

Chairman Kathleen White
Commissioner Larry Soward
Commissioner Martin Hubert

AGENDA

Wednesday, December 13, 2006

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

9:30 A.M.
12100 Park 35 Circle
Room 201S, Bldg. E

The Commissioners may consider posted items in an order other than the order posted. The Commissioners may recess for a lunch break and may not meet in Open Session from 12:00 pm to 1:00 pm. Unfinished items will be continued to the afternoon.

Item 1. **Docket No. 2006-1512-RUL.** Consideration for publication of, and hearings on, proposed repealed and proposed new sections of **30 TAC Chapter 117**, Control of Air Pollution from Nitrogen Compounds and corresponding revisions to the state implementation plan (SIP).

The proposed rulemaking is necessary to accommodate proposed new rules for the Dallas-Fort Worth eight-hour ozone attainment demonstration and to provide for future potential rulemaking, as well as improve organization of existing requirements.

The proposed rulemaking would: 1) provide an overall reorganization into different subchapters and divisions by regions of the state and control strategies, which would retain current one-hour ozone requirements for all ozone attainment and nonattainment areas of the state, and would remove or consolidate redundant and superfluous provisions; 2) establish new emission control requirements for major industrial, commercial, and institutional sources of nitrogen oxides (NOx) in the Dallas-Fort Worth eight-hour ozone nonattainment area in proposed Subchapter B, Division 4, Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources; 3) establish new requirements for utility electric generation sources in the Dallas-Fort Worth eight-hour ozone nonattainment area in proposed new Subchapter C, Division 4, Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources; 4) establish new requirements for minor stationary sources of NOx in the Dallas-Fort Worth eight-hour ozone nonattainment area in proposed new Subchapter D, Division 2, Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources; 5) establish a new Subchapter E, Division 2, Multi-Region Combustion Control, Cement Kilns, that incorporates existing requirements for cement kilns as well as new emission specifications and other requirements to reduce NOx emissions in the Dallas-Fort Worth eight-hour ozone nonattainment area; 6) establish new emission control requirements in new Subchapter E, Multi-Region Combustion Control, Division 4, East Texas Combustion, for stationary gas-fired reciprocating internal combustion engines located in specified counties in northeast Texas; 7) incorporate changes from House Bill 965, 79th Legislature, Regular Session, 2005, relating to revisions to the residential water heater rule, including proposed deletion of the requirement that Type 0 water heaters meet the 10 nanogram per Joule NOx standard by the January 1, 2007, implementation date; and 8) improve readability, correct citations and cross-references, and make other changes specified in the preamble. (Vincent Meiller, Janis Hudson) (Rule Project No. 2006-034-117-EN)

Approve publication of, and hearings on, proposed repealed and proposed new sections of 30 TAC Chapter 117 and corresponding revisions to the state implementation plan; include an additional public meeting to be heard at the Dallas Public Library on January 31, 2007 at 7:00 P.M. KW/MH; all agree.

Item 2. **Docket No. 2006-1900-SIP.** Consideration for publication of, and hearing on, a proposed revision to the **Dallas-Forth Worth (DFW) State Implementation Plan (SIP) to meet the eight-hour ozone National Ambient Air Quality Standard (NAAQS).** The proposed revision includes requirements for the following sources: major industrial, commercial, and institutional sources, minor sources, electric generating facilities, cement kilns, and East Texas combustion sources. All of the proposed requirements apply to the nine-county DFW area except for the East Texas Combustion requirements, which apply in specific counties located in northeast Texas. In addition, the North Central Texas Council of Governments has committed to implementing local-level controls of 2.89 tpd of NOx by ozone season 2009.

This revision also includes a motor vehicle emissions budget, VOC and NOx reasonably available control technology analyses, reasonably available control measures analysis, contingency measures, and emissions inventories. (Mary Ann Cook, Terry Salem) (Rule Project No. 2006-013-SIP-NR)

Approve publication of, and hearing on, a proposed revision to the Dallas-Forth Worth State Implementation Plan to meet the eight-hour ozone National Ambient Air Quality Standard; include an additional public meeting to be heard at the Dallas Public Library on January 31, 2007 at 7:00 P.M. KW/MH; all agree.

Item 3. **Docket No. 2006-1891-SIP.** Consideration for publication of, and hearing on, a proposed revision to the **Dallas-Fort-Worth (DFW) Eight-Hour Ozone Nonattainment Area Reasonable Further Progress (RFP) State Implementation Plan (SIP).** This SIP revision demonstrates a 15 percent emissions reduction requirement will be met for the analysis period of 2002 to 2008. The DFW eight-hour ozone nonattainment area consists of two sets of counties: the existing four nonattainment counties under the one-hour ozone standard or four core counties (Collin, Dallas, Denton, and Tarrant) and the five new nonattainment counties under the eight-hour ozone standard (Ellis, Johnson, Kaufman, Parker, and Rockwall). For the five new counties, the TCEQ must reduce VOC emissions by 15 percent between 2002 and 2008. For the four core counties, the TCEQ has chosen to reduce NOx emissions by 15 percent between 2002 and 2008. The DFW RFP SIP revision demonstration (1) establishes baseline emission levels, (2) calculates reduction targets, (3) identifies control strategies to meet emission target levels, and (4) tracks actual emission reductions against established emissions growth and control budgets.

This revision also includes a motor vehicle emissions budget for the milestone year 2008. No new on-road mobile source controls have been proposed as part of the plan. However, values have been updated using the latest EPA MOBILE6 inventory development tool. Therefore inventories have changed and the MVEB is updated as part of this SIP revision. (Mary Ann Cook, Terry Salem) (SIP Revision Project No. 2006-031-SIP-NR)

Approve publication of, and hearing on, a proposed revision to the Dallas-Fort-Worth Eight-Hour Ozone Nonattainment Area Reasonable Further Progress State Implementation Plan; include an additional public meeting to be heard at the Dallas Public Library on January 31, 2007 at 7:00 P.M. KW/MH; all agree.

- Item 4. **Docket No. 2006-1804-RUL.** Consideration for publication of, and hearings on, proposed amendments to Sections 115.112 - 115.117, 115.119, 115.541 - 115.547, and 115.549 of **30 TAC Chapter 115**, Control of Air Pollution from Volatile Organic Compounds, and corresponding revisions to the state implementation plan.

The proposed rulemaking would reduce emissions of volatile organic compound (VOC) from VOC storage and degassing operations by establishing more stringent controls for fittings on floating roof storage vessels, establishing control requirements or operational limitations on landing floating roofs, establishing control requirements for flash emissions from crude oil and condensate storage tanks, and establishing more stringent control requirements for degassing and cleaning of storage, transport, and marine vessels. (Teresa Hurley, P.E., Les Trobman) (Rule Project No. 2006-038-115-EN)

Approve publication of, and hearings on, proposed amendments to Sections 115.112 - 115.117, 115.119, 115.541 - 115.547, and 115.549 of 30 TAC Chapter 115; and corresponding revisions to the state implementation plan. KW/MH; all agree.

- Item 5. **Docket No. 2006-1874-SIP.** Consideration for publication of, and hearing on, proposed revision to the **Houston-Galveston-Brazoria State Implementation Plan.**

The proposed SIP revision documents the progress made to attain the one-hour ozone standard, documents steps toward attainment of the eight-hour ozone standard, and estimates 2018 as a reasonable target year for attainment of the eight-hour ozone standard in the Houston-Galveston-Brazoria nonattainment area.

The proposed revision also describes the two concurrently proposed state-level rules in Chapter 114 and Chapter 115. In addition, the Houston-Galveston Area Council has committed to implementing 2.82 tpd of local-level NO_x controls by 2009. This revision also includes 2000 base case modeling, 2009 future case modeling, VOC and NO_x reasonably available control technology analyses, reasonably available control measures analysis, contingency measures, and the 2002 Houston-Galveston-Brazoria periodic emissions inventory. (Emily Barrett, Janis Hudson) (Rule Project No. 2006-027-SIP-NR)

Approve publication of, and hearing on, proposed revision to the Houston-Galveston-Brazoria State Implementation Plan. KW/MH; all agree.

- Item 6. **Docket No. 2006-1892-SIP.** Consideration for publication of, and hearing on, a proposed revision to the **Houston-Galveston-Brazoria (HGB) Eight-Hour Ozone Nonattainment Area Reasonable Further Progress (RFP) State Implementation Plan (SIP).** This SIP revision demonstrates a 15 percent emissions reduction requirement will be met for the analysis period of 2002 to 2008. The HGB RFP SIP revision demonstration (1) establishes baseline emission levels, (2) calculates reduction targets, (3) identifies control strategies to

meet emission target levels, and (4) tracks actual emission reductions against established emissions growth and control budgets.

This revision also includes a motor vehicle emissions budget for the milestone year 2008. No new on-road mobile source controls have been proposed as part of the plan. However, values have been updated using the latest EPA MOBILE6 inventory development tool. Therefore inventories have changed and the MVEB is updated as part of this SIP revision. (Mary Ann Cook, Terry Salem) (SIP Revision Project No. 2006-030-SIP-NR)

Approve publication of, and hearing on, a proposed revision to the Houston-Galveston-Brazoria Eight-Hour Ozone Nonattainment Area Reasonable Further Progress State Implementation Plan. KW/MH; all agree.

Item 7. **Docket No. 2006-1796-RUL.** Consideration for publication of, and hearings on, proposed amendments to **30 TAC Chapter 114**, Control of Air Pollution from Motor Vehicles, Subchapter A, Definitions, Section 114.6, and Subchapter H, Low Emission Fuels, Division 2, Low Emission Diesel, Section 114.319 and corresponding revisions to the state implementation plan (SIP).

The proposed rulemaking would amend Chapter 114 to include marine distillate fuels commonly know as Marine Distillate fuel X (DMX), Marine Distillate fuel A (DMA), and Marine Gas Oil (MGO), into the definition of diesel fuels, requiring them to be Texas Low Emission Diesel (TxLED) compliant in the Houston-Galveston-Brazoria (HGB) nonattainment area. The proposed rulemaking would also add a compliance schedule for the introduction of the TxLED-compliant marine distillate fuels in the HGB nonattainment area. (Brandon Smith, John Minter) (Rule Project No. 2006-036-114-EN)

Approve publication of, and hearings on, proposed amendments to 30 TAC Chapter 114 and corresponding revisions to the state implementation plan. KW/MH; all agree.

EXECUTIVE SESSION

Item 8. **Docket No. 2006-0001-EXE.** The Commission will meet in closed session to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the Commission's Executive Director and General Counsel, as permitted by Section 551.074 of the Texas Open Meetings Act, Chapter 551 of the Government Code. The Commission may also meet in open session to take action on this matter as required by Section 551.102 of the Texas Open Meetings Act, Chapter 551 of the Government Code.

The Commission did not meet in Executive Session.

Item 9. **Docket No. 2006-0002-EXE.** The Commission will conduct a closed meeting to receive legal advice and will discuss pending or contemplated litigation, settlement offers, and/or the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of specific Commission employees, as permitted by Sections 551.071 and 551.074, the Open Meetings Act, codified as Chapter 551 of the Government Code. The Commission may also meet in open session to take action on a legal or personnel matters considered in the closed meeting

as required by Section 551.102 of the Texas Open Meetings Act, Chapter 551 of the Government Code.

The Commission did not meet in Executive Session.

Item 10. **Docket No. 2006-0003-EXE.** The Commission will conduct a closed session to discuss their duties, roles, and responsibilities as Commissioners of the TCEQ pursuant to Section 551.074 of the Open Meetings Act, Codified as Chapter 551 of the Government Code. The Commission may also meet in open session to take action on this matter as required by Section 551.102 of the Texas Open Meetings Act, Chapter 551 of the Government Code.

The Commission did not meet in Executive Session.

(PERSONS WITH DISABILITIES WHO PLAN TO ATTEND THE TCEQ AGENDA AND WHO MAY NEED AUXILIARY AIDS OR SERVICES SUCH AS INTERPRETERS FOR PERSONS WHO ARE DEAF OR HEARING IMPAIRED, READERS, LARGE PRINT, OR BRAILLE ARE REQUESTED TO CONTACT OFFICE OF THE CHIEF CLERK AT (512) 239-3300 AT LEAST TWO (2) WORK DAYS PRIOR TO THE AGENDA, SO THAT APPROPRIATE ARRANGEMENTS CAN BE MADE. PERSONS WHO DESIRE THE ASSISTANCE OF AN INTERPRETER IN CONJUNCTION WITH THEIR ORAL PRESENTATION AT THIS TCEQ AGENDA ARE REQUESTED TO CONTACT THE OFFICE OF THE CHIEF CLERK AT (512) 239-3300 AT LEAST FIVE (5) WORK DAYS PRIOR TO THE AGENDA SO THAT APPROPRIATE ARRANGEMENTS CAN BE MADE.)

REGISTRATION FOR AGENDA STARTS AT 8:45 A.M. UNTIL 9:30 A.M. PLEASE REGISTER BETWEEN THESE TIMES. LATE REGISTRATION COULD RESULT IN YOUR MISSING THE OPPORTUNITY TO COMMENT ON YOUR ITEM.

THE PUBLIC CAN VIEW LIVE AND ARCHIVED TCEQ MEETINGS ON THE INTERNET AT NO COST, AT: [HTTP://WWW.TEXASADMIN.COM/cgi-bin/tnrcc.cgi](http://www.texasadmin.com/cgi-bin/tnrcc.cgi)

OLD BUSINESS AGENDA

Wednesday, December 13, 2006

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

1:00 P.M.
12100 Park 35 Circle
Room 201S, Bldg. E

Item continued from the December 6, 2006 agenda.

- Item 1. **TCEQ Docket Nos. 2006-1832-WR and 2006-1831-WR.** Consideration of the Motion to Overturn filed by the **City of Bryan** and the **City of College Station** concerning the Executive Director's September 21, 2006, decisions to return Application Nos. 5912 and 5913 pursuant to 30 Texas Administrative Code Section 281.18 without prejudice to its re-submission. The applications seek authorization to reuse current and future return flows derived from privately owned groundwater that are or will be discharged from the City of Bryan Burton Creek, Still Creek, and Turkey Creek treatment plants and the City of College Station Carters Creek and Lick Creek treatment plants. The applications also seek authorization to convey the return flows down the bed and banks of various watercourses throughout the Brazos River Basin and subsequently divert such flows from the Brazos River for municipal, industrial, and agricultural purposes. The commission will also consider any responses and replies. (Todd Chenoweth, Robin Smith)

The Commission determined that it has jurisdiction to consider and act on the Motion to Overturn under the general powers in Chapter 5 of the Water Code, particularly, Section 5.221 of Chapter 5 and that as a matter of law that the Cities' applications do not involve state water based on Section 11.042(b) of the Water Code, which provides the criteria for the owner of privately owned groundwater to retain ownership of groundwater after discharge into a state watercourse. The Commission also directed the Executive Director to process the Cities' applications solely under Section 11.042(b) and the Commission's bed and banks authorization rules and not under statutes and rules applicable to state water, and the Commission remanded the Cities' Applications to the Executive Director for administrative and technical review and directed that its decision is confined to bed and banks authorization applications that involve exclusively groundwater-based return flows. KW/MH; LS oppose.

(PERSONS WITH DISABILITIES WHO PLAN TO ATTEND THE TCEQ AGENDA AND WHO MAY NEED AUXILIARY AIDS OR SERVICES SUCH AS INTERPRETERS FOR PERSONS WHO ARE DEAF OR HEARING IMPAIRED, READERS, LARGE PRINT, OR BRAILLE ARE REQUESTED TO CONTACT OFFICE OF THE CHIEF CLERK AT (512) 239-3300 AT LEAST TWO (2) WORK DAYS PRIOR TO THE AGENDA, SO THAT APPROPRIATE ARRANGEMENTS CAN BE MADE. PERSONS WHO DESIRE THE ASSISTANCE OF AN INTERPRETER IN CONJUNCTION WITH THEIR ORAL PRESENTATION AT THIS TCEQ AGENDA ARE REQUESTED TO CONTACT THE OFFICE OF THE CHIEF CLERK AT (512) 239-3300 AT LEAST FIVE (5) WORK DAYS PRIOR TO THE AGENDA SO THAT APPROPRIATE ARRANGEMENTS CAN BE MADE.)

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/s/ Celeste Baker
Assistant General Counsel,
Celeste Baker

12-28-2006
Date