

What can you do in response to this increased enforcement emphasis by the TCEQ? While there is no single answer, consider these recommendations:

- 1) *Keep good records.* Start setting up a recordkeeping system now. Don't wait until just before an inspection.
- 2) *Don't miss deadlines.* Develop a calendaring system to alert you when reports and agency notifications are due.
- 3) *Prepare for announced TCEQ inspections.* Find out about the scope of the inspection and what information the inspector will want to look at, and be ready.
- 4) *Be helpful during the inspection.* Have knowledgeable staff available to accompany the inspector, answer questions, and make copies of reports and records. Always keep a copy of whatever material is provided to the inspector, making sure that any requested information that is confidential is clearly marked "confidential".
- 5) *Respond quickly to information requests.* If reports or operating data are requested after the inspection, send them to the TCEQ expeditiously using overnight or certified mail.
- 6) *Challenge questionable NOV's.* If you believe an NOV was incorrectly issued, contact the inspector immediately and find out how to appeal. NOV's will be dropped if you prove your case, but the appeal must occur within a specified period of time following notification.

Ed Fiesinger
- Zephyr Environmental Corporation

Penalties

- Written Notices of Violations (NOVs) for the same or similar violations (5% increase)
- Other written NOV's (2% increase)
- Any agreed final enforcement orders containing a denial of liability (20% increase)
- Any adjudicated final enforcement orders and agreed final enforcement orders without a denial of liability (25% increase)
- Any non-adjudicated final court judgments and default judgments without a denial of liability (35% increase)

Activities for Reducing Penalties

- Notifications of an intended audit under Texas' Audit Privilege Law (1% reduction for each audit)
- Disclosures of violations found during such audits (2% reduction for each audit where violations were found and reported)
- Environmental Management Systems (EMS) in place for one year or more (10% reduction)
- Voluntary on-site assessment by the TCEQ under a special assistance program (10% reduction)
- Participation in a voluntary pollution prevention program (5% reduction)
- Early compliance with future state or federal environmental requirements

We would like to hear from you! Please email your comments to currents@zephyrenv.com or send them online at www.zephyrenv.com.

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Texas Turns Up the heat on ENFORCEMENT

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web article
continued at www.zephyrenv.com.

EPA Proposes Rules to Cut Nonroad Diesel Engine Emissions. EPA has proposed new emissions standards and fuel sulfur restrictions for nonroad diesel engines, one of the largest sources of mobile source emissions. These engines, used in construction, agricultural, mining and industrial equipment, account for roughly 44 percent of the nation's mobile source diesel PM emissions and 12 percent of the NO_x emissions from this source category.

The proposal, published on May 23, should reduce PM and NO_x emissions from nonroad diesel emissions by more than 90 percent. Also, the proposal regulates diesel fuel for the first time, reducing fuel sulfur by more than 99 percent. The proposed emissions standards, to be fully phased in by 2014, will begin affecting new engines in 2008. The proposed fuel sulfur restrictions, taking effect in 2007, will be fully phased in by 2010.

It is increasingly evident that Texas is becoming more aggressive in its enforcement of environmental laws and regulations. Agency inspectors are becoming more thorough in what used to be routine compliance inspections. And, thanks to Title V, they are digging deeper into plant reports and records that they might have brushed over in the past.

The Texas Commission on Environmental Quality (TCEQ) recently revised its policy to increase the penalties for certain categories of non-compliance, and they are becoming less tolerant of poor compliance histories. (See "penalties" box on page 4).

The good news is that these new policies also offer reductions in penalties for performing certain potentially environmentally beneficial activities (see "activities" box on page 4). However, such activities were not intended as means for avoiding fines; no matter how many positive steps are taken by a company, there will always be penalties for non-compliance.

The TCEQ's policy changes become even more critical when one considers the semiannual deviation reporting required of Title V operating permit holders. For example, a regulated facility must keep formal records of all occurrences of

emissions exceeding permitted or regulatory limits and report those events when emissions exceed certain levels (e.g., SARA/CERCLA reportable quantities). However for the purposes of the semiannual deviation reports, both recordable and reportable events must be listed, thus significantly increasing the number of reported deviations.

As a second example, if facility staff discover a leaking component during routine periodic monitoring with an LDAR program and tag and repair the leaking component in the time period specified by the permit or regulation, there is no deviation and, therefore, nothing to report. However if a missing plug, cap, or open-ended line is discovered, each of these occurrences is considered a

deviation even if the plug or cap is reinstalled immediately.

A third example is non-compliance situations discovered during an audit, whether it be conducted under the Texas Audit Privilege Act or voluntarily conducted by facility staff. All instances of non-compliance discovered in either case must be reported as Title V deviations.

It has been reported that the TCEQ is issuing NOV's for reported Title V deviations such as those mentioned above. This becomes an even larger issue for industry, considering that a facility's compliance history can affect the severity of any enforcement penalty.



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Texas Legislature Proposes Streamlining TCEQ Permitting Process.

The government reorganization legislation that died in the recent Texas legislative session has been reintroduced as SB 19 by Senator Ellis in the special session called by Governor Perry. One of the more interesting aspects of SB 19 is a section calling for a seven-member committee appointed by the Governor and both legislative houses to address the TCEQ permitting process. Quoting from the bill, "It is the policy of this state to be effective and efficient with public funds, to provide for effective and efficient management of natural resources, and to serve the people of Texas by making the government more visible, accessible, coherent, consistent, and accountable to the people of Texas. The legislature finds that the (TCEQ's) procedures for processing permits is cumbersome, confusing, lengthy, and inefficient for citizens, business, political subdivisions, and the commission." SB 19 directs the committee to evaluate the TCEQ permitting process, identify problems, and propose solutions to streamline the process without compromising environmental protection. The committee is also directed to hold public hearings and take written and oral comments. Introduced on July 1, it is not yet known how the bill will look if it survives the legislative process. For more information, contact Ed Fiesinger at 713.977.8787 or efiesinger@zephyrenv.com.

Coastal Waterfront Facilities Subject to the TXGLO and Oil Spill Planning and Response Act Requirements. On October 30, 2002, the Texas General Land Office (TXGLO) defined waterfront facilities as those facilities located within 100 yards of coastal waters. Recent opinions by TXGLO representatives have interpreted this requirement to be based upon whether any bulk aboveground oil storage tanks are located within 100 yards of tidally influenced water. The location of 55-gallon drums, oil containing equipment, and oil storage that are "integral to the process" within 100 yards of coastal waters does not appear to trigger the requirements, and written exemptions can be requested from TXGLO. For more information, contact Dave Sorrells at 512.329.5544 or dsorrells@zephyrenv.com.

Texas 8-Hour Ozone Nonattainment Areas Recommended. On July 14th, TCEQ approved a plan to initially designate 21 Texas counties in nonattainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS). This recommendation will be forwarded to Governor Rick Perry, who will make a formal recommendation to the EPA. The recommended
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EPA and CARB to Test Diesel Engine Emissions. On-road and off-road heavy-duty diesel engines are known to be among the highest contributors of NO_x and PM_{2.5} emissions, in addition to being sources of several known and potential carcinogens. So, it was significant when the Engine Manufacturers Association (EMA) announced on June 11 that it had reached a "ground-breaking" agreement with the EPA and the California Air Resources Board to voluntarily develop and implement a manufacturer-run program to test emissions from heavy-duty vehicles. The goal is to gather performance data on existing emissions control technologies and to develop new, advanced portable emissions testing equipment to assure compliance with emission standards. This new in-use testing program is scheduled for implementation in the 2005 model year. For more information contact Art Bedrosian at 512.329.5544 or abedrosian@zephyrenv.com.

NWF Study Shows Elevated Mercury Levels in Rain Falling on 12 States. The National Wildlife Foundation (NWF) released a report in late May that showed elevated mercury levels in precipitation falling on 12 Gulf Coast, Southeastern U.S., and Mid-Atlantic States. According to the report, mercury contamination levels in rain and snow consistently exceeded EPA's "safe" standards for mercury in surface water. The NWF examined rain data from Alabama, Florida, Georgia, Indiana, Louisiana, Maryland, Mississippi, New York, North Carolina, Pennsylvania, South Carolina, and Texas for the 1995 to 2001 period. Maryland had the highest average mercury level – 22.3 nanograms per liter. For more information, contact Lou Corio at 410.312.7912 or lcorio@zephyrenv.com.

Framework for Cumulative Risk Assessment Released. As was reported in the January 2003 issue of *Currents*, EPA is only now beginning to consider the cumulative risk of multiple sources, chemicals, and pathways in risk assessments it performs. As a step in this direction, EPA completed a final document entitled "Framework for Cumulative Risk Assessment" on May 27. This informational document describes various aspects and scientific issues related to cumulative risk. For more information, contact Joe Zupan at 512.329.5544 or jzupan@zephyrenv.com.

CALPUFF added as EPA Guideline Air Dispersion Model. On April 15, 2003, EPA adopted CALPUFF as a preferred air quality model in Appendix A of the Guideline on Air Quality Models. Therefore, EPA is now recommending that CALPUFF be used in the assessment of long-range pollutant transport and its impacts on Federal Class I areas. Also noteworthy is that EPA deferred any action on AERMOD until a later date. For more information, contact Bill Jones at 410.312.7910 or bjones@zephyrenv.com.

Turnover at EPA. Marianne Horinko has been named Acting Administrator of EPA, effective July 11. She replaces Christie

Whitman, who left the position on June 27, saying simply that "it is time to return to my home and husband." The press speculated that Whitman's departure reflected her weariness of ongoing struggles with fellow administration officials, Congress, and advocacy groups. In her second stint at EPA, Horinko has been Assistant Administrator for Solid Waste & Emergency Response since 2001. She has also been president of Clay Associates, Inc. and an attorney at Morgan Lewis. Stephen Johnson, who has been Assistant Administrator of the Office of Prevention, Pesticides and Toxic Substances since December 2000, was appointed Acting Deputy Administrator (replacing Linda Fisher, who resigned shortly after Governor Whitman). For more information, contact Julian Levy at 410.312.7913 or jlevy@zephyrenv.com.

DOT Proposes Change to HazMat Rules. The U.S. Department of Transportation (DOT) is proposing a number of changes to the shipping paper, identification number, other marking, labeling and placarding, and emergency response telephone number requirements for hazardous materials shipments. According to the DOT, these changes were made to enhance the safety of emergency responders, the public, and hazardous materials transporters. Based on comments from the regulated community and from within DOT, the rule changes would impact the design of labels and placards for several classes of materials, including substances that are poisonous by inhalation. For more information, contact Kiley Taylor at 512.329.5544 or ktaylor@zephyrenv.com.

EPA Proposes Amendments to the NSPS for Gas Turbines. Since promulgation of the NSPS for gas turbines in 1979, changes in the design of NO_x emission controls for, and composition of fuels used in, turbines have occurred. Additional methods have also been developed for measuring air emissions and for sampling the sulfur content of gaseous fuel. As a result, there have been numerous requests for case-by-case approvals of alternative testing and monitoring procedures for complying with the Standard. In April, EPA proposed amendments to 40 CFR 60 Subpart GG, as a direct final rule, to codify the alternatives that have been routinely approved over the years. These amendments were also intended to make the Subpart GG provisions consistent with the monitoring provisions of 40 CFR Part 75, since many new turbines are subject to both regulations. EPA withdrew the rule in late May because of adverse comments received from the public, and will take final action on the proposed rule after considering the comments received. For more information, contact Lou Corio at 410.312.7912 or lcorio@zephyrenv.com.

EPA Sets Timetable for Part 2 MACT Applications. On May 9, EPA rolled out a new set of deadlines for industry submittals of Part 2 MACT applications. As part of EPA's settlement agreement with the Sierra Club, facilities in a source category for which case-by-case MACT determinations are required must begin submitting their more comprehensive Part 2 applications within 30 days of the EPA deadline for promulgating the standard. Based on EPA's schedule for issuing MACT standards, Part 2 applications were already due for certain source categories in mid-June 2003, with another round of applications due at the end of November. For more information, contact David Cabe at 512.329.5544 or dcabe@zephyrenv.com.

areas include counties in the Houston/Galveston, Dallas/Fort Worth, Longview/Marshall/Tyler, Beaumont/Port Arthur, San Antonio, and Austin regions. Bexar, Travis, and Gregg counties will have deferred designations since they entered into Early Actions Compacts (EAC) with the EPA and TCEQ. For more information, contact Art Bedrosian at 512.329.5544 or abedrosian@zephyrenv.com.

BPA 1-Hour Ozone Nonattainment Status Under Review. Following the U.S. Court of Appeals' reversal of the extension of the attainment date for the Beaumont/Port Arthur (BPA) moderate 1-hour ozone nonattainment area, EPA will be proposing to withdraw the final approval of the BPA's 2007 attainment and transport demonstration State Implementation Plan (SIP). If the approval is withdrawn, the BPA area would be reclassified from a moderate to a serious 1-hour ozone nonattainment area. Since BPA missed the November 15, 1999 deadline to come into attainment as a serious nonattainment area, EPA is also considering whether to further downgrade the classification to "severe" or to provide BPA options for attaining the standard as a "serious" nonattainment area. For more information, contact Jerry Kung at 512.329.5544 or jkung@zephyrenv.com.

Permit Deadline Approaching for Grandfathered Facilities in Texas. Owners and operators of the remaining grandfathered facilities in Texas must submit permit applications or notices of shutdown by September 1, 2003 for facilities in East Texas, and by September 1, 2004 for facilities in West Texas and for small business stationary sources. Numerous mechanisms are available for authorizing such facilities including permits by rule, conventional construction permits, and the new grandfathered facilities permit. For more information, contact David Cabe at 512.329.5544 or dcabe@zephyrenv.com.

Title V Compliance Certifications Must Go to EPA Region 6. Since June 2001, the TCEQ has required Title V permit holders to submit copies of their permit compliance certifications (PCC) to the EPA administrator as well as the TCEQ executive director. However, EPA recently notified the TCEQ that many permit holders have not submitted their PCCs to the EPA. According to the TCEQ, the issuance of failure to submit the PCC to the EPA will result in a Notice of Violation being issued. For more information, contact Celeste Wiley at 512.329.5544 or cwiley@zephyrenv.com.

maryland news brief

Maryland Senate Rejects Governor's Nominee for Top Environmental Position. In early March, the Maryland Senate rejected Governor Ehrlich's nominee, Lynn Buhl, for Secretary of the Department of the Environment. This is the first time in Maryland history that the Senate rejected a nominee from the Governor for a Cabinet post. The Senate Democratic leadership claimed that Ms. Buhl did not have the qualifications or experience as an advocate for environmental protection. As of the close of the General Assembly session in early April, a new environmental secretary had not been named by the Governor, an apparent violation of the Maryland Constitution. Ultimately, the Governor appointed Kendl Philbrick (originally nominated as the department's deputy secretary) as acting secretary. For more information, contact Lou Corio at 410.312.7912 or lcorio@zephyrenv.com.