

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners' Work Session **Date:** May 18, 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.

NATIONAL COMMENTS LOG

SUBM TO	DATE	SHORT TITLE	TCEQ COMMENTS	OFFICE PREPARING	OFFICE CONTACT
EPA	4/26/07	Draft FY 2008 National Program Manager Guidance	<p>Office of Air and Radiation The Texas Commission on Environmental Quality is particularly concerned about the potential for reduced or redirected federal funding assistance with respect to the support for air monitoring networks. It has been noted that current funding under Section 103 of the Federal Clean Air Act could be reduced. This could force states to use Section 105 funds to support the PM2.5 monitoring network. This agency would then have to provide additional matching funds to maintain the existing monitoring network. Even with the divestment of low-value monitoring for several NAAQS pollutants, divestment opportunities will be limited, since most of Texas' NAAQS monitoring is in non-attainment or near non-attainment areas, is required by other federal grants, or is necessary to measure pollutant transport. Costs for new monitors are likely to increase and Texas does not have sufficient spare monitors to replace ones that malfunction.</p> <p>Office of Water Strategies to Protect Human Health: Fish and Shellfish Safe to Eat Comment on Subobjective B)2) Safe Shellfish: The Texas State Department of Health Services (TSDHS) identifies and closes oyster beds in Texas based upon U.S. Food and Drug Administration (FDA) guidelines and requirements. The TCEQ then identifies the closed areas as impairments on the 303(d) List. In several instances, these closures are not based upon water quality monitoring data indicating elevated levels of indicator bacteria, nor data showing a pollutant discharge as the cause of the closure. Since closures of this type cannot be addressed by limiting or eliminating pollutant discharges, implementation of a Clean Water Act (CWA) program will not address the closures. It is suggested that the EPA identify an objective to prioritize CWA program activities towards the closed areas where monitoring data identify pollutant discharge impacts.</p> <p>Strategies to Protect Human Health: Water Safe for Swimming Comment on Subobjective B)3) Reduce Pathogen Levels in Recreational Waters Generally: The TCEQ agrees that ineffective septic systems are contributing sources to recreational use impairments. In addition to EPA's objective to design decentralized systems, the EPA should also emphasize objectives and funding to connect households with failing septic systems to a POTW. The EPA should allow the use of Section 319 grants for this purpose, to eliminate nonpoint sources. Such a strategy could facilitate progress to address these sources, particularly systems in economically disadvantaged communities within impaired watersheds.</p> <p>Strategies to Protect Fresh Waters, Coastal Waters, and Wetlands: Protect Coastal and Ocean Waters Comment on Strategy 4) Ocean Protection Programs: The TCEQ through its Galveston Bay Estuary Program and partners have successfully collaborated to implement projects to beneficially use sediment dredged from Galveston Bay to design and create high quality habitat areas for birds and other aquatic life. EPA may desire to review the success of this initiative and its possible application elsewhere.</p>	Chief Engineer's Office	Clyde Bohmfalk

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(cont'd) EPA	4/26/07	Draft FY 2008 National Program Manager Guidance	<p>Strategies to Protect Large Aquatic Ecosystems: Protect Mexico Border Water Quality Comment on Strategy B)2) Wastewater Treatment Financing: In early 2007, the TCEQ oversaw completion of a comprehensive watershed protection plan to address nutrients, sediment, and biochemical oxygen demand impacts on the Arroyo Colorado, a Texas border area waterway. This effort was funded in part with the support of a Section 319 grant. The plan includes implementation activities targeted through 2015 that would cost about \$65 million, mostly for wastewater infrastructure and agricultural best management practices. The TCEQ urges the EPA to develop specific border protection strategies in collaboration with other federal entities that provide infrastructure funding that would give priority towards financial assistance towards this watershed.</p> <p>Appendix B: Measures with National/Regional Data and Targets Comment on Strategic Target SP-10 – Number of Water Bodies identified in 2002 as not attaining water quality standards where standards are now fully attained: The TCEQ supports this target and is implementing TMDLs and other strategies aimed at restoration of water quality. The TCEQ published a Status Report on TMDLs (October 2006) which can be viewed at the identified weblink below, which numerically describes contributions towards environmental progress addressing point sources and nonpoint sources through TMDL implementation in Texas. This progress may contribute towards the EPA target. Dependent on EPA’s specific measurement methods, this progress could also contribute towards targets in measures WQ-21, CO-1, and SP-38.</p> <p>http://www.tceq.state.tx.us/implementation/water/tmdl/tmdlprogram.html#status</p> <p>United States – Mexico Border Reductions in funding can have a determining impact on the implementation of some of the goals related to environmental issues along the U.S. – Mexico border area. It is noted that border efforts are acknowledged in the guidance for the Office of Air and Radiation and the Office of Water, but there is no mention of U.S.-Mexico border issues in the draft guidance for the Office of Prevention, Pesticides, and Toxic Substances or the Office of Policy, Economics and Innovation. In addition, in the guidance for the Office of Solid Waste and Emergency Response it is unclear what the priorities are.</p>	Chief Engineer’s Office	Clyde Bohmfalk

NATIONAL COMMENTS LOG

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EPA	5/10/07	Draft Operator Training Grant Guidelines for States	<p>The Texas Commission on Environmental Quality (TCEQ) respectfully provides the following comments with regard to the referenced draft guidelines:</p> <p>How Does A State Implement These Guidelines?: The state must develop state-specific operator training requirements, must establish a procedure to identify persons who are required to be trained, and must ensure that all operators are trained. In Texas, even if third party training providers are utilized and UST owner/operators pay for their own training, existing databases must be modified to track the new information and additional personnel will be necessary to modify the databases and to address the added ongoing information stream. It is currently estimated that the additional burden on the TCEQ could require up to 9 additional staff (6 full time and 3 temporary), and additional expenditures in excess of \$425,000 the first year and in excess of \$305,000 per year thereafter. TCEQ's current FTE caps and budgetary constraints will make meeting these requirements difficult.</p> <p>Who is Subject to Operator Training Requirements and What are the Requirements?: States must establish a procedure to identify individuals who are required to meet operator training requirements and suggests that states may accomplish this by requiring that UST system owners identify at least one name for each operator class for each UST system. A UST system is each individual tank/line system. This requirement is onerous and would be better stated if "UST system" were changed to "UST facility."</p> <p>Who is Subject to Operator Training Requirements and What are the Requirements?: The logistics of designating and tracking the Class C operator or operators by the owner/operators and the state may prove to be quite troublesome, considering the normally high turnover rate of these employees. TCEQ suggests that verification by Class B operators that all daily on-site employees are regularly trained would be sufficient.</p> <p>When Must Operators Be Trained?: States must require Class A and Class B operators to repeat specific training requirements following a non-compliance determination by the state. TCEQ suggests that the language be changed to require only Class B Operators to repeat training.</p>	Office of Permitting, Remediation, and Registration	Anton Rozsypal

Federal Notices & Regulatory Initiatives

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Air Programs

Subject	Activity Dates	Federal Register Information	TCEQ Activity & Status
Supplemental Notice of Proposed Rulemaking for Prevention of Significant Deterioration and Nonattainment New Source Review: Emission Increases for Electric Generating Units; USEPA	July 9, 2007 (comments)	May 8, 2007 Proposed Rules	Under review.
Transportation Conformity Rule Amendments to Implement Provisions Contained in the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU); USEPA	June 1, 2007 (comments)	May 2, 2007 Proposed Rules	Under review.
Agency Information Collection Activities; Proposed Collection; Comment Request; Application Requirements for the Approval and Delegation of Federal Air Toxics Programs to State, Territorial, Local, and Tribal Agencies; USEPA	June 26, 2007 (comments)	April 27, 2007 Notices	Under review.
Change in Deadline for Rulemaking To Address the Control of Emissions From New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder; USEPA	May 29, 2007 (comments)	April 27, 2007 Proposed Rules	Under review.
Exhaust Emission Test Procedures for All-Terrain Vehicles; USEPA	May 29, 2007 (comments)	April 26, 2007 Proposed Rules	Under review.
Agency Information Collection Activities: Proposed Collection; Comment Request; PM2.5 Ozone National Ambient Air Quality Standard Implementation Rule; USEPA	June 25, 2007 (comments)	April 25, 2007 Notice	Under review.
Revisions to Definition of Cogeneration Unit in Clean Air Interstate Rule (CAIR), CAIR Federal Implementation Plan, Clean Air Mercury Rule (CAMR), and CAMR Proposed Federal Plan; Revision to National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters; and Technical Corrections to CAIR and Acid Rain Program Rules; USEPA	June 11, 2007 (comments)	April 25, 2007 Proposed Rules	Staff recommend comments. Executive Review package being developed.

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Air Programs

Subject	Activity Dates	Federal Register Information	TCEQ Activity & Status
National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks; National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products; USEPA	May 24, 2007 (comments)	April 24, 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	Staff recommend comments. Executive Review package being developed.
Risk and Technology Review, Phase II, Group 2; USEPA	May 29, 2007 (comments)	March 29, 2007 Proposed Rules	Staff recommend no comments.

Other Programs

Draft Safe Harbor Agreement and Application for an Enhancement of Survival Permit for the Attwater's Prairie Chicken, Northern Aplomado Falcon, Whooping Crane, and Black Lace Cactus for Activities on Private Lands in All or Portions of Aransas, Austin, Colorado, Galveston, Goliad, Refugio, and Victoria Counties, TX (Grazing Lands Conservation Initiative); Fish and Wildlife Service	May 30, 2007 (comments)	April 30, 2007 Volume 72, Number 82 Notices Page 21283-21284	Under review.
Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Pecos Sunflower (Helianthus paradoxus); Fish and Wildlife Service	May 29, 2007 (comments)	March 27, 2007 Volume 72, Number 58 Proposed Rules Page 14327-14366	Staff recommend no comments.

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Radiation Programs

Subject	Activity Dates	Federal Register Information	TCEQ Activity & Status
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	Staff recommend no comments.

Waste Programs

Agency Information Collection Activities: Proposed Collection; Comment Request; Land Disposal Restrictions; USEPA	June 18, 2007 (comments)	April 17, 2007 Notices	Staff recommend no comments.
Agency Information Collection Activities: Proposed Collection; Comment Request; 2007 Hazardous Waste Report; USEPA	June 18, 2007 (comments)	April 17, 2007 Notices	Staff recommend no comments.
Revisions to the Definition of Solid Waste; USEPA	June 25, 2007 (comments)	March 26, 2007 Proposed Rules	Staff recommend no comments.
Agency Information Collection Activities: Proposed Collection; Comment Request; Land Disposal Restrictions; USEPA	June 18, 2007 (comments)	April 17, 2007 Notices	Staff recommend no comments.
Agency Information Collection Activities: Proposed Collection; Comment Request; 2007 Hazardous Waste Report; USEPA	June 18, 2007 (comments)	April 17, 2007 Notices	Staff recommend no comments.
Revisions to the Definition of Solid Waste; USEPA	June 25, 2007 (comments)	March 26, 2007 Proposed Rules	Staff recommend no comments.

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Water Programs

Subject	Activity Dates	Federal Register Information	TCEQ Activity & Status
Agency Information Collection Activities; Proposed Collection; Comment Request; Proficiency Testing Studies for Drinking Water Laboratories; USEPA	July 2, 2007 (comments)	May 3, 2007 Notices	Under review.
Drinking Water: Regulatory Determinations Regarding Contaminants on the Second Drinking Water Contaminant Candidate List--Preliminary Determinations; USEPA	July 2, 2007 (comments)	May 1, 2007 Proposed Rules	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	Staff recommend no comments.
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	Staff recommend no comments.

Federal Notices & Regulatory Initiatives

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Final Rule Adoption

Subject	Activity Dates	Federal Register Information
Cooperative Agreements and Superfund State Contracts for Superfund Response Actions; USEPA	July 2, 2007	May 2, 2007 Rules and Regulations
Prevention of Significant Deterioration, Nonattainment New Source Review, and Title V: Treatment of Certain Ethanol Production Facilities Under the "Major Emitting Facility" Definition; USEPA	July 2, 2007	May 1, 2007 Rules and Regulations
Regulation of Fuels and Fuel Additives: Renewable Fuel Standard Program; USEPA	September 1, 2007	May 1, 2007 Rules and Regulations
Change in Deadline for Rulemaking To Address the Control of Emissions From New Marine Compression-Ignition Engines at or Above 30 Liters Per Cylinder; USEPA	June 26, 2007	April 27, 2007 Rules and Regulations
Extension of Temporary Exhaust Emission Test Procedure Option for All Terrain Vehicles; USEPA	June 25, 2007	April 26, 2007 Rules and Regulations
Clean Air Fine Particle Implementation Rule; USEPA	May 29, 2007	April 25, 2007 Rules and Regulations
National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks; National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products; USEPA	June 25, 2007	April 24, 2007 Rules and Regulations

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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
Treatment of Data Influenced by Exceptional Events; USEPA	May 21, 2007	March 22, 2007 Rules and Regulations