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## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

September 20, 2013

Water Docket  
U.S. Environmental Protection Agency  
Mail Code: 4203M  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Re: Docket ID No. EPA-HQ-OW-2009-0819

The Texas Commission on Environmental Quality (TCEQ) is providing comments on the U.S. Environmental Protection Agency (EPA) proposed rule revisions to the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category (40 CFR Part 423). The TCEQ appreciates the opportunity to comment.

The TCEQ has some specific comments and recommendations regarding the proposed requirements for direct and indirect dischargers. These include: anti-circumvention provisions and compliance monitoring, compliance schedules, impacts on effluent reuse and recycling, analytical test methods, Best Management Practices (BMPs) for impoundments, establishing limits based on Best Professional Judgment (BPJ) standards, correcting the new source date for indirect dischargers, certain definitions, and readability of the rule as proposed. The comments are included as Attachment 1.

If you have questions concerning the comments, please contact David Galindo at (512) 239-0951 or by e-mail at [David.Galindo@tceq.texas.gov](mailto:David.Galindo@tceq.texas.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Zak", with a long horizontal flourish extending to the right.

Zak Covar  
Executive Director

# **Comments by the Texas Commission on Environmental Quality Regarding the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category; Proposed Rule**

**EPA Docket ID NO. EPA-HQ-OW-2009-0819**

## **I. Summary of Proposed Action**

On June 7, 2013, the United States Environmental Protection Agency (EPA) published in the *Federal Register* a proposed rule to amend the effluent limitations guidelines and standards for the Steam Electric Power Generating Point Source Category (40 CFR Part 423) to strengthen existing controls on direct and indirect users that discharge toxic pollutants from steam electric power generating plants. The proposed rule sets the first federal limits on the levels of toxic metals in wastewater that can be discharged from power plants, based on technology improvements in the industry.

## **II. Comments**

The proposed rule is applicable to both direct and indirect users that discharge wastewater from steam electric power plants.

### **Anti-circumvention and compliance monitoring**

*The TCEQ recommends that the EPA revisit and reconsider the proposed anti-circumvention provisions that would very likely result in significant resource and cost burden to users and permitting authorities associated with permitting, compliance monitoring, and reporting.*

The proposed rule contains a new "Anti-Circumvention" requirement not found in any other effluent limitation guideline. This provision requires monitoring and compliance for specific waste streams prior to commingling with any other waste stream (e.g. this effectively requires individual outfalls along with individual treatment systems for every waste stream generated at steam electric stations). This contradicts historical permitting practices and conflicts with EPA's NPDES Permit Writers Manual that establishes a building block approach to allocating pollutant loadings when waste streams are combined in common treatment systems (e.g. ponds) prior to discharge. The Anti-Circumvention provision is not found in any other effluent limitation guideline and TCEQ does not support inclusion of these requirements in these revised effluent limitation guidelines.

When considering the number of wastestreams, this provision would clearly result in a significant increase in the time and resources for permitting authorities (e.g., POTWs and states).

### **Compliance Schedules**

*TCEQ fully supports the concept of the compliance schedules proposed in the revised effluent guidelines and appreciates the flexibility for permitting authorities to determine dates that existing sources must be in compliance with standards for existing sources.*

EPA is proposing compliance with the newly established technology based effluent limitations as soon as possible within the next permit cycle after July 1, 2017 based on the judgment of the permitting authority. Although not included in the proposed rulemaking, the preamble to the rulemaking would allow additional compliance schedules should individual plants or units choose to close impoundments and operate systems under a zero discharge scenario. TCEQ supports this proposal to allow greater flexibility at individual plants and units and suggests inclusion of this proposal in the revised effluent guidelines. EPA should clearly state that the

determination of the compliance period is established by the permitting authority to avoid having professional judgment disagreements with EPA on the "as soon as possible" standard.

TCEQ has received numerous interim objection letters on draft Texas Pollutant Discharge Elimination System (TPDES) permits from EPA Region 6 related to compliance with newly established effluent limitations (water quality based) citing the "as soon as possible standard". TCEQ opposes receiving interim objections in the future on this issue based on disagreements on professional judgment without specific regulatory authority.

### **Impacts on Effluent Reuse and Recycling**

*The TCEQ recommends that the EPA revisit and reconsider the proposed anti-circumvention provisions that would very likely discourage water reuse if a user wanted to reuse water in a process operation that has a waste stream that would be subject to a zero discharge limit or standard.*

This same "Anti-Circumvention" provision also requires meeting more stringent technology-based effluent limitations prior to being reused in other plant processes. In essence, the rule limits the use of effluent produced by a process for which there is a zero discharge limit or standard to another process operation for discharge under less stringent requirements than intended. This appears to exceed Clean Water Act Authority. This is very likely to significantly affect water conservation and reuse and is a significant issue today related to the drought and water supply issues. Steam Electric Stations are likely to choose not to employ treatment to meet these stringent limitations prior to reusing waste streams within the plant and increase use of raw and potable water. Furthermore there are several waste streams that Best Available Technology (BAT) has been identified as zero discharge which may further impact reuse since these waste streams that could be reused and treated when employed in another process and discharged, would no longer be amenable to that practice. The revised guidelines appear to require compliance with technology-based effluent limitations even if there is no eventual discharge to waters in the U.S. This appears to exceed Clean Water Act Authority and the guidelines should be revised to not apply to waste streams which are not discharged to waters in the U.S.

### **Analytical Test Methods**

*TCEQ suggests revisions to the revised analytical methods guidelines to allow site specific test method and detection levels where warranted.*

The revised guidelines contain a requirement that "sufficiently sensitive" analytical methods be used for compliance monitoring to provide quantifiable results at levels necessary to demonstrate compliance with effluent limits.

This provision requires methods to be used that can detect pollutants at the proposed technology-based standards. TCEQ's latest revisions to the minimum analytical methods (MALs) contained in "Procedures to Implement the Texas Surface Water Quality Standards" indicate that the proposed BAT limits are very close to these new proposed MALs. The revised guidelines do not appear to allow establishment of site specific MALs where matrix interference of other issues are encountered which would prevent proper detection at these levels. These guidelines appear to supersede EPA's regulations which allow site specific detection levels to be established. TCEQ suggests revisions to the revised guidelines to allow site specific test method and detection levels where warranted.

The increased number of internal monitoring points coupled with requirements to use sufficiently sensitive analytical methods for compliance determinations and the associated increase in the cost of testing and reporting, will likely be a significant burden on users and permitting authorities. In addition, it is not clear that the increased burden would be offset by the reduced impacts on POTWs.

### **Best Management Practices for Impoundments**

*TCEQ is opposed to establishing BMPs, construction standards, submittal of plans and specifications, closure plans, and annual certifications under this rule.*

Although the proposed rule does not propose establishing Best Management Practices (BMPs) at this time, in the preamble, EPA has indicated that it is considering establishing BMPs, construction standards, submittal of plans and specifications, closure plans, annual certifications, etc. This would appear to overlap RCRA regulations and substantially increase burden on permittees and water permitting programs. EPA is specifically seeking input on this issue and TCEQ is opposed to these requirements under Clean Water Act authority.

### **Establishing Limits Based on Best Professional Judgment**

*TCEQ is opposed to the revised rulemaking specifically requiring establishment of effluent limitations based on BPJ in lieu of BAT numerical standards*

EPA has established various preferred options for various waste streams in the revised effluent guidelines in the rulemaking preamble. Several options identify not establishing Best Available Technology (BAT) standards and in the alternative, specifically require permitting authorities to establish limits based on Best Professional Judgment (BPJ). TCEQ is opposed to the revised rulemaking specifically requiring establishment of effluent limitations based on BPJ, and if EPA does not choose to specifically establish BAT numerical standards, the revised effluent guidelines should remain silent in establishing effluent limitations for these specific waste streams.

### **Define the terms “no discharge” and “zero discharge”**

*The TCEQ recommends that the EPA include a definition of both terms in the specialized definitions subpart §423.11.*

The terms “no discharge” and “zero discharge” as used in the proposed rule are not clearly defined. If the intent is to not discharge any pollutants in measurable amounts, then that clarification should be made and include a level of detection. If the intent is to not discharge any regulated wastestream (e.g., no flow), then that should be clearly stated.

### **Reduce confusion and improve readability**

*The TCEQ recommends that the EPA use a format for tables such as including headings and table numbers that can be referenced in the applicable subpart and use a protocol for numbering paragraphs in PSES (§423.16) and PSNS (§423.17).*

The way that the effluent limits and exceptions are presented in the proposed rule is hard to follow and understand and causes confusion. Some tables are formatted across one or more columns and are not clearly identified as to applicability with the corresponding subpart. In addition, the protocol for designating paragraphs for PSES (§423.16) is not consistent with the protocol used for PSNS (§423.17). In prior published categorical standards, the same letters for new source and existing source subsections correspond to the same wastestream.

## **Impacts to Permitting Authorities**

*TCEQ is of the opinion that by inclusion of the Anti-Circumvention provision there will be a substantial increase in effort to permit steam electric stations*

The preamble to this rulemaking indicates that there is no impact to permitting authorities (including the Paperwork Reduction Act and Federalism) based on these revised guidelines. By inclusion of the Anti-Circumvention provision there will be a substantial increase in effort to permit steam electric stations. Many new outfalls and requirements will have to be established in permits, including development of rationale for new limits, etc. All of these new outfalls will require additional testing and record keeping of this new data, including data in permit applications and discharge monitoring reports (DMRs). If the impoundment BMPs and other associated requirements are included in the adopted rule, that would establish a significant increase in workload related to review of plans and specs, annual certifications, etc. TCEQ does not concur with EPA's finding of no impact to permitting authorities and believes the preamble should be revised accordingly.