



CE Newsletter

INSIDE THIS ISSUE

EPA Adopts Locomotive and Marine Diesel Engine Emission Rules	2
EPA Proposes NPDES Permit For Vessels	2
EPA Withdraws Early Benzene Credit Rule	2
EPA Proposes 2008 Construction Storm Water Permit	3
EPA and Corps of Engineers Issue Regulations on Wetland Comp. Mitigation	3
TCEQ to Reject Data from Unaccredited Labs June 30	4
TCEQ Adopts New Rules To Allow Concurrent Renewals and Amendments	4
TCEQ Proposes UST Program Changes	5
EPA Amends TRI Regulations	5
EPA Issues Nonattainment Finding for BPA	5
EPA Proposes Nonmetallic Mineral Processing Plant Emission Rule Amendments	6
EPA Revises Ozone Standards	6
EPA Proposes Changes to National Ambient Air Quality Standards for Lead	7
EPA Finalizes PM 2.5 NSR Rules	7
EPA Issues New NESHAP Rules	8
EPA Amends F019 Waste Code	10
EPA Denies Request To Stop Ethanol Facility Rules	10
EPA Amends Aerosol Coatings Rule	10
CE NEWS	11

Offices in Amarillo, Dallas, and Houston

2nd Quarter 2008

EPA PROPOSES TO APPROVE TCEQ PLANS TO REDUCED PUBLIC NOTICE FOR STANDARD PERMITS

On May 15th, the EPA proposed to approve a revision to the Texas State Implementation Plan (SIP), submitted by the TCEQ on October 9, 2006. The SIP revision EPA is proposing to approve would require decreased newspaper notice for proposed air quality Standard Permits with statewide applicability to the following metropolitan areas: Austin, Dallas, Houston, and any other regional newspapers the TCEQ Executive Director designates on a case-by-case basis. TCEQ will publish notice of a proposed air quality Standard Permit in the Texas Register and will issue a press release. In addition, TCEQ may also use electronic means to inform state and local officials of a proposed air quality Standard Permit. EPA proposes to approve these revisions pursuant to section 110 of the Federal Clean Air Act (Act). For further information contact Mr. Stanley M. Spruiell at (214) 665-7212 or spruiell.stanley@epa.gov.

EPA STAYS EQUIPMENT LEAK RULES FOR SOCFI AND PETROLEUM REFINERIES

On June 2nd, the EPA took direct final action on the standards of performance for equipment leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry (SOCMI) and Petroleum Refineries. On November 16, 2007, EPA promulgated amendments and established new standards for these industries. Following that action, the Administrator received a petition for reconsideration. In response to the petition, EPA granted a stay of certain provisions in the final amendments and new standards. In this action, EPA is extending the stay of the requirements under reconsideration until a final decision is reached on these issues. This rule is effective on August 1, 2008 without further notice, unless EPA receives adverse comment by July 2, 2008 or receives a request for a public hearing. For further information contact Ms. Karen Rackley (919) 541-0634 or rackley.karen@epa.gov.



CE Newsletter

EPA ADOPTS LOCOMOTIVE AND MARINE DIESEL ENGINE EMISSION RULES

On May 6th, the EPA adopted final rules for a comprehensive program to dramatically reduce pollution from locomotives and marine diesel engines. The controls will apply to all types of locomotives, including line-haul, switch, and passenger, and all types of marine diesel engines below 30 liters per cylinder displacement, including commercial and recreational, propulsion and auxiliary. The near-term emission standards for newly-built engines will phase in starting in 2009. The near-term program also includes new emission limits for existing locomotives and marine diesel engines that apply when they are remanufactured, and take effect as soon as certified remanufacture systems are available, as early as 2008. The long-term emissions standards for newly-built locomotives and marine diesel engines are based on the application of high-efficiency catalytic aftertreatment technology. These standards begin to take effect in 2015 for locomotives and in 2014 for marine diesel engines. For further information contact John Mueller at (734) 214-4275 or Mueller.John@epa.gov.

EPA PROPOSES NPDES PERMIT FOR VESSELS

On June 17th, the EPA proposed an NPDES Vessel General Permit (VGP) to cover discharges incidental to the normal operation of commercial vessels and recreational vessels greater than or equal to 79 feet in length and an NPDES Recreational General Permit (RGP) to cover discharges incidental to the normal operation of recreational vessels less than 79 feet in length. This action is in response to a District Court ruling that vacates, as of September 30, 2008, a long-standing EPA regulation that excludes discharges incidental to the normal operation of a vessel from the need to obtain an NPDES permit. Although EPA has filed an appeal with the 9th Circuit Court of Appeals, as a practical matter, the Agency cannot simply await the outcome of that appeal. This is because if the District Court's order remains unchanged, as of September 30, 2008, discharges of pollutants incidental to the normal operation of a vessel that had formerly been exempted from NPDES permitting by the regulation will be subject to the prohibition in CWA section 301(a) against the discharge of pollutants without a permit. Comments on the proposed permits must be submitted on or before August 1, 2008. For further information on the proposed commercial vessel NPDES general permit contact Ryan Albert 202-564-0763; or e-mail: CommercialVesselPermit@epa.gov.

EPA WITHDRAWS EARLY BENZENE CREDIT RULE

On May 9th, the EPA withdrew the direct final rule for revising the February 26, 2007 mobile source air toxics rule's requirements that specify the benzene control technologies that qualify a refiner to generate early benzene credits, published on March 12, 2008. For further information contact Christine Brunner at (734) 214-4287 or brunner.christine@epa.gov.



CE Newsletter

EPA PROPOSES 2008 CONSTRUCTION STORM WATER PERMIT

On May 16th, the EPA issued for public comment the proposed 2008 NPDES general permits for stormwater discharges from new dischargers engaged in large and small construction activities. "New dischargers" are those who did not file a notice of intent ("NOI") to be covered under the 2003 construction general permit ("2003 CGP") before it expired. Existing dischargers who properly filed an NOI to be covered under the 2003 CGP continue to be authorized to discharge under that permit according to its terms. This draft 2008 CGP contains the same limits and conditions as the EPA's 2003 CGP with the exception of a few minor modifications which are detailed below. As proposed, EPA is issuing this CGP for a period not to exceed two (2) years and will make the permit available to new construction activities and unpermitted ongoing activities only. In addition to proposing this draft CGP, EPA is also requesting comments on the criteria to be used by the EPA to incorporate, by reference, "qualifying local program requirements" for erosion and sediment control as provided for in EPA's regulations. Approved qualifying local program requirements can then be incorporated by reference into the Agency's construction general permit. A construction site operator with construction activities within the jurisdiction of the qualifying local program can follow local erosion and sediment control requirements in lieu of complying with comparable erosion and sediment control requirements in EPA's CGP. For further information contact Greg Schaner at (202) 564-0721 or schaner.greg@epa.gov.

EPA AND CORPS OF ENGINEERS ISSUE REGULATIONS ON WETLAND COMPENSATORY MITIGATION

On April 10th, the EPA and the Army Corps of Engineers (COE) issued regulations governing compensatory mitigation for activities authorized by permits issued by the COE. The regulations establish performance standards and criteria for the use of permittee-responsible compensatory mitigation, mitigation banks, and in-lieu programs to improve the quality and success of compensatory mitigation projects for activities authorized by COE permits. This rule improves the planning, implementation and management of compensatory mitigation projects by emphasizing a watershed approach in selecting compensatory mitigation project locations, requiring measurable, enforceable ecological performance standards and regular monitoring for all types of compensation and specifying the components of a complete compensatory mitigation plan, including assurances of long-term protection of compensation sites, financial assurances, and identification of the parties responsible for specific project tasks. This rule applies equivalent standards to permittee-responsible compensatory mitigation, mitigation banks and in-lieu fee mitigation to the maximum extent practicable. Since a mitigation bank must have an approved mitigation plan and other assurances in place before any of its credits can be used to offset permitted impacts, this rule establishes a preference for the use of mitigation bank credits, which reduces some of the risks and uncertainties associated with compensatory mitigation. This rule also significantly revises the requirements for in-lieu fee programs to address concerns regarding their past performance and equivalency with the standards for mitigation banks and permittee-responsible compensatory mitigation. The effective date is June 9, 2008.



CE Newsletter

TCEQ TO REJECT DATA FROM UNACCREDITED LABS AFTER JUNE 30

Starting July 1, 2008, analytical data submitted to the TCEQ that is related to permitting or remediation must be generated by a lab that the Texas Laboratory Accreditation Program has accredited under the NELAC standard for matrices, methods, and parameters of analysis, unless:

- The lab is an in-house lab and meets one of these criteria:
 - ◆ The lab performs work for its owner, for another company with a unit located on the same site, or without compensation for a governmental agency or charitable organization; and
 - ◆ The lab is in another state and is accredited or inspected by that state.
- The lab is accredited under federal law.
- The data are needed for emergency-response activities and no TLAP-accredited lab is available.
- The lab supplies data for which the TCEQ does not offer accreditation.

Starting July 1, 2008, the TCEQ will accept analytical data for a permitting or remediation decision only if the data comply with all applicable rules for the regulatory program involved and:

- The lab generating the data is NELAC-accredited by TLAP,
- The TCEQ has approved an exception as described above, or
- The data were generated on or before June 30, 2008.

This policy is based on the requirements of 30 TAC Sections 25.4 and 25.6. For more information visit the Texas Laboratory Accreditation Program website.

TCEQ ADOPTS NEW RULES TO ALLOW CONCURRENT RENEWALS AND AMENDMENTS

On May 7th, the TCEQ adopted rules that would implement Senate Bill 1673 and would allow an air permit to be renewed at the same time as an application for certain permit amendments. SB 1673 allows the TCEQ to process a renewal application at the same time as an amendment for a preconstruction permit, provided the amendment application is filed not more than three years before the date the permit is scheduled to expire and is subject to notice requirements. In order for the TCEQ to process a renewal application concurrently with such an amendment application, the applicant must not object. Guidance documents will be updated to clarify that the notice must be clear that the actions include both the renewal and amendment and that both fees must be paid, even if the actions are processed concurrently. For more information visit http://www.tceq.state.tx.us/assets/public/legal/rules/rule_lib/adoptions/07024116_ado_clean.pdf.



CE Newsletter

TCEQ PROPOSES UST PROGRAM CHANGES

On April 16th, the TCEQ proposed changes to the UST regulations to comply with recent legislation. HB 3554 allows the use of money in the Petroleum Storage Tank Remediation (PSTR) Account for certain AST and UST expenses; extends the fee imposed on the delivery of a petroleum product on withdrawal from bulk; eliminates the current annual UST and AST facility fee and allows its reinstatement at per tank amounts set by the commission; and extends the sunset date of the PSTR Account and the expiration date of the petroleum storage tank reimbursement program. HB 1956 requires financial assurance. For more information visit http://www.tceq.state.tx.us/assets/public/legal/rules/rule_lib/proposals/07037334_pex.pdf.

EPA AMENDS TRI REGULATIONS

On June 9th, the EPA amended the Toxics Release Inventory (TRI) regulations to make certain updates and corrections to the list of North American Industry Classification System (NAICS) codes subject to reporting under the TRI to reflect the Office of Management and Budget (OMB) 2007 NAICS revision. EPA is making corrections to the list of NAICS codes subject to reporting under TRI that was published on June 6, 2006, in the final rule adopting NAICS for TRI reporting and is correcting a longstanding typographical error in the regulatory text. This final rule is effective on August 8, 2008. For further information contact the Emergency Planning and Community Right-to-Know Hotline at (800) 424-9346 or <http://www.epa.gov/epaoswer/hotline/>.

EPA ISSUES NONATTAINMENT FINDING FOR BPA

On March 18th, the EPA issued a rule finalizing nonattainment and reclassification of the Beaumont/Port Arthur 8-hour ozone nonattainment area (BPA area). EPA finds that the BPA area has failed to attain the 8 hour ozone national ambient air quality standard ("NAAQS" or "standard") by June 15, 2007, the attainment deadline set forth in the Clean Air Act (CAA) and Code of Federal Regulations (CFR) for marginal nonattainment areas. As a result, on the effective date of this rule, the BPA area is reclassified by operation of law as a moderate 8-hour ozone nonattainment area. The new moderate area attainment date for the reclassified BPA area is "as expeditiously as practicable," but no later than June 15, 2010. The State of Texas must submit a SIP revision that meets the requirements of the CAA on or before January 1, 2009. This final rule was effective on April 17, 2008. For further information contact Carl Young at (214) 665-7247 or young.carl@epa.gov.



CE Newsletter

EPA PROPOSES NONMETALLIC MINERAL PROCESSING PLANT EMISSION RULE AMENDMENTS

On April 22nd, the EPA proposed amendments to the Standards of Performance for Nonmetallic Mineral Processing Plant(s) (NMPP). These proposed amendments include proposed revisions to the emission limits for NMPP affected facilities which commence construction, modification, or reconstruction after April 22, 2008. These proposed amendments for NMPP also include additional testing and monitoring requirements for future affected facilities; exemption of affected facilities that process wet material from this proposed rule; changes to simplify the notification requirements for all affected facilities; and changes to definitions and various clarifications. EPA is also proposing an amendment to the Standards of Performance for Calciners and Dryers in Mineral Industries to address applicability of this proposed rule to thermal sand reclamation processes at metal foundries. For further information contact Mr. Bill Neuffer (919) 541-5435 or neuffer.bill@epa.gov.

EPA REVISES OZONE STANDARDS

On March 27th, the EPA published final revisions to the primary and secondary NAAQS for O₃ to provide requisite protection of public health and welfare, respectively. With regard to the primary standard for O₃, EPA is revising the level of the 8-hour standard to 0.075 parts per million (ppm), expressed to three decimal places. With regard to the secondary standard for O₃, EPA is revising the current 8-hour standard by making it identical to the revised primary standard. EPA is also making conforming changes to the Air Quality Index (AQI) for O₃, setting an AQI value of 100 equal to 0.075 ppm, 8-hour average, and making proportional changes to the AQI values of 50, 150 and 200.

In 1997, the O₃ standards were revised by replacing the existing primary 1-hour average standard with an 8-hour average O₃ standard set at a level of 0.08 ppm, which is equivalent to 0.084 ppm using the standard rounding conventions. The form of the primary standard was changed to the annual fourth-highest daily maximum 8-hour average concentration, averaged over 3 years. The secondary O₃ standard was changed by making it identical in all respects to the revised primary standard.

For further information contact Dr. David J. McKee at 919-541-5288 or mckee.dave@epa.gov.

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Please let us know if you are interested in receiving our newsletter by e-mail.

You can e-mail me at ernest@caldwelleng.com to receive our newsletter.



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EPA PROPOSES CHANGES TO NATIONAL AMBIENT AIR QUALITY STANDARDS FOR LEAD

On May 20th, the EPA proposed to make revisions to the primary and secondary NAAQS for lead (Pb). With regard to the level and indicator of the standard, EPA proposes to revise the level to within the range of 0.10 to 0.30 ug/m³ in conjunction with retaining the current indicator of Pb in total suspended particles (Pb-TSP) but with allowance for the use of Pb-PM₁₀ data, and solicits comment on alternative levels up to 0.50 ug/m³ and down below 0.10 ug/m³. With regard to the averaging time and form of the standard, EPA proposes two options: To retain the current averaging time of a calendar quarter and the current not-to-be-exceeded form, revised to apply across a 3-year span; and to revise the averaging time to a calendar month and the form to the second-highest monthly average across a 3-year span. EPA also solicited comment on revising the indicator to Pb-PM₁₀ and on the same broad range of levels on which EPA is soliciting comment for the Pb-TSP indicator (up to 0.50 ug/m³). EPA also invited comment on when, if ever, it would be appropriate to set a NAAQS for Pb at a level of zero. EPA proposes to make the secondary standard identical in all respects to the proposed primary standard. EPA is also proposing corresponding changes to data handling procedures, including the treatment of exceptional events, and to ambient air monitoring and reporting requirements for Pb including those related to sampling and analysis methods, network design, sampling schedule, and data reporting. Finally, EPA is providing guidance on its proposed approach for implementing the proposed revised primary and secondary standards for Pb. For further information contact Dr. Deirdre Murphy at telephone 919-541-0729 or Murphy.deirdre@epa.gov.

EPA FINALIZES PM 2.5 NSR RULES

On May 16th, the EPA finalized regulations to implement the New Source Review (NSR) program for fine particulate matter (that is, particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers, generally referred to as "PM_{2.5}"). The NSR program was created by the Clean Air Act (Act or CAA) to ensure that stationary sources of air pollution are constructed or modified in a manner that is consistent with air quality goals in the area. The Clean Air Fine Particle Implementation Rule, which was proposed in the Federal Register on November 1, 2005, included requirements and guidance for State and local air pollution agencies to follow in developing State implementation plans (SIPs) and also the NSR provisions. The final implementation rule that was promulgated on April 25, 2007, included all the SIPs related provisions. In this rulemaking, EPA is finalizing the NSR provisions of the November 1, 2005 proposed rule including the major source threshold, significant emissions rate, and offset ratios for PM_{2.5}, interpollutant trading for offsets and applicability of NSR to PM_{2.5} precursors. This final rule is effective on July 15, 2008. For further information contact Mr. Raghavendra (Raj) Rao (919) 541-5344, or rao.raj@epa.gov.



CE Newsletter

EPA ISSUES NEW NESHAP RULES

The EPA recently issued proposed and final NESHAP rules governing emission sources as shown in the following table:

Sources Covered	Date Issued	Proposed/ Final	Description	EPA Contact
Area Source Standards for Plating and Polishing Operations	3/14/08	Proposed	This rule proposes emission standards in the form of management practices for new and existing tanks, thermal spraying equipment, and mechanical polishing equipment in certain plating and polishing processes.	Donna Lee Jones (919) 541-5251 jones.donnalee@epa.gov
Acrylic and Modacrylic Fibers Production, Carbon Black Production, Chemical Manufacturing; Chromium Compounds, Flexible Polyurethane Foam Production and Fabrication, Lead Acid Battery Manufacturing, and Wood Preserving	3/26/08	Final	EPA published technical corrections through this direct final action to amend the rules published on July 16, 2007. The amendments clarify certain provisions in two of the final area source rules (flexible polyurethane foam production and fabrication and lead acid battery manufacturing) and correct editorial and publication errors in all of the final rules.	Ms. Sharon Nizich, (919) 541-2825; nizich.sharon@epa.gov
Nine Metal Fabrication and Finishing Source Categories	4/3/08	Proposed	This rule proposes emission standards in the form of management practices and equipment standards for new and existing operations of dry abrasive blasting, machining, dry grinding and dry polishing with machines, spray painting and other spray coating, and welding operations.	Donna Lee Jones (919) 541-5251 jones.donnalee@epa.gov
Dry Cleaning Facilities	4/1/08	Final	This action amends rule language to correct applicability cross references that were not correctly amended between the most recent proposed and final rule revisions, and to clarify that condenser performance monitoring may be done by either of two prescribed methods (pressure or temperature), regardless of whether an installed pressure gauge is present. Without these amendments, new area sources could erroneously be required to perform monitoring that was proposed for only major sources, and installed condenser performance gauge readings could be required of sources when a prescribed temperature method is just as valid for compliance purposes	Warren Johnson, (919) 541-5124, johnson.warren@epa.gov

These NESHAPs would implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT).



CE Newsletter

EPA ISSUES NEW NESHAP RULES

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Sources Covered	Date Issued	Proposed/ Final	Description	EPA Contact
Hazardous Waste Combustors	4/8/08	Final	These amendments to the October 2005 final rule clarify several compliance and monitoring provisions, and also correct several omissions and typographical errors in the final rule. EPA is finalizing the amendments to facilitate compliance and improve understanding of the final rule requirements. This rule does not address issues for which petitioners sought reconsideration. Nor does it address issues raised in EPA's comment solicitation of September 27, 2007.	Frank Behan (703) 308-8476, behan.frank@epa.gov
Semiconductor Manufacturing	4/1/08	Proposed	On October 19, 2006, EPA proposed amendments to the NESHAP for Semiconductor Manufacturing, published on May 22, 2003. The purpose of the proposed amendments was to clarify the emission requirements for process vents by establishing a new maximum achievable control technology floor level of control for existing combined hazardous air pollutants process vent streams containing inorganic and organic hazardous air pollutants and adding requirements for new and reconstructed combined hazardous air pollutants process vents. For existing combined hazardous air pollutants process vents, EPA had proposed that the floor was no control. In light of Sierra Club v. EPA, we are re-proposing the requirements for existing and new combined hazardous air pollutants process in this supplemental proposal.	John Schaefer, (919) 541-0296; schaefer.john@epa.gov
Organic Liquids Distribution (Non-Gasoline)	4/23/08	Final	In this action, EPA is clarifying combustion control device compliance requirements, certain storage tank control compliance dates, and vapor balance system monitoring requirements. In addition, EPA is correcting typographical errors found in the July 28, 2006, final rule amendments. This direct final rule is effective on July 22, 2008.	Stephen Shedd, (919) 541-5397, shedd.steve@epa.gov

These NESHAPs would implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT).



CE Newsletter

EPA AMENDS F019 WASTE CODE

On June 4th, the EPA amended the list of hazardous wastes from non-specific sources (called F-wastes) by modifying the scope of the EPA Hazardous Waste No. F019 (Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process). The EPA is amending the F019 listing to exempt wastewater treatment sludges from zinc phosphating, when such phosphating is used in the motor vehicle manufacturing process, provided that the wastes are not placed outside on the land prior to shipment to a landfill for disposal, and the wastes are placed in landfill units that are subject to or meet the specified landfill design criteria. This final action on the F019 listing does not affect any other wastewater treatment sludges either from the chemical conversion coating of aluminum, or from other industrial sources. Additionally, this rule amends the CERCLA list of Hazardous Substances and Reportable Quantities so that the F019 listing description is consistent with the amendment to F019 under regulations for hazardous wastes from non-specific sources. This final rule is effective on July 7, 2008. For information on specific aspects of the rule, contact James Michael at (703) 308-8610 or michael.james@epa.gov.

EPA DENIES REQUEST TO STOP ETHANOL FACILITY RULES

On May 2nd, the EPA denied a request petition for reconsideration and the request for a stay of the final rule published May 1, 2007, entitled "Prevention of Significant Deterioration, Nonattainment New Source Review and Title V: Treatment of Certain Ethanol Production Facilities Under the 'Major Emitting Facility' Definition." On July 2, 2007, EPA received a petition for reconsideration pursuant to 307(d)(7)(B) of the CAA from the Natural Resources Defense Council ("NRDC"). The NRDC petition also requested that EPA stay implementation of the final rule pending reconsideration of the rule. For further information contact Ms. Joanna Swanson at (919) 541-5282 or swanson.joanna@epa.gov.

EPA AMENDS AEROSOL COATINGS RULE

On March 24th, the EPA took direct final action to amend the National Volatile Organic Compound Emission Standards for Aerosol Coatings final rule, which is a rule that establishes national reactivity-based emission standards for the aerosol coatings category (aerosol spray paints) under the Clean Air Act. This direct final action clarifies and amends certain explanatory and regulatory text in the Aerosol Coatings final rule, as the final rule contains misstatements and possibly confusing language on how compounds are added to the list in Tables 2A, 2B or 2C-- Reactivity Factors, and when distributors and retailers are regulated entities responsible for compliance with the final rule. For further information contact Ms. J. Kaye Whitfield (919) 541-2509 or whitfield.kaye@epa.gov.



CE Newsletter

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- Matt Jones, PhD., P.E. recently past his PE exam and is now officially a Registered Professional Engineering in the State of Texas. Congratulations!! Matt graduated with a PhD in Civil Engineering from Texas Tech University. Matt has several years of experience in the environmental field and previously worked for CE back in 2001. He left CE in 2002 and attended Texas Tech where he completed his PhD. We are very pleased to have back with us and he is already busy working several projects for our Houston office.



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