

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners' Work Session **Date:** September 7, 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

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SUBM TO	DATE	SHORT TITLE	TCEQ COMMENTS	OFFICE PREPARING	OFFICE CONTACT
EPA	5/31/07	Transportation Conformity Rule Amendments	TCEQ supports inclusion in the federal conformity rule of the SAFETEA-LU flexibilities and streamlining, and other changes. These changes should provide nonattainment and maintenance areas more time to plan, identify, and implement air quality strategies.	Chief Engineer's Office	Margie McAllister
EPA	6/14/07	Revisions to CAIR/CAMR Rules	<p>General Comment State specific air shed analysis for the effects of the proposed rule was not provided. For Texas to make an informed decision and meaningfully comment as to the proposed rule making's impacts on the Texas air shed, analysis should have been provided to show the impacts on the air shed of excluding biomass electric generating units with the proposed revised efficiency exemption from participation in CAIR and CAMR. In particular, there is no information as to the number of existing units in the neighboring states that may qualify for the proposed revised efficiency exemption that would impact the Texas air shed.</p> <p>Timing of the Proposed Rule Change If additional rule changes to CAIR and CAMR are required for states, Texas would need additional time to incorporate any federal rule changes. The proposed rule would still require states to provide allowance allocations to the EPA by October 31, 2007. However, if this rule package is not finalized until sometime during the summer or fall of 2007, Texas would not have adequate time to make the necessary revisions. The plan and rule revision process for Texas requires a minimum of nine months and that would only allow a few months between finalizing EPA's rules and the required submission date of the CAIR and CAMR allowance allocations to the EPA's Clean Air Markets Division. If adequate time is not provided to make the necessary changes, Texas will be forced to continue under federal plans for both CAIR and CAMR. This result is inconsistent with Texas' desired program for implementing these important initiatives.</p> <p>Allocation Amendments for CAIR and CAMR The EPA has requested comments on the possibility of revisions to states' CAIR and CAMR budgets. Texas is opposed to any additional changes to states' budgets. The potential effect would cause Texas to make amendments to our plans, as well as allocations that have already been distributed to Texas sources. Texas sources have already been made aware of their allocations and have planned accordingly.</p> <p>Definition Clarification for Total Energy Input The EPA did not propose to change the model rule definition of "total energy input" that is currently defined as "with regard to cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself." Therefore, the rule text was changed, but not the definition in the model rule. It is unclear if this would mean "total energy input" equals only the input from fossil fuels if the proposed conditions are met. If this is the case, both the definition and the use of the definition in the rule text should be revised to reflect this.</p>	Chief Engineer's Office	Kim Herndon

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SUBM TO	DATE	SHORT TITLE	TCEQ COMMENTS	OFFICE PREPARING	OFFICE CONTACT
EPA	6/25/07	Revisions to the Definition of Solid Waste	<p>The TCEQ has several comments regarding the revisions to the definition of solid waste proposed by EPA. Comments address the need for additional regulatory oversight for the management of hazardous secondary materials in land-based units. Another comment requests EPA to consider requiring reclamation facilities to make available for review a Closure Plan, or similar documentation, to justify the amount of financial assurance the company posts for closure. The TCEQ also submits comments averring that by employing all four factors used in determining legitimate recycling, flexibility can still be maintained. Another comment addresses the possible generation of wastes that could contain hazardous constituents being classified and managed as non-hazardous waste because those wastes do not demonstrate the characteristics of hazardous waste. The TCEQ requests that EPA reevaluate implementing a formal procedure for the evaluation of petitions of non-waste determination.</p>	Office of Permitting, Remediation, and Registration	Lynn Bell
EPA	7/2/07	Control of Emissions From Engines Less Than 30 Liters per Cylinder	<p>The EPA requested comment on whether to set emission standards for existing large marine diesel engines when they are remanufactured. The TCEQ supports establishing emission standards for remanufactured compression-ignition marine engines with per-cylinder displacement below 30.0 liters per cylinder that would be similar to the emission standards proposed for remanufactured and/or refurbished locomotive engines.</p> <p>The EPA also requested comment on whether refurbished locomotives should be required to meet more stringent standards than locomotives that are simply remanufactured. The TCEQ believes the emission standards for refurbished locomotives should be consistent with those applicable to remanufactured locomotives since the only real difference between these classifications is the amount of previously used engine components being exchanged. The TCEQ supports establishing emission standards that would require both refurbished and remanufactured locomotives to meet the highest tier of emission standards applicable to new line-haul or switch locomotives as appropriate at the time of the locomotive's refurbishment.</p> <p>The TCEQ encourages the EPA to proceed expeditiously toward final adoption of the rules to provide states working toward compliance with the NAAQS for ozone and PM_{2.5} much needed emissions reductions as soon as possible.</p>	Chief Engineer's Office	Morris Brown

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SUBM TO	DATE	SHORT TITLE	TCEQ COMMENTS	OFFICE PREPARING	OFFICE CONTACT
EPA	7/19/07	Model-Based Analysis and Tracking of Airborne Mercury Emissions to Assist in Watershed Planning	<p>The EPA plans to conduct additional modeling with updated emissions from the 1999 – 2002 period modeled previously to represent the 2001 base year. The TCEQ is concerned that these emissions data are outdated, and believes that any further mercury modeling conducted by the EPA for this study should be based on emissions inventory data developed and quality assured by the states for recent years.</p> <p>The TCEQ also has concerns about the methodology the EPA employed for assigning mercury speciation profiles to sources, particularly for electric generating units (EGUs). The EPA's methodology for assigning speciation profiles to EGUs having stack test data appears to be inappropriate in some cases, in that the EPA used speciation profile averaging techniques instead of explicitly using stack test data for each unit. For some units or plants, the EPA's speciation procedure is not clear. The TCEQ recommends that EPA should make documentation available explaining how speciation profiles were developed for individual EGUs, units of other source types, and plant-wide composites.</p> <p>The TCEQ recognizes the EPA's report provides a demonstration of a potentially useful source tagging methodology that can be used for assessing mercury deposition attributable to specific sources or source categories. The TCEQ looks forward to having the opportunity to use the associated graphical analysis tool to determine its usefulness for future planning.</p> <p>The TCEQ recommends that the EPA caution users of information from the study that the modeling is based on emissions inventory information that is outdated, and that the reported results should thus be regarded as largely a demonstration of the source tagging methodology and not necessarily applicable to current mercury deposition values or deposition spatial distributions. Additionally, the TCEQ recommends that the EPA emphasize that recent emissions inventories should be used for regulatory planning.</p>	Chief Engineer's Office	Dave Harper

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SUBM TO	DATE	SHORT TITLE	TCEQ COMMENTS	OFFICE PREPARING	OFFICE CONTACT
EPA	8/1/07	Standards of Performance for Petroleum Refineries	<p>The TCEQ recommends a total particulate matter (PM) standard be used in best available control technology (BACT) determinations when permitting fluid catalytic cracking units (FCCU) in Texas. TCEQ supports a control requirement of 1.0 lb. total PM (condensable and non-condensable) per 1000 lbs. coke burn and encourages the EPA to continue to improve Method 202.</p> <p>The TCEQ requests the EPA to clarify whether the intent is to set stricter standards for sulfur dioxide, carbon monoxide, and nitrogen oxides when oxygen enrichment is used for FCCUs. The EPA acknowledged the availability of oxygen enrichment for FCCUs and has adjusted the coke burnoff determination methods to accommodate that possibility. However, the impact that oxygen enrichment might have on concentrations of other pollutants has not been considered, and the equation as written would result in stricter standards when using oxygen enrichment. The TCEQ also requests the EPA to clarify the intent in cases where oxygen enrichment is used for sulfur recovery units.</p> <p>The emission limitations include several long-term averaging periods, including 7-day and 365-day periods. The TCEQ requests the EPA clarify how compliance with these limitations should be determined when startup, shutdown, and malfunction activities occur during the averaging of time.</p> <p>Regarding the coke burn-off rate Equation 2 on page 27210, the definition of the K_2 constant appears to incorrectly reference "%" (concentration), when there is no "%" multiplier in the term K_2Q_a in Equation 2 (Q_a is a volumetric flow rate).</p> <p>The TCEQ recommends that § 60.107a(b), <i>Exemption from H₂S monitoring requirement for low-sulfur gas streams</i> located on page 27217, be authorized with mandated records and testing instead of being approved by the administrator.</p>	Office of Permitting, Remediation, and Registration	Tara Capobianco
EPA	8/7/07	Prevention of Significant Deterioration New Source Review: Refinement of Increment Modeling Procedures	<p>Due to the complexity of the issues contained in the proposed rule notice, the TCEQ has developed a detailed response that includes comments on various issues including the eight areas summarized on page 31379 of the preamble and the 14 proposals contained in the Western States Air Resources Council (WESTAR) Recommendations for Improving the Prevention of Significant Deterioration Program, May 2005. These issues range from procedures that address air dispersion modeling techniques and guidance to rule changes that amend the process used to calculate emission rates and require the inclusion of mobile source and area source emissions in addition to stationary source emissions in increment analyses.</p>	Office of Permitting, Remediation, and Registration	Beryl Thatcher

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Texas Water Development Board	8/9/07	SB 3 – Economically Distressed Areas Program	<p>The Texas Water Development Board's (TWDB) proposed rules do not specify when the request for consultation might be forwarded to TCEQ, causing the agency review to be hurried and incomplete. As written, TWDB could wait until late in the 30 day period to consult with TCEQ. Six TCEQ divisions (Environmental Law, Water Quality, Water Supply, Border Affairs, Field Operations, and Enforcement), may potentially be involved in evaluating data to determine if there should be an objection to the request to continue temporary funding. TWDB should specify in the proposed rule that they will provide the request as quickly as possible, ensuring TCEQ staff adequate time to review the data, provide an answer to TWDB, and allow TWDB time to respond to the political subdivision within the 30 day period.</p>	Executive Office	Steve Niemeyer
City of Austin	8/10/07	Void and Water Flow Mitigation	<p>The Edwards Aquifer Protection Program (EAPP) is concerned that some technical requirements proposed by the City of Austin (COA) may not provide the minimum standards necessary to protect the Edwards Aquifer. The EAPP has the following three concerns: the use of controlled low strength material encasement (CLSM) rather than concrete encasement of sewer lines; the plugging methods for sensitive features intercepted in the trench floor; and, the thickness of wall sealants. Without additional engineering data to support the COA's proposals for these specific methods, the EAPP will not be able to approve plans submitted with these methods.</p> <p>The EAPP also has concerns with the COA's proposed Geologist Void Description and Documentation Log Sheet. The COA's proposal directs the geologist to conduct a biological survey for karst invertebrates if life signs are present. The TCEQ does not require a biological survey and the COA's proposed form does not contain all of the administrative information necessary for the Edwards Aquifer tracking database; therefore, the EAPP will not be able to accept the COA's form in lieu of current EAPP application forms.</p> <p>The EAPP recognizes that the COA's rule proposal provides some feasible options for the EAPP which provide more definitive requirements for protection of sensitive features encountered during construction activities; however, providing written support of their proposal at this time would circumvent the TCEQ process for amending rules. The TCEQ intends to consider portions of the COA's proposed rule language when developing an Edwards Aquifer rule amendment in the future.</p>	Office of Compliance and Enforcement	Tracy Miller

Federal Notices & Regulatory Initiatives

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Air Programs

Subject	Activity Dates	Federal Register Information	TCEQ Activity & Status
Approval and Promulgation of Air Quality Implementation Plans; Texas; Shipyard Facilities and Provisions for Distance Limitations, Setbacks, and Buffers in Standard Permits; USEPA	September 27, 2007 (comments)	August 28, 2007 Proposed Rules	Under review.
Protection of Stratospheric Ozone: The 2008 Critical Use Exemption From the Phaseout of Methyl Bromide; USEPA	September 26, 2007 (comments)	August 27, 2007 Proposed Rules	Under review.
Revisions to Consolidated Federal Air Rule; USEPA	September 26, 2007 (comments)	August 27, 2007 Proposed Rules	Under review.
National Ambient Air Quality Standards for Ozone; Proposed Rule; USEPA	October 9, 2007 (comments) September 5, 2007 (public hearing - Houston)	July 11, 2007 Proposed Rules	Staff recommend comments. Executive Review package being developed.

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Other Programs

Subject	Activity Dates	Federal Register Information	TCEQ Activity & Status
Agency Information Collection Activities: Proposed Collection; Comment Request; Application for Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases Under CERCLA Section 123; USEPA	October 22, 2007 (comments)	August 22, 2007 Notices	Under review.
Agency Information Collection Activities; Proposed Collection; Comment Request; National Oil and Hazardous Substance Pollution Contingency Plan; USEPA	October 22, 2007 (comments)	August 22, 2007 Notices	Under review.
Agency Information Collection Activities: Proposed Collection; Comment Request; Reporting and Recordkeeping Requirements Under the Responsible Appliance Disposal Program; USEPA	October 15, 2007 (comments)	August 14, 2007 Notices	Staff recommend no comments.
National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List; Notice of intent to delete the Bailey Waste Disposal Superfund Site located in Bridge City, Texas; USEPA	September 13, 2007 (comments)	August 14, 2007 Proposed Rules	Staff recommend no comments.
Notice of Intent To Prepare a Comprehensive Conservation Plan and Environmental Assessment; Trinity River National Wildlife Refuge, Located in Liberty County, TX; FISH & WILDLIFE SERVICE	November 30, 2007 (comments)	August 10, 2007 Notices	Staff recommend no comments.

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Other Programs

Subject	Activity Dates	Federal Register Information	TCEQ Activity & Status
Extension of Cross-Media Electronic Reporting Rule Deadline for Authorized Programs; USEPA	September 4, 2007 (comments)	August 3, 2007 Proposed Rules	Staff recommend comments. Executive Review package being developed.
Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Devils River Minnow; Val Verde and Kinney Counties, Texas; FISH & WILDLIFE SERVICE	October 1, 2007 (comments)	July 31, 2007 Proposed Rules	Staff recommend no comments.
Agency Information Collection Activities: Underground Storage Tanks: Technical and Financial Requirements, and State Program Approval Procedures; USEPA	September 30, 2007 (comments)	July 25, 2007 Notices	Staff recommend no comments.

Waste Programs

Expansion of RCRA Comparable Fuel Exclusion; Proposed Rule; USEPA	September 14, 2007 (comments)	June 15, 2007 Proposed Rules	Staff recommend comments. Executive Review package being developed.
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Water Programs

Subject	Activity Dates	Federal Register Information	TCEQ Activity & Status
United States Section; Notice of Availability of Draft Programmatic Environmental Impact Statement, Improvements to the USIBWC Rio Grande Flood Control Projects Along the Texas-Mexico Border; INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO	September 24, 2007 (comments) Public Hearings: El Paso, Texas August 21, 2007 Presidio, Texas August 22, 2007 McAllen, Texas August 28, 2007	August 10, 2007 Notices	Staff recommend no comments.
Office of Water; Notice of Availability and Comment Period for Draft Federal Geographic Data Committee (FGDC) Wetland Mapping Standard; USEPA	November 9, 2007 (comments)	August 7, 2007 Notices	Staff recommend no comments.
Agency Information Collection Activities: Proposed Collection; Comment Request; National Water Quality Inventory Reports (Clean Water Act); USEPA	October 1, 2007 (comments)	July 31, 2007 Notices	Staff recommend no comments.
Agency Information Collection Activities; Proposed Collection; Comment Request; Clean Watersheds Needs Survey; USEPA	September 21, 2007 (comments)	July 23, 2007 Notices	Staff recommend no comments.

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Final Rule Adoption

Subject	Activity Dates	Federal Register Information
Approval and Promulgation of Air Quality Implementation Plans; Texas; Shipyard Facilities and Provisions for Distance Limitations, Setbacks, and Buffers in Standard Permits; USEPA	October 29, 2007	August 28, 2007 Rules and Regulations
Revisions to Consolidated Federal Air Rule; USEPA	November 26, 2007	August 27, 2007 Rules and Regulations
National Oil Hazardous Substance Pollution Contingency Plan National Priorities List Update; Partial deletion of the RSR Corp. Superfund Site, Dallas, Dallas County, Texas; USEPA	October 16, 2007	August 17, 2007 Rules and Regulations
National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List; Intent to delete the Bailey Waste Disposal Superfund Site located in Bridge City, Texas; USEPA	October 15, 2007	August 14, 2007 Rules and Regulations
Extension of Cross-Media Electronic Reporting Rule Deadline for Authorized Programs; USEPA	October 2, 2007	August 3, 2007 Rules and Regulations
Approval and Promulgation of Implementation Plans; Texas; Clean Air Interstate Rule Nitrogen Oxides Annual Trading Program; USEPA	September 28, 2007	July 30, 2007 Rules and Regulations

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Final Rule Adoption

Subject	Activity Dates	Federal Register Information
Amendments to National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting and Secondary Copper Smelting Area Sources; USEPA	October 1, 2007	July 3, 2007 Rules and Regulations