APRIL 2010

zephyr® Currents

a quarterly publication of zephyr environmental corporation

SSM and MSS – the Confusing Acronyms of Excessive Emissions

Acronyms are the lingua franca of the environmental community. But they only serve us well when their meanings are commonly understood. Take the acronyms MSS and SSM — terms used frequently and often interchangeably in air quality "regulatory-speak". Even though they sound alike, MSS and SSM mean different things and their meanings can change from one regulatory jurisdiction to the next; some states think of SSM as startups, shutdowns, and malfunctions, while others refer to SSM as startup, shutdown, and maintenance. MSS, on the other hand, is a term used by Texas to refer to emissions resulting from maintenance, startup, and shutdowns. These acronyms have one thing in common, however — they refer to emissions in excess of routine amounts — emissions which could be construed as exceeding a regulatory standard or permit limit.

The concepts of SSM and MSS had their beginnings with 1982 and 1983 memos written by EPA Assistant Administrator Kathleen Bennett in response to questions about whether start-up, shutdown, and malfunction emissions could be automatically exempted from state regulation. According to Bennett, such emissions were clearly violations of applicable standards, but states have enforcement discretion if the regulated entity could demonstrate that the emissions were due to "an unavoidable occurrence". Later, in a 1999 memo, another EPA assistant administrator, Steven Herman, reaffirmed Bennett's policy and laid out guidance for states to use in revising their rules to be consistent with EPA's SSM policy.

In spite of EPA's attempts at clarification, confusion remains about how to define and treat SSM and MSS emissions. Most environmental practitioners would agree with North Carolina's definition of "startup" as "the setting into operation any process, process equipment, or air pollution control equipment" and its definition

of "shutdown" as the "cessation of the operation of any source for any purpose". However, many states' definitions of "malfunction" are not nearly as complete as Massachusetts's, which defines it as "any sudden, infrequent, and not possibly preventable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner". Most states say that failures caused by poor maintenance or careless operation are not "malfunctions"; some others don't refer to "startup" at all.

What is meant by "maintenance" is just as problematic. Idaho defines "scheduled maintenance" as "planned upkeep, repair activities and preventive measures on any air pollution control equipment or emissions unit, including process equipment, and including shutdown and startup of such equipment." But most states don't define "maintenance" at all, simply considering it to be the repair and preventative maintenance of pollution control equipment. Texas has gone considerably further in defining "maintenance", saying it includes activities such as degassing of equipment; vacuum truck exhausts; sampling activities; pump repairs; removal of sludge from tanks; tank gauging; taking floating roof tanks out of service; and even, in some instances, painting.

acronyms >>> continued on page 8

FROM THE TRENCHES

Stripping Down and Suiting Up for Safety

I just finished telling my class of all male students "Take off everything that isn't absolutely necessary, but keep on your socks; you're about to be fully encapsulated in a plastic suit and your feet may be stinky". And then my husband calls my cell phone, and I tell him "Wait just a minute honey; I need to finish zipping up Larry before I can talk to you about dinner". That's how my day as a hazmat trainer starts.

Hazardous materials or "hazmat" are an integral part of everyday life. We use hazmat at home to fuel the car, clean the sink, and paint the trim. Many of Zephyr's clients use hazmat to treat their process water, etch parts, and even reduce pollution emissions. Yes, you heard me right . . . improving the environment can mean using hazmat. For example, anhydrous ammonia, a corrosive gas that can cause severe burns and eye or lung injuries if not properly controlled, is used in one process for reducing nitrogen oxide emissions.

Personnel that respond to hazmat emergencies must be trained by a qualified trainer. And that's where I come in. To help them be certified as HazMat Technicians, I provide my students the required 24 hours training in how to respond safely and effectively. And I teach them how to safely come in contact with hazmat using chemical resistant clothing — that's where the plastic suits come in. Also, I provide students seeking certification at the First Responder Operations Level the required eight hours of training on how to respond "defensively" — that is, how to control or contain a hazmat release from a safe distance.

As a trainer at Zephyr's HazMat Academy, I teach hundreds of students each year in an open-enrollment setting in our training facilities. One advantage to this setting is that it promotes the cross-sharing of ideas between personnel from different companies. Although I enjoy teaching hazmat classes at Zephyr, I enjoy teaching at client sites even more. There, I can tour their hazmat storage and use areas, use their hazmat detectors, tools, and equipment, and discuss their site-specific potential hazmat release scenarios, controls, and response protocols.

Whether I'm at Zephyr or a client's site, I let every student don a Level A suit — a gas-tight, chemical vapor resistant fashion statement accessorized with built-in gloves, boots, and a self-contained breathing apparatus. People sometimes refer to these as "moon suits" but I think the astronauts' version is much more comfortable . . . at least it's air-conditioned. I have to pay extra

attention when someone is donning Level A for the first time — some people get claustrophobic when zipped-up in a plastic bag . . . go figure!

As reliable as Level A suits are, I teach my students that they can be dangerous unless properly used. Before rushing into a "Hot Zone", the responders must first analyze the chemical and the physical hazards to which they could be exposed. For example, they must know, in the case of a flammable release, whether oxidizers are present that could turn a small fire into a raging inferno — the one place they never want to wear a chemical-resistant plastic suit is around a fire!

I teach my students that their second response step is to establish and prioritize their objectives, whether they be evacuating personnel, cleaning up a spill, or merely protecting a sensitive environmental receptor. And third, I make sure they know to select the right strategy for meeting each objective. Should they run offense, play defense, or just punt?

No training is complete without a full hazmat response and decontamination drill. We don our Level A suits and practice responding to releases of household chemicals like vinegar or ammonia cleaners from punctured pipes and drums. My goal, as a trainer, is for my students to become both competent and confident in their ability to respond to a hazmat emergency. It's as if I'm in the suit with them, stinky feet and all!

Jeanne Yturri
Principal

Controlling Greenhouse Gases: Will EPA or Congress Take Charge?

The answer is less clear than nine months ago when the House passed the Waxman-Markey bill and the Kerry-Boxer Senate bill was introduced. Both bills focused on cap and trade to reduce greenhouse gas (GHG) emissions. Lambasted on multiple fronts, these bills are stalled in Congress, seen by some as too complex and by others as raising the spectre of abuses like those exposed in the financial derivatives markets. In short, the timing for cap and trade legislation was unfavorable.

Since last summer much has happened, but neither EPA nor Congress has made any real progress toward the actual reduction of GHG emissions. That is not to imply that they have not been busy. Both have.

EPA

The Obama administration prefers a legislative solution to EPA regulation. However, with no legislation forthcoming, and in response to the Supreme Court's ruling in Massachusetts v. U.S., (and in some observers' opinions, to put pressure on Congress to pass legislation) EPA announced in December its finding that greenhouse gases endanger the public health and welfare (the "Endangerment Finding"). Within weeks, EPA proposed the light duty vehicle rule (finally issued on April 1) to comply with the Court's ruling, making GHGs a "regulated pollutant" and opening the door to air quality permitting of GHG emissions for large sources. EPA initially sought to ease the permitting burden with the GHG Tailoring Rule — an attempt to increase (or tailor) the threshold rate of annual emissions of GHGs which triggers Prevention of Significant Deterioration (PSD) review from 250 tons to 25,000 tons.

Since its GHG proposals hit the streets, EPA has faced numerous legal and legislative challenges. Lawsuits continue to be filed by multiple states, including Texas, challenging the scientific and legal bases for the endangerment finding and the lack of statutory support for the Tailoring Rule. And Senator Lisa Murkowski (R) filed a bill to prevent EPA from regulating GHGs at all.

EPA appears to have blinked first. Recently, Administrator Jackson, in response to a letter from Senator Jay Rockefeller (D), stated there would be no regulation of GHGs from stationary sources until 2011, and that the Tailoring Rule would not be finalized by the original March 31 deadline. This move gives EPA time to be more thoughtful about the Tailoring Rule and how to roll out a GHG permitting program. But more important, perhaps, it gives Congress an opportunity to consider new legislation, especially now that health care reform is no longer monopolizing their time.

Congress

Along with Senator Murkowski, Senator Rockefeller has proposed a bill to prohibit EPA from regulating any GHGs from stationary sources. But the bill to watch is the bipartisan energy and climate bill proposed by Senators John Kerry (D), Lindsey Graham (R), and Joe Lieberman (I/D). Expected to be filed in late April, it will likely include a cap and trade provision that initially would affect only the power sector, beginning 2012. The bill would defer coverage of manufacturing and industrial sites until 2016 to allow more time for the development of innovative technological solutions. Transportation emissions would be addressed through a fee on the carbon content of fuels via a tax on each barrel of imported and domestic oil before that oil is refined into gasoline. This approach is designed to not adversely impact the refineries and force them overseas.

The Kerry-Graham-Lieberman bill would also expand nuclear energy, allow more offshore drilling, and is said to preempt EPA regulation of GHGs from stationary sources. These features and the co-sponsorship of Republican Lindsey Graham are designed to garner support from industry and from conservative senators.

The transformation of cap and trade from a widely embraced concept to one in widespread disrepute in the political arena has seemingly more to do with politics and fear of abuse by the financial sector than with economics or science. The political critique is interesting because the concept was based on the success of the acid rain program implemented under the first Bush administration.

Nonetheless, the stigma of both the phrase and the concept is real. As a result, a "cap and dividend bill" has been proposed by Senators Maria Cantwell and Susan Collins. Their bill would require only fossil fuel producers to buy allowances covering their emissions and would limit trading to those industries. The key feature of the Cantwell-Collins bill is that it would return 75 percent of the money paid by the GHG emitters for allowances to the consumers ("the dividend").

Conclusion

Congress will have to act quickly if it expects to pass climate legislation before EPA begins regulating GHG emissions from stationary sources in 2011. If Congress doesn't succeed, it will become progressively harder for the Country to change direction after EPA has started down this regulatory path. One thing seems certain — debate on this high-stakes and controversial legislative effort will continue.

Paul Gosselink
Principal Attorney
Lloyd Gosselink

News Briefs

national news

EPA Reports Substantial Improvements in Air Quality

EPA announced that the quality of the nation's air continues to improve, in a February report titled "Our Nation's Air, Status and Trends Through 2008". The report identifies substantial and continuing reductions in ambient levels of air pollutants, fewer exceedances of national ambient air quality standards, and lower acid rain and haze levels — all attributed to the effectiveness of Clean Air Act regulations. During the period 1990 through 2007, EPA reported that total emissions of criteria pollutants declined by 41 percent despite gross domestic product (GDP) growth of 64 percent. In contrast to these improvements, greenhouse gas (GHG) emissions were reported to have increased by 20 percent during this period. For more information, contact David Mahler at 410.312.7909 or *dmahler@zephyrenv.com*.

OSHA Flashes Work Fatality News on Agency Website

Recently, OSHA has updated the front page of its website to project information about workplace fatalities, including the fatality date, location, and a brief description of the occurrence. Below the fatality "news flashes" is an easy-access link to information about the address and name of the company involved. OSHA added this feature to its website as part of a recent federal government-wide initiative to attempt to make its workings more transparent and information more accessible to the public. For more information, contact Tiffany Giles at 512.879.6630 or *tgiles@zephyrenv.com*.

EPA Proposes More Stringent SO_2 Air Quality Standard

On December 8, EPA proposed to revise the primary national air quality standard for SO_2 by establishing a new 1-hour standard in the range of 50 to 100 ppb — a standard that would be significantly more restrictive than what is currently in place. The proposed rule would revoke the existing 24-hour and annual standards but leave the 3-hour secondary in place. The proposed standard is stated in terms of the 3-year average of the 99th percentile of the annual distribution of daily maximum 1-hour SO_2 concentrations. EPA intends to issue the final rule by June 2. For more information, contact Bill Jones at 410.312.7910 or *bjones@zephyrenv.com*.

EPA Adopts Tighter NO_2 Air Quality Standard

On January 22, EPA adopted, for the first time, a 1-hour primary air quality standard for NO_2. Set at 100 ppb, the new primary standard is stated in terms of the 3-year average of the 98th percentile (or 7th or 8th highest) of the annual distribution of daily maximum 1-hour NO_2 concentrations. EPA also is establishing NO_2 monitoring requirements in urban areas including near-road monitoring, community-wide monitoring, and monitoring to protect susceptible and vulnerable populations. The new standard became effective on April 12. EPA is retaining the existing annual primary standard. For more information, contact Roger Brower at 410.312.7907 or *rbrower@zephyrenv.com*.

Jackson Elaborates on EPA Greenhouse Gas Regulation under CAA

During testimony on February 23 before the U.S. Senate, and as supplemented by subsequent remarks, EPA Administrator Lisa Jackson predicted that EPA will likely raise the initial NSR permitting threshold for GHG emissions from stationary sources from 25,000 tons per year, as currently proposed, to 100,000 tons per year. However, the threshold would be lowered to 50,000 tons per year in 2013, and then lowered to 25,000 tons per year in 2016. The NSR regulations EPA is developing would require the use of best available control technology for reduction of GHG emissions whenever a new facility is constructed or a major modification takes place. In a separate March 29 announcement and April 2 *Federal Register* notice, EPA confirmed that NSR permitting for GHGs will not be required any earlier than January 2, 2011. According to Jackson, this permitting will, initially, only be required for those sources that are drawn into the NSR process due to their non-GHG emissions. For more information, contact Brett Davis at 512.879.6628 or *bdavis@zephyrenv.com*.

EPA Greenhouse Gas Endangerment Finding Faces Legal Challenges

Starting with Virginia and Texas in February, 15 states have now filed petitions for review of EPA's GHG Endangerment finding — the determination that provides a legal basis for regulation of GHGs under the Clean Air Act. The petitions assert that the EPA's finding that GHGs pose a threat to human health by contributing to climate change is based on scientific claims with questionable merit. For the endangerment finding to be reversed, the states must

prove that EPA willingly and negligently referenced unreliable data from the U.N. Intergovernmental Panel on Climate Change and other sources. A successful overturn of the endangerment finding could open the door to more GHG-related legal challenges. For more information, contact Bryan Osborne at 512.579.3815 or *bosborne@zephyrenv.com*.

EPA Makes TSCA Chemicals Inventory Available Free Online

On March 15, EPA announced that the public portion of its Toxic Substances Control Act (TSCA) inventory of chemicals manufactured or processed in the United States is now available free to the public and is accessible at EPA's website and at the Federal Government's new general access data site, *www.data.gov*. Until now, the public portion of the inventory has only been available by purchase. In the near future, EPA will take further steps to make more information available to the public about facilities in their communities using industrial chemicals. For more information, contact Michele Foss at 281.668.7342 or *mfoss@zephyrenv.com*.

Inspector General Says Lack of Vapor Intrusion Guidance Threatens Human Health

EPA's Office of the Inspector General (OIG) asserted in a December 14 report that lack of adequate EPA guidance has hindered efforts to protect human health from the effects of the intrusion of toxic vapors from underground sources into overlying buildings. Referring to the EPA's 2002 draft vapor intrusion guidance, the OIG identified deficiencies in the report's limited purpose and scope, its use of outdated toxicity values, and its absence of recommendations on how to mitigate vapor intrusion risks and to measure the effectiveness of mitigation efforts. For more information, contact Paul C. Moore at 512.879.6642 or *pmoore@zephyrenv.com*.

EPA Issues Final Air Toxics Standards for Engines

On March 3, EPA amended its hazardous air pollutant standard for compression ignition reciprocating internal combustion (IC) engines, also known as "MACT ZZZZ", to address a wider range of existing stationary IC engines and, depending on the rating of the engine and whether or not the site is a major source, to require catalyst installation, prescribed maintenance schedules, and compliance testing. In addition, the rule limits emissions of acrolein, benzene, formaldehyde, and other air toxic pollutants during periods of startup. Compliance will be required by May 3, 2013 for most existing engines. EPA plans to amend the spark ignition portion of the rule in August. For more information, contact Kevin Ellis at 512.879.6647 or *kellis@zephyrenv.com*.

CEQ Provides Guidance to Make NEPA Process More Transparent

On February 18, the White House Council on Environmental Quality (CEQ) proposed steps to "modernize and reinvigorate" NEPA. The stated goal of the measures is to assist federal agencies to meet NEPA's goals, to enhance the quality of public involvement in governmental decisions relating to the environment, and to increase transparency and ease the implementation of the NEPA process. To "modernize" NEPA, the CEQ is issuing for public review draft guidance that 1) addresses when and how federal agencies must consider GHG emissions and climate change in their proposed actions, 2) clarifies the appropriateness of "Findings of No Significant Impact", 3) specifies when there is a need to monitor environmental mitigation commitments, 4) clarifies the use of categorical exclusions, and 5) describes enhanced tools for reporting NEPA activities to the public. For more information, contact Brad Watson at 512.879.6624 or *bwatson@zephyrenv.com*.

EPA Proposes Testing of High Production Volume Chemicals

On February 25, EPA proposed to require manufacturers, importers and processors of 29 specific chemical substances, considered "high production volume" (HPV) chemicals, to conduct testing for environmental fate. Similar to the TSCA 2006 Inventory Update Rule, EPA wants to collect testing data for substances that potentially pose a substantial risk to workers, result in exposures to consumers, and have a high likelihood of entering the environment. The data will be used to assess the relative risks of the chemical substances. Large manufacturers, importers and processors of chemicals will be required to submit a letter of intent to conduct the testing, or apply for an exemption to the testing and provide reimbursement to companies who are conducting testing. Facilities primarily affected by this proposed rule are chemical manufacturers and petroleum refineries. For more information, contact Bonnie Blam at 512.579.3817 or *bblam@zephyrenv.com*.

SEC Provides Climate Change Disclosure Guidance

To ensure that securities purchasers are aware of risks that may directly affect a company's ability to meet credit obligations, on February 8 the U.S. Securities and Exchange Commission (SEC) ordered corporations to disclose in their annual reports the risks that climate change poses to their financial condition. These risks include how existing or pending laws and regulations, as well as international accords and treaties, on climate change might have a material effect on a company's operations. New opportunities and business risks associated with climate change-related technological developments and physical effects such as severe weather, rising sea levels, and availability of water resources must also be taken into consideration. In response to the order, 21 Republican members of the House of Representatives sent a letter to the SEC expressing their displeasure with the new disclosure requirements. For more information, contact Brett Davis at 512.879.6628 or *bdavis@zephyrenv.com*.

EPA Signals End to PM_{10} as Surrogate for $PM_{2.5}$

On February 11, EPA proposed to end its policy for allowing the use of demonstration of compliance with Prevention of Significant Deterioration (PSD) requirements for PM_{10} as a surrogate for

news briefs >>> continued on page 6

news briefs >>> continued from page 5

making the required PSD demonstrations for $PM_{2.5}$. According to EPA, the policy would be discontinued before the May 2011 end of the transition period for states to revise their PSD programs for $PM_{2.5}$. In laying out the reasons for this proposal, EPA cited that the $PM_{2.5}$ implementation issues that led to the adoption of the surrogate policy in 1997 have been "largely resolved to a degree sufficient for sources and permitting authorities to conduct meaningful permit-related $PM_{2.5}$ analyses." If the policy is ended as proposed, applicants for new and modified major sources seeking permits in States with SIP-approved (PSD) programs (such as Texas and Maryland) would be required to conduct permit-related analyses, such as BACT and NAAQS compliance demonstrations, for $PM_{2.5}$ emissions. In a parallel action, EPA is proposing to repeal the grandfathering provision in the Federal PSD program. If finalized, the impact of the repeal will be to a source that submitted a PSD permit application before July 15, 2008 and had not received its permit by June 1, 2009 to satisfy PSD requirements for $PM_{2.5}$. For more information, contact Lou Corio at 410.312.7912 or *lcorio@zephyrenv.com*.

state news

Rulemaking and Memorandum of Understanding Address Roles of Texas Agencies in CO_2 Sequestration Regulation

Texas Senate Bill 1387, passed in 2009, requires that the state provide a framework for regulating the sequestration and long-term storage of CO_2 (note that CO_2-driven enhanced oil recovery is currently regulated). In response to this bill, and under new rules and an inter-agency memorandum of understanding proposed on March 11, the RRCT would have jurisdiction over most forms of underground injection of anthropogenic CO_2 for geologic storage, whereas the TCEQ would have an advisory role in groundwater protection. Concerns about the secondary environmental impacts of projects that use carbon capture and sequestration to reduce greenhouse gas emissions to the atmosphere are primary drivers for the legislation and rulemaking. If adopted as proposed, the rule changes and memorandum of understanding would go into effect on March 30. For more information, contact Paul Moore at 512.879.6642 or *pmoore@zephyrenv.com*.

TCEQ Delays Adoption of Section 185 Fees

On March 15, the TCEQ announced plans to delay the adoption of the "Severe Ozone Nonattainment Area Failure to Attain Fee Rule". Called the Section 185 rule after its citation in the Clean Air Act Amendments of 1990, the rule would have imposed a fee of $5,000 (in 1990 dollars) on major sources located in a severe nonattainment area that failed to attain the 1-hour ozone standard if those sources emit NO_X or VOCs in excess of 80 percent of their 1997 baseline emissions. The delay is related to EPA's recognition that the Houston/Galveston/Brazoria area (the only part of Texas designated as not attaining the 1-hour standard) now appears to be meeting the standard and to EPA's resulting decision not to find that Texas has failed to submit revisions to the clean air plan for this area. According to EPA, eight other nonattainment areas in other states are affected by this decision. For more information, contact Ed Fiesinger at 281.668.7353 or *efiesinger@zephyrenv.com*.

TCEQ Modifies the Houston HRVOC Cap Allocation Method

On March 10, the TCEQ revised its Highly Reactive Volatile Organic Compound Emissions Cap and Trade rule (the HECT rule) to correct inequities in the rule and to further reduce HRVOC emissions in the Houston area. The original method by which highly reactive volatile organic compound (HRVOC) emission allowances were allocated was based on a source's "level of activity" and was found, in practice, to be grossly inequitable. To ensure that well controlled sources are not penalized by the HECT rule, the revised method divides sources into industrial sectors (chemicals, polymers, refining, and terminals) and bases a source's allowances on its "uncontrolled" emissions. The rule revision also reduces the total HRVOC emissions cap by 25 percent, incrementally from 2014 to 2017. For more information, contact Ed Fiesinger at 281.668.7353 or *efiesinger@zephyrenv.com*.

Texas Governor Recommends Harris Area Retain Fine Particle Attainment Status

On February 4, Texas Governor Rick Perry recommended in a letter to EPA Region 6 that all of the Houston-Galveston-Brazoria area be designated as attainment and in compliance with the national air quality standards for fine particulate matter ($PM_{2.5}$). Compliance with the standards has largely been achieved through voluntary measures implemented in areas of eastern Harris County where regional monitors had previously recorded levels of $PM_{2.5}$ at or exceeding the standard. These measures included paving roads and parking areas and replacing railroad switching engines with new models fueled with low sulfur diesel fuels. Local area governments plan additional paving activities, drainage improvement projects, and landscaping projects for 2010 and 2011 to further reduce airborne $PM_{2.5}$. For more information, contact Michele Foss at 281.668.7342 or *mfoss@zephyrenv.com*.

FROM THE PRESIDENT

The Forecast is for More Sunshine

On Day One of his administration, President Obama issued a "Memorandum on Transparency and Open Government," calling for more transparent, participatory, and collaborative government. An early example of such transparency is the website that provides abundant detail on the American Reinvestment and Recovery Act (ARRA), or "the Stimulus" — see *www.recovery.gov*.

With the information provided on this website, it's possible to quickly see where ARRA funds are being spent, to find information about upcoming ARRA projects, and to see which firms have won contracts to execute ARRA projects. The administration has since applied this approach to all federal spending with the creation of another website, *www.usaspending.gov*. The administration promises further efforts to make the Federal government transparent and to make all data that the government manages readily accessible to the public.

Government interest in transparency is hardly new; scarcely eight years ago President Bush signed into law the Sarbanes-Oxley Act — a far-reaching government initiative aimed at providing greater information to investors and the public in general about the financial health of corporations. However, the trend toward government-mandated transparency is clearly accelerating and will have significant implications for the regulated community. I was struck to see that this issue of *Currents* includes no fewer than four news briefs that serve as examples of how information gathered by the government will immediately and publicly reflect on all parties involved — see "OSHA Flashes Work Fatality News on Agency Website," "EPA Makes TSCA Chemicals Inventory Available Free Online," "CEQ Provides Guidance to Make NEPA Process More Transparent," and "SEC Provides Climate Change Disclosure Guidance."

Many firms have already been addressing so-called "environmental liabilities" in the financial data they provide to investors, but having to account for risks posed by climate change to a company's operations and profitability is certainly something new.

Similarly, almost all large corporations have been promoting "environmental stewardship" to their stakeholders and communities. But, now with government data about worker safety and chemical emissions even more readily available to the public, companies will need to show that their actual compliance history matches their goals and public relations messaging.

One of the very first Federal programs that used public disclosure as a policy tool in the environmental arena was the Toxics Release Inventory, implemented by the Emergency Planning and Community Right-to-Know Act of 1986. Arguably, this program has had a significant effect on reducing the emissions of toxic chemicals since no company wants to be known as a "polluter" compared to its peers and competitors. It seems apparent to me that there will now be a lot more public scrutiny of how well businesses operate with respect to environmental and other public concerns. The forecast is definitely for more sunshine!

Joe Zupan
President

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.

Currents is published quarterly by Zephyr Environmental Corporation, is edited by David Cabe, and designed by Allen Griffith of Eye 4 Design. Current and past issues of this newsletter are available at our website. For more information about *Currents*, or to add your name to our subscription list, please email: currents@zephyrenv.com or visit www.zephyrenv.com.

zephyr®
environmental corporation
consulting • training • data systems
www.zephyrenv.com

Corporate Headquarters
2600 Via Fortuna
Suite 450
Austin, Texas 78746

PRST STD
U.S.
POSTAGE PAID
AUSTIN,TEXAS
PERMIT NO.
1501

Visit Zephyr's web sites: www.zephyrenv.com and www.HazMatAcademy.com

acronyms >>> continued from page 1

To receive "enforcement discretion" for unauthorized emissions, the level of detail a company must provide to make "affirmative defenses" of their SSM emissions varies from state to state. Depending on the state, companies could be required to demonstrate that they have 1) promptly reported their excess emissions, 2) used best operating practices to minimize emissions, 3) operated equipment consistent with good engineering practices, 4) minimized the duration of the excess emissions events, 5) quantified and speciated the SSM emissions, and 6) shown no recurring patterns of excess emissions.

What makes an SSM emission reportable also varies from state to state. Generally, the duration of the emissions event is a factor in determining reportabilty, but this, too, varies from one state to the next. And, of course, the magnitude of the emissions is considered. Texas, for example, requires formal notification from the company if the emissions exceeded a defined "reportable quantity".

While most states, with the exception of Maryland, have provisions for reporting SSM emissions and making "affirmative defense" demonstrations, very few require that either SSM or MSS emissions be authorized through the air permitting process. Again, Texas is more prescriptive than most states about permitting MSS emissions, focusing on those emissions that would be considered routine. Following a published schedule, Texas, so far, has received hundreds of MSS applications from the refining and chemical industries. Applications for other industrial sources (carbon black plants, electric services, and oil, gas transmission & distribution) are due in future years.

Like Texas, New Mexico requires that companies include in their permit applications emissions that occur during periods of routine or predictable startup, shutdown, and scheduled maintenance. New Mexico's permitting guidance, however, recognizes that certain MSS-type activities might not result in excessive emissions including emission spikes of short duration compared to emissions limit's averaging time and combustion emissions lower due to cooler temperatures during startup.

For companies that roll existing MSS emissions into their air permits, the question of whether or not these newly identified emissions could be considered "major modifications", triggering federal New Source Review (NSR) has become a very real issue. Even though MSS emissions may be nothing new to the companies and were presumptively authorized, Texas, for example, maintains that MSS emissions that have never reported, or inventoried, or considered for the purposes of modeling attainment with the National Ambient Air Quality Standards must be compared to the NSR applicability thresholds.

The permitting of MSS emissions is in its infancy with no consistency among the states about how they should be treated. While EPA is moving to make state rules consistent regarding how SSM emissions are dealt with, no one can say what the future holds for permitting.

Ed Fiesinger
Principal

© 2010, All Rights Reserved, Zephyr Environmental Corporation. No part of this publication may be copied or used without the permission of Zephyr Environmental Corporation.