

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 7, 2013

Ms. Ashley Mohr
Air Permits Section (6PD-R)
U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
mohr.ashley@epa.gov

Attn: Docket ID No. EPA-R06-OAR-2006-0600

Re: Approval and Promulgation of Implementation Plans; Texas; Revisions to New Source Review (NSR) State Implementation Plan (SIP); Emergency Orders; Proposed Rule

Dear Ms. Mohr:

The Texas Commission on Environmental Quality (TCEQ) disagrees with EPA's proposed disapproval of the Texas SIP revisions relating to Emergency Order rules that were submitted to EPA on August 31, 1993; December 10, 1998; February 1, 2006; and July 17, 2006. As EPA acknowledges in its proposal, a program to ensure cooperation between the state and regulated entities in the event of an emergency or catastrophe is essential to ensure that appropriate and necessary responses to such an event can be taken while continuing to ensure that air quality is protected.

TCEQ further notes that its Emergency Order rules are not intended to substitute for the SIP approved NSR permitting processes. Indeed, the rules themselves, as acknowledged by EPA, require that regulated entities undergo the NSR permitting process on a specific timeframe to obtain the necessary NSR authorizations. In addition, the review of applications for and emergency orders issued by the commission ensure and require compliance with the requirement that any construction or modification will not interfere with the attainment or maintenance of national ambient air quality standards or violate applicable portions of the control strategy (as required by 30 Tex. Admin. Code § 35.805(4)). Case-by-case enforcement discretion does not have the same protective outcome, nor does it satisfy the public participation required for either major or minor NSR in the Clean Air Act.

The Emergency Order rules allow regulated entities the necessary flexibility to respond appropriately to natural disasters and other defined catastrophes while still complying with rules to protect air quality. The economic risk to regulated entities from the fines and penalties associated with unauthorized air emissions can hinder necessary actions; the

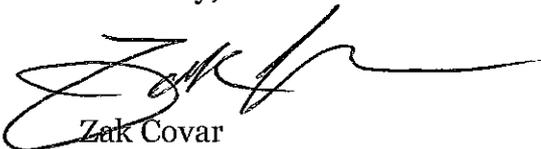
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Emergency Order rules allow regulated entities to obtain needed authorizations to mitigate such risks. EPA's assurances that it will evaluate on a case-by-case basis such actions that are taken during or in response to a catastrophe do not provide the legal certainty of approved rules and force companies to evaluate the costs of the risks of violating Clean Air Act provisions at times when quick action may be necessary to protect lives. TCEQ's rules acknowledge the necessity of such actions, while still requiring regulated entities to obtain authorizations for actions, including all necessary NSR authorizations and protection of air quality. Furthermore, TCEQ has previously provided various documents during informal discussion between TCEQ and EPA to illustrate how TCEQ's rules are compliant with the Clean Air Act. If EPA needs this information again, TCEQ would be glad to provide it to EPA.

The TCEQ continues to support its Emergency Order rules because they comply with the intent of the Clean Air Act to protect air quality, as well as human health and safety. TCEQ would also like to note that EPA has approved similar rules for other states to address emergency conditions, including rules for New Mexico.

The TCEQ appreciates the opportunity to provide comments to EPA relating to the proposal referenced above. If you have any questions concerning these comments, please contact Steve Hagle, Deputy Director, Office of Air, (512) 239-2104, or at steve.hagle@tceq.texas.gov.

Sincerely,



Zak Covar
Executive Director