

# Texas Commission on Environmental Quality

## INTEROFFICE MEMORANDUM

**To:** Air Permits Division Staff  
Regional Air Program Staff

**Date:** 12/8/09

**Thru:** Richard A. Hyde, Deputy Director  
Office of Permitting and Registration

John Sadlier, Deputy Director  
Office of Compliance and Enforcement

**From:** Steve Hagle, P.E., Director  
Air Permits Division

**Subject:** Enforcement Discretion for Chemical MSS Permit Applicants – 101.222(h)(1)(B)

### **Background:**

Based on the incentive to authorize planned maintenance, start-up, and shutdown (MSS) activities provided for in 30 TAC § 101.222(h)(1)(B), owners/operators of chemical and allied product facilities (“chemical”) have timely submitted applications. These applicants’ opportunity for an affirmative defense expires on January 7, 2010. As stated in 30 TAC § 101.222(i), enforcement discretion will be used if an MSS application remains pending more than two years after a permit application is filed, until issuance or denial of the permit, or until an application is voided. Thereafter, there is no automatic enforcement discretion for excess emissions resulting from planned MSS activities.

To manage the chemical MSS applications received, the Air Permits Division (APD) has divided the applications into two groups: those assigned to permit writers in 2008 and those assigned in 2009. If a permit application was assigned in 2008, and the draft MSS permit is agreed to (including modeling) by April 30, 2010, then enforcement discretion will continue to be afforded for the unauthorized, planned MSS activities. The same will hold true for the applications assigned in 2009 if the draft MSS permit is agreed to (including modeling) by April 30, 2011. Additional conditions to preserve enforcement discretion are discussed below, and applications for which a hearing request has been filed and/or which are subject to notice of preliminary decision will be handled on a case by case basis.

Applicants that have not agreed to their draft permit by their applicable April 30<sup>th</sup> deadline will be subject to enforcement for unauthorized, planned MSS emissions.

### **Enforcement Procedure:**

Enforcement discretion for unauthorized emissions from planned MSS activities shall be granted for a period of one year from the date of permit issuance, regardless of the date of issuance, as long as the following procedures and conditions are met:

- (1) The permit applicant must provide written acceptance of the draft permit to APD no later than April 30, 2010 or 2011 (whichever date applies). This acceptance must be received regardless of whether the draft permit changes at a later date due to one or more of the following reasons: impacts review performed by the Toxicology Section in the Chief Engineer's Office, comments received in response to notice of application and preliminary decision (NAPD) as required by 30 TAC § 39.419, a contested case hearing is requested, or commission action.
- (2) Any unauthorized emissions from MSS activities must be recorded/reported under 30 TAC § 101.211 for consideration of enforcement discretion by the Agency. For these unauthorized emissions, the demonstration criteria in 30 TAC § 101.122(c)(1)-(9) will be used to determine the appropriate use of enforcement discretion. As part of the criteria evaluation, the permit requirements for the same or similar activities must be considered by the owner/operator and will be considered by TCEQ in evaluating the activity. For example, owners and operators should apply the same emission minimization efforts and controls to the newly-found planned activities as required in their permits for similar activities.
- (3) Owners/operators must demonstrate sufficient progress for obtaining authorization by one of the following methods:
  - (a) Meet the requirements of 30 TAC § 106.263 and commit to meeting the permit terms for the same or similar MSS activities; or
  - (b) File a permit amendment application within 30 days of (1) notice from the Regional Office (notice will be performed by an exit interview signed by the respondent or, if the respondent chooses not to sign the exit interview form to confirm receipt, a certified letter) or (2) date of self-discovery of the need for authorization (which could be based on actual unauthorized MSS emissions).

**Permitting Procedure:**

The APD will expedite the permitting process for applicants who find that their facility has unauthorized planned MSS emissions who provide:

- (a) written acceptance of a draft permit no later than April 30, 2010 or 2011 (whichever applies); and
- (b) an application that can be deemed administratively complete to authorize planned MSS emissions. This application must be received by APD within 30 days from (1) the date of self-discovery of the need for authorization (which could be based on actual unauthorized MSS emissions) or (2) notice from the TCEQ Regional Office as discussed above.

The APD is committed to processing these applications in an expeditious manner but will need applicants to submit a high-quality application that provides all of the required information, data,

and analysis needed to expeditiously complete the application review. Additionally, applicants must timely respond to requests for clarification and additional data. Untimely responses will be subject to APD's voidance procedure:

(<http://www.tcea.state.tx.us/assets/public/permitting/air/memos/voidguide06.pdf>).

**Permit Status:**

The APD will generate a report on a monthly basis of those chemical MSS applicants that are currently eligible, and the report will then be placed on the FODWEB under the emissions events page for access by all Field Operations staff.

At a minimum, the report will contain the following information:

- (1) Company Name
- (2) Site Name
- (3) Permit Number
- (4) Permit Issuance Date

The APD can add additional information to the report as necessary. This approach will allow the permit reviewers to check a box for the application in APD's IMS and then generate an automated report.

**Future MSS Permitting:**

If, in the future, chemical MSS applicants seek a change in MSS permit conditions based on MSS conditions included in other, later-issued permits, they may file applications to amend their permits or seek approval under 30 TAC § 116.116(c) or (e).

**Scope:**

This procedure applies to chemical MSS applications filed according to the schedule in 30 TAC 101.222(h)(1)(B). The above-referenced enforcement discretion does not imply that excess emissions from planned MSS events are not violations. Instead, the TCEQ will limit enforcement action for expeditious permit applicants. Further, Title V deviation reporting requirements are not waived by this enforcement discretion.