

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners' Work Session **Date:** April 27, 2007
From: ✓ Leonard Olson, Director
Intergovernmental Relations Division
Subject: Federal Regulatory Notices

Issue Discussion of state and federal legislative issues potentially affecting the TCEQ. The commission may consider legislative proposals and federal rulemakings, as well as other state actions and state's participation in federal legislative and regulatory activities. The commission may also meet in closed meeting to receive legal advice regarding these matters, or any of the above matters, as authorized by Section 551.071 of the Open Meetings Act, Chapter 551 of the Government Code. Any commission action, decision, or vote on these matters will be made in open meeting in accordance with Section 551.102 of the Open Meetings Act, Chapter 551 of the Government Code.

Background and Current Practice Federal legislative issues noticed in the Federal Register and of interest to the TCEQ are attached for information. Commission Action on this issue is not required.

Federal Notices & Regulatory Initiatives

April 27, 2007

Air Programs

Subject	Activity Dates	Federal Register Information	TCEQ Activity & Status
Agency Information Collection Activities; Submission To OMB for Review and Approval; 8-hour Ozone National Ambient Air Quality Standard Implementation Rule; USEPA	May 10, 2007 (comments)	April 10, 2007 Notices	Under review.
National Emission Standards for Hazardous Air Pollutants for Area Sources: Acrylic and Modacrylic Fibers Production, Carbon Black Production, Chemical Manufacturing: Chromium Compounds, Flexible Polyurethane Foam Production and Fabrication, Lead Acid Battery Manufacturing, and Wood Preserving; Proposed Rule; USEPA	May 4, 2007 (comments)	April 4, 2007 Proposed Rules	Under review.
Control of Emissions of Air Pollution From Locomotive Engines and Marine Compression-Ignition Engines Less Than 30 Liters per Cylinder; Proposed Rule; USEPA	July 2, 2007 (comments)	April 3, 2007 Proposed Rules	Under review.
Risk and Technology Review, Phase II, Group 2; USEPA	May 29, 2007 (comments)	March 29, 2007 Proposed Rules	Under review.
Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Large Municipal Waste Combustors; USEPA	April 19, 2007 (comments)	March 20, 2007 Rules and Regulations	Under review.
Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Reasonable Possibility in Recordkeeping; USEPA	May 7, 2007 (comments)	March 8, 2007 Proposed Rules	Under review.

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Other Programs

Subject	Activity Dates	Federal Register Information	TCEQ Activity & Status
Draft Toxicological Review of Nitrobenzene (CASRN 98-95-3): In Support of the Summary Information in the Integrated Risk Information System (IRIS); USEPA	April 30, 2007 (comments)	March 29, 2007 Notices	Under review.
Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Pecos Sunflower (<i>Helianthus paradoxus</i>); FISH AND WILDLIFE SERVICE	May 29, 2007 (comments)	March 27, 2007 Proposed Rules	Under review.

Radiation Programs

Project on Government Oversight and Union of Concerned Scientists; Receipt of Petition for Rulemaking; NUCLEAR REGULATORY COMMISSION	June 12, 2007 (comments)	March 29, 2007 Proposed Rules	Under review.
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Waste Programs

Draft Operator Training Grant Guidelines for States; Solid Waste Disposal Act, Subtitle I, as Amended by Title XV, Subtitle B of the Energy Policy Act of 2005; USEPA	May 10, 2007 (comments)	April 10, 2007 Notices	Under review.
Revisions to the Definition of Solid Waste; USEPA	May 25, 2007 (comments)	March 26, 2007 Proposed Rules	Under review.
Placement of Coal Combustion Byproducts in Active and Abandoned Coal Mines; Proposed Rule; DEPT. of INTERIOR	May 14, 2007 (comments)	March 14, 2007 Proposed Rules	Under review.

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Water Programs

Subject	Activity Dates	Federal Register Information	TCEQ Activity & Status
United States Section; Notice of Availability of a Draft Environmental Assessment and Finding of No Significant Impact for Flood Control Improvements From International Dam to Riverside Diversion Dam, Within the Rio Grande Rectification Project, Located in El Paso County, TX; INTERNATIONAL BOUNDARY AND WATER COMMISSION	May 11, 2007 (comments)	April 12, 2007 Notices	Under review.
Agency Information Collection Activities: Proposed Collection; Comment Request; Information Collection Request for the National Listing of Fish Advisories; USEPA	June 11, 2007 (comments)	April 12, 2007 Notices	Under review.
Expedited Approval of Test Procedures for the Analysis of Contaminants Under the Safe Drinking Water Act; Analysis and Sampling Procedures; USEPA	June 11, 2007 (comments)	April 10, 2007 Notices	Under review.
Agency Information Collection Activities; Proposed Collection; Comment Request; Underground Injection Control (UIC) Program; USEPA	April 30, 2007 (comments)	February 28, 2007 Notices	Staff recommend no comments.

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Final Rule Adoption

Subject	Activity Dates	Federal Register Information
Significant New Use Rules on Certain Chemical Substances and Notification on Certain Substances for Which Significant New Use Rules are Not Being Issued; USEPA	May 29, 2007	March 29, 2007 Rules and Regulations
Protection of Stratospheric Ozone: Listing of Ozone Depleting Substitutes in Foam Blowing; USEPA	May 29, 2007	March 28, 2007 Rules and Regulations
Guidelines Establishing Test Procedures for the Analysis of Pollutants; Analytical Methods for Biological Pollutants in Wastewater and Sewage Sludge: Final Rule; USEPA	April 25, 2007	March 26, 2007 Rules and Regulations
Treatment of Data Influenced by Exceptional Events; USEPA	May 21, 2007	March 22, 2007 Rules and Regulations
Design Basis Threat; NUCLEAR REGULATORY COMMISSION	April 18, 2007	March 19, 2007 Rules and Regulations
Nonattainment New Source Review (NSR); USEPA	May 7, 2007	March 8, 2007 Rules and Regulations

NATIONAL COMMENTS LOG

SUBM TO	DATE	SHORT TITLE	TCEQ COMMENTS	OFF PREPARING	OFF CONTACT
EPA	12/8/06	EPA Draft Listing Waters Impaired by Atmospheric Mercury	<p>The TCEQ is supportive of the approach outlined in the draft Guidance document, which appears to be a compromise to listing the water body in 4b.</p> <p>This approach acknowledges the complexity in developing TMDLs for waters impaired primarily by atmospheric mercury.</p> <p>For waters included in the 5m subcategory, EPA recognizes that the schedule of TMDLs in 13 years is not appropriate, and that States would defer mercury TMDL development beyond this recommended time frame. The TCEQ is supportive of this approach which will allow states to show progress in restoring waters, while also recognizing that it will take much longer to address mercury-impaired waters.</p> <p>The document also provides guidance on the “Recommended Elements of a Comprehensive State Mercury Reduction Program” (Attachment A), that a state would need in place to support the 5m listing. TCEQ should comment that atmospheric source reductions for power generating facilities beyond CAMR may not be necessary for a 5m listing. Additionally, the requirements for 5m should be limited to source reduction strategies that are linked to impairments.</p> <p>EPA should undertake air monitoring to evaluate the results of CAMR nationally, not for a given state. Also, EPA should make specific funds available to state monitoring programs for support of the strategy’s implementation.</p> <p>In one of the footnotes, it is stated that “This policy does not replace existing established laws or regulations governing listing of impaired waters or development of TMDLs under Section 303(d).” The TCEQ comments that the policy could potentially open states/federal government up to litigation over the fact that mercury impairments would languish in category 5.</p>	Chief Engineer’s Office	Tom Weber
EPA	12/12/06	Nominations of Drinking Water Contaminants for the Contaminant Candidate List (CCL)	<p>TCEQ recommends that two potential contaminants be included on the CCL - viruses in ground water and nitrite/nitrate in chloraminated water.</p> <p>Viruses have been detected in ground water in several studies, but no nationwide study of wells has been completed. Viruses can cause a wide range of diseases.</p> <p>Nitrate and nitrite can be formed in systems that use chloramines for disinfection. Nitrate and nitrite may cause methemoglobinemia in infants. Although a regulatory standard exists for measurements taken at an entry point to a distribution system, no recent nationwide study on occurrence has evaluated the extent of nitrate and nitrite occurrence within distribution systems.</p> <p>In addition, TCEQ encourages EPA to continue to seek new ways to reduce the cost of this research monitoring on systems. Specifically, in developing sites for CCL contaminant monitoring under any unregulated contaminant monitoring, we recommend that EPA allow representative wells or sources to be sampled, rather than every source at a selected system.</p>	Office of Permitting, Remediation, and Registration	Alicia Diehl

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SUBM TO	DATE	SHORT TITLE	TCEQ COMMENTS	OFF PREPARING	OFF CONTACT
EPA	1/8/07	National Emission Standards for Hazardous Air Pollutants for Source Categories	The referenced storage tank requirements do not adequately address floating-roof tank landing loss emissions from bulk terminals, bulk plants, and pipeline facilities. TCEQ supports the three-year compliance period for the submerged fill requirements at bulk plants and at gasoline dispensing facilities in urban areas.	Chief Engineer's Office	Danielle Nesvacil
EPA	3/5/07	NPDES Permit Fee Incentive for Clean Water Act Section 106 Grants; Allotment Formula	TCEQ opposes the proposed rule due to the restriction in state discretion in allocating CWA Section 106 grants for state water quality programs and objects to the proposed rule's interference in how state legislatures conduct business. Additional incentives for the effective management of state water quality programs, as proposed in the rulemaking, are unnecessary, as performance is already monitored by EPA's Program Activity Measures.	Office of Permitting, Remediation, and Registration	Kimberly Wilson

NATIONAL COMMENTS LOG

SUBM TO	DATE	SHORT TITLE	TCEQ COMMENTS	OFF PREPARING	OFF CONTACT
EPA	3/6/07	Revisions of Standards of Performance for New and Existing Stationary Sources	<p>Modifications to the baseline for determining allowance allocations The EPA has not provided a clear delineation of how the proposed change of using a different baseline heat input period for calculating state unit allocations – from 2000-2004 to 2001-2005 - would take effect. The EPA should clarify if the revised baseline period would apply to state allocation calculations under the CAMR model rule or if it would be used only to calculate unit allocations under the proposed federal plan. The EPA should clarify if, when submitting an approvable plan, states will be required to change the baseline (2001-2005) for determining allowance allocations or if the CAMR model rule baseline (2000-2004) would apply.</p> <p>National set-aside for states and Indian Country that did not previously receive mercury emissions budgets The EPA is proposing to create a 300-pound annual set-aside for new unit generation in states and Indian Country that did not receive initial mercury emissions budgets for CAMR. The EPA is proposing to reduce each state’s mercury emission budget by 0.4 percent for years 2012-2017 and by one percent in 2018 and thereafter, to create the annual set-aside budget. The EPA is proposing that states would begin using their revised budgets in 2012. The EPA is proposing to distribute mercury allowances from the set-aside on a pro-rata basis to new units in states and Indian Country without mercury emissions budgets. However, the EPA is proposing to not redistribute excess allowances to the states or to make them available for purchase. The proposed rule does not specify how unused mercury allowances will be used. States currently participating in the EPA’s CAMR model trading rule are required to reallocate any remaining mercury allowances from the state set-asides. Any excess allowances in the federal set-aside should be made available as per the established distribution methodology for states in the model rule at 41 CFR 60.4142(d), as long as the nationwide budget is not increased. If the national mercury budget for states is revised to create the 300-pound set-aside, states would be required to revise rules and plans, and re-submit a revised plan to the EPA. If the proposed CAMR federal plan is adopted, the EPA would be required to record 2012 allocations by December 1, 2009. This deadline would require the EPA to finalize all changes associated with the CAMR federal plan and the subsequent rule changes as well as revisions to state budgets prior to October 31, 2009, for states to be able to submit their allocations. To accommodate the proposed changes in the CAMR state plans and the associated rules, Texas would need at least a year to make the needed revisions to its state plan and associated rule in addition to the time necessary for the EPA to approve a plan or allowance allocation methodology.</p> <p>Recording of mercury allowances by the EPA The proposal is unclear if October 31 is the deadline in each future year in which states would be required to submit their own mercury allocations, or if the October 31 date would only apply for states submitting allocations to the EPA in 2007.</p> <p>Timing Concerns The EPA needs to ensure that states receive adequate time to make the necessary changes to rules and revisions to state plans to limit the amount of time states will be under a federal plan. This process takes approximately one year to complete in Texas.</p>	Chief Engineer’s Office	Kim Herndon

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EPA	3/8/07	National Emission Standards for Hazardous Air Pollutants: General Provisions	<p>The primary purpose of the proposal is to allow major sources to become area sources by limiting emissions to area source emission levels at any time, regardless of the compliance date. Staff agrees with this initiative, since it would enhance compliance understanding by simplifying applicability determinations, and eliminate resource costs of tracking historic applicability dates and emissions for this purpose. Owners and operators may also be encouraged to reduce emissions beyond the MACT applicability thresholds. The initiative would also allow staff to plan outreach based on need and workload, instead of compliance dates of MACT standards. Some groups have expressed opposition in the past when EPA previously proposed to change the policy. Therefore, staff recommends submitting a comment letter in support of the initiative. Further, some entities support the May 2003 proposal, which allowed sites to avoid MACT requirements only for sources that completely eliminate HAPs. Eliminating HAP emissions completely may not be realistic for all industries.</p> <p>The EPA has also included in the proposal concepts of case-by-case analysis and inquiry on changes between major and area source status. Because these changes impact commission resources and can impact environmental protection, staff recommends submitting specific comments on the initiative. The areas of interest include (1) when owners and operators must comply with area source standards when changing from major to area source status, (2) when that source must comply if it changes again to be a major source, and (3) the proposals to use case-by-case analysis.</p>	Office of Permitting, Remediation, and Registration	Tara Capobianco
EPA	3/20/07	Hazardous Waste Management System: Amendment to Hazardous Waste Code F019	<p>Regarding the feasibility of recycling F019 waste under current market conditions, the TCEQ has information that recycling of F019 is occurring in Texas. While not specifically from automotive manufacturers, Texas data indicates that F019 recycling is feasible under today's market conditions.</p> <p>Concerning the different options for non-hazardous landfill disposal of F019 waste, the TCEQ supports the second option allowing for alternative disposal in a landfill equipped with a liner system that meets minimum design criteria. The TCEQ recommends that disposal in landfills with more rigorous liner design criteria (or hazardous waste landfills), should remain optional. Again, the TCEQ does not object to alternative landfill disposal as discussed in the second option.</p> <p>Considering recordkeeping requirements, it seems reasonable to the TCEQ that they should be part of the exemption rather than a separate requirement, further reinforcing the concept that qualification of the waste as non-hazardous is conditioned on its safe management. TCEQ concurs with the proposed regulatory language in its entirety for prescriptive management standards prior to disposal.</p> <p>In addition, the TCEQ is also providing comments regarding F019 recycling. The proposal seems to state that the waste may be excluded from hazardous waste regulations if disposed, but it appears to remain designated as hazardous waste if recycled. The TCEQ is concerned that this may have the effect of discouraging recycling. Similarly, it is unclear, when a portion of a generator's F019 waste is recycled and the remainder is sent for disposal, whether the generator is required to manage the entire volume as hazardous waste or whether the recycled portion may be treated as nonhazardous waste prior to removal. The TCEQ requests that the EPA provide clarification in instances where an automotive manufacturer recycles a portion or all of their F019 waste.</p>	Office of Permitting, Remediation, and Registration	Scott Green

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SUBM TO	DATE	SHORT TITLE	TCEQ COMMENTS	OFF PREPARING	OFF CONTACT
EPA	3/22/07	Control of Air Pollution From New Motor Vehicles/New Motor Vehicle Engines— Heavy-Duty Vehicle and Engine Standards; Onboard Diagnostic Requirements	<p>TCEQ supports the proposed rule by requiring a standardized emissions control monitoring system such as OBD for gasoline and diesel vehicles weighing over 14,000 pounds. Since heavy-duty vehicles, especially diesel vehicles, have an extended useful life often lasting hundreds of thousands of miles, the need to detect emissions-related problems throughout the operational period is important in reducing nitrogen oxides (NOx) and particulate matter (PM) emissions. This Heavy-Duty OBD rulemaking will provide an option for states to consider in meeting their State Implementation Plan (SIP) requirements. However, the current Mobile6.2 model and the new mobile model under development, Motor Vehicles Emissions Simulator (MOVES) do not provide any credit for conducting diesel testing. The mobile model should be designed so that states are able to take SIP credits for implementing a diesel I/M program.</p> <p>TCEQ also supports the consideration of future rulemaking that would require OBD systems on non-road heavy-duty diesel engines. Non-road heavy-duty vehicles are a source of NOx and PM and, similar to heavy-duty vehicles, have an extended useful life lasting many years. The implementation of OBD on non-road heavy-duty vehicles would assist in the maintenance and repair of these vehicles and provide a means to ensure these vehicles continue to emit at low emissions levels.</p>	Chief Engineer's Office	Bob Wierzowiecki
EPA	4/10/07	Public Hearings and Submission of Plans	TCEQ generally supports EPA's recommended changes. However, clarity needs to be provided to determine whether states will have the option to hold hearings without providing an opportunity to request a hearing, as the state deems appropriate.	Chief Engineer's Office	Kim Herndon