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ENVIRONMENTAL ALERT

Amendments to the Regulation for the Control of Atmospheric Air Pollution

On January 19, 2011, the Puerto Rico Environmental Quality Board (“EQB”) promulgated several amendments to the Regulation for the Control of Atmospheric Air Pollution (“RCAAP”). The main objective of these amendments is to achieve consistency with the definition of Volatile Organic Compounds (“VOC”) contained in the federal regulations; specifically, 40 C.F.R. §51.100. Among other amendments made to the RCAAP is the modification of the Hazardous Air Pollutants (“HAP”) list found in Appendix A of said regulation.

Prior to the present amendments, the VOC definition and HAP list contained in the RCAAP included substances that the U.S. Environmental Protection Agency (“EPA”) had excluded from their VOC definition and HAP list. As a result of this, the regulation placed an unnecessary regulatory burden to those industries operating in Puerto Rico.

The following table contains the VOCs that are now excluded – in addition to those previously excluded – from the applicable regulatory requirements contained in the RCAAP:

VOCs EXCLUDED FROM THE RCAAP
Parachlorobenzotrifluoride (PCBTf); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro 1,1,2,2,3, pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3- pentafluoropropane (HFC-245ea); 1,1,1,2,3,-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3,-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1 chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C4F9OCH3 or HFE-7100); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF3)2CFCF2OCH3); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C4F9OC2H5or HFE-7200); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF3)2CFCF2OC2H5); methyl acetate, 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-C3F7OCH3, HFE-7000), 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500), 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea), methyl formate (HCOOCH3), (1) 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); propylene carbonate; and dimethyl carbonate.

Concerning the HAPs listed in Appendix A of the RCAPP, it is worth noting that the EQB removed *Methyl ethyl Ketone (2-butanone)* (CAS No. 78933) and *Ethylene glycol monobutyl ether (2-Butoxyethanol)* (CAS No. 111-76-2) from said list and, thus, are no longer regulated as HAPs under the RCAPP.

The amendments to the RCAAP result in the elimination of regulatory obligations that currently require the use of air emissions control measures (e.g., thermal oxidizers) and reduce operational costs to those industries currently implementing such control measures.

The amendments to the regulation become effective on February 18, 2011.

Greenhouse Gases Proposed Regulation:

The EQB is also proposing additional amendments to the RCAAP. EQB is proposing additional amendments in order to incorporate EPA's final rule issued on May 3, 2010, known as the Prevention of Significant Deterioration and Title V Greenhouse Gases Tailoring Rule ("GHG Tailoring Rule").

The proposed amendments establish dates and thresholds by which GHGs will start to be regulated. As stated in the proposed amendments, **beginning January 2, 2011**, GHGs are subject to regulation if: (i) the stationary source is a new major stationary source for a regulated air pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy of Carbon Dioxide Equivalent ("CO₂e") or more; or (ii) the stationary source is an existing major stationary source for a regulated air pollutant that is not GHGs, and also will have an emissions increase of a regulated air pollutant, and an emissions increase of 75,000 tpy CO₂e or more. In addition to the foregoing, the proposed amendments establish that, **beginning July 1, 2011**, GHGs shall also be subject to regulation: (i) at a new stationary source that will emit or have the potential to emit 100,000 tpy CO₂e; or (ii) at an existing stationary source that emits or has the potential to emit 100,000 tpy CO₂e, when such stationary source undertakes a physical or operational change that will result in an emissions increase of 75,000 tpy CO₂e or more.

EQB's GHG proposed amendments will also modify the definitions of major stationary source, regulated air pollutant or regulated substance, and regulated pollutant (for presumptive fee calculation). Also, EQB proposes to include the following terms in the RCAAP: tpy carbon dioxide equivalent, global warming potential and greenhouse gases.

The promulgation of EQB's GHG proposed amendments is expected at any moment.

If you have any questions or comments, or wish additional information regarding this matter, please contact any of the attorneys listed below, members of our [Environmental, Energy and Land Use Practice Group](#):

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