

The purpose of the rule is to identify those sources that do not demonstrate good operating and housekeeping procedures and those sources that release unauthorized emissions to the environment.

The compliance history rule will, for the first time, enable the TCEQ to numerically grade the performance of each regulated company under the various state and federal environmental rules. Factors considered in the scoring will include the number of investigations conducted, the number of self-audits performed, the number of violations issued, and the existence and effectiveness of the company's environmental management system. Those companies that demonstrate a history of poor environmental compliance will find they are the recipients of more frequent regulatory inspections, including unannounced visits. They also might encounter difficulty in obtaining permits to modify or expand their operations. The worst performers might even find themselves being denied requests to renew permits for existing operations.

Finally, the Texas environmental management system rule intends to encourage regulated sources to integrate environmental considerations into their design activities, plant-wide operations, and maintenance activities. The rule establishes requirements that environmental management systems (EMS) must satisfy to be accepted by the TCEQ. Since the rule is voluntary, the TCEQ encourages sources to participate through regulatory incentives such as upgrades to compliance history scores.

Through the application of programs focused on upset and maintenance conditions, compliance history, and environmental management systems, the TCEQ is directing its limited enforcement resources on those sources that are responsible for most unauthorized emissions. And by offering operational and financial incentives to companies that manage their environmental efforts with a high degree of success, it's adding a new "carrot" to the traditional enforcement "stick".

- Art Bedrosian

President, Zephyr Environmental Corporation

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EPA - diesel exhaust likely to cause cancer. After years of study and draft reports, the EPA finally released its health assessment document concluding that long-term exposure to diesel exhaust is "likely to be carcinogenic to humans by inhalation," although EPA is currently unable to quantify the risk. *This article is continued at www.zephyrenv.com.*

EPA's new Spill Prevention, Control and Countermeasure rules. EPA has significantly revised its SPCC rule that applies to owners and operators who use oil in quantities that may be harmful to navigable waters or adjoining shorelines. These revisions have changed the criteria for preparing and maintaining a Facility Response Plan, and the methods for regulating worst-case discharge planning levels. *This article is continued at www.zephyrenv.com.*

TCEQ revises rules for upset / emissions. On September 12th, the Texas Commission on Environmental Quality (TCEQ) issued new rules for emission events and scheduled maintenance, start-up, and shutdown activities. Failure to act on these new rules could adversely affect a company's compliance history and thereby complicate future permitting. *This article is continued at www.zephyrenv.com.*

New Approaches to Environmental Enforcement

With over three decades of experience under their belts, EPA, state, and local regulatory agencies have learned the hard way that most unauthorized releases and excess emissions to the environment come from a relatively small group of sources. And with dwindling enforcement budgets, the regulators are more convinced than ever that enforcement activities must be focused on the egregious offenders to get the biggest "bang for the buck".

Consequently, in the late 1990's, EPA started profiling a wide variety of industrial processes to document their compliance histories. Known as the Sector Facility Indexing Project, the EPA program not only gathered compliance history data, but also gathered operational and demographic information on sources and their surroundings. In the September 20, 2002 *Federal Register*, EPA published a request for cooperation from industry trade organizations to work with its newly reoriented sector program.

The culmination of EPA's efforts is a new enforcement database - Enforcement Compliance History Online or ECHO - which should be on EPA's website by

the end of the year. ECHO will provide permit, inspection, violation, and penalty information for about 800 companies nationwide, focusing on compliance with the Clean Air, Clean Water, and Resource Conservation and Recovery Acts. Each state will be responsible for generating data for its group of industrial sources.

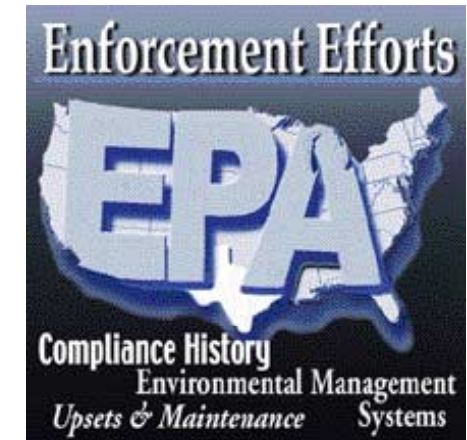
However, EPA will provide a mechanism to interested parties for challenging the data.

Recent actions in Texas illustrate this heightened compliance and enforcement focus at the state level. Responding to a legislative mandate,

in 2002, the Texas Commission on Environmental Quality (TCEQ) adopted related rules aimed at directing the state's limited resources on the few sources responsible for the majority of industrial pollution problems. These rules fall into the following categories:

1. Definition and regulation of upset and maintenance conditions
2. Compilation and use of compliance history
3. Use of environmental management systems

The upset and maintenance rule requires timely reporting of process upsets and significantly tightens the definition of upsets and routine maintenance activities.



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8-Hour ozone standard update. EPA is considering four approaches for classifying ozone nonattainment areas under the 8-hour standard: 1) based on 1-hour ozone design values, 2) based on 8-hour ozone design values, 3) based on 8-hour ozone design values, but classifying areas as "marginal" if modeling data show that the area will attain in the short-term standard, and 4) a hybrid of 1) and 2). EPA currently seems to favor the second approach and is expected to finalize changes to the implementation aspects of the rule in mid-2003. For more information, contact Kimberly Brandt at 512.329.5544 or kbrandt@zephyrenv.com.

New TCEQ Executive Director named. The Texas Commission for Environmental Quality (TCEQ) has named its new Executive Director. On August 27th, Ms. Margaret Hoffman, the former Deputy Director for Legal Services at the Texas Natural Resource Conservation Commission (TNRCC), was named Executive Director of the 3,000-employee agency. Hoffman, who replaced Jeff Saitas, joined the TNRCC in 1994 as a staff attorney, then was promoted to Senior Water Attorney in 1996, Director of the Environmental Law Division in 1998, and in 2001 was named Deputy Director for Legal Services. For more information, contact Joe Zupan at jzupan@zephyrenv.com or 512.329.5544.

Air permitting of dockside emissions. Dockside operations that emit air contaminants now require authorization under Chapter 116 of the TCEQ's rules. The revisions to Chapter 116 allow dockside operators the option of including routine maintenance, start-up, and shutdown emissions in the facility's air permit. In accordance with HB 3040, TCEQ is prohibited from conducting modeling over water and evaluating effects of non-criteria air pollutants from shipyards in coastal waters. For more information, contact Celeste Wiley at 512-329-5544 or cwiley@zephyrenv.com

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

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Chemical plant security: who's in charge? The chemical industry, Congress, and the Bush Administration continue to disagree on who - EPA, Office of Homeland Security, or industry groups - should be responsible for overseeing chemical plant security. On September 24th, EPA Administrator Christine Whitman testified before the Senate Environment and Public Works Committee, applauding the efforts of chemical industry groups such as the American Chemistry Council to assist chemical plants in assessing and correcting their security vulnerabilities to terrorist attacks. However, when questioned, she stated that only 7 percent of the chemical plants in the U.S. belong to such trade groups. Whitman alluded to a bipartisan group of Senators who are working to pen a chemical site security bill that would designate the Office of Homeland Security as the lead agency for facility security issues, rather than the EPA as proposed by Senator Corzine (D-NJ). For more information, contact Kiley Taylor at 512.329.5544 or ktaylor@zephyrenv.com.

EPA proposes to accelerate MACT application deadline. Section 112 of the Federal Clean Air Act requires certain major sources of hazardous air pollutants (HAPs) to meet Maximum Achievable Control Technology (MACT) standards for the control of HAP emissions. Although EPA has promulgated many of these standards, it has missed firm regulatory deadlines for others by 18 months or more. Originally, sources subject to these "late" standards were to have proposed source-specific MACT and applied for revisions to their Federal Operating Permits to incorporate the standards. However, on March 5th, EPA Administrator Whitman signed a final rule that delays the MACT hammer for two years requiring only the first round applications (Part 1) by the original May 15th deadline. In a proposed settlement agreement with the Sierra Club published in August, EPA now would require the more extensive Part 2 applications by May 15, 2003. Before this deadline is finalized, however, EPA is accepting public comments on the proposed settlement. For more information, contact David Cabe at 512.329.5544 or dcabe@zephyrenv.com.

OSHA revises standards for signs, signals, and barricades. OSHA has revised its safety standards to require that traffic control signs, signals, barricades or devices protecting workers involved in construction activities conform to Part VI of either the 1988 Edition of the Federal Highway Administration (FHWA) Manual on Uniform Traffic Control Devices (MUTCD), with 1993 revisions (Revision 3) or the Millennium Edition of the FHWA MUTCD (Millennium Edition), instead of the American National Standards Institute (ANSI) D6.1-1971, Manual on Uniform Traffic Control Devices for Streets and Highways (1971 MUTCD). This final rule will become effective December 11, 2002. For more information, please contact Elena Rivera at 512.329.5544 or erivera@zephyrenv.com.

Beta version of updated AERMOD model available. Updated versions of the AERMOD, AERMET and AERMAP air quality model and input data processors are now available from EPA. The updated version of AERMOD includes the PRIME building downwash algorithm, a TOXICS option, post-1997 PM10 NAAQS processing, and an EVENT processor. For more information, contact Roger Brower at rbrower@zephyrenv.com or 410.312.7907.

OSHA forms alliance with the plastics industry. OSHA and the Society of Plastics Industry (SPI) have formed an alliance to promote safe workplaces in SPI member facilities. The alliance provide information and guidance to help protect employees, with an emphasis on 1) identifying and eliminating hazards likely to result in amputations, and 2) reducing and preventing exposure to ergonomic hazards. OSHA and SPI plan to use SPI's newsletters, website, workshops and annual meetings to disseminate information and guidance on

workplace safety and health information. For more information, contact Elena Rivera at 512.329.5544 or erivera@zephyrenv.com.

State rebels: N.J. to scrap pollution trading experiment. New Jersey announced that it plans to discontinue an experimental pollution trading program whereby businesses buy and trade pollution rights in selected states. The program developed under then-Governor Christie Whitman, who is now Administrator of the EPA, was based on the premise that companies will emit less if it is financially beneficial. The current administration in New Jersey blames the program's failure on companies being allowed to take credit for emissions reductions based on cuts from earlier years and on the fact that no ceiling for the total allowable emissions was set. Michigan, Illinois, and New Hampshire still have similar programs. For more information, contact Bill Jones at 410.312.7910 or wjones@zephyrenv.com.

EPA to reconsider several provisions of the "final" Portland Cement MACT. Amendments to the portland cement NESHAPs were promulgated by EPA on April 5, 2002 as a direct final rule. However, due to adverse public comments on seven amendments, EPA withdrew these specific provisions on July 2nd. The amendments addressed the applicability of the rule for crushers at portland cement plants, the temperature operating limit for an in-line kiln/raw mill with an alkali bypass, visible emissions monitoring of a totally enclosed conveyor transfer point, and operating conditions during daily visual opacity observations. EPA will take final action on the seven amendments (with no additional comment period) after consideration of all comments received. The 17 provisions for which no adverse comments were received became effective on July 5th. For more information, contact Lou Corio at lcorio@zephyrenv.com or 410.312.7912.

DOT testing systems to protect hazardous materials on trucks. The U.S. Department of Transportation (DOT) has begun a series of tests to measure the effectiveness of safety and security technologies and procedures. Their efforts are intended for safeguarding hazardous materials transported by trucks in order to prevent them from being hijacked by terrorists. Testing of 100 trucks over a 2-year period will be aimed at measuring the effectiveness of such measures as biometric driver verification, off-route vehicle alerts, stolen vehicle alerts, cargo tampering alerts and remote vehicle disabling. For more information, contact Kiley Taylor at 512.329.5544 or ktaylor@zephyrenv.com.

California passes first U.S. law on global warming. On July 22nd, California passed the nation's first law for controlling greenhouse gas emissions, including carbon dioxide (CO2). Assembly Bill 1493 requires the California Air Resources Board to develop greenhouse gas standards for vehicles in model year 2009 and beyond. The standards will apply to automakers' fleet averages, rather than each individual vehicle, and automakers will be able to partially achieve the standards by reducing pollution from non-auto sources (e.g., factories), even if these sources are located in another state or nation. The auto manufacturers' group plans to challenge the law in federal court. For more information, contact Lou Corio at lcorio@zephyrenv.com or 410.312.7912.

U.S. Chemical Safety and Hazard Investigation Board (CSB) recommends extending the PSM standard and the RMP rule. Following a two-year study, the CSB approved new recommendations to EPA and OSHA for reducing the number of serious industrial accidents caused by uncontrolled chemical reactions, calling on the agencies to extend the Risk Management Plans (RMP) and Process Safety Management (PSM) rules to better control hazards associated with chemical reactivity. OSHA and EPA must respond within 180 days to the CSB's recommendations. More than half of the accidents studied involved chemicals that are currently exempt from the OSHA and EPA process safety rules. For more information, contact Elena Rivera at 512.329.5544 or erivera@zephyrenv.com.

TCEQ asks EPA to consider raising Houston-Area speed limits. As part of the ozone control plan for the Houston Galveston Area (HGA), the TCEQ has requested that the EPA consider raising the current 55-mph speed limit. According to the proposal, roads with 70-mph speed limits before the 55-mph speed limit was posted on May 1, 2002 would be raised to 65 mph and roads with a 65-mph speed limit before May 1st would be reduced to 60 mph. In 2005, the speed limit would revert back to 55 mph in the eight-county area unless replacement emissions reductions can be identified by the TCEQ. TCEQ's Commissioners approved the change on September 25th, but the timetable for the changes will be set by the Texas Department of Transportation (TxDOT). The proposed changes match environmentally-driven speed limits already in place in surrounding counties. For more information, contact Mark Fridel at 713.977.8787 or mfridel@zephyrenv.com.

maryland news briefs

MDE moves and gains a new Secretary. On September 9, Governor Parris Glendening announced the appointment of Richard F. Pecora as Maryland Secretary of the Environment. Acting Secretary Merrylin Zaw-Mon resumed her position as Deputy Secretary. This news comes on the heels of MDE's move, beginning the last week of August, to new offices in the Montgomery Park Business Center in southwest Baltimore. MDE's new address and main phone number are: 1800 Washington Blvd., Baltimore, MD, 21230; 410-537-3000. For more information, contact Lou Corio at 410.312.7912 or lcorio@zephyrenv.com.

EPA proposes to approve Maryland's Part 70 Program. On September 10, 2002, the EPA proposed to approve Maryland's Part 70 (Title V) Operating Permit Program. EPA had granted Maryland final interim approval in 1996; however, because of unresolved "deficiencies" in Maryland's Part 70 program, EPA never granted full approval to the State. As a result, in December 2001, EPA required Maryland to implement a Federal Part 71 operating permit program. Ultimately, in July 2002, Maryland submitted documents to the EPA that revised its Title V operating permit program, meeting EPA requirements. For more information, contact Jennifer Seinfeld at 410.312.7915 or jseinfeld@zephyrenv.com.

EMS & Compliance History:

What's good for the environment is also good for you.

Many people think that having an Environmental Management System (EMS) is just a drain on profits, but nothing could be further from the truth! In actuality, an EMS helps you save money by increasing your efficiency and helping you comply with environmental regulations.

The EMS approach to environmental compliance coupled with technological advances, heightened public awareness, and increasingly stringent regulations have played a part in improving the environment. In particular, the EMS model has enabled regulators to advance from less of a "command and control" enforcement mentality to more of an "assist and incentivize" mindset.

Many state regulatory agencies are encouraging organizations to implement an EMS that improves environmental compliance and performance by granting regulatory incentives (see feature article, this issue). However, some critics of EMS distrust the new "partnerships" between regulators and industry. Not realizing that an EMS goes far beyond "procedures on a shelf", such critics frequently prefer command and control, believing that industry is guilty until proven innocent.

In Texas, it appears that an agreement has been struck between critics and the regulators in the form of a new rule, called Compliance History. Under the new Chapter 60 of its rules, the TCEQ will begin classifying industrial sites according to three categories:

- 1) high performers which have an above-average compliance records,
- 2) average performers, which generally comply with environmental regulations, and
- 3) poor performers, which have below-average compliance histories.

Points will be assigned to documented violations, depending upon whether they are major, moderate, minor and/or repeat. Points will be reduced for submitted notices of intended audits, violations that were granted immunity under the Audit Privilege Act, and investigations by the TCEQ. And the compliance history formula provides advantages for sites with a certified EMS.

Compliance History Formula:

$$\frac{(\text{Violation Points}) + (\text{Repeat Violation Points}) - (\text{Environmental Audits})}{\text{Number of Agency Investigations} + 1} \times 0.9 \text{ for sites with TCEQ-certified EMS}$$

A company's classification will be considered by the TCEQ when making decisions regarding permit issuance, renewal, amendment, modification, denial, suspension, or revocation; enforcement; the use of announced investigation; and participation in innovative programs. The compliance history will cover a five-year period.

The TCEQ estimates that about 40 Texas facilities will be classified as "high performers" and up to 5 percent of Texas facilities will be classified as "poor". Where does your facility rank?

Compliance History Point Ranges

< 0.10 = high performer

0.10 to 45 = average performer

> 45 = poor performer

The classification may affect a company's relationship with the public since its ranking will be published on a public website, without prior notification. Even the TCEQ concedes that the process for counting the number of violations is not black and white, since pending Notices of Violation and those in dispute will also be counted. In these tough market conditions, even an average environmental compliance history can be used against you!

Susan Roothaan, who leads the EMS Rule team at TCEQ, said it best when she described the compliance history rule as "punishment for the bad, rewards for the good, and everything is public." So, Zephyr's advice to you is this: increase your audit frequency, take corrective action before violations are identified, and implement an effective EMS!

- Jeanne Yturri, ISO 14001 Lead Auditor for EMS
Zephyr Environmental Corporation

Time for fall housecleaning

Traditionally, fall is a time when people clean up their homes - get rid of old stuff, have garage sales, prep the yard for the upcoming winter, and generally do a thorough housecleaning. It just seems like a good time to take stock of things - after the kids have started back to school, but before the busy holiday season sets in.

The same philosophy can be used in our business. Now is a good time to step back and take a look at how well your compliance program is working. In essence, it's a good time to do an EHS compliance "housecleaning" so you can make sure that all of your EHS programs are current and properly functioning, and to ensure you have all the information you'll need for year-end reporting. As part of this housecleaning, Zephyr suggests that you:

- Check your compliance calendar. Have you completed or, at least, made arrangements to complete that annual stack test or audit? Those are the last things you want to be doing over the holidays. Be sure to check that you submitted all required notifications and reports to the agency.

Compliance "Housecleaning" to do list:

- Check your compliance calendar.
- Review your old requirements.
- Check for new requirements.
- Review changes made to your facility
- Check your calculation methodologies.
- Check your software.
- Determine your compliance.

- Review your old requirements. Are you keeping all of the data you'll need for those annual reports due next Spring? Are you conforming to all of the recordkeeping requirements? We've noticed that it's very easy to overlook needed updates to old plans. (When was the last time you checked your Start-up, Shutdown, and Malfunction Plan?)

- Check for new requirements. Have any applicable rules been modified or amended during the year? Have the regulatory agencies issued any new policies that you didn't have a chance to assess during the busy summer?

- Review changes made to your facility. Adding new, or modifying existing equipment / processes may result in applicability of one or more regulations that didn't apply to you

before. Even what appears to be very minor changes could mean new requirements to address. Be sure to review capital job requests for your facility and, if necessary, get clarifications from the people responsible for the changes.

- Check your calculation methodologies. It is amazing how often we find systematic errors in continuous monitoring or stack test results. Consider checking those calculations to make sure that the data you're providing the agency are correct.

- Check your software. Remember how confusing and frustrating it was last spring when you had to put together the emissions inventory or fee calculation for your plant? Didn't you promise yourself, "Never again!"? Well, now would be a good time to get in place the systems that will make your life easier the next time that report is due.

- Determine your compliance. This is the bottom line. Assessing your anticipated annual compliance now gives you a chance to be proactive. Even if you're out of compliance, you have time for developing a compliance strategy and working with your regulatory agency to get a reasonable timetable for corrective action. Waiting until the end of the year means one word - *panic*.

I do a lot of housecleaning--and it's not fun. But, the rewards of doing it early are that it's out of the way and I can actually enjoy a clean house. Similarly, doing an EHS compliance housecleaning isn't fun. But, by doing it now, you can face the future with confidence that you're in compliance (or you know how to get there) and you can avoid those last minute compliance crises. Happy Holidays!

- Julian Levy
Principal, Zephyr Environmental Corporation