspector General Web Page, December 9, 2011

"EPA does not administer a consistent national enforcement program."

Draft Investigation of Ground Water Contamination Near Pavillion, Wyoming

EPA Web Site, December 2011

"In response to complaints by domestic well owners regarding objectionable taste and odor problems in well water, the U.S. Environmental Protection Agency initiated a ground water investigation near the town of Pavillion, Wyoming under authority of the Comprehensive Environmental Response, Compensation, and Liability Act."

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