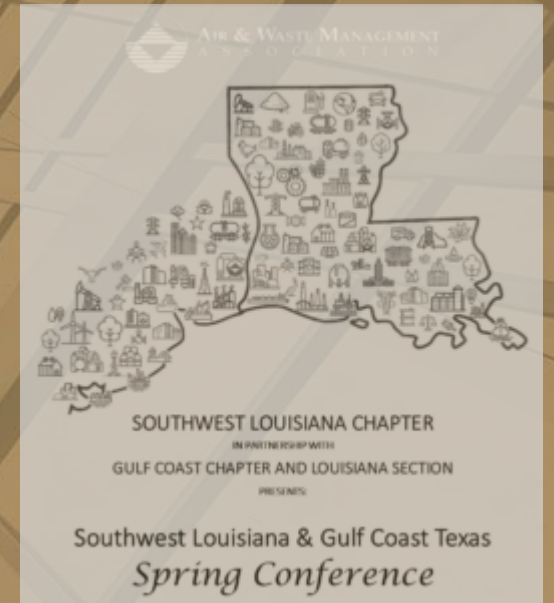


Legal Update

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Road Map

- Transport SIP, FIP Litigation Update
- EPA SSM SIP Call Litigation
- PM_{2.5} Update
- Title V Permitting Case – Louisiana First Circuit
- LDEQ Self-Audit Program Rulemaking, Deviation Reporting Rulemaking
- PACAN vs. TCEQ BACT case
- Louisiana CCS and Primacy Challenge
- PFAS RCRA Rulemakings
- Breaking News

Transport SIP, FIP Litigation

- Louisiana, Texas challenged EPA's disapproval of SIP (along with Mississippi) at the U.S. Fifth Circuit (Case No. 23-60069; 88 Fed. Reg. 9336, 9356). Awaiting a decision.
- EPA issued a FIP on March 15, 2023 – stayed by the Fifth Circuit
- U.S. Supreme Court heard oral arguments related to stay in other Circuits on February 21, 2024.



EPA SIP Call: Env'tl. Comm. of the Florida Elec. Power Coordinating Group, Inc. vs. EPA

- D.C. Circuit vacated in part EPA's 35-state SIP Call issued in 2015 for states to remove or replace Startup, Shutdown and Malfunction ("SSM") provisions in State Implementation Plans ("SIPs").
- Texas was subject to the original 36-state SIP call and was originally a petitioner in this D.C. Circuit challenge. In 2020, in response to a 2017 administrative petition, EPA formally withdrew the SIP call as to Texas. Texas' challenge to the SIP Call was ended. In 2023, however, EPA proposed to reinstate the Texas SIP call. That proposal is pending.
- The Court's decision:
 - EPA's SIP Call as to automatic exemptions, director discretion and complete affirmative defenses was vacated.
 - EPA's SIP Call as to limited affirmative defenses - those that remove penalties but leave injunctive relief was upheld.
- Implications: Texas and other states have followed, what was at the time, then-existing EPA guidance that called for limiting the affirmative defense to penalties-only. Texas' provisions were upheld in a Fifth Circuit decision that predated the SIP Call. Raises significant questions for the EPA's 2023 Texas SIP Call

EPA's SIP Call: Specific Holdings

- Overall, EPA has broad authority to issue a SIP Call.
- SSM Affirmative Defenses:
 - Automatic Exemptions: Vacated – States can choose the framework they decide is “necessary or appropriate” to comply with the CAA.
 - Director Discretion: Vacated – States can add an extra step to the automatic exemption.
 - Enforcement Discretion: Upheld – States (Tennessee) may not eliminate EPA and/or citizen enforcement as provided in CAA.
 - Affirmative Defenses separated as Complete or Partial
 - Complete: Vacated – States may create an exemption from the rule.
 - Partial: Upheld – States may not provide for only injunctive relief and eliminate penalties. Courts have full ability to apply the appropriate remedies under the CAA.

PM2.5 Update



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Implementation Timeline (Feb. 7, 2025 for attainment designation)



EPA acknowledging wildfire impacts in four-page “Fact Sheet” (discusses exceptional events demonstrations)



The House Subcommittee on Environment, Manufacturing, and Critical Minerals called for a hearing to discuss a bill that would ease implementation of the PM2.5 NAAQS



Cassidy, Sinema Introduced Clean Air Act Permitting Reform Bill



March 6, 2024 - A group of 22 states, including Louisiana, filed the attached Petition for Review of the NAAQS PM2.5 standard. They state that the rule exceeds the EPA’s statutory authority and is arbitrary and capricious

Title V Permitting Case – Louisiana First Circuit

- First Circuit’s decision in *Rise St. James et al. v. Louisiana DEQ* (concerning the Formosa/FG-LA proposed industrial complex in St. James Parish).
- The court upheld LDEQ on all issues, vacated the lower court ruling that denied the permits, and reinstated the 13 Title V and PSD permits at issue. This is a key decision due to the number of issues it addressed.
- The opinion provides a great deal of valuable guidance for the permitting process in Louisiana and will be useful going forward through air and other permitting processes.

* Also affecting Title V – “Clarifying the Scope of Applicable Requirements Under State Operating Permit Programs (89 FR 1150 (Jan. 9, 2024))”

LDEQ Rulemaking (Self Audit, Deviation Reporting)

- Self Audit Program: La. R.S. 30:2044; Part I, Subpart 5, Chapter 70 – similar to EPA’s program
- Deviation Reporting: AQ395 (proposed changes include: allows a “negative declaration”, disallows incorporation by reference, requires use of LDEQ’s forms for semi-annual and annual compliance reporting).
 - LDEQ required to respond to comments at least 15 days before the date of publication of the final rule.
 - The final rule will be effective the date it is published in the Louisiana Register, unless LDEQ provides otherwise in the final rule.

PACAN vs. TCEQ: Certified to Sup. Ct of Texas

- The 5th Circuit Court of Appeals certified the question: Does the phrase “has proven to be operational” in Texas’ definition of “best available control technology” require an air pollution control method to be currently operating under a permit issued by TCEQ?
- The 5th Circuit had previously pulled the LNG Project’s emissions permit holding that the TCEQ failed to explain a change in a policy that allowed less-stringent pollution controls for the LNG terminal when compared to another, recently permitted Rio Grande LNG project.
- TCEQ argued that the lower emission limits had not been demonstrated in practice as actually achievable. The Rio Grande facility was not operational; therefore, it doesn’t qualify as BACT.
- LNG Project argued that TCEQ has the authority to determine BACT on a case-by-case basis and requiring “proven to be operational” limits innovation.

2023 Amendments to the Louisiana Geologic Sequestration of Carbon Dioxide Act

- On June 14, 2023, Governor Edwards signed HB 571 (Act No. 378) into law, which was touted as a “middle ground” between support of the CCS industry and protection for local governments and communities.
- La. R.S. 30:6(H) was added to require the Commissioner of Conservation to notify the governing authority of any parish included in a completed permit application for a Class V or VI well related to carbon sequestration. HB 571 also mandates public hearings in the respective Parish under La. R.S. 30:1105. Separately, HB 571 requires notification be made to Parishes when the State enters in an operating agreement with respect to carbon dioxide covering state owned lands.
- HB 571 also provides that 30% of revenues from carbon storage under state land or water bottoms shall go to local government (proportional if more than one parish), with 30% going to the Mineral and Energy Operation Fund, and the remaining funds deposited in the State general fund.
- Further, an applicant for a Class VI injection well shall submit an “environmental analysis,” which mirrors the IT Factors mandated by the Louisiana Constitution in the 1984 *Save Ourselves* case, such as: (i) have the potential and real adverse environmental effects of the proposed permit activity been avoided to the maximum extent possible? (ii) Does a cost-benefit analysis of the environmental impact costs versus the social and economic benefits of the proposed activities demonstrate that the latter outweighs the former? (iii) Are there alternative activities (or sites or mitigating measures) which would offer more protection to the environment than the proposed activity without unduly curtailing non-environmental benefits?

Louisiana Primacy - Class VI Wells

- The EPA determined that Louisiana's UIC Class VI rules under the Louisiana Geologic Sequestration of Carbon Dioxide Act (La. R.S. 30:1101-1112) and Statewide Order No. 29-N-6 (LAC 43:XVII.Ch. 36) were as stringent as the corresponding federal rules, and that Louisiana has sufficient resources to issue permits, track compliance and enforce its program.
- The EPA did retain oversight, inspection rights and annual performance reviews, as well as Class VI permitting on Indian lands.
- LDENR's UIC Class VI program also includes certain provisions that are more stringent than those required under EPA rules. LDENR has created a comprehensive web page addressing Class VI Wells: <https://www.dnr.louisiana.gov/index.cfm/page/1693>
- LDENR also requires applicants to submit an Environmental Analysis with their UIC Class VI permit application (the IT factors mandated by the LA Constitution under the *Save Ourselves 1984* La. S. Ct. case). See La. R.S. 30:1104.1.

Louisiana Primacy - Class VI Wells

- LDENR must also comply with a MOA entered in May 2023 with the EPA, which requires an inclusive public participation process, the incorporation of environmental justice and civil rights considerations in the permit review processes, undertaking sufficient enforcement, and the incorporation of environmental mitigation measures where warranted.
- On February 5, 2024, pending applications for UIC Class VI permits at 22 locations in Louisiana will be transferred to LDENR. Given LDENR's geologic expertise and its decades of primacy over the programs for Classes I through V wells, this delegation should result in a more expedited and efficient permitting process and significantly advance the growth of the CCS industry in Louisiana.
- Petition for Judicial Review of Delegation of UIC Class VI Program was filed in the 5th Cir. On Feb. 21.

PFAS – Companion Rulemakings under RCRA

- *Definition of Hazardous Waste Applicable to Corrective Action for Releases from Solid Waste Management Units (89 FR 8598):* amends the definition of hazardous waste to include any substance within the statutory (vs. regulatory) definition for corrective action;
- *Listing of Specific PFAS as Hazardous Constituents (89 FR 8606):* Lists 9 PFAS as “hazardous constituents” under Part 261 Appendix VIII.



Breaking News and Emerging Issues

- SEC Reporting: Adopted climate reporting standards that will require publicly traded companies to disclose their greenhouse gas emissions but will not be required to report the Scope 3 emissions.

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