

*Regulatory Environmental Outlook for
2010: Current and New Issues for
the New Year*

A&WMA Gulf Coast Chapter

December 1, 2009

Paul C. Sarahan, Counsel

Overview

- TCEQ Regulatory Activity
- Effect of Sunset Review on TCEQ
- EPA Regulatory Activity

TCEQ Regulatory Activity

- Predominantly Air-Related
 - *Supplemental Leak Detection*
 - *VOC LDAR Alternative Work Practice*
 - *Public Participation for Air Permitting*
 - *NSR Reform*
 - *Flexible Permits*
 - *Qualified Facilities*
 - *Particulate Matter*

Supplemental Leak Detection

- Proposed voluntary program
- Implements HB 1526
- Incentives
- Establishes conditions
- Exceptions
- Repairs w/in 30 days; no nuisances

VOC LDAR Alternative Work Practice

- Allows use of optical gas imaging instruments to detect leaks
- Incorporates federal requirements
- Includes training, QA, and notice requirements
- Mixed approach allowed

Public Participation for Air Permitting

- EPA's limited approval/disapproval
- TCEQ Rule Proposal
 - *Covers PALs and flex permits*
 - *Expands publication requirements to all minor NSR permit applications*
 - *Specifies persons to whom notice must be given*
 - *Expands possibility of public meeting*
 - *Apps filed on or after July 1, 2010*

NSR Reform

- EPA Position
 - *Deletion of references to federal program*
 - *Applicability and definitions*
 - *MSS and Baseline Actual Emissions*
 - *Pollution Control Projects (PCP) Standard Permit*

NSR Reform

- TCEQ Rulemaking
 - *Re-adopt EPA's definition of BACT, address relaxation of an enforceable limitation;*
 - *Clarify references for major stationary sources and major modifications to EPA definitions;*
 - *Clarify definition of baseline actual emission rate, and inclusion of MSS emissions when determining baseline actual emissions; and*
 - *Clarify existing requirements to obtain and comply with a PAL to meet FNSR requirements.*

Flexible Permits

- EPA Position
 - *Allows for minor or major modifications*
 - *Circumvents federal NSR requirements*
 - *Insufficient monitoring and recordkeeping*
- TCEQ Position
 - *Significant emission reductions at previously grandfathered sources*
 - *Will clarify significance calculation as baseline actual to PTE*

Flexible Permits

- TCEQ Rulemaking
 - *remove insignificant emissions factor (i.e. 9 percent of total allowable emissions);*
 - *ensure FNSR applicability requirements included in flexible permit reviews, and that requirements of the appropriate FNSR permitting program are met when triggered;*
 - *apply the FNSR applicability concepts of modification, project, and contemporaneous netting during technical review of a flexible permit;*

Flexible Permits

- TCEQ Rulemaking
 - *require that MSS emissions count against the Flexible Permit cap;*
 - *ensure terms and conditions of previously issued permits or more stringent terms and conditions are added to flexible permit;*
 - *ensure rules contain legally enforceable and replicable procedures for establishing caps;*
 - *provide emissions limitations based on a 12-month rolling average*

Qualified Facilities

- EPA Position
 - *Definitions*
 - *Intra-plant trades; netting and double-counting*
- TCEQ Rulemaking
 - *clarify requirement to apply federal netting during technical review of a qualified facility;*
 - *ensure federal NSR requirements are met when triggered;*
 - *clarify that a qualified claim will be denied if federal NSR is triggered;*
 - *provide emissions limitations based on 12-month rolling average*
 - *address definitions*

Particulate Matter

- EPA requests designation recommendation
 - *Based on 2006-2008 monitoring data, which indicates Clinton Drive monitor may be violating the annual PM_{2.5} NAAQS of 15.0 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$)*
- TCEQ Work Session
- Exceptional events

Effect of Sunset Review

- Air permitting process
 - *Cumulative effects*
 - *EPA oversight*
- Compliance history
- Enforcement authority
- Monitoring activities
- Public participation
- Water, water, water

EPA Regulatory Activity

- GHG Reporting
- GHG Regulation
- Fugitive Emissions Rule
- Additional Issues
 - *Chemical Management Reform*
 - *Increasing Brownfield funding*
 - *Resolving backlog of pending civil rights / environmental justice complaints*
 - *Monitoring Toxic Outdoor Air Pollution*
 - Deer Park Junior High School, Young Scholars Academy

Conclusion

FULBRIGHT
& Jaworski L.L.P.
Attorneys at Law

*When You Think
Environmental,
Think Fulbright.™*