

Texas Environmental Update

June 1, 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.

BRACEWELL & GIULIANI ALERTS AND PUBLICATIONS

West Virginia Dismisses Challenge to Marcellus Oil and Gas Development Clean Air Act Permits

Bracewell & Giuliani Environmental Law Update, May 26, 2011

On Thursday, May 19, 2011, the West Virginia Air Quality Board granted a directed verdict to Appalachia Midstream Services, LLC, a subsidiary of Chesapeake Energy, dismissing an appeal challenging its Clean Air Act permits for its development in northern West Virginia. The verdict sends a positive signal to the oil and gas industry in the United States [...]

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY - AGENDAS AND WORK SESSIONS

Commissioners' June 8, 2011 Meeting Agenda

TCEQ Web Site

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY - NEWS REPORTS

Air

Editorial: Gas industry Should Help Fight Smog in Dallas-Fort Worth

Fort Worth Star-Telegram, May 26, 2011

"It's a pleasure almost two decades gone now, but used-to-be you could enjoy the captivating aroma of fresh-baked bread from the Mrs. Baird's bakery as you drove on the West Freeway near downtown Fort Worth."

TCEQ: Turning Up Refinery Flares Could Fix Houston's Air

Houston Chronicle, May 24, 2011

"Small changes in the use of open flames, or flares, to burn off pressurized gases at oil refineries and chemical

plants could help improve Houston's air quality, a new study suggests."

Outside Polluters Costing Texas Industries

Houston Chronicle, May 23, 2011

"Houston is known as a smog factory, but wind-borne pollution from Mexico and other countries is partly to blame for our bad air."

Liberty County Business Owner Sentenced in Air Pollution Case

TCEQ Web Site, May 23, 2011

"The Texas Commission on Environmental Quality today announced that its environmental crimes unit investigation of a Liberty County storage tank manufacturer culminated today in a guilty plea and criminal fines totaling \$250,000."

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Permitting

Review Power Plant Permit, TCEQ Told

Houston Chronicle, May 31, 2011

"A Travis County judge has told Texas' environmental agency to take another look at the air pollution permit for a proposed coal-fired power plant in Matagorda County - a ruling that could delay the project for months."

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Regulatory Developments

What's New in TCEQ Rules

TCEQ Web Site, May 27, 2011

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Water

Additional Limits on Water Are Set

San Antonio Express-News, June 1, 2011

"Stage 2 drought restrictions are in effect today in San Antonio, as the J-17 well - the Edwards Aquifer's index well in Bexar County - has fallen below 650 feet above mean sea level."

Texas Politicians Knew Agency Hid the Amount of Radiation in Drinking Water

khou.com, May 19, 2011

"HOUSTON - Newly-released e-mails from the Texas Commission on Environmental Quality show the agency's top commissioners directed staff to continue lowering radiation test results, in defiance of federal EPA rules."

TCEQ Restricts Junior Water Rights

TCEQ Web Site, May 18, 2011

"Drought conditions continue to be widespread across the state."

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Other TCEQ News

Editorial: Hotter Burn

Houston Chronicle, May 30, 2011

"When we see 'TCEQ' in a headline, our hearts automatically sink."

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BUREAU OF OCEAN ENERGY MANAGEMENT, REGULATION AND ENFORCEMENT

Notice of Availability of a Revised Draft Supplemental Environmental Impact Statement (SEIS) and Public Hearings, Outer Continental Shelf, Alaska OCS Region, Chukchi Sea Planning Area, Oil and Gas Lease Sale 193



76 Federal Register 30956, May 27, 2011

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EPA

Final Rule, Confidentiality Determinations for Data Required Under the Mandatory Greenhouse Gas Reporting Rule and Amendments to Special Rules Governing Certain Information Obtained Under the Clean Air Act



76 Federal Register 30782, May 26, 2011

Science Advisory Board Staff Office Notification of a Public Meeting of the SAB Mercury Review Panel



76 Federal Register 29746, May 23, 2011

Final Rules; Delay of Effective Dates; Industrial, Commercial, and Institutional Boilers and Process Heaters and Commercial and Industrial Solid Waste Incineration Units




76 Federal Register 28662, May 18, 2011

Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}); Final Rule To Repeal Grandfather Provision



76 Federal Register 28646, May 18, 2011

Re-Proposal of Effluent Limits Under the NPDES General Permit for Oil and Gas Exploration, Development and Production Facilities Located in State and Federal Waters in Cook Inlet, AK (AKG-31-5000) 

76 Federal Register 28776, May 18, 2011

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PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION

Pipeline Safety: Notice of Public Meetings on Managing Challenges With Pipeline Seam Welds and Improving Pipeline Risk Assessments and Recordkeeping 

76 Federal Register 30241, May 24, 2011

Pipeline Safety: Meetings of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee 

76 Federal Register 29333, May 20, 2011

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TEXAS RAILROAD COMMISSION

New Fracturing Disclosure Rules May Take Awhile

Houston Chronicle, May 31, 2011

"Texas lawmakers have passed a bill requiring disclosure of most of the chemicals used in hydraulic fracturing, a natural gas and oil production technique that has been a source of contention in some communities over the past year."

Chisum Still Has Plans for Railroad Commission

Lubbock Avalanche-Journal, May 27, 2011

"AUSTIN - State Rep. Warren Chisum, who announced three months ago he would seek a seat in the three-member Texas Railroad Commission, can go on with his original two-possibility plan the Legislature put on hold for seven weeks."

Official: FM Fighting Rule 37

Flower Mound Leader, May 20, 2011

"There may be another battle brewing between Flower Mound and Williams Exploration."

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82ND TEXAS LEGISLATURE - NEWS

Texas Legislature Has Mixed Environmental Results

Fort Worth Star-Telegram, May 31, 2011

"HOUSTON - The Texas Legislature ended its regular session with a mixed bag of environmental rules, passing some bills that put it ahead of the nation and others that are bound to infuriate the U.S. Environmental Protection Agency."

Bid to Reform Texas Railroad Commission, State's Oil/Gas Regulator, Fails

Platts, May 31, 2011

"Texas lawmakers have failed to pass legislation that would have reformed the agency chiefly responsible for regulating the oil and natural gas industry in the state."

Thorny State Measure Appears to Be Dead

Denton Record-Chronicle, May 27, 2011

"A measure that would make it harder for landowners to sue polluting industries for property damages appeared to be dead on Thursday."

Panel Reaches Compromise on Dam Safety Bill

Austin American-Statesman, May 25, 2011

"A panel of state lawmakers has reached a compromise on legislation that would exempt some dams from state inspection."

Despite Drought, Water Plan Dies

Houston Chronicle, May 24, 2011

"AUSTIN - The severe drought across Texas apparently hasn't made it dry enough for lawmakers to pour billions of dollars into a plan to increase the state's water supply over the next 50 years."

Drilling-Related Legislation Appears Dead in Texas Legislature

Fort Worth Star-Telegram, May 22, 2011

"AUSTIN - With just a week left in the legislative session, most proposed drilling-related bills appear dead but a handful still have a chance of becoming state law."

Texas House to EPA: Don't Regulate Our Greenhouse Gas

KUT News, May 20, 2011

"The Texas House approved a measure 107-34 today urging US Congress to prevent the Environmental Protection Agency (EPA) from regulating greenhouse gas emissions in the Lonestar State."

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82ND TEXAS LEGISLATURE - BILLS OF INTEREST REPORTED OUT OF COMMITTEE

House Committee on Energy Resources

House Committee on Environmental Regulation

House Committee on Natural Resources

Senate Committee on Natural Resources

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OTHER TEXAS ENVIRONMENTAL NEWS

Lizard, W. Texas Oil Are Both in Danger

Houston Chronicle, May 30, 2011

"People in Midland like to say God felt such remorse for the dry, dusty landscape that he decided to give it oil."

Fight Over Canada-Texas Oil Pipeline Moves to Congress

Fort Worth Star-Telegram, May 23, 2011

"WASHINGTON - A dispute over a plan to send oil from western Canada to the Texas coast moved to Capitol Hill on Monday, where a House panel debated whether to speed a decision by the Obama administration."

Powering Up: Final Preparations Are Under Way at State's First Biomass Plant

The Lufkin Daily News, May 21, 2011

"Standing 127 feet above ground, Aspen Power president Danny Vines explained how a pile of leftover logging debris can be turned into energy at Texas' first biomass power plant."

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REPORTS

Tallying Up the Impact of New EPA Rules 


Economic Policy Institute, May 31, 2011

"This paper examines the combined effects of the major EPA regulations that the Obama administration has already finalized as well as the regulations that it has proposed but not finalized."

Introduction, Climate & Electricity Annual 2011: Data and Analyses 

International Energy Agency, May 27, 2011

"Climate & Electricity Annual 2011: Data and Analyses provides authoritative regional and global data on the evolution of the sector to date and presents original analyses on how policy and technology can address the problem of rising CO2 emissions associated with the demand for electricity services."

Improving Our Regulations: A Preliminary Plan for Periodic Retrospective Reviews of Existing Regulations [EPA's Preliminary Plan for Periodic Retrospective Reviews] 

Office of Management and Budget Web Site, May 24, 2011

"EPA developed this Preliminary Plan for Periodic Retrospective Reviews of Existing Regulations (the Plan) in response to President Obama's recent call in Executive Order 13563 for each federal agency to 'develop a preliminary plan, consistent with law and its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.'"

Draft 2010 TCEQ Flare Study Project Final Report 

TCEQ Web Site, May 23, 2011

"The purpose of this project was to conduct field tests to measure flare emissions and collect process and operational data in a semi-controlled environment to determine the relationship between flare design, operation, vent gas lower heating value (LHV) and flow rate, destruction and removal efficiency (DRE), and combustion efficiency (CE)."

Department of the Interior Preliminary Plan for Retrospective Regulatory Review 

Office of Management and Budget Web Site, May 2011

"This plan implements President Obama's Executive Order 13563 of January 18, 2011, 'Improving Regulation and Regulatory Review,' which seeks to make the U.S. Government's regulatory system work better for the American public."