

# **Texas Two-Step: Navigating Air Permitting of EGUs in the Wake of the TCEQ and EPA Duel**

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# *Today's Agenda*

1. History of EPA and TCEQ controversy
2. EPA SIP disapproval
3. EPA Title V objections
4. Other areas of inter-agency conflict
5. Related topic: Texas nodal-market change
6. Conclusions and recommendations

# A Brief History

- 1994 to 2008: TCEQ submits more than 25 NSR program SIP submittals to EPA
  - No EPA SIP approval = SIP Gap
- 2008: An industry coalition sues EPA for failure to act on SIP submittals
  - **Court orders EPA to act**
- Sept. 2009: EPA takes action and proposes to disapprove portions of TCEQ NSR programs (final disapprovals in 2010)



***“Them’s fightin’ words”***

# *NSR Permitting Disapproval*

- EPA disapproval of several NSR program elements
  - Public participation process
  - NSR reform
  - Flexible permits
  - Qualified facilities
  - Planned MSS activities



# *Impacts to NSR Permitting*

- Public participation process
  - Change: now all permits undergo initial and second public notice
  - Add at least 30 days to permit timeline
  - No second chance for public hearing
- NSR reform, Qualified facilities
  - October 2010 - TCEQ amended regulations
- Flexible permits
  - Not a significant impact to EGUs

# *Planned Maintenance, Startup and Shutdown (MSS) Emissions*

- TCEQ initiative to permit planned MSS activities beginning in January 2008
- Electric utilities can claim “affirmative defense” against enforcement for excess emissions resulting from MSS, provided authorization is applied for by 1/5/2011
- November 2010: EPA disapproves TCEQ planned MSS rules
  - **Potential Implication: EPA will not grant affirmative defense for MSS**

# *The Title V Shootout*

*“I challenge thee to a duel. You may choose your weapon”*



# *The Title V Shootout*

- EPA has used its Title V objection authority to force Texas air program changes
  - EPA has filed objections to 44 permits
    - Objections filed on last (45<sup>th</sup>) day of comment period
    - TCEQ response to comments: 3 to 4 months after EPA objection
  - TCEQ has responded to 37
  - Only **one** permit has been issued (as of mid January)
- EPA has taken over Title V permitting for a handful of permits

# *Title V Permits – Can I Avoid Objection?*

## Typical EPA objections and TCEQ responses

- EPA Objection: NSR permit incorporation-by-reference
  - Response: Addition of NSR permit(s) and emission limits to Title V permit
  - EPA correspondence indicates that they consider this approach unacceptable
  - This issue is still being debated

# *Title V Permits – Can I Avoid Objection? (cont)*

- EPA Objection: Lack of emission limits and applicable requirements for permit exempt (“PBR”) sources
  - Response: Addition of limits and requirements for these sources in Title V permit
- EPA Objection: Identification of all vents subject to opacity limitations
  - Response: Case-by-case

# *The Showdown Continues*

***GHG Permitting: “Don’t Mess With Texas”***



# *GHG Permitting in Texas*

- August 2010, TCEQ Chairman and Texas Attorney General letter to EPA: “Texas has neither the authority nor the intention of interpreting, ignoring or amending its laws in order to compel the permitting of greenhouse gas emissions.”
- December 2010, EPA promulgates a federal implementation plan (“FIP”) applicable to Texas sources
  - **Establishes EPA as the permitting authority for GHGs**

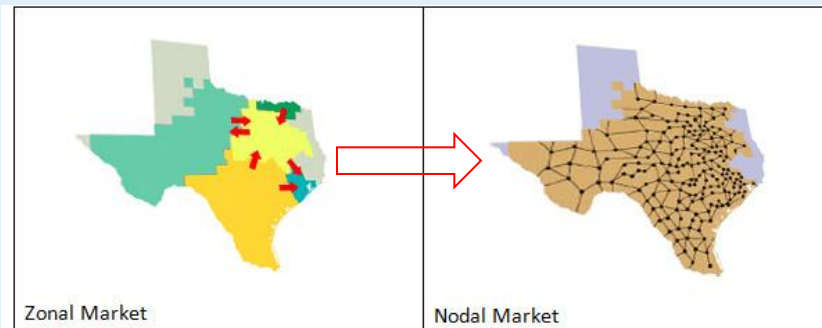
# *The Showdown Continues*

## *Water Quality Permitting Theater*

- December 2010, EPA requests TCEQ to issue delayed water quality discharge permits

# Texas Electric Market Changes

ERCOT regional-to-nodal market change on December 1, 2010



- Day-ahead market drives real-time demand response
- Nodes allow for more efficient energy delivery
- Generators will be given even shorter notice for peak generation requests
- Peaking requests will be more frequent

# *Texas Electric Market Changes*

## **Air permitting impacts:**

- Expect increased frequency of startup and shutdowns
  - Increased S/U frequency reduces available allowables
  - Simultaneous unit startups may be requested
- Generators permitted for low load operations may be more viable in the market
- May choose to run at low load rather than shutdown
- NO<sub>2</sub> impacts demonstration may limit flexibility for more frequent startups

# *Conclusions*

- Although the TCEQ & EPA dialogue is heated, EPA & industry dialogue remains productive
- Trend observed by the regulated community is that of increased apprehension and conservatism by TCEQ
  - Applicants asked to provide demonstrations not previously requested, or that TCEQ has historically performed

# *Recommendations*

- Account for ERCOT nodal market operations in permitting approach
  - increased and simultaneous startup and shutdowns
  - low load operations
- Define a realistic project schedule
  - uncertainties in NSR technical review
  - multiple public notices

# *Recommendations (cont.)*

## **Title V permitting:**

- Obtain the latest guidance and recommendations from TCEQ to thwart an EPA objection
- Don't count on a fix at TCEQ level
- Work with EPA, not as scary as originally thought

# *Recommendations (cont.)*

## **GHG Permitting:**

- Readiness steps:
  - Calculate project GHGs. If necessary, add GHG permitting to project planning timeline
  - Consult with EPA prior to preparing a GHG application
- Stay abreast of ongoing GHG permitting evolution
  - Regulatory development (SIP) in Texas?
  - BACT requirements (expectation that this will be highly contended) for post July 2011

# Thank you!

The screenshot shows the Zephyr Environmental Corporation website. At the top is the Zephyr logo and a navigation menu with links for SERVICES, TRAINING, PUBLICATIONS, NEWS, and ABOUT. Below the navigation are three main service areas: CONSULTING (with a landscape image), TRAINING (with a bird in flight image), and DATA SYSTEMS (with a waterfall image). A left sidebar contains links for LOCATIONS, CONTACT, LINKS, CAREERS, and a HAZMAT ACADEMY logo. The main content area features a large image of an oil pumpjack with the text: "We are Strategic Responsive Insightful INNOVATIVE NIMBLE". To the right of this image is a text block about Zephyr Environmental Corporation, describing it as a privately held, full-service environmental, health and safety (EHS) firm. Below this is a "ZEPHYR SPOTLIGHT" section with a link to a training course on "Authorizing Air Emissions!". Further down is a "GET THE LATEST..." section with links to "Zephyr Announces New Look & Feel", "Overview of Services", "Latest Issue of Currents", "2011 Open Enrollment Training Schedule", and "Zephyr Alerts Archive". At the bottom is a "VOTED BEST!" section mentioning a 2008 award. The footer contains the text: "AUSTIN | HOUSTON | BALTIMORE | DUBAI" and "Zephyr Environmental Corporation | 800.452.5558 | info@zephyrenv.com".

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