

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: | Air Permits Division (APD) Staff | **Date:** | January 4, 2011 |
| Regional Air Program Staff |

Thru: | Richard A. Hyde, Deputy Director 
| Office of Permitting and Registration

 John Sadlier, Deputy Director
| Office of Compliance and Enforcement |

From: | Steve Hagle, P.E., Director 
| Air Permits Division |

Subject: | Enforcement Discretion for Carbon Black MSS Permit Applicants –
| 101.222(h)(1)(C) |

Background:

Based on the incentive to authorize planned maintenance, start-up, and shutdown (MSS) activities provided for in 30 TAC § 101.222(h)(1)(C), owners/operators of carbon black facilities have timely submitted applications. These applicants' opportunity for an affirmative defense expires on January 5, 2011. As stated in 30 TAC § 101.222(i), enforcement discretion will be used if an MSS application remains pending more than one year after a permit application is filed, until issuance or denial of the permit, or until an application is voided. Thereafter, there is no automatic enforcement discretion for excess emissions resulting from planned MSS activities.

Applicants that have not agreed to their draft permit by May 31, 2011 will be subject to enforcement for unauthorized, planned MSS emissions.

Enforcement Procedure:

Enforcement discretion for unauthorized emissions from planned MSS activities shall be granted for a period of one year from the date of permit issuance, regardless of the date of issuance, as long as the following procedures and conditions are met:

- (1) The permit applicant must provide written acceptance of the draft permit to APD no later than May 31, 2011. This acceptance must be received regardless of whether the draft permit changes at a later date due to one or more of the following reasons: impacts review performed by the Toxicology Division in the Chief Engineer's Office, comments received in response to notice of application and preliminary decision (NAPD) as required by 30 TAC § 39.419, a contested case hearing is requested, or commission action; and

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- (2) Any unauthorized emissions from MSS activities must be recorded/reported under 30 TAC § 101.211 to ensure regional staff may review it for enforcement discretion. For these unauthorized emissions, the demonstration criteria in 30 TAC § 101.122(c)(1)-(9) will be used to determine the appropriate use of enforcement discretion. As part of the criteria evaluation, the permit requirements for the same or similar activities must be considered by the owner/operator and will be considered by TCEQ in evaluating the activity. For example, owners and operators should apply the same emission minimization efforts and controls to the newly-found planned activities as required in their permits for similar activities.

Permitting Procedure:

The APD will expedite the permitting process for applicants who find that their facility has unauthorized planned MSS emissions who provide:

- 1) Written acceptance of a draft permit no later than May 31, 2011; and
- 2) An application that can be deemed administratively complete to authorize planned MSS emissions. This application must be received by APD within 30 days from (1) the date of self-discovery of the need for authorization (which could be based on actual unauthorized MSS emissions) or (2) notice from the TCEQ Regional Office as discussed above.

The APD is committed to processing these applications in an expeditious manner but will need applicants to submit a high-quality application that provides all of the required information, data, and analysis needed to expeditiously complete the application review. Additionally, applicants must timely respond to requests for clarification and additional data. Untimely responses will be subject to APD's voidance procedure:

(<http://www.tcea.state.tx.us/assets/public/permitting/air/memos/voidguide06.pdf>).

Permit Status:

The following six carbon plants have pending MSS permits.

RN#	Regulated Entity Name	Customer Name	Permit #(s)	Project #
RN100226026	Sid Richardson Carbon Big Spring Facility	Sid Richardson Carbon	6580/PSDTX151	153555
RN100222413	Sid Richardson Carbon Borger Plant	Sid Richardson Carbon	1867A/PSDTX1032	153547
RN100209386	Orange Carbon Black Plant	Evonik Carbon Black LLC	9403B	153751
RN100209659	Borger Carbon Black Plant	Evonik Carbon Black LLC	8780PSDTX416M1	153748
RN100221761	Cabot Pampa Plant	Cabot Corporation	40088/PSDTX934	153582

RN#	Regulated Entity Name	Customer Name	Permit #(s)	Project #
RN100210582	Cabot Corporation Development and Manufacturing Center	Cabot Corporation	42233/PSDTX956	153586

Scope:

This procedure applies to carbon black MSS applications filed according to the schedule in 30 TAC 101.222(h)(1)(C). The above-referenced enforcement discretion does not imply that excess emissions from planned MSS events are not violations. Instead, the TCEQ will limit enforcement action for expeditious permit applicants. Further, Title V deviation reporting requirements are not waived by this enforcement discretion.