

# Air Quality Committee Newsletter

Vol. 14, No. 1

January 2011

## MESSAGE FROM THE CHAIR OF THE AIR QUALITY COMMITTEE

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The Clean Air Act continues to be among the most relevant and dynamic areas of environmental regulation and with the contributions of many, the Air Quality Committee is keeping pace. For those fortunate to attend the Fall Meeting in New Orleans, we heard from a diverse group of experts on actions to regulate greenhouse gas (GHG) emissions, revise and implement National Ambient Air Quality Standards (NAAQS), establish technology-based standards for limiting hazardous air pollutants, and the evolving relationship of the U.S. Environmental Protection Agency (EPA) with state permitting programs. Nearly twenty attended our committee dinner with lively conversation and good food, followed by a trip uptown to see the venerable New Orleans band, the Radiators. Thanks to all of those who made the Fall Meeting so productive and enjoyable, especially the Committee members and vice chairs who shared their time, knowledge, and company.

As the Obama administration's ambitious air agenda proceeds through rulemakings and legal challenges, we are continuing to cover developments with programs and through our Committee newsletter. Stay tuned for a Quick Teleconference (QT) in November discussing the suitability of the Clean Air Act for implementation of a GHG cap-and-trade program. A December program will review and discuss the details of the steps EPA is taking to include GHGs as regulated pollutants

in the Title V and prevention of significant deterioration (PSD) permitting programs, beginning in January 2011. Early next year, we are planning a QT to discuss EPA's final new NAAQS for ozone (when promulgated) and other NAAQS developments. And for the Annual Conference on Environmental Law in March, we will be examining the role of states as permitting authorities, including perspectives from state agencies, permittees, and EPA on state implementation plans and the state/federal relationship.

When I began practicing air law in 1993, the Clean Air Act was an important but somewhat obscure legal area among a small group of committed practitioners. Seventeen years later, the profile of the practice and the number of air lawyers are at an all-time high. We appreciate the unprecedented interest and all who have recently joined the Air Quality Committee. Please feel free to drop me a note anytime with your thoughts about the Committee and how we can better enhance your practice.

## MESSAGE FROM THE EDITOR OF THE COMMITTEE NEWSLETTER

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The Committee newsletter would not be possible without the dedicated support of our colleagues who have once again done a magnificent job of summarizing developments at EPA headquarters and in the regions. If you are interested in writing for future issues, please contact me.

**Air Quality Committee Newsletter**  
**Vol. 14, No. 1, January 2011**  
**Philip E. Karmel, Editor**

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## Upcoming Section Programs—

For full details, please visit  
[www.abanet.org/environ/calendar/](http://www.abanet.org/environ/calendar/)

January 19, 2011

### **Nonprofit Issues for the “Non” Nonprofit Attorney Series**

Primary Sponsor: Business Law Section  
Webinar

January 26, 2011

### **Financial Assurance: Is the Government Asking Too Much?**

Quick Teleconference

February 1, 2011

### **Wave Energy in the U.S. Today: How Technology, Academia, Regulations, and Policies are Shaping the Industry**

Quick Teleconference

February 23-25, 2011

### **29th Annual Water Law Conference** San Diego

March 17-19, 2011

### **40th Annual Conference on Environmental Law**

Salt Lake City

April 11-12, 2011

### **Petroleum Marketing Attorneys’ Meeting** New Orleans



## SEVENTH CIRCUIT HANDS DOWN TWO INTERESTING AIR CASES

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The Seventh Circuit decided two Clean Air Act cases in September and October 2010. In both cases, some cold water was thrown on the plaintiffs.

### **Scope of Citizens Enforcement of Prohibitions Against “Air Pollution” and “Fugitive Particulate Matter”**

In *McEvoy v. IEI Barge Services, Inc.*, \_\_\_ F.3d \_\_\_, 2010 WL 3463703 (7th Cir. Sept. 7, 2010), an individual homeowner (McEvoy) and commercial property owners in East Dubuque, Illinois, were annoyed by windblown coal dust from storage piles owned by the defendant’s barge services operations. They alleged that the coal dust would blow onto their properties, annoying people there and invading structures if they were not shut tight. The situation thus set up a classic scenario out of a textbook on common law nuisance. The plaintiffs sued. Rather than take the issues to state court or the Illinois Pollution Control Board, however, they filed their case in federal court under the so-called citizen-suit provision of the Clean Air Act.

This provision, section 304 of the Clean Air Act, states in relevant part: “any person may commence a civil action on his own behalf . . . against any person . . . who is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of (A) an emission standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation.” 42 U.S.C. § 7604.

The trial court granted the defendant’s motion for summary judgment. The theory of its motion was that the heart of plaintiffs’ case rested on prohibitions on “air pollution” and “fugitive particulate matter” in Illinois rules and regulations. The defendant submitted that these prohibitions are not enforceable “emission standards” or “limitations” on emissions within the meaning of the act. The plaintiffs appealed that question, but the Seventh Circuit panel of Judges Easterbrook, Bauer, and Wood upheld the trial judge.

Judge Wood wrote her usual thoughtful opinion for the panel. She noted that under the Illinois state implementation plan (SIP), there are a host of regulations. Numerous of these regulations clearly state emission limits or prescribe standards, as those terms are defined in the act. She then notes that the statute defines emission standards as “a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under this chapter.” 42 U.S.C. § 7602(k).

Then, she weighs the rather generic formulations of the Illinois rules on “air pollution” and “fugitive particulate matter” against the statutory template and finds them wanting, devoid of sufficient precision to be judicially enforceable.

The opinion is not all bad news for citizens or public prosecutors. Judge Wood and the panel adopt a broad meaning of what is enforceable, compared to the trial court. The district judge read the law to require that standards needed to be set forth in a permit to be enforced; the panel decided that any regulation that is relevant and part of the state implementation plan can be enforced, *provided* that it has enough precision to constitute a standard or limitation respecting emissions. In so doing, there is an interesting discussion of the history and import of section 304(f)(4) of the act (42 U.S.C. § 7604(f)(4)), which the district judge read narrowly, but the Seventh Circuit says has the natural meaning of expanding the scope of potential citizen suits.

But alas for the plaintiffs, the language of the Illinois “air pollution” prohibition is deemed by the court to be basically a hortatory statement that “thou shalt not pollute.” The court focuses on the fact that there is no precise standard or limitation articulated by saying one shall not emit contaminants “so as to cause air pollution.”

The “fugitive particulate matter” rule was, for Judge Wood, a tougher hurdle on the narrow question of whether it prescribes a standard or limitation. That rule states: “No person shall cause or allow the emission of

fugitive particulate matter from any process, including any material handling or storage activity, that is visible by an observer looking generally toward the zenith at a point beyond the property line of the source.” 35 I.A.C. § 212.301.

Judge Wood observes: “We must decide where on the spectrum running from the specific and enforceable to the hortatory and unenforceable this regulation falls.” After deeming this to be a question of “first impression,” she engages in a series of questions that dissect the meaning of the rule, or imprecision thereof. She notes uncertainty as to characteristics of the observer, the light conditions, the number of times an occurrence or observation is made, uncertainties as to weather, and other issues that create vagueness. In the end, she finds the regulation to be a “grey” area, where, although the value of visible observation is real, the parameters for describing what is seen are too uncertain to make for fair enforcement by a court.

This case is certain to challenge prosecutors and citizens’ counsel to be more specific about regulatory and permit infractions in their pleaded contentions of wrongdoing. It also may serve to remit ordinary nuisance cases back to state courts, which have weighed the question of what is unreasonable interference with the use of another’s property for hundreds of years. Of course, that may mean giving up the attorneys’ fee award available under the Clean Air Act.

### **Indiana SIP Defined Emissions Increase as Increase in Maximum Hourly Rate**

The Seventh Circuit also issued another opinion on Clean Air Act enforcement in the federal context. In *United States v. Cinergy Corp.*, \_\_\_ F.3d \_\_\_, 2010 WL 4009180 (7th Cir. Oct. 12, 2010), a panel consisting of Chief Judge Easterbrook and Judges Posner and Rovner handed a defeat to EPA in its decade-long campaign to tag utilities and other large emitters with major source violations on account of process and equipment changes.

This case arises in Indiana, where Cinergy had made changes in certain coal-fired electric generating units without first obtaining a permit to “modify” the units in question. After a jury trial, four changes that occurred

between 1989 and 1992 were found to be unlawful modifications. The finding rested in great part on expert testimony from two government witnesses. The experts focused on annual sulfur dioxide and nitrogen oxide emissions to conclude the Cinergy had violated the Indiana SIP.

Cinergy argued that the changes involved between 1989 and 1992 were governed by a SIP approved in 1982, and that the 1982 SIP proscribed changes that increased “potential emissions.” Cinergy had shown that the disputed changes did not increase the units’ maximum hourly emissions rate. Thus, the company submitted, even if it used the units more often due to efficiencies they achieved, and even though that meant significantly greater annual emissions, there had not been an improper increase of “potential emissions” as defined by the then-applicable provisions of the Indiana SIP.

Judge Posner’s opinion adroitly navigates between the desires of EPA to deal with actual emissions and the defense of the company. The court finds that the Indiana SIP revision that dealt with *actual* emissions (rather than potential emissions) was not made or approved by EPA until after 1992, so it was “tough luck” for the EPA. Even though the agency’s heart was in the right place, it was deemed unfair to hold the company to a standard that had not yet officially changed, even though change was “expected.” This result is salutary in upholding the necessity of federal compliance with the formalities of the relationship of a federal agency to the states that take part in the regulatory process.

The case may also be of some import in terms of the court’s comments on relevance of expert testimony. The EPA experts used a base-load model to gauge and project emissions of pollutants like nitrogen oxide. Judge Posner quite correctly observes that while that may be reasonable in dealing with base load units, these particular coal-fired units were in fact inefficient enough that they were used as cycling units, i.e., units operating intermittently, rather than almost steadily almost all the time. Thus he and the panel reject the propriety of the evidence put forth, and reversed the verdicts in favor of the government. The case was remitted for retrial.

## EPA REGIONAL REPORTS

### EPA HEADQUARTERS

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#### I. Air Toxics—Portland Cement Kilns

On September 9, 2010, EPA issued final amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) and new source performance standards (NSPS) for Portland Cement Manufacturing. 75 Fed. Reg. 54,970. The amended NESHAP regulations will reduce emissions of mercury, total hydrocarbons, hydrochloric acid, and particulate matter (PM) from both new and existing cement kilns, while the amended NSPS regulation will reduce nitrogen oxides (NO<sub>x</sub>), sulfur dioxide (SO<sub>2</sub>), and PM from new kilns.

The final NESHAP rule sets emission limits for mercury, total hydrocarbons, and PM that apply both to kilns that are “major sources” of air toxics (i.e., kilns that emit 10 tons of any air toxic or 25 tons of multiple air toxics per year) and to kilns that are area sources. The rule also sets hydrochloric acid limits for major source kilns only. The emission limits for mercury, total hydrocarbons, and PM are less stringent for existing source kilns than new source kilns. For example, the emissions limits for mercury for existing source kilns are 55 pounds per million tons of clinker, averaged over 30 days, and for new source kilns 21 pounds per million tons of clinker, averaged over 30 days. For major source kilns, the amended rule sets an emission limit for hydrochloric acid for existing and new source kilns of 3 parts per million by volume, averaged over 30 days. Existing kilns must comply by 2013, and new kilns built after May 6, 2009, must comply at start-up or within 60 days after September 9, 2010, whichever is later. Beginning in 2013, the final rule removes a ban on the use of fly ash from utility boilers. Previous rules banned the use of fly ash from utility boilers if the mercury content of that fly ash had increased as a

result of certain utility mercury emission controls, such as activated carbon injection. Emissions from fly ash are now addressed through the mercury emission limits. In addition to emission limits, the final NESHAP requires continuous emissions monitoring for mercury, total hydrocarbons, PM and, in some cases, hydrochloric acid. The PM monitoring requirement replaces visual evaluation.

The new source performance standards apply to all cement kilns built after June 16, 2008. The NSPS emission limits for NO<sub>x</sub>, SO<sub>2</sub>, and PM are 1.5 lb/ton clinker, 0.4 lb/ton clinker, and 0.01 lb/ton of clinker, respectively. All are averaged over 30 days. The final NSPS requires continuous emissions monitoring of NO<sub>x</sub>, SO<sub>2</sub>, and PM. “New” kilns must comply with the NSPS within 60 days of September 9, 2010, or at start-up, whichever is later.

#### II. Air Toxics—Reciprocating Internal Combustion Engines

On August 20, 2010, EPA published final air toxic standards for existing gas-fired stationary reciprocating internal combustion engines, also known as spark ignition (SI) engines. 75 Fed. Reg. 51,570. The final rule took effect October 19, 2010, and applies to stationary SI engines that meet specific siting, age, and size criteria. The rule applies to SI engines that are (1) used at area sources of air toxics emissions and constructed or reconstructed before June 12, 2006; and (2) used at “major sources” of air toxics emissions, have a site rating of less than or equal to 500 horsepower (HP), and constructed or reconstructed before June 12, 2006. The rule establishes numeric emission limits for the following engines: (1) stationary nonemergency four stroke lean burn (4SLB) engines with a site rating between 100 HP and 500 HP and located at a major source of hazardous air pollutant (HAP) emissions; and (2) stationary nonemergency 4 stroke rich burn and 4SLB engines with a site rating greater than 500 HP and located at an area source of HAP emissions. Engines that are not required to comply with the numeric limits must perform in accordance with work or management practices. Operators of existing stationary SI engines that are subject to the numeric emission limits must perform

emissions tests to demonstrate engine performance and compliance with the numeric emission limits.

SI engines are found throughout industrial facilities. They are used at power plants and chemical and manufacturing plants to generate electricity for compressors and pumps and by the oil and gas industry for production and pipeline transport. In emergencies, they are used to generate electricity to pump water for flood and fire control. The rule will reduce emissions of air toxics, NO<sub>x</sub>, carbon monoxide, and volatile organic compounds. Compliance is required in 2013. EPA estimates the total national capital costs for the final rule to be approximately \$383 million in 2013 when the rule is fully implemented, with a total national annual compliance cost of \$253 million in 2013. The agency further estimates that price and output changes for production from affected facilities in 2013 should be less than one percent for most affected output.

### **III. Air Toxics—Six Air Toxics Standards for 16 Source Categories**

On September 14, 2010, EPA proposed changes to six air toxic standards that cover sixteen industrial source categories. The six air toxics standards include (1) printing and publishing industry; (2) steel pickling-HCl process facilities and hydrochloric acid regeneration plants; (3) chromium electroplating; (4) Group I polymers and resins; (5) marine tank vessel loading operations; and (6) pharmaceuticals production. The risk assessments found that all six air toxics standards provide an acceptable risk with an ample margin of safety to protect public health, and that no further risk reduction is required to address residual risk.

The proposed rule would eliminate provisions related to emissions during periods of start-up, shutdown, and malfunction for all 16 categories in response to the District of Columbia Circuit Court's vacatur of the start-up, shutdown, and malfunction provisions for other air toxics standards. The elimination of these provisions is the only proposed change to the air toxics standards for the (1) printing and publishing industry

and (2) steel pickling-HCl process facilities and hydrochloric acid regeneration plants.

EPA is also proposing other changes to the remaining four air toxics standards.

For chromium electroplating, EPA is proposing a prohibition on the addition of certain wetting agent fume suppressants used on electroplating or anodizing tanks and proposing several housekeeping requirements to minimize emissions of chromium-laden fugitive dust from chromium electroplating operations. Under the proposal, these housekeeping requirements would be required to be incorporated in the facility's operation and maintenance plan.

For Group I polymers and resins, EPA is not proposing new amendments based on the technology assessment. Instead, the agency is proposing amendments to reduce emissions from previously unregulated emission points. In particular, EPA is proposing to add standards limiting emissions from the back-end process operations from the butyl rubber production, halobutyl rubber production, epichlorohydrin rubber production, nitrile butadiene rubber production, and neoprene rubber production source categories, and to require control of hydrochloric acid emissions resulting from the combustion of chlorinated organic compounds for front-end process vents from the butyl rubber production, halobutyl rubber production, and ethylene propylene rubber production source categories.

For marine tank vessel loading operations, EPA would require all facilities to perform vapor recovery if loading one million or more barrels per year of gasoline, based on the technology assessment. EPA is also proposing to require some small facilities to use submerged fill to reduce emissions from previously unregulated emission points.

For pharmaceuticals production, the agency is proposing language to clarify regulatory requirements for the MACT standard. No other changes except for the previously discussed changes to the start-up, shutdown, and malfunction provisions are proposed.

#### **IV. Air Toxics—Sewage Sludge Incineration Units**

On October 14, 2010, EPA published proposed NSPS and emission guidelines (EG) for new and existing sewage sludge incineration (SSI) units. 75 Fed. Reg. 63,260. The proposed rule would apply to incinerators or combustion devices used to burn dewatered sewage sludge and cover multiple-hearth (MH) and fluidized-bed incinerators typically located at wastewater treatment facilities. The proposal does not cover units incinerating sewage sludge at commercial, industrial, and institutional facilities.

The proposed rules would establish opacity limits and emission limits for nine pollutants emitted from SSI units: mercury, lead, cadmium, hydrogen chloride, PM, carbon monoxide, dioxins/furans, NO<sub>x</sub>, and SO<sub>2</sub>. The standard that EPA is proposing for mercury emitted from MH incineration units is more stringent than the minimum requirement. Under the proposed standards, EPA estimates that 196 of 218 SSI units may be required to install activated carbon injection, fabric filters, or high-efficiency scrubbers. EPA estimates that larger facilities will choose to comply with the proposed rule by installing controls, but that smaller facilities may choose to switch from incineration to landfilling or another cost-effective disposal alternative. The proposed rule represents the first time EPA has regulated SSI units under section 129 of the Clean Air Act, a statutory provision specific to solid-waste combustion. Under the proposal, sewage sludge incineration would be regulated under section 129 rather than section 112 of the Clean Air Act. Pursuant to section 129, the proposal would also require testing and operator training as well as monitoring, record keeping, and reporting.

#### **V. Climate Change—Denial of Petitions to Reconsider Endangerment Finding**

On August 13, 2010, EPA published notice of its denial of ten petitions to reconsider its Endangerment and Cause or Contribute Findings for Greenhouse Gases (collectively, the Endangerment Finding) under section 202(a) of the Clean Air Act. 75 Fed. Reg. 49,556. The petitions urged EPA to reconsider its

Endangerment Finding based upon certain e-mail communications between scientists at the Climate Research Unit at the University of East Anglia in the United Kingdom and several other scientists (sometimes called the ClimateGate argument), a limited number of errors and claimed errors in the 2007 Intergovernmental Panel on Climate Change Fourth Assessment Report, and submissions of a limited number of additional studies not previously considered as part of the scientific record of the Endangerment Finding. In denying the petitions, EPA characterized the petitioners' arguments as "inadequate and generally unscientific." *Id.* EPA described the science supporting the Endangerment Finding as "robust, voluminous, and compelling." For further support for its conclusions, EPA relied upon the recent science assessment of the U.S. National Academy of Sciences. *Id.* EPA also noted that its conclusions concerning the e-mails were consistent with independent inquiries by the U.K. House of Commons, Science, and Technology Committee, the University of East Anglia, Oxburgh Panel, the Pennsylvania State University, and the University of East Anglia, Russell Panel; however, EPA did acknowledge that the "recommendation for more transparent procedures concerning availability of underlying data appears appropriate." *Id.* at 49,558. EPA stated that the Endangerment Finding had been "decades in the making" and that the conclusion that anthropogenic emissions of GHGs caused climate change and that human-induced climate change generates risks and impacts to public health and welfare has become "more clear over time with the accumulation of evidence." *Id.* at 49,557. EPA also stated that the petitions failed to "lower the degrees of confidence associated with each of these major scientific conclusions." *Id.*

#### **VI. Climate Change—Proposed GHG SIP Call and FIP**

On September 2, 2010, EPA published two related proposed rules concerning permitting under the prevention of significant deterioration (PSD) programs for construction of new sources and modification of existing sources. 75 Fed. Reg. 53,892. In the proposed GHG state implementation plan (SIP) call, EPA is proposing to find that thirteen states with EPA-

approved SIPs for their PSD programs have SIPs that are substantially inadequate because they do not apply PSD requirements to GHG-emitting sources. The thirteen states are Alaska, Arizona, Arkansas, California, Connecticut, Florida, Idaho, Kansas, Kentucky, Nebraska, Nevada, Oregon, and Texas. Because certain GHG-emitting sources will become subject to the PSD requirements on January 2, 2011, and may not be able to obtain a PSD permit in order to construct or modify, EPA is proposing an expedited schedule for states to submit their corrective SIP revisions. EPA is also soliciting comment on whether the remaining states with approved SIP PSD programs have PSD programs that do or do not apply to GHG-emitting sources. EPA is asking the thirteen states for which the agency is proposing a SIP call to identify the deadline—between three weeks and 12 months from the date of signature of the final SIP call—that they would accept for submitting their corrective SIP. *Id.* at 53,896. EPA is also asking all of the states with PSD-approved SIPs to confirm by October 4, 2010, whether or not its SIP applies to GHG-emitting sources. *Id.* In the other proposed rule, EPA is proposing a federal implementation plan (FIP) to apply to any state that is unable to meet, by its deadline, a corrective SIP revision to insure that the state has authority to issue permits under the Clean Air Act's PSD program for sources of GHG. 75 Fed. Reg. 53,883. Comments on both rules were due October 4, 2010.

## **VII. Climate Change—Mandatory Greenhouse Gas Reporting Rule**

On September 22, 2010, EPA published a final rule amending the final mandatory GHG reporting rule, 40 C.F.R. Part 98, to include new requirements for reporters to provide additional information in their annual reports. 75 Fed. Reg. 57,669. The additional information includes (1) the names, physical addresses, and percentages of ownership of their U.S. parent companies; (2) their primary North American Industry Classification System (NAICS) code(s) as well as all additional applicable NAICS; and (3) an indication of whether or not any of their reported emissions are from a co-generation unit. The final rule took effect November 22, 2010.

## **VIII. Mobile Sources—Motor Vehicle Fuel Economy Label**

On September 23, 2010, EPA and the National Highway Traffic Safety Administration (NHTSA) published a proposed joint rulemaking to redesign and add information to the current fuel economy label that is posted on the window sticker of all new cars and light-duty trucks sold in the United States beginning with model year 2012 cars and trucks. 75 Fed. Reg. 58,078. The proposal also includes new label designs for electric vehicles and plug-in hybrid electric vehicles. EPA and NHTSA are proposing two label designs. The designs differ in how the data are used and presented. One design is more traditional and focuses on fuel economy values and annual fuel-cost projections. The second design gives a letter grade to convey the overall fuel economy and GHG emissions as well as a projected five-year fuel cost or savings associated with a particular vehicle when compared to an average vehicle. The agencies are also requesting comment on a third label design. Comments were due November 22, 2010.

## **IX. 2017 Model-Year Light-Duty Vehicle GHG Emissions and CAFE Standards**

On October 13, 2010, EPA and NHTSA published a notice of intent to issue a proposed rule that would establish fuel economy and GHG emissions standards for light-duty vehicles for model year (MY) 2017 and later. 75 Fed. Reg. 62,739. As an initial assessment of a range of potential MY 2017–2025 GHG and corporate average fuel economy (CAFE) scenarios, the agencies analyzed potential GHG reduction targets. The low end of the range of potential GHG reduction targets analyzed was a 3 percent *per year* decrease in GHG emissions from the MY 2016 fleetwide average of 250 grams/mile (equivalent to 47 miles per gallon in MY 2025); the high end of the range was a 6 percent *per year* decrease in GHG emissions from this same baseline (equivalent to 62 mpg in MY 2025). According to the October 13, 2010, notice of intent, the agencies plan to continue an attribute-based approach to setting the standards for MYs 2017–2025. The agencies also promise to consider whether and how some of the flexibility provisions included in

the MY 2012–2016 program (e.g., a five-year credit carry-forward provision, a three-year credit carryback provision, air conditioning system credits, off-cycle credits program, and flexible fuel vehicle credits) might be applied to the new program. The agencies plan to issue a supplemental notice of intent by November 30, 2010, and to propose a coordinated national program for MYs 2017–2025 by the fall of 2011.

## **X. Medium and Heavy-Duty Trucks GHG Emissions and CAFE Standards**

On October 25, 2010, EPA and NHTSA proposed the first national standards for GHGs and fuel efficiency for medium and heavy-duty trucks in the United States. The proposal includes standards for combination tractors, heavy-duty pickups, and vans and vocational vehicles. Under the proposal, manufacturers of these vehicles would be required to increase fuel efficiency and reduce tailpipe emissions by 10 to 20 percent between the 2014 and 2018 model years. For combination tractors, the agencies are proposing engine and vehicle standards that begin in MY 2014 and achieve up to a 20 percent reduction in CO<sub>2</sub> emissions and fuel consumption by MY 2018. For heavy-duty trucks and vans, the agencies are proposing separate gasoline and diesel truck standards phased in beginning in MY 2014. Vehicles running on gasoline would need to reach a 10 percent cut in fuel consumption and emissions by 2018, while diesel vehicles would need to achieve 15 percent reductions. For garbage trucks, transit and school buses, and other vocational vehicles, the agencies are proposing a 10 percent reduction in fuel consumption and emissions by MY 2018. The agencies expect the improvements in fuel efficiency to be achieved through more efficient engines, improved aerodynamics, and better tires. Comments are due 60 days after the proposal is published in the *Federal Register*.

## **XI. NAAQS—Ozone Implementation**

On August 24, 2010, EPA published a proposed rule to clarify that new source review (NSR) requirements that applied as a result of an area's one-hour ozone classification should apply under the anti-backsliding provisions of the 1997 eight-hour ozone

implementation rule. 75 Fed. Reg. 51,960. The proposed rule is in response to the decision by the U.S. Court of Appeals for the District of Columbia in *South Coast Air Quality Management District v. EPA*, 472 F.3d 882 (D.C. Cir. 2006), that the one-hour major NSR program is a required control to prevent anti-backsliding even after revocation of the one-hour NAAQS in areas that were designated one-hour nonattainment on the date of designation for the 1997 eight-hour NAAQS, which for most areas was June 15, 2004. Comments were due September 23, 2010.

## **XII. Secondary NAAQS for NO<sub>x</sub> and SO<sub>x</sub>**

On September 21, 2010, EPA published a notice of availability of the draft policy assessment report for the review of the secondary NAAQS for NO<sub>x</sub> and sulfur oxides (SO<sub>x</sub>). 75 Fed. Reg. 57,463. The draft report is the second external review draft. In addition on October 5, 2010, EPA published notice of availability of supplementary materials, including an errata sheet for chapter 8; an addendum for chapter 5; an additional table 7-1 (summary of key uncertainties), and an additional table for chapter 9 (summary of options for elements of the NO<sub>x</sub> and SO<sub>x</sub> standard). 75 Fed. Reg. 61,486. Comments were due November 12, 2010.

## **XIII. PSD Regulation of PM<sub>2.5</sub>—Increments, SILs, and the Significant Monitoring Concentration**

On October 20, 2010, EPA published a final rule amending the requirements for fine particulate matter (PM<sub>2.5</sub>) under the PSD program. 75 Fed. Reg. 64,864. The final rule adds maximum allowable increases in ambient pollutant concentrations, known as increments, and two screening tools, known as the significant impact levels (SILs) and significant monitoring concentration (SMC) for PM<sub>2.5</sub>. Increments, SILs, and an SMC for PM<sub>2.5</sub> are used for ambient air quality monitoring and modeling under the PSD regulations for areas designated attainment or unclassifiable for PM<sub>2.5</sub>.

An increment is the maximum allowable increase in ambient concentrations of a pollutant in an area. Increases above that level are considered to significantly deteriorate air quality and are not allowed. EPA set the PSD increments for PM<sub>2.5</sub> using the “percent of NAAQS” approach that Congress used to establish the original increments for PM and SO<sub>2</sub> in 1977.

SILs are a screening tool used to determine whether a proposed source’s emissions will have a “significant” impact on air quality in the area. If an individual facility projects an increase in air quality impacts less than the corresponding SIL, its impact is said to be de minimis and the permit applicant is not required to perform a more comprehensive cumulative modeling analysis. In the final rule, EPA established SILs for PM<sub>2.5</sub> by scaling the SILs for PM<sub>10</sub> by the ratio of the PM<sub>2.5</sub> NAAQS to the PM<sub>10</sub> NAAQS, without regard to the disparate statistical forms of the standards. The new SILs for 24-hour PM<sub>2.5</sub> concentrations are 0.07 µg/m<sup>3</sup> in class I areas and 1.2 µg/m<sup>3</sup> in other areas. The new SILs for annual PM<sub>2.5</sub> concentrations are 0.06 µg/m<sup>3</sup> in class I areas and 0.3 µg/m<sup>3</sup> in other areas.

The SMC is a screening tool that may be used to determine if a source must submit to the permitting authority one year of preconstruction air quality monitoring data prior to constructing or modifying a facility. The final rule establishes the SMC for PM<sub>2.5</sub> as 4 µg/m<sup>3</sup> (24-hour average). The final rule takes effect December 20, 2010. The increments for PM<sub>2.5</sub> become applicable on October 20, 2011, under section 166(b) of the Clean Air Act. The effective date for implementation of SILs and the SMC is December 20, 2010.

## EPA REGION 1

**Dixon Pike, Brian Rayback, Nick Livesay  
and Mike Anderson**  
**Pierce Atwood LLP**  
**Portland, Maine and Portsmouth, New  
Hampshire**

### I. Regional Update—RGGI

The ninth Regional Greenhouse Gas Initiative (RGGI) auction took place on September 10, 2010, and resulted in total proceeds of \$66,437,340 for the participating states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Vermont. At the auction, 34,407,000 CO<sub>2</sub> allowances for 2009–2011 sold at a price of \$1.86 per allowance, and 1,312,000 CO<sub>2</sub> allowances for the period of 2012–2014 sold at the same price. A total of 56 potential bidders took part in the auction. Cumulative proceeds from all eight of the RGGI auctions now total more than \$729.3 million, which the participating states have invested in clean energy programs focused on reducing emissions, increasing efficiencies, and job creation in the renewable energy sector. The next two RGGI auctions are scheduled for December 1, 2010, and March 9, 2011.

### II. Regional Update—The 2010 Ozone Season

Based on preliminary data from the 2010 “ozone season” (April–September), EPA has determined that in New England this past summer there were 28 days where ozone levels exceeded ambient air quality standards. While this is an increase from the 11 such days in 2009, the warmer weather in 2010 likely contributed to this difference. EPA Region 1 noted in an October 1, 2010, press release: “When comparing the 2010 ozone season to the 2002 ozone season, a New England summer with temperature data similar to this summer, the total number of monitored exceedances dropped from 860 in 2002 to 101 this past summer. This is an approximately 88% decrease in the number of areas in New England exceeding the standard over this eight year period.”

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### **III. Connecticut Permitting**

On September 20, 2010, the Connecticut Department of Environmental Protection (CDEP) submitted its final permitting assessment report in compliance with the recently enacted PA 10-158, An Act Concerning the Permit and Regulatory Authority of DEP and Establishing an Office of the Permit Ombudsman Within the Department of Economic and Community Development. The report responds to the legislative mandate that CDEP make reasonable efforts to review permit applications within 60 days and make final permit decisions within 180 days, and represents an in-depth analysis of twenty-five individual permit programs within the state of Connecticut, including both the new source review and Title V operating permit programs implemented to fulfill the state's obligations under the federal Clean Air Act. The report identifies specific process improvements and programmatic initiatives aimed at increasing the overall efficiency and efficacy of the state's environmental permitting program. With respect to its air emissions permitting programs, CDEP recommended the implementation of a uniform Title V application template, streamlined Title V application forms and review process, requiring modeling submittal with permit applications to reduce delays associated with post-application modeling requests, and enhanced online tools to assist in the application process. On the legislative and regulatory front, CDEP recommended replacement of the state's indirect source permitting program, which applies to certain highway construction projects, with a memorandum of agreement between CDEP and the Connecticut Department of Transportation, as well as regulatory revisions to authorize municipalities to respond to nuisance complaints regarding odor and outdoor wood-fired furnaces. The report can be accessed at [www.ct.gov/dep/lib/dep/permits\\_and\\_licenses/assessment/permit\\_assessment\\_report.pdf](http://www.ct.gov/dep/lib/dep/permits_and_licenses/assessment/permit_assessment_report.pdf).

### **IV. Connecticut Lawn Equipment Exchange Fund**

On September 9, 2010, CDEP launched the lawn equipment exchange fund (LEEF), which contains \$500,000 to be used for reimbursement to

municipalities for costs associated with replacing old lawn and grounds maintenance equipment with new low-polluting machines. Awards of funds from the LEEF will be based on (1) the cost of the new equipment; (2) the amount of emission reductions achieved by the equipment replacement; and (3) other environmental or equity factors associated with the contemplated exchange. Successful municipalities will receive a reimbursement for 80 percent of the new equipment. The application period for the LEEF ends December 10, 2010, and awards are expected to be announced early in 2011.

### **V. Maine—Implementation of the Tailoring Rule**

The Maine Department of Environmental Protection (MDEP) has proposed changes to chapter 100 of its air licensing regulations to implement EPA's greenhouse gas Tailoring Rule, which added greenhouse gases (GHGs) to the list of pollutants subject to federal new source review /prevention of significant deterioration air-permitting requirements.

For the most part, MDEP has proposed changes that are consistent with the EPA rule. For example, the definitions of "greenhouse gases" and "carbon dioxide equivalents (CO<sub>2</sub>e)" are the same as EPA's definitions and the regulatory thresholds for major sources (potential emissions of 100,000 tons/year of CO<sub>2</sub>e) and major modifications (net emissions increase of 75,000 tons/year of CO<sub>2</sub>e) are consistent. Also consistent with EPA's GHG Tailoring Rule, there is no distinction made between CO<sub>2</sub> from combustion of fossil fuels versus CO<sub>2</sub> from combustion of renewable or biogenic fuels. Thus, for purposes of permitting thresholds, all CO<sub>2</sub>e is considered the same, regardless of fuel source. MDEP's proposal, however, does not include the EPA phase-in approach, which would mean that the MDEP permitting requirements for GHGs would become effective immediately upon promulgation by MDEP.

MDEP's proposed changes would add GHGs to the list of pollutants regulated under the air licensing requirements only for new major sources and major

modifications of existing major sources. The changes appear to reflect an intent that GHGs will not be subject to air permitting for new minor sources and minor modifications. It is unclear, however, whether GHGs would need to be considered in best available control technology (BACT) analyses for new minor sources or minor modifications, or whether GHGs would need to be considered in best practical treatment (BPT) analyses for renewals of minor or major source licenses

Also under the proposed changes, sources that are currently below the “major source” thresholds for purposes of triggering Part 70/Title V air licensing requirements under chapter 140 of MDEP regulations will become subject to the Part 70/Title V air licensing requirements under chapter 140 if they have potential emissions of CO<sub>2</sub>e greater than 100,000 tons/year.

#### **VI. Massachusetts—C&D Wood as Fuel**

The Massachusetts Department of Environmental Protection (MassDEP) and Department of Public Health intend to evaluate the potential public health and environmental impacts associated with the use of construction and demolition (C&D) wood as a fuel for the generation of electricity. Over the summer, MassDEP held two public hearings on a draft scope of work for the formal assessment of this alternative fuel.

#### **VII. Massachusetts—The MassCleanDiesel Program**

Under the MassCleanDiesel program, which is funded in part by the federal Diesel Emissions Reduction Act (DERA), MassDEP recently announced the installation of pollution control equipment on 26 diesel garbage and recycling trucks and the participation of 25 school bus owners who have retrofitted 483 school buses in an effort to reduce emissions.

#### **VIII. New Hampshire—New VOC Regulations**

The New Hampshire Department of Environmental Services (NHDES) has initiated rulemaking to readopt and update the rules regarding emissions of volatile

organic compounds (VOC) from stationary sources. In addition to clarifying existing requirements, the proposed amendments are expected to incorporate nine of the 11 control techniques guidelines EPA issued in 2006–2008 to reduce ozone in nonattainment areas. NHDES anticipates publishing draft rules implementing these changes by the end of January 2011.

#### **IX. New Hampshire—Implementation of the Tailoring Rule**

NHDES has proposed rule amendments implementing provisions of EPA’s recent final greenhouse gas Tailoring Rule. The proposed rule adds definitions for both GHGs and CO<sub>2</sub>e, modifies the existing definition of “major source,” and amends the PSD permitting requirements in order to implement the federal GHG thresholds established by the greenhouse gas Tailoring Rule, specifically the major source threshold of 100,000 tons of CO<sub>2</sub>e per year and the major modification threshold of a net increase of 75,000 tons of CO<sub>2</sub>e per year.

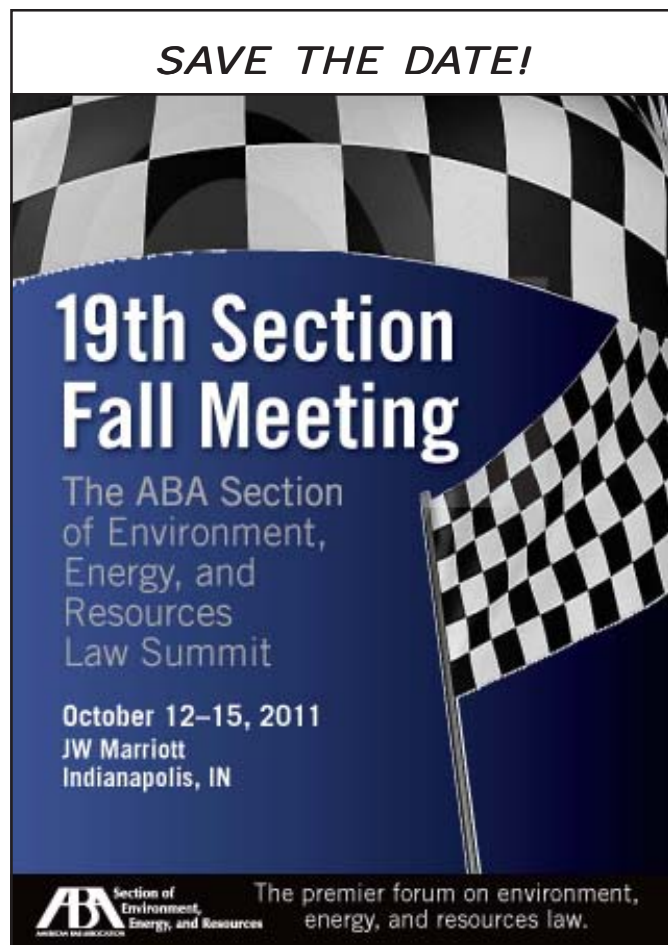
#### **X. Rhode Island—Ozone Attainment**

EPA recently determined that the Providence (all of Rhode Island) moderate 1997 eight-hour ozone nonattainment area has attained the NAAQS. 75 Fed. Reg. 64,949 (Oct. 21, 2010). This determination is based on three years of ozone monitoring data from 2007 through 2009. EPA also indicated that preliminary data for the 2010 season were consistent with a determination of attainment. The determination suspends the requirement for the Providence (all of Rhode Island) moderate ozone attainment area to submit to EPA an attainment demonstration, reasonable further progress plans, contingency measures under section 172(c)(9) of the Clean Air Act (CAA), and any other state implementation plans required under the CAA, for so long as attainment of the 1997 ozone NAAQS continues. In addition, because the area attained the 1997 ozone NAAQS by its applicable attainment date of June 15, 2010, the determination establishes that the area will not be reclassified for failure to attain by that deadline. The determination does not, however, constitute a redesignation of

attainment, and the classification and designation status of the Providence (all of Rhode Island) moderate 1997 eight-hour ozone nonattainment area remains moderate nonattainment until EPA determines that the area meets the CAA requirements for redesignation.

## **XI. Vermont—New Climate Change Web Site**

In October 2010, the Vermont Agency of Natural Resources (VANR) launched a new climate change Web site that provides comprehensive information on climate change and the efforts to reduce its impact both within the state and beyond. The Web site includes summaries of existing climate change initiatives in the state, including the formation of the seven-person climate change team that serves as the focal point for VANR's climate change efforts, general background on climate science, Vermont's GHG emissions data, links to a library of climate change materials, a current events calendar, and suggestions for citizen activity that can positively impact climate change. The new Web site is available at [www.anr.state.vt.us/anr/climatechange](http://www.anr.state.vt.us/anr/climatechange).



## **EPA REGION 2**

**Philip E. Karmel**  
**Bryan Cave LLP**  
**New York, New York**

### **I. New Leadership at NYSDEC**

On October 28, 2010, Governor Paterson designated Peter Iwanowicz as the acting commissioner of the New York State Department of Environmental Conservation. The previous commissioner was fired after asserting that budget cuts to the department would endanger its ability to protect the environment.

### **II. NYC Effort to Clean Up Taxicabs Held Preempted**

On July 27, 2010, the U.S. Court for the Second Circuit affirmed a lower court order enjoining the New York City Taxicab and Limousine Commission from enforcing regulations that changed its maximum lease rates for taxicabs to incentivize fleet owners to purchase fuel-efficient vehicles. The court held that the regulations were preempted by provisions of the Energy Policy and Conservation Act (49 U.S.C. § 3219(a)) and the Clean Air Act (42 U.S.C. § 7543(a)). See *Metropolitan Taxicab Board of Trade v. City of New York*, 615 F.3d 152 (2nd Cir. 2010).

### **III. New York City Enacts Law Reducing Sulfur in No. 4 Oil**

New York state law already imposes sulfur limits on no. 2 oil which, as of July 1, 2012, must have a sulfur content of no more than 15 parts per million. On August 16, 2010, the New York City Council enacted a new law (Law 43 of 2010) imposing a limit of 0.15 percent sulfur in no. 4 oil as of October 1, 2012.

### **IV. New Jersey Lowers Sulfur in Fuel Oil**

On August 31, 2010, the New Jersey Department of Environmental Protection issued a regulation imposing a new maximum sulfur content standard of 500 parts per million for home heating oil and lighter grade fuel oil. The new standard will take effect on July 1, 2014. A second phase of more stringent standards to reduce sulfur to 15 parts per million will take effect on July 1, 2016.

## **EPA REGION 3**

**Barbara Diane Little**  
**Jackson Kelly PLLC**  
**Charleston, West Virginia**

### **I. EPA Region 3—Greenhouse Gas Report**

In July 2010, EPA Region 3 released a report titled “Reducing Greenhouse Gases in the Mid-Atlantic.” The report summarizes greenhouse gas (GHG) activities across Region 3. Specific information is provided on activities in each Mid-Atlantic state, emphasizing the major municipalities. The report provides an overview of how regional priorities intersect with climate change and how the connections are manifesting through regional programs. There are several useful appendices with detailed information on state policies related to renewable energy and efficiency, including Internet links to state and local programs. Bar charts show GHG emissions from the states in the region. EPA recounts its efforts to assist metropolitan areas and other organizations with climate-change planning. The report is available at [www.epa.gov/reg3artd/globclimate/Reducing%20GHGs\\_8.3.10.pdf](http://www.epa.gov/reg3artd/globclimate/Reducing%20GHGs_8.3.10.pdf).

### **II. Delaware—SIP Revisions**

On August 11, 2010, EPA approved nine revisions to the Delaware state implementation plan (SIP). 75 Fed. Reg. 48,566. These provisions have been effective as state law in Delaware since July 2008, but the SIP effective date is October 12, 2010. The revisions are noted to be primarily administrative, nonsubstantive changes with respect to the following regulations: (1) Regulation 1124, sections 1.0 through 50.0: Control of Volatile Organic Compound Emissions—Comprehensive Document; (2) Regulation 1125: Requirements for Preconstruction Review; (3) Regulation 1126: Motor Vehicle Emissions Inspection Program: Applicable to Sussex County only; (4) Regulation 1127: Stack Heights Regulation 1132: Transportation Conformity; (5) Regulation 1135: General Conformity Regulation 1139: Nitrogen Oxides (NO<sub>x</sub>) Budget Trading Program; (6) Regulation 1140: National Low Emission Vehicle Program; and (7)

Regulation 1141: Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products.

On October 20, 2010, EPA further approved an amendment to section 2.0 of Delaware’s Regulation 1141 to add the sale, distribution, and manufacturing of 23 new categories of consumer products and product types to the list of products already regulated by that rule. These categories include personal hygiene and grooming, home cleaning, and cleaning of electrical and electronic equipment. EPA received no comments on the notice of proposed rulemaking (NPR) to approve Delaware’s SIP revision. The formal SIP revision was submitted by the state of Delaware on June 22, 2009, and becomes SIP-effective November 19, 2010.

### **III. Delaware—Air Quality and Urban Sprawl**

The Department of Natural Resources and Environmental Control (DNREC) Air Quality Management Section has initiated a program to evaluate the air quality impacts of residential development. In the context of residential preliminary land use service (PLUS) projects requiring state review, DNREC models the potential emissions for a range of pollutants—including toxic substances, compounds that form smog and acid rain, carbon dioxide, and fine particulates. Air emissions generated from housing developments include emissions from (1) area sources such as painting, lawn and garden equipment, and the use of consumer products such as roof coating and roof primers; (2) the generation of electricity needed to support the homes in the development; and (3) car and truck activity associated with the homes in the new development.

DNREC’s calculation does not include additional emissions during construction from truck traffic, earthmoving, and road paving. But most of the residential developments the state reviews generate enough emissions that they would require air permits if they were manufacturing plants or other business facilities.

For each of these residential development reviews, DNREC makes several suggestions for reducing the impact on air quality, including construction of Energy

Star homes, providing renewable energy sources, retaining or planting trees, and providing bike and walking trails.

#### **IV. District of Columbia Climate Action Plan**

Mayor Adrian Fenty announced that the District government is taking action to reduce its emissions of greenhouse gases responsible for climate change and is on target to reduce emissions 20 percent by 2012 and 30 percent by 2020. The report, “Climate of Opportunity—A Draft Climate Action Plan for the District of Columbia,” was released on September 10, 2010, for public comment and identifies specific actions to reduce greenhouse gas emissions from government operations.

The District Department of the Environment coordinated efforts of numerous District agencies to complete an inventory of greenhouse gas emissions (available at [green.dc.gov](http://green.dc.gov)) and to develop the draft Climate of Opportunity plan. The draft plan’s goals to reduce greenhouse gas emissions from District government operations are among the most aggressive in the nation.

The draft Climate of Opportunity plan identifies existing and proposed actions that residents, businesses, and institutions can take to reduce pollution and energy consumption. Community emissions—those outside the direct operational control of the District government—make up 94 percent of the District’s overall emissions. Targets and strategic actions for reducing communitywide reductions in greenhouse gases will be developed during a public engagement process; residents, businesses, and subject matter experts are encouraged to participate actively in these discussions.

Public comments on the draft were due November 15, 2010. Additional public meetings and working sessions during fall 2010 will focus on development of community emission reduction targets and actions that individuals, the private sector, and federal government can take to reduce greenhouse gas emissions.

#### **V. Maryland SIP Revisions**

On September 29, 2010, EPA took direct final action to approve Maryland’s rule, Control of Volatile

Organic Compound [VOC] Emissions from Industrial Solvent Cleaning Operations, adopting standards for industrial solvent cleaning operations that satisfy the reasonably available control technology (RACT) requirements for sources of VOCs covered by control techniques guidelines (CTGs). Barring public comment, this rule will be effective on November 29, 2010. 75 Fed. Reg. 59,973 (Direct Final Rule); 75 Fed. Reg. 60,013 (Proposed Rule).

On September 27, 2010, EPA took direct final action approving Maryland’s provisions for control of VOCs from paper, film, and foil coatings, adopting the requirements of EPA’s CTG for Paper, Film, and Foil Coatings (75 Fed. Reg. 59,184 [Final Rule]; 75 Fed. Reg. 59,180 [Proposed Rule]), and for the control of VOCs from flexible package printing, adopting the applicable EPA CTG (75 Fed. Reg. 59,086 [Final Rule]; 75 Fed. Reg. 59,179 [Proposed Rule]).

On August 11 and 12, 2010, EPA withdrew its direct final rule (published at 75 Fed. Reg. 34,644 on June 18, 2010), and a proposed rule (published at 75 Fed. Reg. 34,669 on June 19, 2010), which amended Maryland’s transportation conformity and general conformity regulations. On June 18, 2010, EPA had published both a direct final rule and proposed rule to approve revisions to Maryland’s transportation conformity and general conformity regulations, but EPA’s approval did not include Maryland’s regulation regarding conflict resolution associated with conformity determinations (COMAR 26.11.26.06). EPA subsequently determined that it cannot proceed with approval of these SIP revisions unless and until it also approves Maryland’s regulation regarding conflict resolution associated with conformity determinations. Therefore, EPA withdrew both its direct final rule and proposed rule regarding approval of Maryland’s conformity regulations. 75 Fed. Reg. 48,860 (withdrawal of Direct Final Rule); 75 FR 48,627 (withdrawal of Proposed Rule).

#### **VI. Maryland Lawn Mower Exchange**

On August 14, 2010, the Maryland Department of the Environment cosponsored with Clean Air Partners, a nonprofit coalition of area governments, a lawn mower exchange to emphasize that gas mowers pollute and to

provide an economical way to make the switch to battery power. Gas mowers were traded in for discounted new battery-powered motors provided by Vermont-based Neuton Mowers.

## **VII. Pennsylvania SIP Revisions**

On October 18, 2010, EPA approved the addition of the Pennsylvania Consumer Products and Architectural and Industrial Maintenance Coatings Regulations, 25 Pa. Code Chap. 130, Subchapters B and C, to the SIP. The regulation reduces VOC emissions. 75 Fed. Reg. 63,717 (effective November 17, 2010).

## **VIII. Pennsylvania Grants Available to Small Businesses to Improve Energy Efficiency**

The Pennsylvania Department of Environmental Protection (PADEP) is making available 50 percent matching grants to small business owners in Pennsylvania of up to \$7,500 to adopt or acquire energy-efficient or pollution-prevention equipment. Grant applicants must be a for-profit business with 100 or fewer full-time employees. The grant-supported project must be located within a Pennsylvania facility owned by the applicant and save the business at least 10 percent annually in energy or pollution-related expenses. Applicants may be manufacturers, retailers, service providers, mining operators, or agricultural businesses. Examples of eligible projects include HVAC and boiler upgrades, high-efficiency lighting, solvent recovery systems, waste recycling systems, and auxiliary power units deployed as anti-idling technology for trucks. Applications were due November 5, 2010.

## **IX. Carnegie Mellon University Green Power Award**

EPA's Green Power Partnership honored Carnegie Mellon University in Pittsburgh as a Green Power Partner for successfully using green power to help grow the nation's voluntary green power market while also reducing greenhouse gas emissions. Carnegie Mellon is one of only ten organizations in the nation receiving a Leadership Award for Green Power Purchasing by purchasing the majority of its electricity from green power through a utility green-pricing

program, a competitive green marketer, or a renewable energy certificate (REC) supplier. A REC is a financial product certifying that electricity was generated from a renewable resource. Carnegie Mellon is currently purchasing nearly 87 million kilowatt-hours of green power annually, supplying 75 percent of its electricity. It generates solar on-site and purchases renewable energy from Community Energy and Constellation NewEnergy. These green power purchases are equivalent to avoiding the carbon dioxide emissions of nearly 12,000 passenger vehicles per year, or enough electricity for nearly 8,000 average American homes each year.

## **X. PADEP Reissues Title V Operating Permit for Exide Technologies**

On October 1, 2010, PADEP reissued a five-year Title V air quality operating permit to Exide Technologies' lead-battery smelter facility in Berks County. PADEP had issued a Title V operating permit to Exide in November 2000. The company applied to renew the permit in 2005 while PADEP was pursuing enforcement actions for repeated odor violations. In December 2007, Exide and PADEP signed a consent order and agreement that required the company to address the malodors and other issues. In May 2008 the company submitted a study and control plan including the replacement of the two smelter afterburners. Both afterburners were replaced by the end of 2009 and no odor violations have been documented since late 2008. While the malodor control plan was progressing, PADEP resumed review of Exide's Title V renewal application and developed a draft permit in April 2009. After considering input from a public hearing in November 2009, PADEP released a revised draft plan approval for further comment in May 2010.

Over the past five years, PADEP's air program has sent Exide 17 air quality notices of violation, and has taken seven air quality penalty actions. Past violations included emission, operating parameter, monitoring, reporting, maintenance, and equipment operational problems. Penalties collected totaled more than \$400,000. As a result, significant improvements have been made at the facility. Prior to issuing the Title V permit, PADEP required Exide to correct all

outstanding air quality violations. Related documents are available at [www.depweb.state.pa.us](http://www.depweb.state.pa.us) under the “Community Information” section of the South-central Regional Office page, which is accessed by clicking on “Regional Resources.”

### **XI. PADEP Considers Crawford Tire-to-Energy Plant Permit**

PADEP is considering Crawford Renewable Energy’s application for an air quality permit. The company proposes to build a tire-to-energy plant at Keystone Regional Industrial Park in Greenwood Township, Crawford County, that will combust waste-tire chips and capture heat to generate electricity. A meeting was held October 26, 2010, to provide information about the proposed project.

### **XII. Pennsylvania—Creation of Laurel Highlands Conservation Coalition**

Several local and regional conservation organizations have come together to create the Laurel Highlands Conservation Coalition, a four-county coalition of grassroots conservation and environmental groups in Fayette, Westmoreland, Somerset, and Cambria counties. The purposes of the coalition will be to network, to provide information about and input into key issues in the region, and to support funding for conservation efforts.

### **XIII. Virginia SIP Revisions**

The Virginia Department of Environmental Quality (DEQ) is proposing as a SIP revision a permit to limit air pollution emitted by a facility in Shenandoah County, Virginia. O-N Minerals is subject to the regional haze regulation, 9VAC5-40-7550 et seq., for existing stationary sources, which provides guidance for determining best available retrofit technology (BART). BART is required for any BART-eligible source that emits any air pollutant that may reasonably be anticipated to cause or contribute to visibility impairment in any federal class I area. O-N Minerals has undergone a BART analysis resulting in the application of BART controls, which have been incorporated into its state operating permit. The current proposed revision consists of a mutual and final determination between the O-N Minerals and DEQ,

signed on May 4, 2010, that the one calcimatic kiln (U-12) rated at 8.3 tons per hour of lime production is permanently shut down. The state operating permit associated with this facility has been revised August 6, 2010, to reflect this change.

### **XIV. Virginia Biomass Energy Generator General Permit**

The Virginia Air Pollution Control Board has proposed a regulation (9VAC5 chap. 520) providing for a general permit to streamline permitting electric-generating units that use biomass as a fuel for electricity generation such that the emissions from the units do not endanger public health. Such sources generate no more than five megawatts of electricity, or produce the equivalent amount of energy in the form of fuel, steam, or other energy product. General provisions are established that cover the overall basis, applicability, and general requirements of the general permit; procedures for obtaining the general permit are described; terms and conditions are established for, among other things, testing schedules, record keeping, and reporting; a certified fuel test for all feedstock used in the process and a certified stack test are required; and an exemption from permitting is established if the uncontrolled emissions are below the emission threshold limits specified in the regulation. DEQ is accepting written comments until January 5, 2011.

### **XV. Virginia—Petition for Rulemaking to Revise Fugitive Dust Regulations**

Southern Appalachian Mountain Stewards and the Sierra Club have filed a petition for a rulemaking to revise the standards for fugitive dust emissions from existing sources (9 VAC 5-40-90) and new sources (9 VAC 5-50-90) to clarify what is meant by “reasonable precautions” and to offer additional examples of these “reasonable precautions” relative to sources of dust associated with trucks that haul coal and other materials through residential communities.

### **XVI. West Virginia—Potential Geothermal Energy Production**

An October 2010 study by Southern Methodist University (SMU) in Dallas, Texas, finds that West

Virginia has the potential to become a major player in geothermal energy production. The SMU study identified a large area in east central West Virginia to have elevated heat flow and upper crustal temperatures compared to the rest of the eastern United States. The high heat flow has been recognized based on interpretation of bottom-hole temperature (BHT) data from oil and gas drilling in the area. The temperatures are high enough to make this the most attractive area for geothermal energy development in the eastern third of the country, and the heat in places is sufficient to support large-scale development of enhanced geothermal systems.

The high heat flow is located primarily beneath the western slope of the Appalachian Mountains' Allegheny Front, especially in the West Virginia counties of Tucker, Randolph, Pocahontas, and Greenbrier. The trend of the highest heat flow area is almost due north to south. Because drilling makes up a significant percentage of the cost for geothermal development, the most favorable areas will be the highest temperatures at shallowest depths, making the most favorable areas somewhat site-specific. Much of the thermal energy resides in basement rocks below the sedimentary section.

The SMU Geothermal Laboratory has increased its estimate of West Virginia's geothermal generation potential to 18,890 megawatts (assuming a conservative 2 percent thermal recovery rate). The new estimate represents a 75 percent increase over estimates in MIT's 2006 "The Future of Geothermal Energy" report and exceeds the state's total current generating capacity, primarily coal based, of 16,350 megawatts.

## **XVII. Group Challenges EPA's Reliance on Brooke County, West Virginia, for CATR**

EPA proposed its Clean Air Transport Rule (CATR) on August 2, 2010 (75 Fed. Reg. 45,209). The CATR would require extensive additional emissions controls on electric generating units (EGUs) in a 31-state area, including West Virginia, to reduce emissions that contribute to ambient ozone and PM<sub>2.5</sub> concentrations with the goal of eliminating "significant contribution" to nonattainment (transport) from upwind to downwind states. The Midwest Ozone Group (MOG), an ad hoc coalition of companies and organizations that own and operate fossil fuel-fired electric generating units throughout the Midwest and Southeast, submitted comments to EPA debunking EPA's use of data from a monitor in Brooke County, West Virginia, as support for CATR. According to MOG, the high concentrations at the Brooke County, W. Va., monitor are a 24-hour PM<sub>2.5</sub> issue only. MOG also noted in its comments that the Brooke County monitor presents a number of anomalies: (1) EPA's PM<sub>2.5</sub> technical support document identifies contributing emissions score (CES) values of 100 for Jefferson County, 60 for Hancock County, and 19 for Brooke County; (2) the monitor sits on the border of Brooke and Hancock counties and should be representative of Hancock County, but the Hancock monitor data show attainment; and (3) concentrations at the Brooke County monitor are dominated by a carbon manufacturing facility, an iron and steel mill, and a ferroalloy manufacturing facility about two miles away.



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## **EPA REGION 4**

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### **I. Alabama—Birmingham Nonattainment Area**

EPA has determined that the Birmingham nonattainment area has attained the 2006 24-hour PM<sub>2.5</sub> National Ambient Air Quality Standards (NAAQS), effective October 20, 2010. 75 Fed. Reg. 57,186.

### **II. Georgia—Atlanta Nonattainment Area**

EPA has determined that Georgia's state implementation plan (SIP) revision associated with the Atlanta 1997 PM<sub>2.5</sub> nonattainment area is complete and halted the sanctions arising from a previous "failure to submit" the required nonattainment submittals. 75 Fed. Reg. 62,323.

### **III. Florida—Turnover at DEP**

Secretary Mike Sole of the Florida Department of Environmental Protection (DEP) has resigned from the agency to join Florida Power & Light as vice president of Government Affairs. Mimi Drew has been appointed as interim secretary of DEP, effective September 10, 2010. Ms. Drew has served as DEP's deputy secretary of regulatory programs since 2007, and prior to this role, she served as the director of the Division of Water Resource Management.

### **IV. Florida—Rulemakings**

DEP is currently revising the state's air quality regulations to (1) expand certain permit exemption criteria; (2) clarify when construction and operation permits are required; (3) convert certain Title V general permits to non-Title V general permits; (4) clarify general permit rule language and forms; (5) update Florida's nonattainment new source review rules; (6) update rule references to include PM<sub>2.5</sub>; and (7) revise rules related to state and federal ambient air quality standards, including designation procedures.

### **V. Kentucky—Nonattainment Area Redesignation**

EPA redesignated the Kentucky portion of the tri-state eight-hour ozone nonattainment area to attainment for the 1997 eight-hour standard. 75 Fed. Reg. 47,218.

### **VI. North Carolina/South Carolina—Sanctions Lifted**

EPA determined that revisions to the states' SIPs were complete and halted the sanctions associated with the Charlotte-Gastonia-Rock Hill eight-hour ozone nonattainment area and arising from a previous failure to submit attainment demonstrations. 75 Fed. Reg. 51,949.

### **VII. Tennessee—Knoxville Nonattainment Area**

EPA determined that the Knoxville nonattainment area has attained the 1997 eight-hour ozone NAAQS, effective October 12, 2010. 75 Fed. Reg. 62,470.

### **VIII. Greenhouse Gas Tailoring Rule Implementation**

EPA proposed to approve the draft revisions to the SIPs of several Region 4 states (Alabama, Kentucky, Mississippi, North Carolina, and Tennessee) to modify their prevention of significant deterioration (PSD) programs to implement the Tailoring Rule. 75 Fed. Reg. 68,285; 68,272; 68,259; 68,279; 68,265. The proposed revisions would establish different emission thresholds for determining which new stationary sources and modification projects trigger each state's PSD permitting requirements for greenhouse gases (GHG) in order to avoid overwhelming the states' permitting resources. Without this revision, PSD requirements would apply at the lower Clean Air Act thresholds of 100 or 250 tons per year on January 2, 2011. Due to the time-sensitive nature of these revisions, the states have submitted their draft revisions to EPA for parallel processing (i.e., while the states conduct public hearings to finalize the proposed

revisions, EPA publishes notice and solicits public comment).

In response to EPA's GHG Tailoring Rule, the Florida DEP indicated to EPA that the state's permitting rules would require revision before DEP could implement the Tailoring Rule and that the time frame for such revisions is unknown. Therefore, EPA should anticipate using, for an indefinite period of time, its federal implementation plan authority to implement GHG permitting in the state.

## **EPA REGION 5 FEDERAL DEVELOPMENTS**

**Harvey M. Sheldon**  
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***Chicago, Illinois***

The air enforcement and air program scene at Region 5 was relatively quiet during the past quarter, at least in terms of major news. The enforcement program continues in earnest with a number of administrative notices of violation and administrative settlements with companies large and small. The process of state implementation plan (SIP) review and revision is a top priority, with several declarations of ozone air quality attainment occurring. However, most of the SIP-related work involves meetings, draft submittals, and discussions between the region and the states, out of the public eye for the most part.

EPA reached a major settlement with Hoosier Energy Rural Electric Cooperative that includes a \$950,000 civil penalty and a promise to make emission reductions and spend \$5 million on supplemental projects. The region's clean diesel program continues in earnest, with public award ceremonies and a major "initiative" grant to the maritime industry on the Great Lakes. The region continues its neighborhood-school monitoring program for toxics, and its green initiatives.

## **40th Annual Conference on Environmental Law**

**March 17-19, 2011**  
**Salt Lake City**

This year we celebrate 40 years! This conference continues to be one of the most important educational and professional gatherings available for environmental law practitioners including academics, nonprofit lawyers, in-house counsel, and government lawyers. The conference, formerly residing in Keystone, has grown over the years into three days of cutting-edge plenary and breakout sessions, packed with keynote speakers, expert panels, and an abundance of networking opportunities. But don't worry— we are still near the fabulous ski hills around Salt Lake City, Utah! Along with these outstanding sessions, meeting highlights include networking opportunities, public service activities, and a ruby red anniversary celebration of the 40th anniversary of the Annual Conference on Environmental Law.

### **Important Deadlines:**

- Early Bird Deadline: Thursday, February 17, 2011
- Law Student Scholarship Opportunity Deadline: Tuesday, February 8, 2011
- Tuition Assistance Deadline: Tuesday, February 8, 2011
- Housing Deadline: Tuesday, February 22, 2011

For a complete schedule of events, CLE descriptions, online registration, and further program details, please visit

**[www.abanet.org/enviro/envlaw/](http://www.abanet.org/enviro/envlaw/)**

## EPA REGION 9

**Eric L. Hiser**  
**Jorden Bischoff & Hiser P.L.C.**  
**Scottsdale, Arizona**

### I. Preemption of State Regulation of Idling Railroad Engines

In *Association of American Railroads v. South Coast Air Quality Management Dist.*, \_\_\_ F.3d \_\_\_, 2010 WL 3565261 (9th Cir. Sept. 15, 2010), the Association of American Railroads, BNSF Railway, and Union Pacific filed suit challenging SCAQMD's adoption of rules governing the idling of trains in rail yards and certain reporting obligations. The railroads contended that the idling regulations violated the Interstate Commerce Commission Termination Act, which vests exclusive jurisdiction over rail regulation in the Surface Transportation Board. The district court granted a permanent injunction, and SCAQMD appealed. The Ninth Circuit affirmed. The Ninth Circuit noted that the rules in question had not been incorporated into the state implementation plan (SIP). Accordingly, the court held: "Because the District's rules have the force and effect of *state* law, ICCTA preempts those rules unless they are rules of general applicability that do not unreasonably burden railroad activity. The District's rules plainly cannot meet that test. The rules apply exclusively and directly to railroad activity, requiring the railroads to reduce emissions and to provide, under threat of penalties, specific reports on their emissions and inventory. Because ICCTA 'preempts all state laws that may reasonably be said to have the effect of managing or governing rail transportation,' ICCTA preempts the District's rules here."

### II. FERC Natural Gas Quality Determination Upheld

In *South Coast Air Quality Management Dist. v. FERC*, \_\_\_ F.3d \_\_\_, 2010 WL 3504649 (9th Cir. Sept. 9, 2010), SCAQMD brought an action to prevent the Federal Energy Regulatory Commission (FERC) from granting a certificate of public convenience and necessity to North Baja Pipeline

(NBP) for NBP to *reverse* the direction of natural gas flow in the pipeline from south (out of the United States) to north (into the United States). SCAQMD challenged FERC's failure to require NBP to meet certain gas quality standards demanded by SCAQMD. FERC refused, instead requiring NBP to meet the highest gas quality standards established by the California Public Utilities Commission. The Ninth Circuit held that FERC acted reasonably in relying on the California Public Utilities Commission standards.

### III. Arizona—CalPortland Company Consent Decree

EPA and the U.S. Department of Justice entered into a consent decree with CalPortland Company over its Rillito, Arizona, Portland cement kiln. The proposed consent decree provides for a \$350,000 civil penalty and requires CalPortland to either construct a new kiln #6 and shut down kilns #1 through #4 or else not construct kiln #6 and meet the following emissions limits: 0.008 grains per dry standard cubic foot (gr/dscf) for the older units and 0.005 gr/dscf for the newer units.

### IV. Arizona—BART at Four Corners Generating Station

EPA Region 9 proposed that the Four Corners Generating Station be required, under the regional haze rule, to install selective catalytic reduction (SCR) technology as "best available retrofit technology." EPA's proposal would be achieved by installing and operating an SCR on all five units at the plant. The installation and operation of the SCR is estimated to increase the electricity bill for the average Arizona Public Service residential customer by about 70 cents per week.

### V. Arizona—PM<sub>10</sub> Plan for Phoenix Basin

On September 3, 2010, EPA proposed to disapprove the coarse particulate plan submitted by Arizona for the Phoenix basin. The Maricopa area is considered in "nonattainment" for coarse particulate matter (PM<sub>10</sub>)—meaning the air quality fails to meet national standards for this pollutant. The state of Arizona submitted a plan

in 2009 intended to ensure that coarse particulate matter was reduced by five percent each year until the standard was attained. EPA contended that Arizona did not correctly inventory the sources of PM<sub>10</sub> and rejected Arizona's contention that many of the days with poor air quality, when particulates exceed the standards, are due to "exceptional events" such as dust storms.

## **VI. Arizona—Fines for Construction Dust**

EPA Region 9 fined Summit Builders Construction Co., based in Maricopa County, Arizona, \$105,610 for allegedly failing to comply with Clean Air Act regulations based on 2006 and 2007 inspections by the Maricopa County Air Quality Department (MCAQD) of five commercial construction projects. Eight violations were discovered, including (1) failure to install a track-out control device to remove particulate matter from vehicles; (2) failure to immediately clean up dirt that is tracked more than 50 feet beyond the site; (3) failure to operate a water application system during earthmoving operations; and (4) failure to comply with the dust control plan.

## **VII. California—Fines for Polystyrene Manufacturer**

EPA Region 9, the Department of Justice, and SCAQMD settled with Lifoam Industries, Inc., which agreed to pay \$450,000 in fines and vent all of its manufacturing emissions through control devices, after filing claims that the company violated the federal Clean Air Act and state air quality laws at its polystyrene manufacturing facility in Vernon, California. According to the agencies, Lifoam failed to ensure that it emitted less than 2.4 pounds of volatile organic compounds (VOCs) per 100 pounds of raw materials, as required by local regulation. Both EPA and SCAQMD also contended that Lifoam installed and operated air pollution-emitting equipment without obtaining the necessary permits and that the facility did not properly vent VOCs to air pollution control equipment.

## **EPA REGION 10**

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**Seattle, Washington**

### **I. Northwest Coal-Fired Power Plants Face Heat**

A coal-fired power plant in Boardman, Oregon, received a notice of violation (NOV) alleging that it has been violating the Clean Air Act since 1998. EPA issued the NOV to Portland General Electric (PGE) in September. It claims that two boiler upgrades at the plant, in 1998 and 2004, increased the SO<sub>2</sub> emission rate and were therefore new source performance standards (NSPS) modifications, triggering applicability of the SO<sub>2</sub> emission standard in Subpart Da. The NOV also claims that PGE failed to supplement its Title V application to include the NSPS standard as an applicable requirement.

The Oregon Department of Environmental Quality (DEQ) reportedly disagrees. An official told a local TV station that the state agency, which had been told of the upgrades when they occurred, did not see any violation of a requirement.

The future of the Boardman plant was already in question. DEQ is expected to require additional controls under new regional haze regulations, and PGE has proposed shutting the plant down in 2020 to avoid some of those expenses. The threat of a penalty totaling well over \$100 million could further affect PGE's decision making. A copy of the NOV is available at [http://images.bimedia.net/documents/NOV+issued+to+Portland+General+Electric+Company+dated+Sept\\_28\\_2010+\(1\).pdf](http://images.bimedia.net/documents/NOV+issued+to+Portland+General+Electric+Company+dated+Sept_28_2010+(1).pdf).

In Washington, the owners of the state's only coal-fired power plant have agreed to significant nitrogen oxide and mercury emissions reductions by the end of 2012. TransAlta Centralia Generation LLC and the Washington Department of Ecology entered into an agreement earlier this year to settle a dispute over whether the plant previously met best available retrofit

technology requirements and to establish early mercury reductions limits.

Under the agreement, by the end of 2012 TransAlta will meet a NO<sub>x</sub> concentration limit that is 20 percent tighter than its current limit and reduce mercury emissions by up to 50 percent by installing halogenated sorbent injection controls or equally effective technology. TransAlta expects it will cost \$20 to \$30 million to implement these reductions.

## II. Implementation of the Tailoring Rule

On September 2, 2010, EPA proposed to determine that the state implementation plans (SIPs) for 13 states—including the Region 10 states Alaska, Idaho, and Oregon—are “substantially inadequate” because their prevention of significant deterioration (PSD) programs do not apply to new or modified greenhouse gas (GHG)-emitting sources. If EPA finalizes the proposal in December as anticipated, it will require these states to revise their SIPs by December 2011 (the deadline will be 12 months from final rule issuance). In a second proposal, EPA would assume responsibility for GHG PSD permitting for any states that do not revise their SIPs on time, using a federal implementation plan.

There is a potential problem with the timing. Under current rules, direct regulation of GHG emissions from large industrial sources (CO<sub>2</sub> emissions over 75,000 tons per year) begins in January 2011 when the Tailoring Rule goes into effect. If a state waits until later in 2011 to revise its SIP, there could be a period during which new or modified large GHG sources are not

able to obtain PSD permits because the SIP is not approved.

Rule revisions in Oregon are in process, but not expected to be complete by January 2011. In Washington, rule changes to make GHG emissions subject to the PSD and air operating permit programs are in process and expected to be final by the time the Tailoring Rule goes into effect. Meanwhile, ongoing challenges to EPA’s GHG rules and potential moves by Congress to limit EPA’s authority to regulate GHGs could change the rules.

## III. New Mandatory GHG Reporting Proposal in Washington

The Washington Department of Ecology is, again, proposing mandatory GHG reporting rules. A previous reporting rule was sidelined because of its lack of consistency with developing federal reporting requirements. This time, Ecology says that the rule is designed to be consistent with EPA’s approach. The state rule, however, will apply to many more facilities and fuel suppliers than those that would be subject to the EPA rule.

While EPA’s rule requires reporting by facilities with annual emissions of 25,000 metric tons or more of CO<sub>2</sub>e gases, the Washington proposal would require reporting by facilities (including biomass plants) with annual CO<sub>2</sub>e emissions over 10,000 metric tons, as well as suppliers of transportation fuels sold in the state that, when combusted or oxidized, would result in the same levels of annual CO<sub>2</sub>e emissions. Ecology plans to adopt a final rule no earlier than December 1, 2010.



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# CALL FOR NOMINATIONS

## THE SECTION INVITES NOMINATIONS FOR THE FOLLOWING AWARDS:

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### ENVIRONMENT, ENERGY, AND RESOURCES GOVERNMENT ATTORNEY OF THE YEAR AWARD

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*The Environment, Energy, and Resources Government Attorney of the Year Award* will recognize exceptional achievement by federal, state, tribal, or local government attorneys who have worked or are working in the field of environment, energy, or natural resources law and are esteemed by their peers and viewed as having consistently achieved distinction in an exemplary way. The Award will be for sustained career achievement, not simply individual projects or recent accomplishments. Nominees are likely to be currently serving, or recently retired, career attorneys for federal, state, tribal, or local governmental entities.

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### LAW STUDENT ENVIRONMENT, ENERGY, AND RESOURCES PROGRAM OF THE YEAR AWARD

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*The Law Student Environment, Energy, and Resources Program of the Year Award* will be given in recognition of the best student-organized educational program or public service project of the year addressing on issues in the field of environmental, energy, or natural resources law. The program or project must have occurred during the 2010 calendar year [consideration may be given to allowing projects that occurred in the 2009-2010 or 2010-2011 academic years]. Nominees are likely to be law student societies, groups, or committees focused on environmental, energy, and natural resources issues.

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### STATE OR LOCAL BAR ENVIRONMENT, ENERGY, AND RESOURCES PROGRAM OF THE YEAR AWARD

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*The State or Local Bar Environment, Energy, and Resources Program of the Year Award* will be given in recognition of the best CLE program or public service project of the year focused on issues in the field of environmental, energy, or natural resources law. The program or project must have occurred during the 2010 calendar year. Nominees are likely to be state or local bar sections or committees focused on environmental, energy, and natural resources issues.

**Nomination deadlines: May 16, 2011.**

*These Awards will be presented at the ABA Annual Meeting in Toronto in August 2011.*

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### 2011 ABA AWARD FOR EXCELLENCE IN ENVIRONMENTAL, ENERGY, AND RESOURCES STEWARDSHIP

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The *2010 ABA Award for Excellence in Environmental, Energy, and Resources Stewardship* was established in 2002 to recognize and honor the accomplishments of a person, organization, or group that has distinguished itself in environmental, energy, and resources stewardship. Nominees must be people, entities, or organizations that have made significant accomplishments or demonstrated recognized leadership in the areas of sustainable development, energy, environmental, or resources stewardship. This may include a major development in law or policy that serves to enhance conservation, responsible development, prudent resource use, and pollution abatement or mitigation, or it may be a recognition for a sustained period of leadership in the development of law and policy in this area. The Award may also be given for significant achievements in legal practice or in business, including corporate charitable contributions of funds, land, or resources; in written articles; in teaching; in advocacy before courts, agencies, legislators, or other institutions; or for any other significant achievement that evidences excellence in environmental, energy, and resources stewardship.

**Nomination deadline: June 13, 2011.**

*The Award will be presented at the 19th Section Fall Meeting in Indianapolis in October 2011.*

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### 2011 ABA AWARD FOR DISTINGUISHED ACHIEVEMENT IN ENVIRONMENTAL LAW AND POLICY

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The ABA Standing Committee on Environmental Law (“SCEL”) and the Section of Environment, Energy, and Resources invite nominations for the *2011 ABA Award for Distinguished Achievement in Environmental Law and Policy*. This award recognizes individuals or organizations who have distinguished themselves in environmental law and policy, contributing significant leadership in improving the substance, process or understanding of environmental protection and sustainable development.

**Nomination deadline: March 31, 2011.**

*The Award will be presented at the ABA Annual Meeting in Toronto in August 2011.*



FOR FURTHER DETAILS ABOUT THESE AWARDS,  
PLEASE VISIT THE SECTION WEB SITE AT  
<http://www.abanet.org/environ/sectaward/>