

# Texas Commission on Environmental Quality

## INTEROFFICE MEMORANDUM

**To:** Regional Air Section Staff  
Air Permits Division Staff

**Date:** February 12, 2009

**Thru:**  John Sadlier, Deputy Director  
Office of Compliance and Enforcement

 Dan Eden, Deputy Director  
Office of Permitting and Registration

**From:**  Jennifer A. Sidnell, Director  
Field Operations Support Division

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Air Permits Division

**Subject:** Enforcement Discretion for Certain Refinery MSS Permits

### Background:

Based on the incentive to authorize planned maintenance, start-up, and shutdown (MSS) activities provided for in Title 30 Texas Administrative Code § 101.222(h)(1)(A) (30 TAC § 101.222(h)(1)(A)), owners/operators of 26 refineries timely submitted applications and were afforded the affirmative defense for one year, which expired January 7, 2008. As stated in 30 TAC § 101.222(i), enforcement discretion will be used if the 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 unauthorized emissions resulting from planned MSS activities.

The Air Permits Division (APD) expects to issue the majority of the refinery MSS permits in April 2009. Applications for which a hearing request has been filed and/or which are subject to Notice of Preliminary Decision (NAPD) will be resolved at a later date.

### Issue:

Concern has been expressed by the applicants that they will not have authorization for the following planned MSS activities:

1. Those MSS activities which were represented in the application and authorized but;
  - a. The number of activities is now exceeded; or
  - b. The amount of emissions for these activities was exceeded; or

2. The MSS activities not included in the permit application.

The planned MSS activities that occur after permit issuance, but are not authorized in permits, will be subject to enforcement without benefit of affirmative defense or enforcement discretion according to § 101.222(i).

**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 March 31, 2009. 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 Section in the Chief Engineer's Office, comments received in response to notice of application and preliminary decision (NAPD) as required by § 39.419, a contested case hearing is requested, or commission action.
2. Any unauthorized emissions from MSS activities must be recorded/reported under § 101.211 for consideration of enforcement discretion by the Agency. For these unauthorized emissions, the demonstration criteria in § 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.
3. Owners/operators must demonstrate sufficient progress for obtaining authorization by one of the following methods:
  - a. Meet the requirements of § 106.263 and commit to meeting the permit terms for the same or similar MSS activities; or
  - b. File a permit amendment application within 30 days of (1) notice from the Regional Office (notice will be performed by an exit interview signed by the respondent or, if the respondent chooses not to sign the exit interview form to confirm receipt, a certified letter) or (2) date of self-discovery of the need for authorization (which could be based on actual unauthorized MSS emissions).

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**Permitting Procedure:**

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

- a. written acceptance of a draft permit no later than March 31, 2009; and
- b. 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 information, data, and analysis needed to allow a complete review. Applicants must timely respond to requests for clarification and additional data in order to expedite the permitting process. Untimely responses will be subject to APD's voidance procedure:

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

**Permit Status:**

The APD will generate a report on a monthly basis of those applicants who are currently eligible and the report will then be placed on the FODWEB under the Emissions Events page for access by all Field Operations staff.

At a minimum, the report will contain the following information:

1. Company Name
2. Site Name
3. Permit Number
4. Permit Issuance Date

The APD can add additional information to the report as necessary. This approach will allow the permit reviewers to check a box for the application in APD's IMS and then generate an automated report.

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**Future MSS Permitting:**

If, in the future, these 26 applicants seek a change in MSS permit conditions based on MSS conditions included in other, later-issued permits, they may file applications to amend their permits or seek approval under § 116.116(c) or (e).

**Scope:**

This procedure does not apply to non-refinery applications filed or permits issued to authorize planned MSS activities and emissions. This enforcement discretion does not imply that unauthorized emissions from MSS are not violations, but rather only that TCEQ will limit the enforcement action taken for such activities for these refineries. Further, Title V deviation reporting requirements are not waived by this enforcement discretion.