

## REGULATORY GUIDANCE

**ISSUED BY:** Glenn Shankle, Executive Director, Texas Commission on Environmental Quality

**DATE:** November 28, 2006

**RE:** Regulatory Guidance, Re: exercise of Enforcement Discretion for Natural Gas-Fired Water Heaters manufactured on or after January 1, 2007.

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### **Executive Director Authority**

The Executive Director of the Texas Commission on Environmental Quality (TCEQ) hereby issues this regulatory guidance to announce the manner in which the agency expects to exercise its enforcement discretion concerning whether natural gas-fired water heaters manufactured on or after January 1, 2007, meet the emissions specifications set out in 30 TEX. ADMIN. CODE §117.465(b)(2). The Executive Director has the authority to issue this enforcement guidance pursuant to 30 TEX. ADMIN. CODE §70.3.

### **Background**

This action is made necessary due to the impossibility of performance to meet the emission rate established by §117.465(b)(2) as there are no compliant water heaters that can be manufactured by the compliance date established in the rule, January 1, 2007. This rule establishes a nitrogen oxides (NO<sub>x</sub>) emission limit of 10 nanograms per joule (ng/J) for residential natural-gas fired water heaters with a maximum rated capacity of no more than 75,000 British thermal units (Btu) per hour manufactured after January 1, 2007. Typically, these water heaters store 30 to 75 gallons of water. The rule further provides that water heaters manufactured after January 1, 2007, may not be sold, distributed, installed or offered for sale within the State of Texas unless they meet the 10 ng/J NO<sub>x</sub> emission rate.

As specified by the 79<sup>th</sup> Texas Legislature in House Bill (HB) 965, the TCEQ conducted a study to determine the technical and economic feasibility of regulating residential water heaters. As a part of the study, the TCEQ surveyed residential water heater manufacturers to determine the practicality of implementing the 10 ng/J NO<sub>x</sub> emission limit by the January 1, 2007 compliance date. *See Technical and Economic Feasibility Study Regulation of Residential Water Heaters, 30 TAC 117, Subchapter D, Division 1*, dated December 2005. The TCEQ concluded the following:

- Residential gas-fired water heaters meeting the new NO<sub>x</sub> emission rate of 10 ng/J will not be available on the market by the compliance deadline of January 1, 2007;
- Residential gas-fired water heaters can not be developed to meet the NO<sub>x</sub> emission rate of 10 ng/J at a cost that is economically reasonable; and,
- The 40 ng/J NO<sub>x</sub> emission rate for residential water heaters will be retained to prevent back-sliding.

Accordingly, the Executive Director has recommended the repeal of the 10 ng/J NO<sub>x</sub> emission rate in a proposed rulemaking that will be presented to the TCEQ Commissioners on December 13, 2006. Once before the TCEQ took action to postpone the compliance date of the 10 ng/J NO<sub>x</sub> emission rate for water heaters from 2004 to 2007 on the basis that it was not technically feasible to develop a compliant water heater at that time. The Executive Director has determined, that at this time, it remains technically infeasible to develop a compliant water heater. Accordingly, the best course of action is to repeal the emissions specifications.

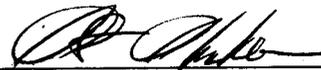
### **Pending Rulemaking**

On December 13, 2006, the TCEQ Commissioners are scheduled to act to propose the repeal of the emissions specifications contained in current §117.465(b)(2) within a broader Chapter 117 rulemaking package. However, under the procedures set forth in TEX. GOV'T CODE Chapter 2001, that rulemaking will not be final until it undergoes a public comment period and it is finally adopted, approximately during the second quarter of 2007. Accordingly, if the repeal is adopted, there will be some period of time after the stated compliance date that the repeal of the emissions specifications will not be final.

### **Announcement of Enforcement Discretion**

In light of the gap in time between the compliance date stated in the rule (January 1, 2007) and the date that the proposed repeal of the emissions specifications contained in current §117.465(b)(2) may be adopted and final (approximately second quarter of 2007), the Executive Director hereby issues this regulatory guidance to announce that the TCEQ will exercise its enforcement discretion and not institute or prosecute any action for noncompliance related to the sale, distribution, installation, or offer for sale of residential natural gas-fired water heaters with a maximum rated capacity of no more than 75,000 British thermal units (Btu) per hour manufactured after January 1, 2007, that do not meet the 10 ng/J NO<sub>x</sub> emission rate.

ISSUED this 28<sup>th</sup> day of November, 2006



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Glenn Shankle, Executive Director  
Texas Commission on Environmental Quality