

zephyr®

Currents

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PROTECTING AND RESTORING A NATIONAL TREASURE: THE CHESAPEAKE BAY

The Chesapeake Bay is North America's largest and most biologically diverse estuary, home to more than 3,600 species of plants, fish, and animals. Its watershed encompasses an area of about 65,000 square miles, including parts of the States of New York, Pennsylvania, Maryland, Virginia, West Virginia, Delaware and the District of Columbia.

Nearly a half-century ago it was recognized that the health and vitality of the Bay's ecosystems were seriously declining, mainly due to human population growth within the watershed and its associated pressures on the environment. The area of submerged aquatic vegetation was rapidly decreasing, regions of zero dissolved oxygen content ("dead zones") were expanding, fish and crab populations were sharply declining, and the native oyster population was disappearing.

THE HISTORIC BAY AGREEMENTS

The Chesapeake Bay is considered by many to be a national treasure, worthy of the highest levels of protection and restoration. Therefore, in response to the continuing decline in the health of the Bay, both governmental and private organizations have been established to study and identify its problems and organize and implement measures to address them.

In 1983 and 1987, the States of Maryland, Virginia and Pennsylvania and the District of Columbia, along with the U.S. Environmental Protection Agency and the Chesapeake Bay Commission, signed historic agreements that established the Chesapeake Bay Program — a partnership to protect and restore the Bay's ecosystems. A critical aspect of these agreements was the setting of specific pollutant reduction goals with timelines. Additional agreements



signed since 1987 have further defined and refined the original goals and timelines as knowledge of the Bay's problems increased over time and as new problems developed.

As recognized in these agreements, a significant factor in the degradation of the Bay's health was the excessive amount of nutrients — nitrogen and phosphorus — and toxic pollutants entering the Bay through the watershed. The nutrients originated from different sources, most notably, wastewater treatment plant effluent, agricultural fertilizing, and air pollution deposition. In response, the 1987 Agreement called for a 40-percent reduction in the controllable nutrient loads to the Bay, along with the elimination of toxics from controllable sources. (At that time, the environmental community envisioned that nitrogen oxide emission control provisions of the 1990 Clean Air Act Amendments would serve to reduce the atmospheric contribution of nutrients.)

The most recent agreement (Chesapeake 2000) between the government entities embodies the historic commitments to improve and restore the health of the Bay, as outlined by the stated goals:

chesapeake bay >>> continued on page 6

FROM THE TRENCHES

A Natural High

It's 3:30 a.m. and I am cruising down a lonely dirt road on the Lower Rio Grande National Wildlife Refuge in Deep South Texas. A common *pauraque* is flying down the road in front of me and I swerve to miss a giant toad, all while I am trying to find my quarry. A bobcat on which I attached a radio-transmitting collar a week ago is somewhere nearby in the brush. As I scan the brush trying to catch a glimpse of the cat, I notice a large SUV barreling down the road in my direction. As we approach, the SUV turns to block the path in front of me and stops. With the SUV closer, I can read "Border Patrol" on the side of the vehicle. Immediately after stopping, an agent steps out of the vehicle and walks towards me. He is a little surprised to see someone in a Refuge truck out this late. I tell him that I am chasing one of about ten bobcats which I have collared to study their movements along the river corridor. The U.S. Fish and Wildlife Service is spending millions of dollars to patch together a refuge along the U.S. side of the river and is very interested to know how the many international bridges affect the movements of some of the top predators in the area. The agent asks me a few more questions just to make sure I am who I say I am and then tells me not to continue any farther up-river tonight. "It is best to stay away in case the situation gets dangerous", he says. While disappointed, I thank him for the warning and turn the truck around. Being a wildlife biologist requires late hours and great patience at times, but avoiding a dangerous situation so that I can continue with the study and the work I love makes all the sense in the world. One last wave to the agent and I am around a bend and out of site. I decide to chase another bobcat farther south. Maybe he can help me determine how the international bridges affect bobcat survival.

While most folks' environmental needs don't involve chasing bobcats into dangerous places in the middle of the night, we never know where we may end up or what we may be doing on any given day. The encounter described above is just one example of what makes being a natural resources professional so exciting. We often do things that either make our office mates green with envy or make them really glad they aren't us. The great part for us is that we would be out doing these or similar activities anyway. We spend most of our spare time outdoors following, capturing, photographing, or just observing wildlife and their habitat. Many, many gigabytes of hard drive space are dedicated to folders with names such as "Snake Photos", "South Texas Palms", "Kayak Trip Plants and Critters", and "West Texas Cactus". We do these things because we love it, and it still blows our minds that we can actually get paid for our services.

Most people in the natural resources field love the outdoors and have been plant and animal folks since they were kids. Our friends, family, and coworkers usually don't understand why we



just *have* to stop and get a photo of the dead rattlesnake we see on the side of the road or why we would ever jump into the creek to catch a yellow-bellied water snake. Of course we know why, but we usually can't explain it.

All that said, there are other, less desirable, parts to the job. For all our fun field work and outdoor time, there is usually an equal amount of documentation and report writing that are necessary. Then, there are the numerous meetings with regulatory agencies, landowners, and other people who may have an interest in what we did or didn't see while out with our spotlights trying to call up critters at night. We can't forget mosquitoes, ants, flies, fleas, thorns, dust, wind, rain, sleet, cold, and that awful Texas heat. We can't forget them because most of the time we're dealing with them. There is usually a need for insect repellent and sunscreen, and you find out very quickly which ones cause you to break out in a rash and which ones make you smell like you've been to the perfume counter at the mall.

For every negative, there are a hundred reasons why we do what we do. Our natural resources staff has over 16 years of professional experience dealing with issues like wetland determination/delineation, endangered species habitat assessments and surveys, and wildlife management plans. We are gratified knowing that we help people accomplish their goals while at the same time protecting the environment. Whether assisting commercial and industrial clients or private landowners, we are happy to make a difference doing things we love! 🌸

Brad Watson
Clay Fischer

Natural Resources Project Managers

Managing Environmental Cleanups Through Liability Transfers

In the face of strict environmental cleanup liabilities and regulatory mandates in the U.S., many companies are searching for practical, efficient and environmentally protective approaches for remediating contaminated properties. One approach that has drawn favorable attention in recent years involves the use of a “liability transfer,” a process by which a third-party environmental management firm agrees to assume and perform a particular landowner’s or company’s remediation obligations for the affected property and releases the landowner/company from potential future environmental cleanup responsibility. This approach can increase the efficiency of site cleanups as well as allow property owners to remove contingent environmental liabilities from their balance sheet.

THIRD-PARTY ASSUMPTION OF CLEANUP RESPONSIBILITY

The third-party assumption of responsibility for the cleanup and closure of a contaminated site is at the core of the liability transfer. Under this approach, a potentially responsible party (“PRP”) will typically contract with a third-party environmental contractor or trust to transfer all of the PRP’s cleanup liabilities for an absolute fixed cost. The contractor will also typically indemnify the PRP against any cleanup claims by governmental regulators or other parties. In such a transaction, the third-party firm assumes all site responsibility. For example, at a typical Superfund site the contractor would become the performing party under the consent decree with the relevant government agency. In a number of instances, several companies that were targeted by the U.S. Environmental Protection Agency (“EPA”) as PRPs have been able to join forces to successfully resolve their cleanup liabilities for a specific site through a liability transfer approach. Thus, this approach is strongly recommended at multi-party sites, where the third-party firm can bear full responsibility for remediation/liability in exchange for payments from the PRPs, either individually or through a PRP group organization. At the same time, liability transfers can be effectively employed by individual companies to address cleanup liabilities at a single site, or even a portfolio of properties.

OBTAINING INSURANCE COVERAGE FOR REMEDIATION EFFORTS

The second critical element of a successful liability transfer is the establishment of a sophisticated package of insurance policies and/or bonding to address the long-term environmental risks at a contaminated site. For example, this financial package should typically be designed to fund the remediation and provide insurance coverage for cost overruns, unanticipated environmental conditions, and third-party environmental liabilities. To achieve these objectives, the appropriate package should generally include a combination of the following insurance coverages:

- ◆ Blended finite risk insurance – the insured pays a premium equal to the net present value of the total estimated cost of a site cleanup and the associated long-term “operation and maintenance” activities; this policy is then used to pay for the site’s cleanup costs over time. This type of coverage is often “blended” with:
- ◆ Cleanup cost-cap coverage – additional insurance coverage for future cost overruns, and
- ◆ Pollution legal liability coverage or “PLL” policy – coverage for costs or damages arising from unknown conditions or other third-party liabilities.

PREPAYMENT OF ANTICIPATED LIABILITY COSTS

The final critical element of a liability transfer is the compensation to be paid to the third-party firm to assume the environmental cleanup liability. Several possible options exist for structuring compensation to the third-party — companies can negotiate a one-time payment to a third-party firm that would cover all remediation costs for a particular site, plus a “premium” to compensate the third party for the potential risks associated with its assumption of site liabilities. Alternatively, one may use “milestone” payments to the third-party firm, whereby a company would make an up-front payment as well as subsequent installment payments as the cleanup work progresses.

BENEFITS OF LIABILITY TRANSFERS

Liability transfers can provide significant benefits to parties that are confronting prolonged environmental cleanup liabilities. By allowing property owners and PRPs to remove from their balance sheets the specter of undetermined cleanup liabilities for specific sites and exchange these risks for cost certainty, liability transfers can allow companies to focus on their core business operations. This approach can be particularly useful for sites that involve complex remediation requirements and/or cleanups costing \$1 million or more; (for sites with less costly cleanups that are simpler to address technically, companies may wish to consider using a “guaranteed fixed-price remediation” contract). Given the significant costs and time required to manage and cleanup environmentally-impaired properties, a liability transfer can provide companies with an extremely attractive alternative to the continued obligation to conduct and pay for environmental cleanups. ✨

J. Barton Seitz
Baker Botts, L.L.P

News Briefs

national news

Supreme Court Rules EPA Has Authority to Regulate Greenhouse Gas Emissions

In a 5-4 decision, the U.S. Supreme Court ruled on April 2 that EPA has the authority under the Federal Clean Air Act to regulate emissions of CO₂ from vehicles and that EPA must provide satisfactory evidence that greenhouse gases do not contribute to global warming if it wants to continue with its policy of not regulating such gases. The decision was immediately hailed by environmental groups. However, the Alliance of Automobile Manufacturers cautioned that regulation of greenhouse gases must be approached on a national economy-wide scale to prevent an undue burden on any single industry. For more information, contact David Cabe at 512.879.6644 or dcabe@zephyrenv.com.

EPA Proposal Would Expand Opportunities for Legitimate Recycling

In an attempt to streamline the regulation of hazardous secondary materials and further promote recycling and reuse, EPA announced, on March 15, proposed modifications to the definition of "solid waste". The proposed changes would remove unnecessary restrictions to the reuse of solvents, metals, and certain other chemicals. In addition, legitimate recycling activities would be defined to ensure that only authentic recycling, and not treatment or disposal under the guise of recycling, receives the benefits of the revised regulations. Chemical manufacturing, semiconductor manufacturing, and pharmaceutical manufacturing will be the industry sectors most affected by the proposed changes. For more information, contact Betty Moore at 512.879.6622 or bmoore@zephyrenv.com.

EPA Considers Tightening Ozone Standards

On January 31, EPA staff recommended that the current ozone standards be tightened to protect sensitive population groups and the environment. As part of the periodic review mandated by the Clean Air Act, the staff proposed that the primary 8-hour ozone standard be revised to fall within the range of 0.060 ppm to 0.079 ppm and that the secondary standard be revised to a longer-term cumulative exposure form in the range of 7 ppm-hrs to 21 ppm-hrs. EPA plans to make a proposal by

June 20, 2007, with final action by March 12, 2008. The ozone standards were last updated in 1997. For more information, contact Roger Brower at 410.312.7907 or rbrower@zephyrenv.com.

OSHA Revises Electrical Safety Rules

On February 14, OSHA revised its Electrical Safety Standard for the first time since 1981. The rule, which addresses safety in the design, installation, and operation of electric equipment in the workplace, was updated to more closely align with the National Fire Protection Association's Electrical Safety Requirements for Employee Workplaces and with the National Electrical Code. The revised rule goes into effect August 13. For more information, contact Kiley Taylor at 410.312.7905 or ktaylor@zephyrenv.com.

EPA Revises Appendix S Nonattainment Permitting Rules

On February 28, EPA revised its "Appendix S" new source review (NSR) air permitting requirements to deal with permitting issues for areas that have been recently designated as not meeting the ambient air quality standards for ground-level ozone and fine particulates and which have not yet been addressed in approved state plans. The changes to Appendix S, which were necessary to be consistent with the EPA's 2004 NSR reforms, relate primarily to methodologies for calculating and documenting baseline and future emissions and to plant-wide applicability limits or PALs. For more information contact Jennifer Seinfeld at 410.312.7915 or jseinfeld@zephyrenv.com.

EPA Provides Guidance on Geologic Sequestration of CO₂

As a step in reducing emissions of greenhouse gases to the atmosphere, EPA released guidance for processing permit applications for small-scale CO₂ geologic sequestration projects. These projects, which would capture CO₂ from an emission source (e.g., a power plant) and inject it into deep subsurface rock formations for storage, would be regulated through the existing Underground Injection Control program as Class V Experimental Technology Wells, or as Class II wells where the injection is performed to enhance oil and gas recovery. EPA's guidance is aimed at assisting permit writers as they evaluate applications for such projects to ensure that underground sources of drinking water and public health are protected. For more information, contact Betty Moore at 512.879.6622 or bmoore@zephyrenv.com.

Corps of Engineers Reissues Nationwide Permits

On March 12, the U.S. Army Corps of Engineers reissued, with some modifications, all existing nationwide permits (NWP) for regulating work in wetlands and other waters of the United States. In this action, one of the Corps' goals was to provide greater clarity and certainty to the regulated community, and a number of aspects of the permits were modified, including general conditions and definitions. The Corps also issued six new NWPs, including one for pipeline repairs. The new and reissued permits went into effect on March 19. For more information, contact Jeff Blackmore at 713.907.4264 or jblackmore@zephyrenv.com.

EPA Tightens Mobile Source Emissions Standards

In February EPA tightened its mobile source air toxics emissions standards to reduce the nationwide risk from outdoor exposure. Under the revised standards, EPA hopes to reduce toxic emissions from cars by 2030 to levels 80 percent lower than 1999 emission rates. The standards are aimed at lowering the benzene content in gasoline, reducing exhaust emissions from passenger vehicles operating at ambient temperatures below 75°F, and reducing emissions that evaporate from and permeate through portable fuel containers. For more information, contact Louisa Preston at 512.879.6646 or lpreston@zephyrenv.com.

state news

Maryland Passes Clean Cars Bill

On February 26, Maryland passed a "clean car" bill, becoming the eleventh state to adopt California's stricter emission standards for automobiles. Under this bill automakers must reduce emissions of global warming gases from passenger vehicles they sell in Maryland by 30 percent by 2016. Supporters of the bill believe it will reduce annual greenhouse gas emissions by more than 4 million tons by 2020, at the additional cost of about \$1,000 per vehicle. However, auto manufacturers believe the cost could reach \$3,000 per vehicle. For more information, contact Bill Jones at 410.312.7910 or bjones@zephyrenv.com.

Buddy Garcia Confirmed as New TCEQ Commissioner

On March 13, the Texas Senate confirmed the appointment of H. S. "Buddy" Garcia as TCEQ Commissioner, replacing Martin Hubert, who left the TCEQ in January. A native of Brownsville, Mr. Garcia recently served as the Texas Deputy Secretary of State. Prior to that, he served in the Governor's office as a special assistant on Texas-Mexico border affairs. In 2004 Governor Perry appointed him Border Commerce Coordinator, where he worked on various trade issues with Mexico and Canada. For more information, contact Ed Fiesinger at 281.668.7353 or efiesinger@zephyrenv.com.

TCEQ Issues BART Rules

In January, the TCEQ adopted new rules to implement Best Available Retrofit Technology (BART) requirements under the Federal Regional Haze rules. The rules require that affected

sources perform engineering analyses to determine the appropriate level of BART emission controls and to subsequently implement any required controls. The affected sources are those built or reconstructed between August 7, 1962, and August 7, 1977 belonging to one of 26 industry source categories and having a potential to emit 250 tons per year or more of a visibility-impairing pollutant, including nitrogen oxides, sulfur dioxide, or particulate matter. The rules also include mechanisms for a source to exclude itself from BART requirements if the TCEQ or the source demonstrates, via modeling, that the source does not significantly impact visibility in Federally-designated Class I areas. The rules require that BART-eligible sources submit BART engineering analyses or BART exemption modeling to the TCEQ no later than April 30, 2007. For more information, contact Curtis Harder at 512.879.6643 or charder@zephyrenv.com.

Houston Mayor Proposes Broad Changes to Nuisance Pollution Ordinance

On February 7, Mayor Bill White proposed changes to Houston's nuisance pollution ordinance that would set stringent ambient concentration standards for emissions of acrolein, acrylonitrile, benzene, 1-3 butadiene, chlorine, chromium compounds, ethylene dibromide, diisocyanate, formaldehyde, and diesel particulate matter. Under the revised ordinance, violators could be fined from \$500 to \$2,000 per day, regardless of the location of the violation with respect to municipal boundaries. City Council action on the proposed revisions has been tabled pending further review and comment from industry and community stakeholders and the outcome of legislative bills filed in response to potential implications for municipal governance. For more information, contact Michele Foss at 281.668.7342 or mfoss@zephyrenv.com.

TCEQ Tweaks TRRP Rules

On March 19, the TCEQ adopted changes to its Chapter 350 Texas Risk Reduction Program (TRRP) rules, which specify how risk-based corrective action is applied to contaminated sites in Texas. The changes would make the rules more flexible and possibly less costly for the regulated community, including provisions for variances from existing rule provisions for certain leaking petroleum storage tank sites and for avoiding a full-scale ecological risk assessment under certain circumstances. In addition, the rule changes provide for a new electronic data management system initiative to increase agency effectiveness and make information more available to the regulated community. For more information, contact Joe Zupan at 512.879.6638 or jzupan@zephyrenv.com.

New Protocol Proposed for Golden Cheeked Warbler Surveys

On January 2, the U.S. Fish and Wildlife Service (USFW) proposed a new protocol for landowners who perform surveys of the golden-cheeked warbler — an endangered bird species predominantly found in the Edwards Plateau region of Central Texas. The

- ◆ Enhance and protect finfish, shellfish, and other living resources, their habitats and ecological relationships to sustain all fisheries and provide for a balanced ecosystem
- ◆ Preserve, protect and restore those habitats and natural areas that are vital to the survival and diversity of the living resources of the Bay and its rivers
- ◆ Achieve and maintain the water quality necessary to support aquatic living resources throughout the Chesapeake Bay ecosystem and its tributaries and to protect human health
- ◆ Develop, promote and achieve sound land use practices which protect and restore watershed resources and water quality, maintain reduced pollutant loadings for the Bay and its tributaries, and restore and preserve aquatic living resources
- ◆ Promote individual stewardship and assist individuals, community-based organizations, businesses, local governments and schools in initiatives to achieve the goals and commitments of this agreement

ENCOURAGING RESULTS

The organized efforts to protect the Chesapeake Bay and its watershed, its tributaries, and the natural land and water ecosystems have yielded significant positive results. For example, the rockfish (striped bass) population has dramatically rebounded and areas of submerged aquatic vegetation have expanded. However, all parties recognize that much more work needs to be done. Population and development continue to increase within the watershed, presenting ever-greater challenges to the restoration of the health of the Bay. These challenges are further complicated by the dynamic nature of the Bay and the ever-changing global ecosystem with which it interacts.

WHAT HAVE THE BAY PROTECTION AND RESTORATION EFFORTS TAUGHT US?

The historical environmental protection efforts for the Chesapeake Bay can serve as a model for the development of programs to protect other large, endangered water bodies. In a nutshell, it takes a collaborative, committed effort by responsible government bodies and affected private parties over the long term to achieve effective results.



Regulatory initiatives, while necessary, can only go so far. Both government and private organizations must make concerted efforts to educate the general public and increase awareness of the problem. A key component to the success of the Bay protection/restoration initiatives has been to build a watershed-wide environmental ethic among all citizens. Taken together, simple measures such as government promoting of vanity license plates (“Treasure the Chesapeake” in Maryland) to student stenciling of storm sewers (“Don’t Dump — Chesapeake Bay Drainage”) have effectively heightened public awareness of the Bay’s plight.

The privately-funded Chesapeake Bay Foundation (CBF), founded in 1967, has historically recruited, trained, and partnered with citizens to heighten sensitivity, increase knowledge, and empower people to take positive action. The CBF has developed classroom curricula as well as field programs where schools can take canoe and workboat trips to CBF learning centers. The CBF publishes a monthly e-newsletter as well as a quarterly educational e-newsletter for teachers.

Be it the Bay or any other endangered water body, everyone living and/or working on or around it must be made to understand that they have the power to make a difference in restoring and maintaining the health and vitality of that natural resource, for present and future generations. ✨

Lou Corio
Senior Air Quality Scientist

Zephyr is a professional services firm providing worldwide consulting, training and data systems to the industrial, commercial and public sectors. The firm's major areas of practice are air and water quality, waste issues, worker and community safety, and incident management.

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Holistic Medicine for the Environment

Lately, the folks at Zephyr have been very busy putting together “holistic medicine” for the environment, to borrow a term of art from the health care professionals. A combination of factors seems to be driving this holistic approach to environmental issues, including, in my opinion:

- ◆ Maturation of environmental science and regulatory development, including an increasing awareness of the complexities and interlinked nature of discrete environmental issues (e.g., the effects of global climate change or airborne mercury on the flora and fauna of various microenvironments), as evidenced by this month’s stunning Supreme Court ruling that the EPA not only has the authority to consider greenhouse gases as pollutants, but the obligation to do so
- ◆ A quickly developing countryside, combined with a wealthier and more astute American public, that frequently has the political effect of elevating the NIMBY (not in my back yard!) syndrome to BANANAS (build absolutely nothing anywhere near anyone!)
- ◆ A growing sense in American business that satisfying environmental regulatory agencies is now only a *starting point* for satisfying all stakeholders and the public, as evidenced by the recent and virtually unprecedented accord between environmental groups and investment bankers planning the purchase of a major Texas utility.

The net effect is that American businesses are considering the environmental ramifications of their operations more carefully than ever before, whether it entails current operations or construction of new facilities.



In this month’s feature article, Lou Corio discusses the complexities of the initiatives to protect and restore the Chesapeake Bay. In his article, Lou states that “a key component to the success of the Bay protection/restoration initiatives has been the building of a watershed-wide environmental ethic among all citizens,” and goes on to stress that the progress has been contingent on concerted efforts by both government and private organizations.

The net effect of such initiatives for consultants like us is that we find ourselves doing everything from (literally) chasing bobcats (see this month’s “In the Trenches”), to applying new hardware-intensive dispersion modeling programs such as AERMOD and CALPUFF to air quality impacts analysis, to analysis of the effects of mercury deposition on surface water biota, to human health risk assessment, to evaluation of greenhouse gas emissions and “carbon footprints.”

When we’ve conducted our surveys, performed our analyses, and summarized our results, we are then called upon to explain them to the regulators and the public. If our clients are fortunate, those explanations may be limited to obtaining buy-off from the regulators, crafting press releases, and conducting public meetings that satisfy the stakeholders of the adequacy of the response to environmental concerns. However, if a project has galvanized stakeholder opposition, we’ve found that we’ve then had to provide our analysis and results in adversarial administrative proceedings, a forum that anyone would prefer to avoid — trust me on that point!

It seems to me that our consulting practice is getting to be more and more like holistic medicine — that is to say, it is no longer sufficient to treat various “symptoms” (i.e., discrete environmental issues) when our clients and their stakeholders insist that we treat their environmental issues in a broader context. It has certainly added complexity and challenges to our daily work as engineers and scientists, but here’s the best part — I think that most of us are having a ball! For our clients, the payoff is coming from anticipating and sufficiently addressing all their environmental concerns in a way that keeps their projects moving forward with support from the stakeholders and the public and their businesses making money. ✨

Joe Zupan
President

new protocol would raise the number of survey events required in a single survey while lowering the area that can be covered in a unit time and would also narrow the range of acceptable weather conditions for survey events. By following the new protocol, landowners would enable the USFW to more accurately determine nesting densities within a site. However the survey expense would increase even if the landowner might only be interested in knowing whether or not the golden-cheeked warbler is found on the property. For more information, contact Clay V. Fischer at 512.879.6629 or cfischer@zephyrenv.com.

Judge Blocks Mandatory Fast Tracking of Permit Hearing on Coal Plants

In response to a motion by opponents to TXU's applications for seven new coal fired power plant units in Texas and just one day before a consolidated hearing on the applications was scheduled to begin, Judge Stephen Yelenosky of the District Court of Travis County issued a temporary injunction to the Texas State Office of Administrative Hearings (SOAH), prohibiting them from complying with Governor Rick Perry's Executive Order that environmental permit hearings on power plant applications be fast-tracked. Although Judge Yelenosky's February 20 injunction did not specifically forbid SOAH from proceeding with the hearing as scheduled, the SOAH judges responded by postponing the hearing for four months to allow additional time for parties to prepare. For more information, contact David Cabe at 512.879.6644 or dcabe@zephyrenv.com.

TCEQ Proposes to Allow Expanded Role for Executive Director in Hearings

On February 23, the TCEQ proposed to amend its Chapter 80 rules to allow the Executive Director (ED) to participate as a party in contested case hearings on types of applications in which the ED currently may not participate. In particular, the Commission would be allowed to direct the ED to be a party in hearings on certain types of matters involving municipal solid waste, concrete batch plants, facilities for which health and welfare review of emissions are not required, grit and grease trap waste processing, composting, and irrigation of domestic or wastewater effluent. For more information, contact David Cabe at 512.879.6644 or dcabe@zephyrenv.com.

Still No Construction Before Air Permit is Issued

In August 2006, the TCEQ proposed changes to its Chapter 116 air permit rules to implement the 2005 Senate Bill 1740, which allowed for construction to begin after an air permit application is submitted but before the permit is actually issued. However, in response to comments by EPA that the rule changes would be inconsistent with federal rules, the TCEQ withdrew the proposal in February. The TCEQ plans to continue discussions with the EPA to identify approvable methods to provide greater flexibility for early construction. For more information, contact Karen Olson at 512.879.6618 or kolson@zephyrenv.com. *

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