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## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

January 3, 2014

Gerald Filbin  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave. NW.  
Washington, D.C. 20460

Attn: Docket Number EPA-HQ-OA-2013-0568

Re: Notice of Availability for Public Review and Comment: Draft EPA Climate Change Adaptation Implementation Plans

Dear Mr. Filbin:

The Texas Commission on Environmental Quality (TCEQ) appreciates the opportunity to respond to the United States Environmental Protection Agency's Notice of Availability for Public Review and Comment on "Draft Climate Change Adaptation Implementation Plans" published in the *Federal Register* on November 4, 2013.

As we stated in our April 5<sup>th</sup> comments on the Draft Climate Change Adaptation Plans, the TCEQ does not support federal climate change policy in the absence of congressional action and cannot support these implementation plans. Global climate models are insufficient and inappropriate for planning on a local or regional level. When extreme weather events occur, regardless of the cause, Texas has a proven track record of responding quickly and effectively. EPA should take all steps necessary to ensure states have appropriate flexibility to implement only those actions which are appropriate for the conditions in the state.

Enclosed, please find the TCEQ's detailed comments relating to the referenced document. If you have any questions concerning the enclosed comments, please contact Mr. Mike Hoke at (512) 239-4899 or at [Mike.Hoke@tceq.texas.gov](mailto:Mike.Hoke@tceq.texas.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Zak Covar".

Zak Covar  
Executive Director

Enclosure



**TCEQ Comments On U.S. Environmental Protection Agency  
Notice of Availability for Public Review and Comment:  
Draft EPA Climate Change Adaptation Implementation  
Plans**

**Docket Number EPA-HQ-OA-2013-  
0568**

**EPA Office of Water**

**Disclaimer**

*TCEQ Comment: EPA should take all steps necessary to ensure that any activities conducted under the Climate Change Adaptation Implementation Plan are consistent with the document's disclaimer. States should not be obligated to implement activities identified in this document. EPA should revise this document to further emphasize the voluntary nature of the numerous actions identified throughout the plan, not just in the disclaimer.*

**Plan Implementation**

*TCEQ Comment: Implementation activities should not result in rigid directives which may impede the ability of entities to respond to changes. It is requested that EPA take all steps necessary to ensure states have appropriate flexibility to implement only those actions which are appropriate for the conditions in the state. The document should be revised to address this concern.*

**Page 15: Section IV, Office of Water Contribution to Meeting EPA  
Strategic Measures on Climate Change**

One of the four EPA national objectives is to integrate climate change into rules. EPA indicates it is committed to supporting this objective through the development of a water program regulation by 2015. The specific regulation is has not yet been determined.

*TCEQ Comment: It appears that EPA is using the Implementation Plan to direct regulatory development rather than evaluating the need for the regulatory development.*

Another of EPA's identified national objectives is to integrate climate change into grant, loan, and assistance programs.

*TCEQ Comment: Existing grant, loan, and assistance programs should not include requirements related to climate change.*

## **Pages 16 – 18: Section VI, Training and Outreach**

*TCEQ Comment: The outreach actions which are identified are mostly meetings, workshops, training modules, and workgroups. However, the last two action items in the list are substantive in terms of programmatic/regulatory commitments: (1) work with Region 10 and other stakeholders on assessing water criteria to address ocean acidification; and (2) work with U.S. Department of Energy to improve management of water resources and energy production (e.g. – water resource management, water quality, wastewater re-use, emergency response, thermoelectric generation). These two actions have relatively broad policy and regulatory implications. EPA should provide more explanation in the draft document.*

## **EPA Office of Air and Radiation**

### **Page 14 Section II. OAR Categories of Priority Actions**

EPA lists several priority actions for the Office of Air and Radiation, including: incorporate the latest research on ozone, particulate matter, and climate change into NAAQS development and implementation; determine if modifications to the air quality monitoring program, guidance, and procedures are necessary; and adjust air quality modeling tools and guidance to incorporate projects of meteorological parameters and potential changes in emissions resulting from climate change. The plan indicates that additional steps are necessary to assure transparency and consistency before EPA can incorporate scientific projections of future climate change into analytical tools used in modeling and analysis for air quality purposes.

*TCEQ Comment: The states and the public should be given the opportunity to comment on any changes the EPA Office of Air and Radiation is considering to the National Ambient Air Quality Standards (NAAQS) development and implementation processes to incorporate climate change projections. TCEQ agrees that additional steps are needed before the EPA attempts to incorporate climate change projections into the air quality planning processes discussed in the EPA implementation plan. However, the EPA has not indicated what additional steps will be taken, when the EPA intends to proceed with these steps, or if stakeholders will have the opportunity for comment. A robust public comment process is necessary to allow the states and other interested parties opportunity to comment on the necessity and specific details of any changes the EPA is considering to requirements and guidance in the NAAQS development and implementation processes.*

## **EPA Office of Solid Waste and Emergency Response**

### **Page 1: Section I, Climate Change Impacts to OSWER Programs**

EPA: “There is some uncertainty, however, as to how and when these changes to the climate will occur. OSWER will act prudently to ensure its actions address pressing needs and will review its vulnerabilities, actions and the state of climate science to make adjustments in the future.”

*TCEQ Comment: Decisions must be based on sound scientific and engineering practices and data. The TCEQ has a robust program to regulate industrial and municipal solid waste. TCEQ’s permitting and enforcement programs are geared to monitor the waste management activity in the state and compliance with state and federal regulations to ensure protectiveness of human health and the environment.*

### **Page 4: Section 11, Vulnerability Assessment, Climate Change Impacts**

EPA: “Rising sea level may inundate OSWER sites in coastal areas and increase flooding from storm surge, both of which could damage cleanups and increase human and ecological exposures to contaminants.”

EPA: “More powerful hurricanes may increase the area affected by these storms, putting sites and communities that had not been previously impacted by flooding and storm surge in the past at risk. More powerful storms may also increase storm debris that will need to be appropriately managed.”

*TCEQ Comment: TCEQ reviews the suitability of hurricane-prone coastal locations for land-based waste management units. Engineering designs suitable in specific sites to prevent release in the case of heavy storm or other inundation threat are reviewed, including plans for removal of wastes prior to threatening events with expected rising water. Permits contain language requiring actions and changes by the operator of a facility when the permitted activities are seen to be no longer protective of human health and the environment. Similar warnings of owners’ and operators’ responsibilities to prevent releases are reiterated for any waste management activity. In addition, requirements such as Spill Prevention, Control and Countermeasure plans and Contingency Plans address both storm preparation and response. There are also civil and industrial organizations (such as Channel Industries Mutual Aid) that also have storm preparation and response requirements.*

### **Page 4: Section 11, Vulnerability Assessment, Climate Change Impacts**

EPA: “Increased average temperature and increased extreme temperatures may result in more frequent and longer lasting heat waves, increasing the risk of wildfires capable of spreading to OSWER sites and affecting the performance of remedies.”

*TCEQ Comment: Fire prevention and emergency responses are set out in the application process and reviewed for adequacy as part of the processing of permits. Wildfires from sources external to the permitted facility are also included in action plans where warranted. Case-by-case reviews are performed for all potential permitted facilities or notifications of waste-handling operations.*

## **Page 5: Section 11, Vulnerability Assessment, Climate Change Impacts**

EPA: “Decreased precipitation and increased frequency of drought may impact water-intensive remedies and site stability, as well as increase the risk of wildfires.”

*TCEQ Comment: Wildfires have long been a fact of life in many areas of Texas and therefore a focus of attention in reviewing designs and plans using engineering expertise. The reviews address this to the greatest extent possible given the level of knowledge at the time of permit application or notification.*

EPA: “Wildfires at contaminated sites could promote the spread of contamination or impact remedies. Wildfire in the upland areas above contaminated sites could reduce vegetative cover, thereby increasing surface water runoff and resulting in catastrophic flooding that spreads contamination or impacts remedies.”

*TCEQ Comment: Please see previous comments concerning review of design criteria.*

## **Page 6: Table 1. OSWER Climate Change Vulnerabilities:**

*Table Section: "Preserving Land, Proper Management of Hazardous and Non-Hazardous Wastes"*

EPA: “Design and placement of RCRA Treatment, Storage and Disposal facilities, non-hazardous Subtitle D landfills, Superfund remedies and municipal recycling facilities may need to change to accommodate climate change impacts. Hazardous waste permitting requirements may need to be updated to reflect climate change impacts.”

*TCEQ Comment: The TCEQ waste regulatory programs have mechanisms in place to apply updates on case-by-case site-specific basis. Any regulatory permitting requirements would need to be based on sound science and engineering principles.*

EPA: “Current waste management capacity may be insufficient to handle surges in necessary treatment and disposal of hazardous and municipal wastes, as well as mixed wastes generated from climate events.”

*TCEQ Comment: The TCEQ tracks waste management capacity in Texas and monitors existing capacity levels as well as projecting the potential need for new capacity.*

In the same table EPA: “Levels of necessary financial assurance at RCRA and CERCLA facilities may need to adjust for increased risks/liabilities at specific facilities that may be directly affected by climate change impacts.”

*TCEQ Comment: Guidelines and estimates of closure cost requirements are constantly reviewed as a part of the permitting process. Currently, guidance estimates for closure and post-closure activities’ costs at permitted facilities are issued yearly. These reflect the industry rates for the required activities and are based on potential worst-case closure scenarios.*

#### *Table Section: "Reducing Chemical Risks and Releases"*

*TCEQ Comment: The TCEQ recognizes that waste management and handling strategies and protocols are an evolving process. Changes to these items are based on sound science, engineering expertise, and field experience that are reflected in the permitting standards applied in the review of applications and notifications. Site specific plans are reviewed with attention to the particular and predictable challenges or conditions at a specific site.*

#### *Table Section: Restoring Land*

*TCEQ Comment: The level of cleanup required for any contaminated site is established through a risk-based evaluation. Resulting permit responses and clean-ups are applied and required using the concept of risk management of the level of hazard remaining at the property upon completion to the suggested level. Clean-up strategies may be modified at any time they are determined to no longer be protective of human health and the environment. There may be impacts to state Leaking Underground Storage Tank programs, state Brownfields programs, and RCRA Corrective Action programs depending on how EPA implements climate change considerations; particularly if climate change considerations were to become part of the evaluation of cleanup alternatives. Also, while the Superfund program may be impacted by changes in site characterization, analysis of risk, and design of cleanup, the primary impact of this category will be on existing sites that are either in long-term response action or state-funded operation and maintenance, and are evaluated based on new changes.*

#### *Table Section: Emergency Response*

EPA: “Current waste management capacity, including interim capacity, may be insufficient to handle surges in necessary treatment and disposal of hazardous and municipal wastes, as well as mixed wastes generated from climate events.”

*TCEQ Comment: See previous notes under Preserving Land concerning capacity tracking.*

*Table Section: Tools, Data, Training and Outreach*

*TCEQ Comment: TCEQ is consistently reviewing training and outreach information based on the evolving needs of the state. The program invites new training programs and guest speakers as part of our continuing processes to improve. We have one of the largest Environmental trade show programs in the U.S., as well. The TCEQ uses this opportunity as well as many other opportunities to provide regulatory compliance updates and guidance to its stakeholders.*

**Page 8: Table 2. OSWER Programs**

*Table Section: Office of Resource Conservation and Recovery*

*TCEQ Comment: Texas has a fully delegated waste permitting program with a comprehensive system to review applications for waste management including treatment, storage, and disposal of industrial, municipal, and hazardous waste. The TCEQ also has an effective regulatory program to regulate waste management activities that do not require a permit authorization.*

**Page 9: Section III. Addressing Impacts of Climate Change, Focusing on Specific Vulnerabilities**

EPA states in their characterization criteria that “scale of impact to human health, the environment or vulnerable communities because of the vulnerability – The scores for this criterion reflect the potential for harm to human health, the environment, or a vulnerable community, if the vulnerability is not addressed. Likelihood of occurrence because of the vulnerability – This criterion is a reflection of what impacts have already occurred at OSWER sites and programs.”

*TCEQ Comment: The Texas programs for waste management including disposal are already designed to review the focus areas EPA describes in this proposal.*

**Page 11: Preserving Land – Proper Management of Hazardous & Non-Hazardous Wastes**

EPA: “Proper treatment, storage, and disposal of hazardous waste protect the environment from harmful contamination. To ensure these materials are properly managed, OSWER supports prevention by activities such as permitting and inspections. Non-hazardous waste must also be properly managed, both routinely and in times of emergency.”

*TCEQ Comment: Texas has an active, delegated permitting and inspection program for both hazardous and non-hazardous industrial waste. This is in addition to municipal waste management and permitting programs.*

**Page 24: Appendix A – Effect of Climate Change Impacts on OSWER Program Vulnerabilities**

*Table Section: Preserving Land – Proper Management of Hazardous and Non-Hazardous Wastes*

EPA addresses the likelihood that design and placement of RCRA Treatment, Storage and Disposal facilities, non-hazardous Subtitle D landfills, Superfund remedies and municipal recycling facilities may need to change to accommodate climate change impacts and hazardous waste permitting requirements may need to be updated to reflect climate change impacts.

*TCEQ Comment: TCEQ performs site-specific reviews of locations, activities, and requirements for permitted and other reporting entities for solid waste disposal. It is understood that the application of the requirements evolves to meet the prevailing conditions for the sites. Any regulatory permitting requirements should be supported by sound science/technical development.*

**Page 31: Appendix C – OSWER Actions**

*Table Section: ORCR*

EPA: “Based on outreach to states and tribes, develop recommendations for these stakeholders to incorporate climate change into RCRA Permitting Programs as appropriate (e.g., through robust implementation of technical standards for facility location and design).”

*TCEQ Comment: TCEQ will work with EPA as appropriate and incorporate any changes that are based on sound scientific information and technical development.*

EPA: “Prepare Fact Sheets on the proper management of wastes/debris associated with large natural disasters (e.g., electronic, household hazardous wastes, white goods, etc.)

*TCEQ Comment: The TCEQ waste programs have experience in public outreach and emergency response to manage disaster-generated wastes. There are existing TCEQ guidance publications available on proper waste handling for multiple scenarios.*

EPA: “Finalize a document describing the “4 Step Process for Waste Management Planning. Update the ORCR Homeland Security Website with updated waste management planning information.”

*TCEQ Comment: TCEQ can share our expertise gained in managing waste and disaster planning for a large variety of terrains and various weather-related events.*

## **EPA Region 6**

### **Disclaimer**

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### **Page 8: Introduction**

EPA states: The EPA Region 6 Climate Change Adaptation Implementation Plan discusses climate change vulnerabilities the Region will face in coming years, identifies priority actions the Region will take in response to these vulnerabilities, outlines an approach for measuring and evaluating performance, and stresses the importance of working in partnership with stakeholders, states, tribes, and vulnerable communities and places to address the challenges posed by a changing climate.

*TCEQ Comment: There is no mention of whether the regulated business community is included in the EPA's 'stakeholders' as partners in addressing the described challenges.*

### **Page 12: Vulnerabilities to Climate Change Impacts**

EPA states: "There are indications that "extreme precipitation events" will constitute a larger percentage of the total, thus prompting greater flooding. Seasonal shifts are likely to affect snow packs in the mountains of New Mexico, where runoff is expected earlier in the spring and summer, with attendant decreases in runoff in the warmer months. Droughts are expected to become more frequent and larger in spatial extent and thus more damaging."

*TCEQ Comment: Texas already takes into account weather related factors including the site's hydrological conditions in reviewing proposals for significant solid waste management activity. Solid waste management operations are not permitted if site characteristics are unsuitable and cannot be adequately addressed by engineering controls.*

### **Page 14: Waste Site Management, Reducing Chemical Risks and Releases (continuing to Page 15)**

EPA: "Saltwater intrusion and increased ground water salinity in coastal aquifers may also increase the permeability of clay liners installed at waste sites, such as landfills, allowing contaminants to spread to nearby properties. These contaminant releases may pose an increased risk of adverse health and environmental impacts."

*TCEQ Comment: We review the protections and design containment for hazardous and solid waste units on a case-by-case basis when permitting a facility. This review includes secondary containment for units such as tanks, flood protection in container management, as well as materials and construction of liner systems for surface impoundments and landfills. Final cap designs for land-based units are also reviewed to determine their ability to meet the goal of keeping the waste isolated and at a low hazard probability for the foreseeable future. Continued groundwater monitoring at these sites is intended to provide for long term detection capability of possible increases in constituent levels.*

## **Page 15: Reducing Chemical Risks and Releases (cont.)**

EPA: Inundation from relative sea level rise or severe storms may disrupt the transportation system in place to handle hazardous waste or may damage treatment, storage or disposal facility infrastructure.

*TCEQ Comment: Texas has a fully-delegated permitting program with comprehensive reviews of applications for hazardous, industrial, and municipal waste treatment, storage, and disposal permits. Permit reviews include determining the adequacy of the infrastructure at the site and in waste handling. These often involve reviewing the transportation network, used to move waste to and from the facility, for its adequacy.*

EPA: Changes in precipitation may affect the rate at which vegetation grows, impacting landfill covers, phytoremediation, ecological revitalization efforts, and remedies relying on biological processes (e.g., land farming and enhanced monitored natural attenuation). The impacts may be positive or negative, depending on conditions at each site. Groundwater characteristics (i.e., depth, flow, chemistry) may also be altered, resulting in potential adverse impacts on the performance and cost of remediation.

*TCEQ Comment: All solid waste management activity is subject to a case-by-case review. Technical requirements based on regulatory requirements and case-by-case reviews are subject to change if site conditions change in such a way to make the technical requirements less effective, regardless of the cause of the condition change. For example, Texas allows the use of alternative caps based on local site and weather conditions.*

## **Page 17: Management Division**

EPA: "Therefore, all these facilities could suffer from decreasing reliability of electrical power and water availability. For example, load-shedding occurred in the Texas electrical grid, ERCOT, in February 2011, with Electricity Emergency Alerts in summer 2011. In addition to employee discomfort from such a situation, without reliable power and water, information technology equipment may be compromised. Whether enhancing employee telework would be an effective response to these challenges is unclear."

*TCEQ Comment: The TCEQ has a system in place to forward all telephone and internet functions from an affected Regional office to another during times of emergency so that customer service and agency functions are not interrupted.*

## **Page 12: Part 1, Section 1.2, Adaptation Planning**

EPA Region 6 clarifies that the implementation plan is intended to address ways that EPA programs can plan for and react to climate change impacts and the plan is not intended to address mitigation for climate change, such as reduction of greenhouse gases.

*TCEQ Comments: TCEQ concurs with the position that the plan is not a venue for addressing mitigation of climate change. It is imperative that EPA maintain this focus and position and that communication and coordination regarding adaptation planning not become programmatic mandates.*

## **Page 17: Emergency Response**

EPA: “A number of Superfund sites are located in vulnerable areas of Region 6, particularly the Gulf Coast regions of Texas and Louisiana. Rising coastal waters and massive storm surges could potentially flood sites where waste has been capped and left in place. Although most caps and barriers at Superfund sites are engineered to contain waste for many years, the possibility of long term and extensive flooding, even permanent submersion, could affect the integrity of engineered remedies at many sites where waste has been consolidated and remains in place.

(...)

Or, as discussed above, EPA’s common practice of consolidating waste and leaving it in place in landfills or under engineered caps may no longer be protective of human health and the environment if climate changes result in frequent, massive flooding in the Gulf Coast areas.”

*TCEQ Comment: Permitted facilities with landfills are reviewed in advance to determine whether there are unsuitable site characteristics or special conditions that can be solved with engineered solutions. Approval for construction or use for waste disposal can be denied prior to any hazardous materials being placed in them. Reviewing applications with all potential disasters/emergencies in mind and research of new responses are part of a sound scientific approach.*

## **Page 19: Cross Program Impacts**

EPA: “The variation among the statutes our Region administers, as well as the regulatory programs EPA designs ... will require special attention and legal analysis on a case by case basis. The evolving scientific understanding of climate change impacts and the sensitivity of EPA programs to those impacts will also necessitate case specific analysis. The relative weight climate change considerations should be given in evaluating options for EPA action will depend on many factors ... compared to the temporal and spatial scale of the proposed EPA action; the scientific understanding of

the climate impacts; and the environmental and economic consequences ...[of the] proposed climate change adaptation measures. Considerations such as these are by definition case-specific.”

*TCEQ Comment: Case-specific reviews are a part of processing in all waste permit actions. Permits contain language requiring their modification of the permit as necessary when activities are determined to be no longer protective of human health and the environment. Awareness of this potential is part of the permit requirements.*

**Page 19: Cross Program Impacts, 1.4.8.2 Partnerships**

*TCEQ Comment: The EPA does not mention important interactions/communications with industrial or regulated partners.*

**Page 20: Responding to Vulnerabilities – Priority Actions, Overview**

EPA: “(4) Strengthen adaptive capacity of EPA staff and partners through training”

*TCEQ Comment: TCEQ has its own training program and regularly invites training groups and speakers for additional expertise.*

EPA: “(5) Develop decision-support tools that enable EPA staff and partners to integrate climate adaptation planning into their work”

*TCEQ Comment: TCEQ will work with EPA as appropriate and incorporate any changes that are based on sound scientific information and responsive technical development.*

EPA: “(8) Focus on most vulnerable people and places; (9) Measure and evaluate performance; and (10) Develop Program and Regional Office Implementation Plans.

*TCEQ Comment: The TCEQ solid waste permitting programs will assess needs for future development and response in the varied Texas climate areas based on sound science and engineering principles. The TCEQ waste programs have experience in public outreach as well as in emergency responses involving disaster-generated wastes. There are existing TCEQ guidance publications available on proper waste handling for multiple scenarios.*

*The rest of the document after the Overview discussed programs in place and projected for outreach, professional training, partnerships, and data collection. While there are a number of initiatives and goals mentioned, the items did not appear to need further comments as the items above discussed the reasoning.*

**Page 22: Part 2, Section 2.4, Subsection 2.4.2, More Frequent and Intense Droughts**

The EPA Region 6 document states that “The use of existing programs and tools will be expanded to accomplish priority goals in this arena.” A variety of potentially applicable programs and funding sources are listed.

*TCEQ Comment: TCEQ is concerned that EPA may attempt to compel states to address the Implementation Plan with funding requirements or include specific requirements in grant programs to address climate change. TCEQ urges EPA not to include specific requirements in grant programs and requests that the Plan be revised to specifically address this concern.*

**Page 23: Section 2, Subsection 2.4.5, Increasing Rates of Relative Sea Level Rise**

The EPA Region 6 Plan states that “Climate change adaptation goals will be addressed by establishing, refining, or expanding coastal restoration priorities” in coordination with groups such as the Gulf Ecosystem Restoration Task Force, the Gulf Ecosystem Restoration Council. The TCEQ supports communication and coordination between various groups. In this case the identified groups share a goal of protecting and restoring areas along the Gulf coast.

*TCEQ Comment: The TCEQ is concerned that EPA is committing to dedicate funds allocated for specific purposes to tasks for addressing climate change. It is requested that the document be revised to acknowledge that coordination regarding climate change adaptation goals may occur with other groups and funding may be leveraged to the extent the goals are compatible and the activities are appropriate. EPA cannot mandate funds dedicated for other purposes be used to implement the concepts in this document.*

**Page 25: Part 3, Section 3.2, Approach to Measuring and Evaluating Performance**

The document indicates that Region 6 employs several tracking mechanisms to measure and evaluate performance of internal operations and programmatic activities and outcomes during the year. The document also notes a variety of specific regional efforts to measure and evaluate progress that have some relation to climate change considerations.

*TCEQ Comment: The TCEQ is concerned that EPA Region 6 will impose conditions on existing programs, or require additional tracking and reporting, to demonstrate progress on the Plan. It is requested the document be revised to address this concern.*

**Pages 26 – 27: Part 3, Section 3.3, Measures**

The document identifies additional programmatic metrics that will be tracked and reported on under the Implementation Plan. Some of these items are new regional-level commitments to earmark efforts of broader programs to climate change.

*TCEQ Comment: The TCEQ is concerned that this approach will result in additional mandates of the programs administered by the TCEQ. The TCEQ encourages EPA Region 6 not to use the Implementation Plan to impose additional, and burdensome, mandates on the entities administering the programs.*

