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April 11, 2017

Richard A. Hyde, P.E.
Executive Director
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087



Re: Petition for Rulemaking of Jed Anderson

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY AND EXECUTIVE DIRECTOR

Dear Chairman Shaw, Commissioner Baker, Commissioner Niermann, and Executive Director Hyde:

Please find attached a Petition for Rulemaking to simplify regulatory burdens to the State of Texas and its citizens. The Federal government is making an effort to reduce red-tape. If the Federal government can do better, we can do better. Simplifications to the regulatory system would reduce costs to Texas citizens, improve the economy, and increase environmental performance. The system is currently so complex that the opportunities for simplification are mind-boggling in their potential.

At the risk of ridicule, I would like to say that this Petition is submitted with the foremost intent of love. I will not say that it will feel loving when you read it, nor that it is devoid of the defects of self nor perfect, but it is submitted I hope foremost with this ultimate intent. It is not intended as criticism, but to encourage continued improvement. All of us, and me foremost, can do better. I hope it is considered in this light—and that shining through it is a glimmer of the possibilities that are sure to come in the pursuit of an even better tomorrow.

Respectfully submitted,

Handwritten signature of Jed Anderson in black ink.

Jed Anderson
6118 Soaring Pine Court
Kingwood, TX 77345
Phone: (832) 428-4257
Email: jedanderson@jedlaw.net

**PETITION FOR RULEMAKING
TO REDUCE RULEMAKING
BY JED ANDERSON**

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**BEFORE THE TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY**

ORIGINAL PETITION FOR RULEMAKING



TO THE HONORABLE COMMISSIONERS:

Now comes Jed Anderson (“Petitioner”), and pursuant to the provisions of 30 Texas Administrative Code (“TAC”) Chapter 20 hereby presents this Petition for Rulemaking (“Petition”) to the Texas Commission on Environmental Quality (“TCEQ” or “Commission”).

This Petition seeks to simplify and reduce regulatory burdens to Texas citizens and businesses—and improve environmental performance.

---“*If you have 10,000 regulations you destroy all respect for the law.*”—Winston Churchill

The manner in which this Petition seeks to simplify and reduce burdens parallels, to some extent, efforts at the Federal to reduce regulatory burdens. An Executive Order was signed by President Trump requiring two regulations removed for every one added (*see* E.O. 13771). President Trump also committed to reducing regulations by at least 75%. The President also submitted a proposed budget to Congress that reduces EPA spending by 31%.

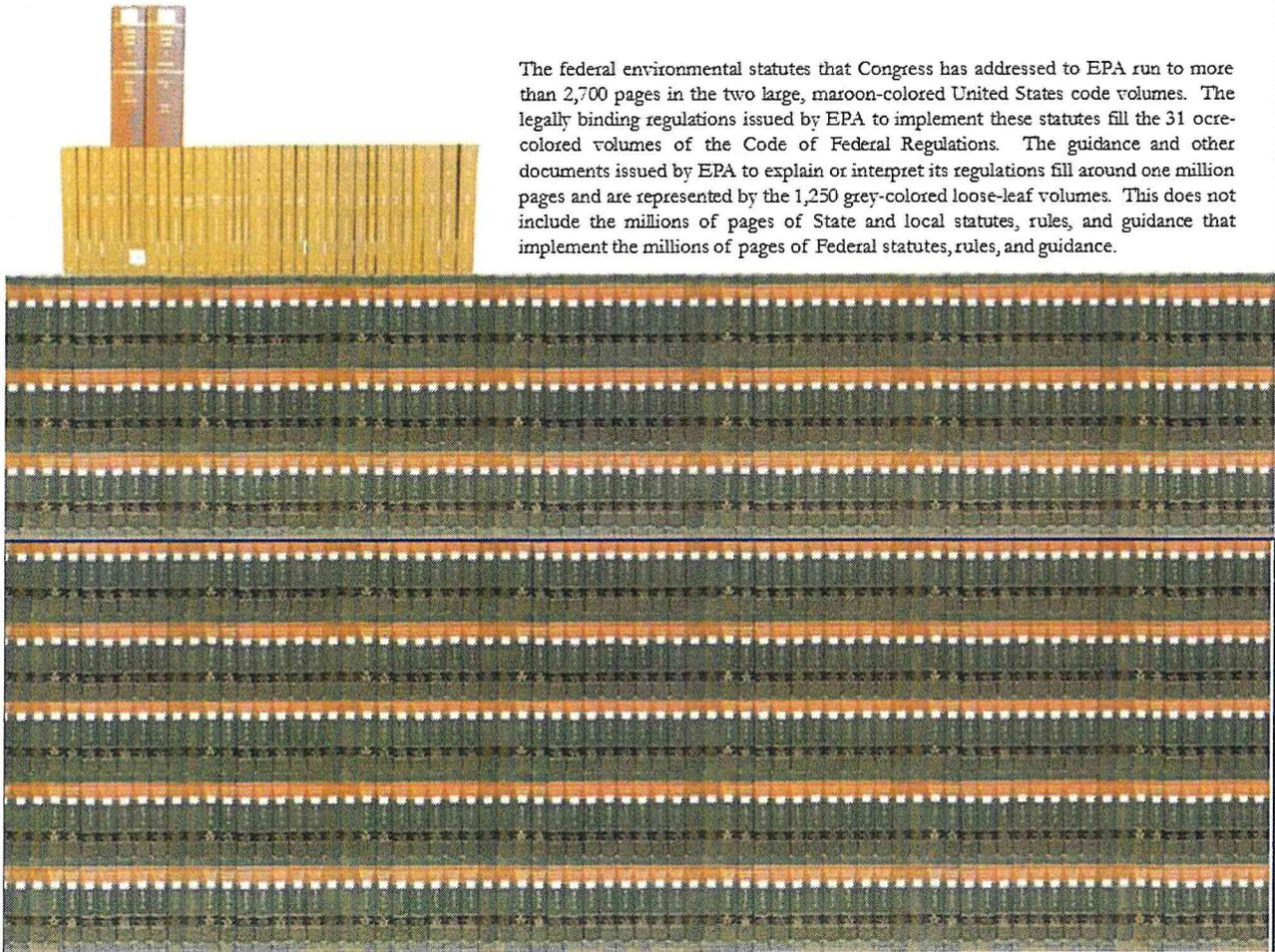
If the Federal government can do better, Texas can do better. Environmental regulatory requirements can be simplified at the State level to reduce costs to taxpayers and improve environmental performance.

Before proceeding further, it is important to note that TCEQ rules already require the agency to interpret rules simply (*see* 30 Tex. Admin. Code §1.1). This Petition would require the agency to write them simply as well. The Petition adds only two words and an implementation provision that would set in motion a formal process whereby existing requirements would also be simplified.

Petitioner respectfully requests that the Commission consider this Petition as set out herein and initiate proceedings necessary to effectuate its language and proposed intent. Pursuant to the provisions of 30 TAC § 20.15, Petitioner would respectfully show the following in support of this Petition.

State Environmental Requirements: Too Lengthy and Too Complicate

The environmental regulatory system in the United States, to which TCEQ is a part of, has been found to be the most complicated regulatory system in human history. A study found that the environmental regulatory system is twice as complicated as the tax code.¹ The system includes millions of pages of Federal and State laws, rules, guidance, permit terms, and other documents that establish legal obligations on Texas citizens and businesses.



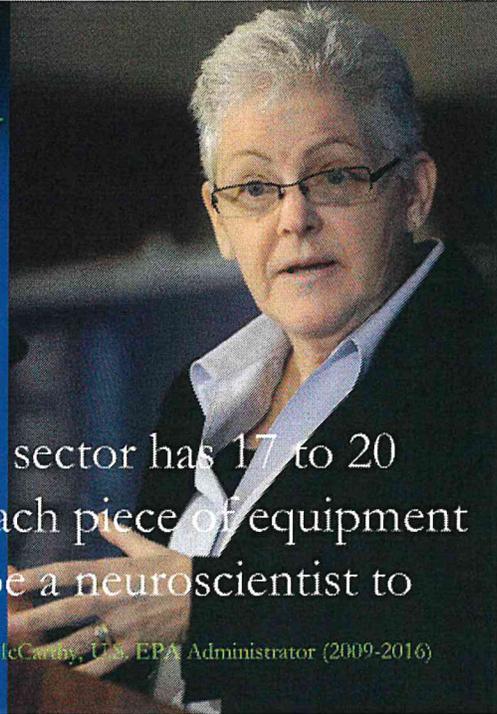
Gina McCarthy, former EPA Administrator during the Obama Administration, said the following about the air quality management system in the United States:

---“I hate that each sector has 17 to 20 rules that govern each piece of equipment and you’ve got to be a neuroscientist to figure it out.” —Gina McCarthy, Former EPA Administrator (2009-2016)

¹ *Measuring the Complexity of the Law: The United States Code*, Daniel Martin Katz, Illinois Tech - Chicago Kent College of Law, 22 *Artificial Intelligence and Law* 337 (2014).

U.S. Air Quality Management System

---“I hate that each sector has 17 to 20 rules that govern each piece of equipment and you've got to be a neuroscientist to figure it out”. ---Gina McCarthy, U.S. EPA Administrator (2009-2016)



President Obama called the air quality management system “hugely complicated and very technical”². Others have called it “complex”³, “very complicated”⁴, “contentious”⁵, “lengthy”⁶, “unreadable”⁷, “incomprehensible”⁸, “obsolete”⁹, “overlapping”¹⁰, and “a model of redundancy”¹¹.

TCEQ requirements in many ways are more lengthy and complicated than Federal requirements. TCEQ generally takes the federal rules and then adds even more requirements on to them (i.e. State rules, permit conditions, etc.). The number of TCEQ rule records for example has grown by over 25% from 1999 to 2016. Although much of these rules are in response to Federal mandates— not all fingers can be pointed at the Federal government for the resulting size and complexity of State regulation. Moreover, outside of the formal rulemaking process, Special Conditions in permits have grown that impose additional requirements on industry. These requirements have become lengthier and more complex in part because these requirements do not go through notice-

² President Obama, NPR Interview, December 15, 2016

³ “The Clean Air Act – one of the most complex and extensive pieces of federal environmental legislation.” –Center on Congress—Indiana University

⁴ “The statute and its regulatory offshoots are very complicated.” —U.S. Department of Justice

⁵ “The Clean Air Act is complicated and contentious”. —Senate Environment and Public Works Committee

⁶ “The Clean Air Act is a lengthy and complex federal law” —Florida Department of Environmental Protection

⁷ “The Act itself has often been called “unreadable” and “incomprehensible.” —John Quarles and Bill Lewis, Morgan & Lewis

⁸ *Id.*

⁹ “The Clean Air Act is obsolete.” - David Schoenbrod, author of “Breaking the Logjam”.

¹⁰ “The federal Clean Air Act (CAA) alone has been referred to as the most complicated statute in history. The statutory complexity is compounded by the thousands of pages of federal regulations and the overlapping statutes and regulations adopted by each individual state.” —Erich Brich writing for the American Bar Association

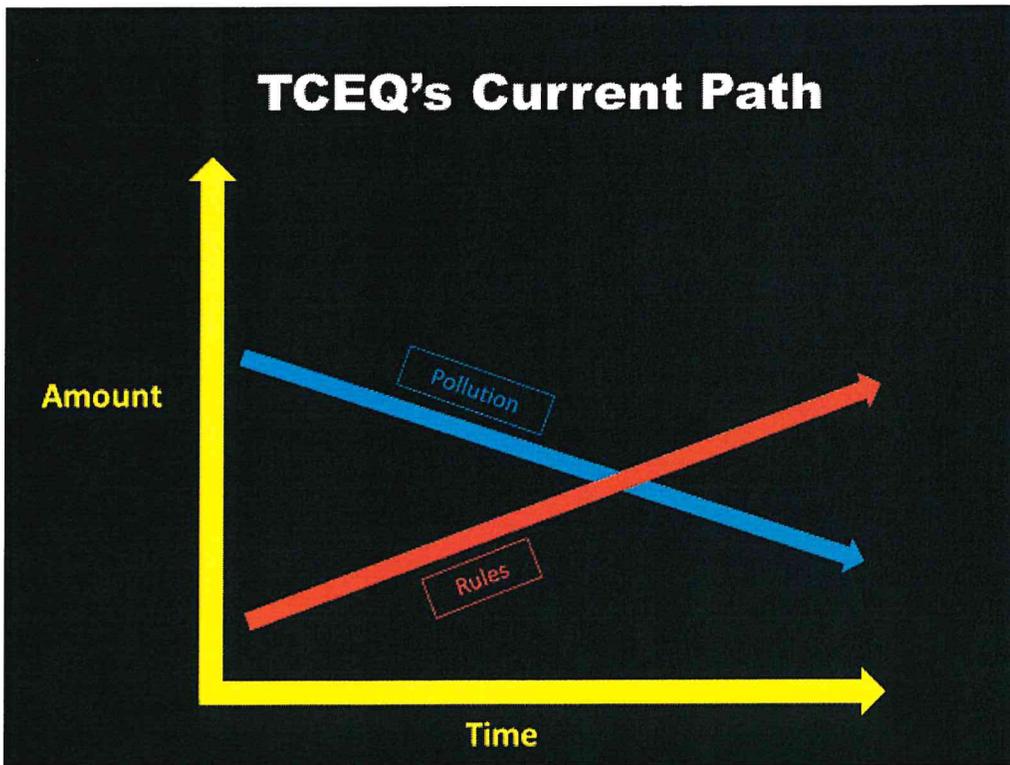
¹¹ “The Clean Air Act is a model of redundancy. Virtually every type of pollutant is regulated by not one but several overlapping provisions.” – Ben Lieberman

and-comment rulemaking and are put into place when industry is in the more vulnerable position of needing their permits.

Although most of the nation is focused on needed regulatory improvements at the Federal level, few realize the similar and corresponding opportunities to reduce the size and complexity of requirements on the State-side.

Before proceeding further, a phenomenon must be acknowledged. Rules increase over time if left un-checked. That's just naturally what happens with an agency tasked with rulemaking. A procedure must therefore be in place to ensure that rules are reviewed from time-to-time, and those that no longer bear abundant fruit are revised or removed. TCEQ currently does not have such a procedure. This Petition creates such a procedure. To use an example from nature, the only way to grow more and healthier grapes is to prune the vine from time-to-time. One cannot simply graft more branches and expect healthier and more abundant fruit to grow.

- **Hardy Fruit Trees Guidance:** *“Is it really necessary to prune the grape vines? If you would like to collect more than one cluster of grapes, yes! Here is why: the vine will only be producing fruit on the new branches of the year. If you let the vine make five meters of branches every year, after 3 years your vine will have to feed 15 meters of branches to reach the branch's extremity where the fruit are! The vine will not have much energy left when it comes to the end of the branch, hence the fruit yield will be very low. Pruning your vine is essential, because it limits the amount of useless branches to feed.”*---Hardy Fruit Trees



The Solution is Simplicity

Often we look only within the confines of our professional subset of resources for answers to difficult environmental regulatory policy questions—when sometimes the answers can be readily perceived in other contexts—and sometimes even in nature herself.

- *“Nature operates in the shortest way possible.” — Aristotle*
- *“Nature is pleased with simplicity. And nature is no dummy.” — Isaac Newton*
- *“Nature does not multiply things unnecessarily . . . and does nothing in vain”. — Galileo*

If we were to follow nature’s example (based on Aristotle’s, Newton’s, and Galileo’s observations), TCEQ regulations must be as short as possible, not multiply things unnecessarily, and be as simple as possible. To protect nature, we must emulate nature.

Just a short aside, I understand that presenting supportive evidence for simplifying TCEQ regulations outside of a pure technical discussion opens me to ridicule. I also understand this could become a tangential exercise—which I do not want this to become. But I would ask the reader to open her or his mind to the possibility that the technical answer to simplifying TCEQ rules might be rooted in nature or the historic pursuit of problem solving in other human arts and sciences. Some of the greatest geniuses of history for example used parsimony or simplicity as a heuristic device to solve highly complicated problems. Here are some examples from which we can draw upon:

- *“The definition of genius is taking the complex and making it simple.” —Albert Einstein*
- *“Out of clutter, find simplicity.” —Albert Einstein*
- *“Complexity is a sign of technical immaturity. Simplicity of use is the real sign of a well-designed product whether it is an ATM or a Patriot missile.”— Daniel T. Ling*
- *“When the solution is simple, God is answering.” —Albert Einstein*
- *“Beauty of style and harmony and grace and good rhythm depend on simplicity”—Plato*
- *“A complex system that works is invariably found to have evolved from a simple system that worked. A complex system designed from scratch never works and cannot be patched up to make it work. You have to start over, beginning with a working simple system.”—John Gall*
- *“Nature operates in the shortest way possible.”—Aristotle*
- *“Simplicity is prerequisite for reliability.”—Edsger W.Dijkstra*
- *“Phenomena complex—laws simple.”—Richard P. Feynman*
- *“The cheapest, fastest, and most reliable components of a computer system are those that aren’t there.”—Graham Bell*
- *“Simplicity is the ultimate sophistication.” — Leonardo da Vinci*
- *“[T]he grand aim of all science...is to cover the greatest possible number of empirical facts by logical deductions from the smallest possible number of hypotheses or axioms.”—Albert Einstein*
- *“Rudiments or principles must not be unnecessarily multiplied (entia praeter necessitatem non esse multiplicanda)—Immanuel Kant*
- *“You know you’ve achieved perfection in design, not when you have nothing more to add, but when you have nothing more to take away.”— Antoine de Saint-Exupéry*
- *“Fools ignore complexity; pragmatists suffer it; experts avoid it; geniuses remove it.”- Alan Perlis*

- *"Nature is pleased with simplicity. And nature is no dummy."* — Isaac Newton
- *"There are two ways of constructing a software design. One way is to make it so simple that there are obviously no deficiencies. And the other way is to make it so complicated that there are no obvious deficiencies."*— C.A.R. Hoare
- *"Any intelligent fool can make things bigger, more complex, and more violent. It takes a touch of genius — and a lot of courage — to move in the opposite direction."* —E.F Schumacher
- *"Simplifications have had a much greater long-range scientific impact than individual feats of ingenuity. The opportunity for simplification is very encouraging, because in all examples that come to mind the simple and elegant systems tend to be easier and faster to design and get right, more efficient in execution, and much more reliable than the more contrived contraptions that have to be debugged into some degree of acceptability.... Simplicity and elegance are unpopular because they require hard work and discipline to achieve and education to be appreciated."*— Edsger W. Dijkstra
- *"Remember that there is no code faster than no code."*— Taligent's Guide to Designing Programs
- *Although there are no textbooks on simplicity, simple systems work and complex don't.* —Jim Gray
- *"Nature does not multiply things unnecessarily; that she makes use of the easiest and simplest means for producing her effects; that she does nothing in vain, and the like".*—Galileo
- *"The main purpose of science is simplicity and as we understand more things, everything is becoming simpler."* — Edward Teller
- *"I'll tell you what you need to be a great scientist. You don't have to be able understand very complicated things. It's just the opposite. You have to be able to see what looks like the most complicated thing in the world and, in a flash, find the underlying simplicity. That's what you need: a talent for simplicity."*— Mitchell Wilson
- *"Science may be described as the art of systematic over-simplification."*— Karl Popper
- *"Simplicity does not precede complexity, but follows it."*— Alan J. Perlis
- *"The ability to simplify means to eliminate the unnecessary so that the necessary may speak."* — Hans Hofmann
- *"There is no greatness where there is not simplicity . . ."* — Leo Tolstoy
- *"Truth is ever to be found in the simplicity, and not in the multiplicity and confusion of things."* — Isaac Newton
- *"The simplest things are often the truest."* — Richard Bach
- *"When Henry Ford decided to produce his famous V-8 motor, he chose to build an engine with the entire eight cylinders cast in one block, and instructed his engineers to produce a design for the engine. The design was placed on paper, but the engineers agreed, to a man, that it was simply impossible to cast an eight-cylinder engine-block in one piece. Ford replied, "Produce it anyway."*— Henry Ford
- *"Five lines where three are enough is stupidity. Nine pounds where three are sufficient is stupidity."*—Frank Lloyd Wright
- *"If you have 10,000 regulations you destroy all respect for the law."* —Winston Churchill
- *Don't be fooled by the many books on complexity or by the many complex and arcane algorithms you find in this book or elsewhere. Although there are no textbooks on simplicity, simple systems work and complex don't.* —Jim Gray
- *"When you first start off trying to solve a problem, the first solutions you come up with are very complex, and most people stop there. But if you keep going, and live with the problem and peel more layers of the onion off, you can often times arrive at some very elegant and simple solutions."*—Steve Jobs

- *“That’s been one of my mantras – focus and simplicity. Simple can be harder than complex: You have to work hard to get your thinking clean to make it simple. But it’s worth it in the end because once you get there, you can move mountains. —Steve Jobs*
- *“Our life is frittered away by detail. Simplify, simplify.” —Henry David Thoreau*
- *“I do believe in simplicity. [. . .] When the mathematician would solve a difficult problem, he first frees the equation of all incumbrances, and reduces it to its simplest terms. So simplify the problem of life, distinguish the necessary and the real. Probe the earth to see where your main roots run.” —Henry David Thoreau*
- *“A lady once offered me a mat, but as I had no room to spare within the house, nor time to spare within or without to shake it, I declined it.” —Henry David Thoreau*
- *“Simplicity is the law of nature for men as well as for flowers.” —Henry David Thoreau*
- *“Simplicity is the key to brilliance.”—Bruce Lee*
- *“In building a statue, a sculptor doesn’t keep adding clay to his subject. Actually, he keeps chiselling away at the inessentials until the truth of its creation is revealed without obstructions.”—Bruce Lee*
- *“To me, the extraordinary aspect of martial arts lies in its simplicity. The easy way is also the right way, and martial arts is nothing at all special; the closer to the true way of martial arts, the less wastage of expression there is.” —Bruce Lee*
- *“All the great things are simple.” —Winston Churchill*
- *“Out of intense complexities, intense simplicities emerge.” —Winston Churchill*
- *“Simplicity, simplicity, simplicity!” —Henry David Thoreau*

We would do well to consider these examples in dealing with the complexity and size of environmental regulation. The opportunities to improve environmental performance using the genius of simplification are staggering. The more complex things are, the more opportunity to simplify them. And few things as noted above are more complicated than the environmental regulatory system.

What does Simplicity Look Like in Terms of Environmental Regulation?

A bottom-up, rule-by-rule approach could be the approach by which requirements are simplified. Another possibility would be to work the problem backwards starting with a simple solution. The following provides such an example:

A Simplified 21st Century Air Quality Management System

- ~~PSD Program~~
- ~~Title V Program~~
- ~~NNSR Program~~
- ~~NSPS Program~~
- ~~MACT Program~~
- ~~Regional Haze Program~~
- ~~Acid Rain Program~~
- ~~CAI/CSAPR Program~~
- ~~SIP requirements~~
- ~~TCEQ Ch. 115, 116, 117~~

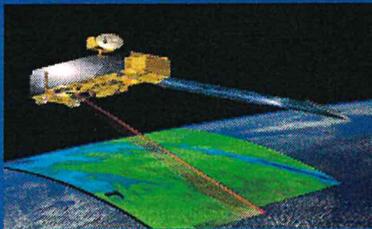


Multi-Pollutant Market-Based System Based on Real-Time Source Monitoring

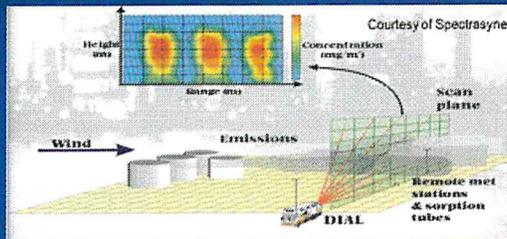
Approximately 50 to 75% of Clean Air Act regulations would no longer be needed.

Technology has advanced since 1970 that would allow for a more simplified and transparent approach to air quality management in Texas

Satellite Monitoring



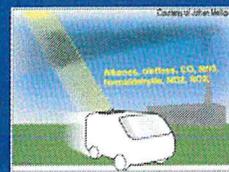
DIAL System

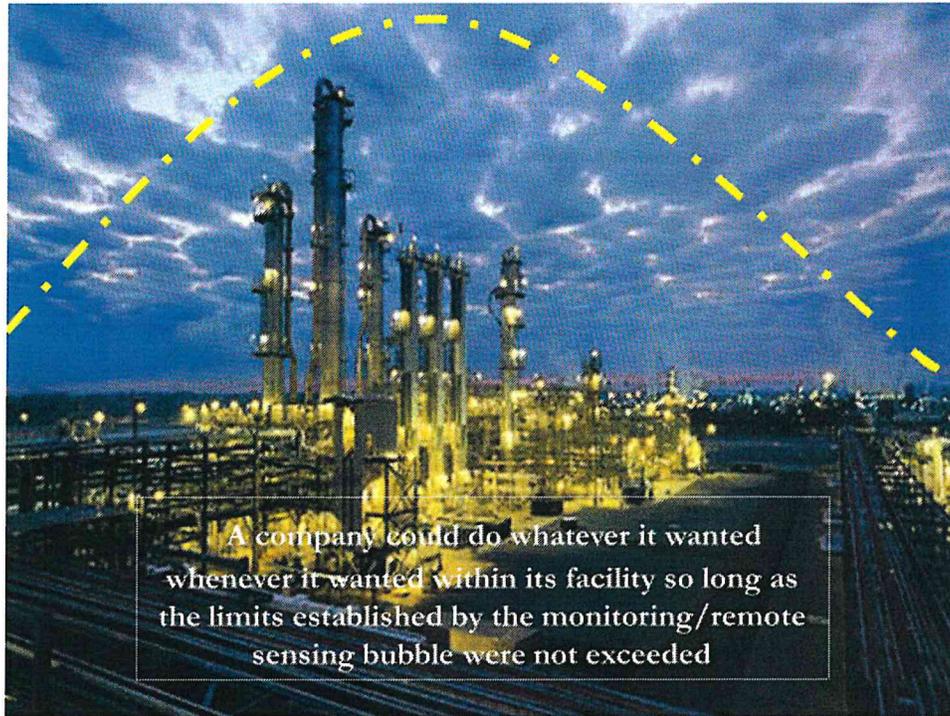


Fence-line Monitoring

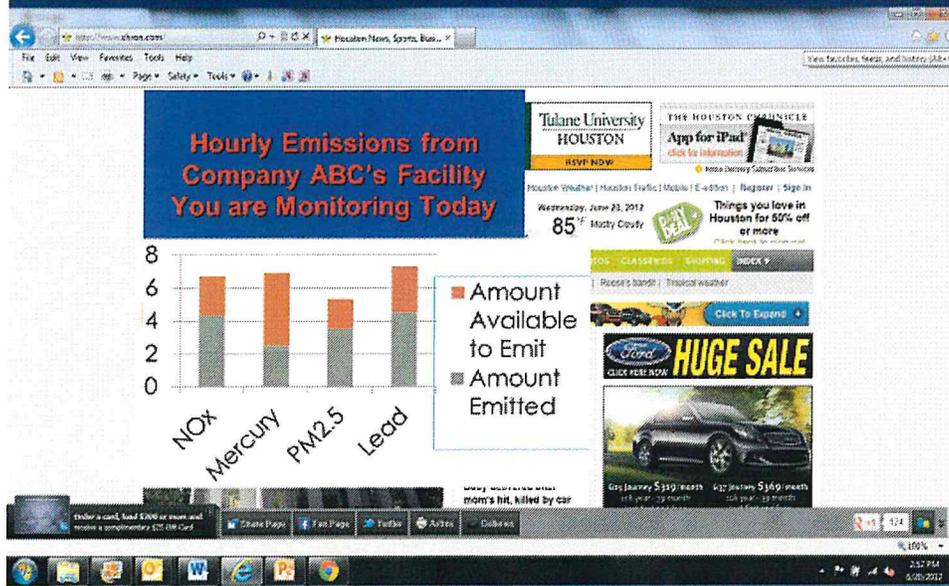


SOF System

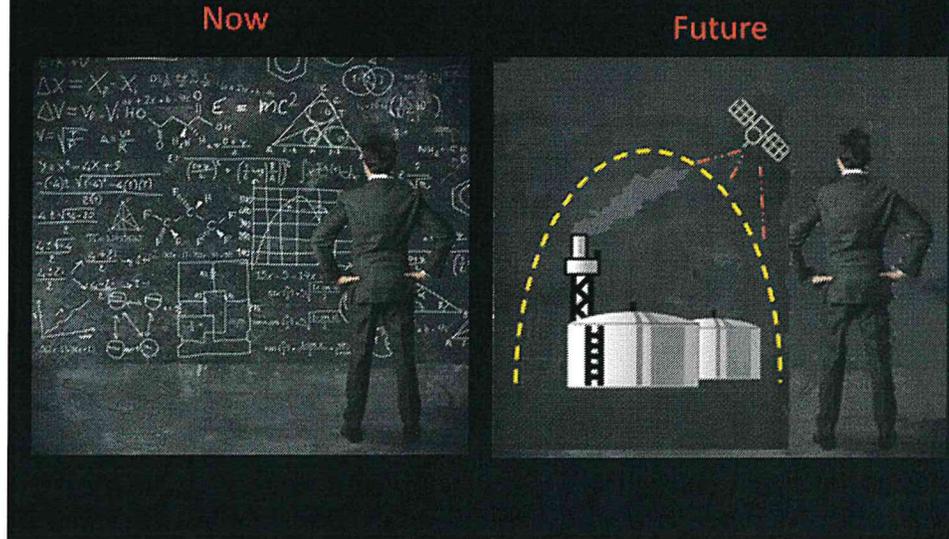




Imagine seeing this webpage as a Texas environmental manager, regulatory agency, or a citizen instead of sifting through millions of pages of regulatory materials to determine if you or someone else is in compliance?



TCEQ Air Quality Management



Simpler systems require simpler rules . . . and less rules. For example, the acid rain program in 40 CFR Part 72 requires far less resources than the amount of regulations needed to implement the thousands of command-and-control requirements in other parts of the air quality management system. Essentially the system pictured above would place regulators more in an accountability role than an engineering role. Instead of telling business how to engineer, the system would simply hold companies responsible for their engineering.

TCEQ could potentially use the delegation it's been granted for various Federal programs to consolidate and simplify programs at the State level to help make this happen. EPA cannot expect to leave States holding the bag with all these Federal programs. If EPA wants Texas to implement these programs more extensively moving forward, and do so more efficiently and with less dollars, EPA will need to help Texas consolidate and simplify these requirements. New emissions measurement technologies have advanced that could be key to this consolidation. TCEQ for example could potentially propose that several Federal air programs would be satisfied via an alternative means of compliance that uses new real-time source monitoring technologies as pictured above—rather than using “17 to 20 rules that govern each piece of equipment” as the last EPA Administrator stated. Consolidation of regulatory programs might ultimately require updates to the Clean Air Act and other environmental statutes (this is long overdue), but TCEQ's effort could help lead to these updates, and provide significant rule simplification and increased environmental performance in the interim. Texas also could become a leader in ushering a new era in environmental management in this nation—a new era that reduces more pollution at less costs to citizens and businesses.

I. Public Policy Benefits

This Petition is submitted in the interest of reducing the cost of regulation to the State of Texas and improving environmental performance. With the expected decrease in Federal monies and EPA assistance to implement all of the programs that Congress has created, the State will be called upon to do more with less. The Texas State Legislature is also considering decreases to TCEQ's budget. TCEQ therefore will need to do things simpler, smarter, and more succinctly moving forward. Even setting aside the need for TCEQ to become more efficient due to decreased funding and EPA's passing more responsibility to the States under the banner of "cooperative federalism", simplicity will pay huge dividends in terms of increased environmental protection. With simplicity will come better transparency. With transparency will come better accountability. The more simple things are, the more everyone understands them. The more everyone understands them, the better they can comply with them. It's that simple.

II. Petitioner's Name and Address

Petitioner's name is Jed Anderson and his address is 6118 Soaring Pine Court, Kingwood, TX 77345. Petitioner is a principal attorney with the AL Law Group and former attorney with Baker Botts, Vinson & Elkins, and an Adjunct Professor of Law at the University of Houston Law School where he taught the Clean Air Act. Petitioner is not representing anyone in this Petition but is submitting this Petition in his own capacity in the most prominent role that anyone in Texas is given—citizen.

III. Brief Explanation of the Proposed Rule

The proposed rule would require the commission to not only interpret rules simply as currently required under 30 Tex. Admin. Code § 1.1, but to write them simply as well. To implement this requirement to existing rules, the proposed rule includes an implementation provision that would set in motion a formal process whereby existing requirements would be simplified. The implementation provision mimics Executive Order 13771 to some extent—requiring two Federal regulations removed for every regulation added. Simply put, if the Federal government can do better at simplifying rules, we in Texas can do better as well.

IV. Text of the Proposed Rule

The proposed rule change would be made to 30 Tex. Admin. Code Chapter 1 accordingly:

CHAPTER 1

PURPOSE OF RULES, GENERAL PROVISIONS

Section 1.1. Purpose of Rules.

The purpose of the commission's rules is to implement the powers and duties of the commission under the Texas Water Code, the Texas Health and Safety Code, and other laws, to establish the general policies of the commission, and to set forth procedures to be followed in agency proceedings. The rules should be written and interpreted to simplify procedure, avoid delay, save expense, and facilitate the administration and enforcement of state and other laws by the agency.

Section 1.11 Simplifying Procedure for Existing Rules

For the purposes of fostering implementation of the simplification requirements established in Section 1.1, the commission shall remove two regulatory requirements for every regulatory requirement added to the extent practicable.

V. Statement of the Statutory Authority for the Rule Petition

Below is some of the statutory authority allowing the Commission to pursue this proposed rulemaking:

- Texas Water Code §5.102, General Powers;
- Texas Water Code §5.013, General Jurisdiction of Commission;
- Texas Water Code §5.103, Rules
- Texas Water Code §5.011, Purpose of Chapter
- Texas Water Code §5.012, Declaration of Policy
- Texas Water Code §5.103, Rules
- Texas Water Code §5.101, Scope of Subchapter
- Texas Health & Safety Code §382.011(c), General Powers and Duties
- Texas Health & Safety Code §382.017, Rules

VI. Injury or Inequity Resulting from Failure to Adopt the Proposed Rule

The injury and inequity resulting from the failure of the State of Texas to adopt this proposed rule is significant. The State of Texas is being called upon to do more with less. EPA money and assistance to the States is projected to decrease. The Texas Legislature is also considering budget reductions. Finally, the Executive Branch of the Federal government is passing more responsibility for implementing Congressional mandates under the Federal environment statutes to the States under the banner of “cooperative federalism”. In order for the Commission to meet growing responsibilities with less resources, and to help foster Congressional action that accepts responsibility for Congressional mandates and efforts for which the Federal government can more properly control, action is needed now at the State level to do things simpler, smarter, and more succinctly. For the above reasons, and because simpler rules can provide better environmental protection at less cost to Texas citizens and businesses as stated herein, it is incumbent upon the Commission to pursue this Petition for Rulemaking and begin simplifying its rules, requirements, and procedures.

VII. Prayer

WHEREFORE, premises considered, Petitioner respectfully requests that the Commission approve this Petition and commence a rulemaking as provided herein. The Petitioner further prays for any and all other relief to which Petitioner may be entitled.

Respectfully submitted,



Jed Anderson
6118 Soaring Pine Court
Kingwood, TX 77345
Phone: (832) 428-4257
Email: jedanderson@jedlaw.net