

# Texas Commission on Environmental Quality

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## INTEROFFICE MEMORANDUM

**To:** Commissioners' Work Session

**Date:** October 29, 2009

**From:**  Jim Harrison, 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.

# Texas Commission on Environmental Quality

## INTEROFFICE MEMORANDUM

To: Mark Vickery, Executive Director  
Commissioners

Date: October 1, 2009

From:  Jim Harrison, Director, Intergovernmental Relations

Subject: Legislative Implementation Status Report

81 <sup>st</sup> Legislative Session Implementation Status Report			
	Total Number to Complete	Total Number Completed	Total Number Remaining
Number of Bills to Implement	189	4	185
Number of Bills Requiring Rulemaking	18	0	18

### 81<sup>st</sup> Legislative Session

- Out of the total number of bills to implement, 139 of these are local district bills and are expected to be completed by 10/31/09.
- Seven bills have multiple components to implement, but are still counted as one bill.

80 <sup>th</sup> Legislative Session Implementation Status Report			
	Total Number to Complete	Total Number Completed	Total Number Remaining
Number of Bills to Implement	197	192	5
Number of Bills Requiring Rulemaking	38	34	4

### 80<sup>th</sup> Legislative Session

Below is information regarding those bills for which implementation are not completed:

- HB 3 and SB 3 - (1) Instream Flows provision - Rules cannot be adopted prior to 9/1/2010. (2) Edwards Aquifer Authority provision - Implementation agreement is due on 12/31/09.
- HB 1526 - Rule team has been formed. Proposal is tentatively scheduled for Dec 2009.
- SB 1672 - Rules to be proposed in Sept. 2009; adopted in Feb. 2010.
- SB 1615 - Financial Administration Division is implementing through a contract and expected to be completed by 12/31/09.

## NATIONAL COMMENTS LOG

Thursday, October 29, 2009

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SUBM TO	DATE	SHORT TITLE	TCEQ COMMENTS	OFFICE PREPARING	OFFICE CONTACT
EPA	1/27/09	Approval and Promulgation of Implementation Plans; Texas; Public Participation on Permits for New and Modified Sources	Overall, the comments defend the TCEQ's notice rules as consistent with earlier versions of the public participation rules that have been SIP-approved by EPA, and TCEQ's rules, in some cases exceed federal requirements. TCEQ's basis for this position is that (a) EPA has provided states great latitude in developing their minor new source review programs, including public participation for those programs, and therefore full and fair notice should be given if EPA wants to impose specific requirements for TCEQ's rules, and (b) EPA should provide Texas with the same deference as provided to other states (which occurred after TCEQ's rules were adopted in 1999) regarding flexibility of Texas' program. However, the comments acknowledge that some rule amendments are needed to (a) ensure the rule text adequately and completely reflect our notice practice, (b) address miscellaneous specific requirements that are not included, and (c) provide updates and correct cross-references.	OLS	Janis Hudson
EPA	2/11/09	Standards of Performance for New Stationary Sources/Emission Guidelines for Existing Sources: Hospital/Medical/ Infectious Waste Incinerators	TCEQ Air Permits Division staff recommend that the EPA modify a perceived outdated and inaccurate exemption provision that is currently contained within Subpart Ec, §60.50c(e). The current exemption concerns Subparts Cb, Ea, or Eb, but should be amended to include units subject to exemptions for Subpart AAAA or Subpart BBBB.	OPR	Lisa Martin
OMB	4/30/09	Standard Data Elements for Reports under Section 1512 of the American Recovery and Reinvestment Act of 2009 (ARRA), Public Law 111-5 (Grants, Cooperative Agreements and Loans)	<p>The TCEQ supports transparency and accountability standards and appreciates OMB publishing the standard data elements for use in complying with the reporting requirements. The TCEQ hopes the final data elements are published quickly thereby allowing the TCEQ some certainty. However, our overriding concern is that data elements, guidance and grant requirements will continue to shift even after the award and expenditure of funds. If this were to occur, the TCEQ believes compliance with ARRA requirements may become a tremendous resource drain to the TCEQ and sub-recipients. Additionally, some requirements seem inappropriate for all entity types and the TCEQ believes explicit distinctions are needed.</p> <p>We certainly understand the motivation for an aggressive approach, but believe there is wisdom in tempering requirements to strike a balance between administrative obligations and programmatic accomplishments. In the case of the TCEQ, it means focusing the preponderance of resources toward environmental goals which protect Texas' human and natural resources and create cleaner air, cleaner water, and the safest management of waste.</p>	EXEC	Patricia Brummer

NATIONAL COMMENTS LOG

SUBM TO	DATE	SHORT TITLE	TCEQ COMMENTS	OFFICE PREPARING	OFFICE CONTACT
EPA	6/9/09	Mandatory Reporting of Greenhouse Gases	<p>The Executive Director of TCEQ provided detailed comments on the following various aspects of the proposal: Delegation to States; Implications for Current State Administered Federal Programs; Role of States; Verification Option; Reporting Burden; Impact on Small Business and Local Governments; Characterization and Unintended Consequences of Reporting; State and Local Transportation Data; Vehicle Fleets</p>	CEO	Brian Foster
EPA	6/23/09	Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act	<p>The Executive Director of the Texas Commission on Environmental Quality (TCEQ) believes the Clean Air Act (CAA) is not an appropriate vehicle to regulate Greenhouse Gases (GHG). For the most part, the CAA assumes that state and local governments are able through regulations and permit requirements to implement emission controls that will improve air quality. GHG are distributed relatively uniformly throughout the world and state and local emission controls would have little or no impact on global concentrations.</p> <p>The Executive Director does not believe that any regulatory mechanisms under the CAA are suited for control of substances which, like GHG, are uniformly distributed throughout the world. The result would be the imposition of expensive, burdensome regulations with little or no chance of success without similar controls implemented worldwide.</p> <p>The Executive Director strongly believes it is inappropriate for EPA to move forward on the Endangerment and Cause or Contribute findings without consideration of the regulatory mechanisms to be used to implement the findings and without consideration of the economic impacts on Texas and the nation as a result of such regulations.</p> <p>The Executive Director believes that the Administrator should withdraw the endangerment finding and conduct a thoughtful review of the totality of scientific research as well as conduct a comprehensive cost-benefit analysis. At the very least, the Administrator should provide additional time for reviewers to conduct a more comprehensive evaluation of this information. The ramifications of this endangerment finding are too significant to be based on such a limited analysis.</p>	CEO	Minor Hibbs

NATIONAL COMMENTS LOG

SUBM TO	DATE	SHORT TITLE	TCEQ COMMENTS	OFFICE PREPARING	OFFICE CONTACT
EPA	6/26/09	Transportation Conformity Rule PM2.5 and PM10 Amendments	<p>The EPA proposes three options for setting an updated baseline year for conformity purposes. The baseline is used for interim conformity tests when there is no applicable motor vehicle emissions budget. Option 1 would set the baseline at 2008, option 2 would define the baseline at whatever year is used to meet other air quality planning requirements, and option 3 would set the baseline at 2005. The TCEQ believes option 2 is the best choice because it would provide needed flexibility for implementing the rule and decrease the need for revising the rule in the future.</p> <p>TCEQ also believes EPA's rule language should provide interagency consultation partners (which includes EPA regional staff) flexibility in selecting the best conformity baseline year for air quality purposes for the specific nonattainment area. Option 2 should apply to all national ambient air quality standards that are incorporated into the EPA's transportation conformity rule, not just the standards referenced in the proposal (particulate matter). The rest of the proposed rule revision incorporates the 2006 PM2.5 and PM10 national ambient air quality standards into existing conformity requirements, and provides a minor clarification of existing hot-spot conformity requirements.</p> <p>Although the proposed rule revision does not affect the current conformity situation in Texas, comments are provided to encourage consistency and efficiency in anticipation of implementing transportation conformity for the 2008 eight-hour ozone standard.</p>	CEO	Margie McAllister
EPA	7/1/09	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Paints and Allied Products Manufacturing	<p>The TCEQ supports the proposed rule and is submitting specific recommendations on various aspects of the proposed rule. The TCEQ suggests that certain changes to the EPA's proposal would simplify and reduce the cost of compliance for sources subject to this rule, which are predominately small businesses employing fewer than ten persons, while simultaneously improving the sources' ability to continuously achieve the stated emissions reductions of certain metal HAPs. Specifically, the TCEQ Air Permits Division is offering comments on three areas of the proposed rule: 1) six specific comments regarding the particulate matter control systems and compliance monitoring thereof; 2) one comment regarding aligning the compliance deadlines of this rule with other similar federal rules; and 3) three comments on recordkeeping and reporting requirements.</p>	OPR	Lisa Martin

NATIONAL COMMENTS LOG

SUBM TO	DATE	SHORT TITLE	TCEQ COMMENTS	OFFICE PREPARING	OFFICE CONTACT
EPA	7/23/09	Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program	The TCEQ has implemented a number of regulatory air quality control strategies under the State Implementation Plan (SIP) to reduce volatile organic compounds (VOC) and NOx emissions in the areas of Texas that have been designated by the EPA as being in violation of the National Ambient Air Quality Standards (NAAQS) for ground level ozone. Ground level ozone is created by a photochemical reaction of VOC and NOx emissions in the presence of sunlight. Staff recommends the TCEQ comment on the potential negative impact that the increased use of renewable fuels will have on criteria pollutant emissions that are of critical importance for compliance with the NAAQS, primarily the expected increase in VOC and NOx emissions. The recommendation is for the EPA to reevaluate the appropriateness of requiring an increased use of renewable fuels in areas of the nation that are already designated by the EPA as nonattainment areas under the NAAQS for ground level ozone or in areas that are considered to be near-nonattainment areas.	CEO	Morris Brown
EPA	9/28/09	Control of Emissions From New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder	The TCEQ encourages the EPA to adopt the new emission standards for Category 3 marine diesel engines as proposed. In addition, the TCEQ encourages the EPA to adopt the proposed diesel fuel rules that would prohibit the production and sale of marine fuel oil above 1,000 ppm sulfur for use in any marine diesel vessel operating within U.S. waters. This proposal would eliminate the current 500 ppm sulfur standard for locomotive and Category 1 and Category 2 marine diesel, thereby requiring all diesel fuel, except for marine fuel oil to be used in Category 3 marine diesel engines, to meet a 15 ppm sulfur standard after 2014. The TCEQ believes that the adoption of the proposed emissions standards for new Category 3 marine diesel engines and changes to the federal diesel fuel program would provide a significant reduction of NOx, particulate matter, and sulfur oxides emissions from marine vessels and would contribute to the air quality goals of Texas and the U.S.	CEO	Morris Brown

## Federal Notices & Regulatory Initiatives

October 29, 2009

### Air Programs

Subject	Activity Dates	Federal Register Information	TCEQ Activity & Status
Review of the National Ambient Air Quality Standards for Ozone; USEPA	November 6, 2009 (comments)	October 19, 2009 Notices	Under review.
Protection of Stratospheric Ozone: New Substitute in the Motor Vehicle Air Conditioning Sector Under the Significant New Alternatives Policy (SNAP) Program; USEPA	December 18, 2009 (comments)	October 19, 2009 Proposed Rules	Under review.
Emissions Factors Program Improvements; USEPA	November 13, 2009 (comments)	October 14, 2009 Proposed Rules	Under review.
Prevention of Significant Deterioration (PSD): Reconsideration of Interpretation of Regulations That Determine Pollutants Covered by the Federal PSD Permit Program; USEPA	December 7, 2009 (comments)	October 7, 2009 Proposed Rules	Staff recommend comments. Executive Review package being developed.
Lead Dust Hazard Standards and Definition of Lead-Based Paint; TSCA Section 21 Petition; Notice of Receipt and Request for Comment; USEPA	October 21, 2009 (comments)	October 6, 2009 Notices	Staff recommend no comments.
Draft Documents Related to the Review of the National Ambient Air Quality Standards for Particulate Matter; USEPA	November 9, 2009 (comments)	October 5, 2009 Notices	Staff recommend no comments.

## Federal Notices & Regulatory Initiatives

October 29, 2009

### Air Programs

Subject	Activity Dates	Federal Register Information	TCEQ Activity & Status
Proposed Rulemaking To Establish Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; USEPA	November 27, 2009 (comments)	September 28, 2009 Proposed Rules	Staff recommend comments. Executive Review package being developed.
Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Flexible Permits; USEPA	November 23, 2009 (comments)	September 23, 2009 Proposed Rules	Staff recommend comments. Executive Review package being developed.
Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD), Nonattainment NSR (NNSR) for the 1997 8-Hour Ozone Standard, NSR Reform, and a Standard Permit; USEPA	November 23, 2009 (comments)	September 23, 2009 Proposed Rules	Staff recommend comments. Executive Review package being developed.
Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Modification of Existing Qualified Facilities Program and General Definitions; USEPA	November 23, 2009 (comments)	September 23, 2009 Proposed Rules	Staff recommend comments. Executive Review package being developed.
Control of Emissions From New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder; Proposed Rule; USEPA	September 28, 2009 (comments)	August 28, 2009 Proposed Rules	Comments submitted to EPA 9/28/09.

## Federal Notices & Regulatory Initiatives

October 29, 2009

### Waste Programs

Subject	Activity Dates	Federal Register Information	TCEQ Activity & Status
Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Notification of Regulated Waste Activity and 2009 Hazardous Waste Report (Renewal); USEPA	November 16, 2009 (comments)	October 15, 2009 Notices	Under review.

### Water Programs

Subject	Activity Dates	Federal Register Information	TCEQ Activity & Status
Modification to 2008 National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges From Construction Activities; USEPA	November 18, 2009 (comments)	October 19, 2009 Notices	Under review
Drinking Water Contaminant Candidate List 3—Final; USEPA	October 8, 2009	October 8, 2009 Notices	Information only.
Agency Information Collection Activities; Proposed Collection; Comment Request; National Estuary Program (Renewal); USEPA	December 7, 2009 (comments)	October 8, 2009 Notices	Staff recommend no comments.

# Federal Notices & Regulatory Initiatives

October 29, 2009

## Final Rule Adoption

<b>Subject</b>	<b>Activity Dates</b>	<b>Federal Register Information</b>
National Primary Drinking Water Regulations: Drinking Water Regulations for Aircraft Public Water Systems; USEPA	November 18, 2009	October 19, 2009 Rules and Regulations
Standards of Performance for Coal Preparation and Processing Plants; USEPA	October 8, 2009	October 8, 2009 Rules and Regulations
Operating Permit Programs; Flexible Air Permitting Rule; USEPA	November 5, 2009	October 6, 2009 Rules and Regulations