

Texas Environmental Update

By: **Richard Alonso, Kevin A. Ewing, Tracy D. Hester, Jeffrey R. Holmstead, Jason B. Hutt, and Tim Wilkins.**

June 15, 2011

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.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY - AGENDAS AND WORK SESSIONS

Commissioners' June 22, 2011 Meeting Agenda

TCEQ Web Site

Commissioners' June 8, 2011 Agenda Meeting Webcast

TexasAdmin.com

top

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY - NEWS REPORTS

Air

Austin Energy Seeks to Head Off Suit Over Fayette Plant Emissions

Austin American-Statesman, June 15, 2011

"Austin Energy hopes to thwart a state environmental group's effort to impose stricter pollution controls at the Fayette Power Plant, a coal-burning facility east of Austin that supplies about a third of the city's electricity."

Air Quality Plan to Emerge From Haze

Denton Record-Chronicle, June 12, 2011

"State regulators are reworking a statewide plan to improve air quality, but Denton County is unlikely to see relief anytime soon."

Heat Takes a Toll on Air, Too

Houston Chronicle, June 10, 2011

"Houston just can't kick its smog habit."

[top](#)

Enforcement

TCEQ Approves Fines Totaling \$1,854,902

TCEQ Web Site, June 8, 2011

"The Texas Commission on Environmental Quality today approved penalties totaling \$1,854,902 against 135 regulated entities for violations of state environmental regulations."

[top](#)

Permitting

Complaint: Aspen Wastewater Threatening Ellen Trout Lake

Lufkin Daily News, June 12, 2011

"A private landowner has filed a complaint with the Texas Commission on Environmental Quality, alleging that the release of the new Aspen Power biomass plant's wastewater into Ellen Trout Lake could adversely affect the area."

[top](#)

Regulatory Developments

What's New in TCEQ Rules

TCEQ Web Site, June 10, 2011

[top](#)

Waste

Residents Near Texas Nuke Dump Get Health Survey

Houston Chronicle, June 10, 2011

"LUBBOCK, Texas - Residents living near a low-level radioactive waste burial ground in West Texas will be asked to complete a health survey as part of a study commissioned by state officials."

[top](#)

Water

Power Plant in Matagorda Co. Gains in Water Fight

Houston Chronicle, June 13, 2011

"The Lower Colorado River Authority says there is enough water, even in dry times, for a proposed coal-fired power plant in Matagorda County - a finding that all but removes one of the last hurdles for the controversial project."

Water Restrictions Increase Amid Texas Drought

Austin American-Statesman, June 5, 2011

"LUBBOCK - Lush, green lawns might be a luxury Mother Nature won't allow this summer in parts of Texas."

Texas Wants Oklahoma Water

NewsOK.com, June 5, 2011

"People in North Texas want Oklahoma water bad enough to sue for it."

[top](#)

BUREAU OF OCEAN ENERGY MANAGEMENT, REGULATION AND ENFORCEMENT

Regulators Take Team Approach on Inspections

Houston Chronicle, June 13, 2011

"WASHINGTON - Government inspections of thousands of offshore oil and gas facilities now will involve teams of federal workers rather than just a single auditor under a plan announced Monday."

[top](#)

COUNCIL ON ENVIRONMENTAL QUALITY

Notice of Availability; Request for Comments; National Ocean Council; Strategic Action Plan Content Outlines

76 Federal Register 33726, June 9, 2011

[top](#)

EPA REGION 6

EPA to Resample Air at San Jacinto Elementary School

EPA Region 6 Web Site, June 14, 2011

"DALLAS – The Environmental Protection Agency (EPA) announced that it will resample air at San Jacinto Elementary School for 1,3-butadiene and other volatile organic compounds (VOCs)."

North Central Texas Council of Governments and Houston-Galveston Area Council Recognized by the EPA for Their Clean Air Initiatives

EPA Region 6 Web Site, June 7, 2011

"DALLAS – The Environmental Protection Agency (EPA) has honored two Texas innovators for their commitment to clean air: The North Central Texas Council of Governments' (NCTCOG) Regional Emissions Enforcement Program

for assisting local law enforcement to reduce fraudulent and illegal emissions inspections activities, and the Houston-Galveston Area Council's (HGAC) Commute Solution Program that promotes voluntary trip reduction programs and services designed to reduce traffic congestion and improve the region's air quality."

[top](#)

EPA

U.S. EPA Delays Rollout of CO2 Rule on Power Plants

Reuters, June 13, 2011

"WASHINGTON - The U.S. Environmental Protection Agency, under pressure from Republicans and big utilities, said on Monday it had extended a deadline by two months on draft rules that would for the first time limit greenhouse gas emissions from power plants."

EPA Improves Clean-Air Permitting in Indian Country

EPA Web Site, June 13, 2011

"WASHINGTON - The U.S. Environmental Protection Agency (EPA) today finalized rules to ensure that Clean Air Act permitting requirements are applied consistently to facilities in Indian country to better protect the health of people living near them."

Greenhouse Gas Emission Rules Unlawful, Texas Official Says

Austin American-Statesman, June 6, 2011

"Expanding on the push-and-pull between Washington and Texas on environmental regulation, the state's attorney general has called federal regulations meant to cut greenhouse gases from auto tailpipe emissions unlawful."

Proposed Rule, Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Permit Renewals

76 Federal Register 32333, June 6, 2011

[top](#)

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Receipt of Revised Application for Letters of Authorization; Request for Comments and Information, Taking and Importing Marine Mammals; Geological and Geophysical Exploration of Mineral and Energy Resources on the Outer Continental Shelf in the Gulf of Mexico

76 Federal Register 34656, June 14, 2011

[top](#)

TEXAS RAILROAD COMMISSION

Texas Railroad Commissioner David Porter Vows to Push for Rulemaking Process for Frac Fluid Disclosure to Be Completed by July 1, 2012

Railroad Commission Web Site, June 3, 2011

Chairman Elizabeth Ames Jones Begins Process for First State Rule to Disclose Frac Fluid Components in Drilling

Railroad Commission Web Site, June 3, 2011

top

82ND TEXAS LEGISLATURE - NEWS

Bill Meant to Ease Fears Over Fracking

San Antonio Express-News, June 11, 2011

"Presuming Gov. Rick Perry signs HB 3328, which is sitting on his desk, the Railroad Commission will begin writing the rules industry must follow when identifying the many chemicals used to unlock hydrocarbons in deep shale formations such as Eagle Ford."

Post-Session, Some Environmentalists Feel They Dodged Legislative Bullet

Austin American-Statesman, June 8, 2011

"For environmental activists, the legislative session looked to be a grim one as it got under way in January."

Industry Enjoys Success Stories in Legislative Session

MyWestTexas.com, June 8, 2011

"For 140 days, Texas legislators focused on ways to close a budget gap that ranged from \$15 billion to \$27 billion."

Session Yields Mixed Results

Denton Record-Chronicle, June 5, 2011

"Natural gas drillers will have to disclose most of the chemicals they use in hydraulic fracturing under a bill passed by the Texas Legislature, but many other drilling-related bills died during the regular session, including an overhaul of the state agency that regulates the industry."

top

82ND TEXAS LEGISLATURE - BILLS OF INTEREST

June 19, 2011, is the deadline for the Governor to sign or veto bills passed during the regular legislative session; bills without specific effective dates become law August 29, 2011.

HB 1981 

Author: Smith, Wayne

Status: 05/27/2011, Sent to the Governor

Relating to measuring, monitoring, and reporting emissions.

HB 2663 

Author: Chisum

Status: 05/30/2011, Sent to the Governor

Relating to the effect of rules and standards adopted by the Railroad Commission of Texas relating to the liquefied petroleum gas industry on ordinances, orders, or rules adopted by political subdivisions relating to that industry.

HB 2694 

Author: Smith, Wayne

Status: 05/30/2011, Sent to the Governor

Relating to the continuation and functions of the Texas Commission on Environmental Quality and abolishing the On-site Wastewater Treatment Research Council.

HB 3134 

Author: Crownover

Status: 05/27/2011, Sent to the Governor

Relating to the plugging of inactive oil and gas wells.

HB 3268 

Author: Lyne

Status: 05/30/2011, Sent to the Governor

Relating to permits for air contaminant emissions of stationary natural gas engines used in combined heating and power systems.

HB 3328 

Author: Keffer, Crownover, Burnam, Parker, Strama

Status: 05/31/2011, Sent to the Governor

Relating to the disclosure of the composition of hydraulic fracturing fluids used in hydraulic fracturing treatments.

SB 18 

Author: Estes, Duncan

Status: 05/19/2011, Effective on 9/1/11

Relating to the use of eminent domain authority.

SB 332 

Author: Fraser

Status: 05/30/2011, Sent to the Governor

Relating to the ownership of groundwater below the surface of land, the right to produce that groundwater, and the management of groundwater in this state.

SB 385 

Author: Williams

Status: 05/30/2011, Sent to the Governor

Relating to the creation of programs to support the use of alternative fuels, including an alternative fuel program to be funded by the Texas emissions reduction plan fund and a grant program for certain natural gas vehicles.

SB 527 

Author: Fraser, Estes, Harris, Nelson, Shapiro, et al.

Status: 05/09/2011, Effective on 9/1/11

Relating to projects funded through the Texas emissions reduction plan.

SB 875 

Author: Fraser

Status: 05/30/2011, Sent to the Governor

Relating to compliance with state and federal environmental permits as a defense to certain actions for nuisance or trespass.

SB 1134 

Author: Hegar

Status: 05/31/2011, Sent to the Governor

Relating to the issuance of permits for certain facilities regulated by the Texas Commission on Environmental Quality.

SB 1504 

Author: Seliger, Hinojosa

Status: 05/27/2011, Sent to the Governor

Relating to the disposal or storage of waste at, or adjacent to, the Texas Low-Level Radioactive Waste Disposal Compact waste disposal facility.

[top](#)

OTHER TEXAS ENVIRONMENTAL NEWS

Environmental Groups Sue Over Shell Offshore Plan

Houston Chronicle, June 9, 2011

"WASHINGTON - Lawsuits filed Thursday that challenge the federal government's approval of a Shell Oil Co. offshore exploration plan present a major test of regulators' power to swiftly review deep-water drilling blueprints."

Toxins in Certain Game Fish Could Spark a Closer Look

Corpus Christi Caller-Times, June 8, 2011

"COASTAL BEND - A limited study reveals dangerous levels of mercury in oversized redfish caught in the surf near Port Aransas."

Cornyn Amendment Would Halt Lizard Listing

MyWestTexas.com, June 7, 2011

"The Permian Basin oil industry received a boost Tuesday in its fight to keep the sand dune lizard off the endangered species list"

Council Approves Drilling Amendments

Lewisville Leader, June 7, 2011

"On Monday, Lewisville took a further step toward ensuring the health of its residents regarding oil and gas drilling."

[top](#)

REPORTS

A Lifesaver, Not a Job Killer

Economic Policy Institute Web Site, June 14, 2011

"This report aims to provide a more complete picture of the toxics rule's effect on employment by examining each of these areas in some detail."

Integrated Assessment of Black Carbon and Tropospheric Ozone: Summary for Decision Makers

United Nations Environment Programme Web Site, June 2011

"The result is a comprehensive analysis of drivers of emissions, trends in concentrations, and impacts on climate, human health and ecosystems of BC, tropospheric O3 and its precursors."

Environmental Regulation and Electric System Reliability

Bipartisan Policy Center Web Site, June 2011

"This report summarizes the current state of knowledge about challenges facing the electric power sector as it seeks to maintain reliability without jeopardizing important progress on public health and environmental protections."

2011 Strategic Directions Survey Results

Black & Veatch Web Site, June 2011

"The survey once again explored the traditional utility-focused questions regarding operations and regulations."

Proposed CATR + MACT 

AmericasPower.org, May 2011

"Evaluated impacts of EPA's Clean Air Transport Rule (CATR) and Utility Maximum Achievable Control Technology (MACT) proposals."

Air Quality: Information on Tall Smokestacks and Their Contribution to Interstate Transport of Air Pollution 

Government Accountability Office Web Site, May 2011

"GAO analyzed Energy Information Administration (EIA) data on power plants, surveyed states with tall stacks, and interviewed experts on the transport of air pollution."