Zak Covar - Cleveland Editorial Board - "When it Comes to Ozone, Cuyahoga County has Gone As Low As It Can Go"

From: 
To: 

[Signature]

[Address]
Article below from the Editorial Board of the Cleveland paper. Why is everyone yelling at EPA? Achieving the NAAQS is not EPA’s primary responsibility. It is your primary responsibility States (see 42 U.S.C. § 7407(a)) . You are the ones responsible for achieving the NAAQS. You can’t continue accepting primary responsibility for achieving the NAAQS and then turn around and expect the Federal government, who doesn’t have ultimate responsibility, to achieve the NAAQS for you. It’s not their problem. It’s your problem.

If someone would accept responsibility for mowing my lawn—what would be the impetus for me to go out and mow it? We as States have accepted responsibility for mowing the Federal government’s lawn for them. They just tell us how close they want it mowed. And they have told us we can’t use a lawn mower or string-trimmer to cut the lawn (e.g. regulate federally preempted sources or interstate/international pollutant transport). Get out your scissors, a ruler, and some motrin—this is going to take a while.

Time to align responsibility and authority. Time to transform the SIP process. We can make it happen.

For more information on the SIP transformation effort, see www.sipreform.com.

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Editorial: When it comes to ozone, Cuyahoga County has gone as low as it can go
By The Plain Dealer Editorial Board
March 29, 2010, 4:31AM

To the federal government, eliminating ozone might seem like a game of limbo:
Lower the ozone level and watch counties bend over backward to meet it. They can't. State and local air-quality officials here in Northeast Ohio say they have reduced smog as much as they possibly can. The federal government ought to turn up its hearing aid and heed their pleas. Instead, the U.S. Environmental Protection Agency proposes to lower ozone standards even more. If the feds have their way, the new standard would be 60 to 70 parts per billion, down from 75 parts per billion, perhaps by this August. Someone has to put the kibosh on this foolish idea. Eliminating ozone is an admirable goal. Many youngsters and some adults suffer from respiratory problems, particularly in the summer, when smoggy days can be pure misery.

But continuing to lower the standard, forcing local governments to slap on onerous regulations that make it difficult for counties to retain and attract businesses, will do little or nothing to vanquish smog. Cuyahoga County can't meet the 75 parts per billion standard set in 2008, so how is it supposed to meet a more stringent one? It's not for lack of trying. State and local officials have tackled the low-hanging fruit with little to show for it. Officials established the notorious E-check program, which monitors automobile emissions. They have demanded that companies add new pollution controls. Cleveland passed an ordinance against idling motor vehicles. None of it has worked.

Even banning gasoline-powered cars wouldn't make a difference. Former EPA officials have argued convincingly that this urban region's natural wind patterns and hot summer days make ground-level ozone inevitable. There might be something that the federal government could do from its vantage point -- demanding cleaner cars and businesses comes to mind -- but the locals have more than done their part. The U.S. EPA should put away its limbo stick and come up with solutions to the problem of ozone that make sense for Northeast Ohio.
From: Pettie Burnett
To: Mark Vickery
Date: 3/24/2010 12:37 PM
Subject: presumably private ph#
From: Keith Sheedy
To: exec Barnett Shale; Mark Vickery; Zak Covar
Date: 3/26/2010 4:21 PM
Subject: Fwd: flower_mound32010.pdf
Attachments: flower_mound32010.pdf

From our discussion today, here is the DSHS study of the occurrence of cancer in and near the Town of Flower Mound.

>>> Shannon Ethridge 3/26/2010 10:28 AM >>>
As requested, Carrie is still working on the DISH blood/urine analysis study. Susan thinks they will have everything completed in a couple of weeks.

>>> "Prosperie, Susan" <Susan.Prosperie@dshs.state.tx.us> 3/26/2010 10:23 AM >>>
here u go
Summary of Investigation into the Occurrence of Cancer
Zip Codes 75022 and 75028, Flower Mound
Denton County, Texas
March 8, 2010

Executive Summary

In response to citizen concerns about a possible elevation of cancer in Flower Mound, Texas, the Department of State Health Services (DSHS) Texas Cancer Registry (TCR) examined the occurrence of cancer in Flower Mound zip codes 75022 and 75028. Local citizens were concerned that benzene from gas drilling could be causing cancer.

Since benzene has been shown to have an association with leukemia and non-Hodgkin’s lymphoma in the scientific literature, and to a lesser degree with childhood leukemias, the TCR evaluated complete, statewide incidence data (1998–2007) for childhood leukemia subtypes (0-19 years), all age leukemia subtypes, and all age non-Hodgkin’s lymphoma. Breast and childhood brain/central nervous system (CNS) cancers were included in the analyses because of separate requests from concerned citizens.

The TCR also evaluated the preliminary numbers of cancer cases occurring from 2007–2009 received as of March 2010, compared to 1998-2007 for the same cancer sites. In order to protect patient confidentiality with such a small area of analysis (zip codes) and some rare cancer sites, data from 2007 were included with preliminary 2008 and 2009 data. No statistical evaluation could be conducted since 2008-2009 data are not yet complete statewide, and sufficient population data are not yet available. It should also be noted that because of the large year-to-year variation in the number of cases that may occur, it is impossible to draw any definitive conclusions from only three years of data.

Investigation of 1998–2007 Flower Mound Zip Codes 75022 and 75028:

There was no evidence of a cancer cluster in zip codes 75022 and 75028. However, there was a slight elevation of female breast cancer, which is consistent with the population growth in the area and likely higher mammography use compared to Texas overall.

The analysis of incidence data for zip codes 75022 and 75028, Flower Mound, Texas, from January 1, 1998–December 31, 2007, found childhood leukemia subtypes, childhood brain/CNS cancer subtypes, all age leukemia subtypes, and all age non-Hodgkin’s lymphoma to be within expected ranges in both males and females. A statistically significant elevation was found among females for breast cancer in zip code 75028 and both zip codes combined (but not 75022 alone).

Because of the inherent limitations associated with these types of investigations, we cannot determine with any degree of certainty why the number of breast cancer cases is higher than expected among females in zip code 75028. Breast cancer is the most
commonly diagnosed cancer in Texas and the U.S., and these results may in part be explained by the rapid increase in the Flower Mound population.

**Investigation of Preliminary 2007–2009 Flower Mound Zip Codes 75022 and 75028:**

From 2007–2009, there were 5 cases of childhood leukemia (all subtypes) and 2 brain/CNS cancers. Two additional childhood cancer cases reported to the TCR by concerned citizens were found to reside in zip codes other than 75022 and 75028 at the time of diagnosis, so they could not be included in the preliminary data. Comparison of the average annual number of cases between 2007-2009 and 1998-2007 does not take into account the population growth that occurred in this area between the time periods; more people usually results in more cases. Compared to 1998-2007, the average annual number of cases between 2007-2009 remained essentially unchanged for all childhood cancers. The average annual number of cases of all age acute leukemias, non-Hodgkin's lymphoma and breast cancer were somewhat higher from 2007 to 2009.

The TCR does not usually review preliminary data, such as that from 2008 and 2009, particularly when those data only cover a few years. Cancer data can vary substantially from year-to-year. Caution must be used when interpreting preliminary data such as these because the number of cases represented in the preliminary data could change. The receipt of additional information or a subsequent review of the cancer reports for coding validity/quality assurance purposes might change the status of the preliminary cases reported, impacting the actual number of cases.

**Recommendations:**
Due to the high level of citizen concern about the environment and more recently diagnosed cancer cases, as well as having only preliminary TCR 2008–2009 data available at this time, the TCR will continue to confirm cases reported from the public, work with the DSHS Environmental & Injury Epidemiology & Toxicology Unit, and update these analyses as new data become available.
Summary of Investigation into the Occurrence of Cancer
Zip Codes 75022 and 75028, Flower Mound
Denton County, Texas
March 8, 2010

Background:
In response to citizen concerns about a possible elevation of cancer in Flower Mound, Texas, the Department of State Health Services (DSHS) Texas Cancer Registry (TCR) examined the occurrence of cancer in Flower Mound zip codes 75022 and 75028. Local citizens were concerned that benzene from gas drilling could be causing cancer. Since benzene has been shown to have an association with leukemia and non-Hodgkin’s lymphoma in the scientific literature, and to a lesser degree with childhood leukemias, the TCR evaluated complete, statewide incidence data (1998–2007) for childhood leukemia subtypes (0-19 years), all age leukemia subtypes, and all age non-Hodgkin’s lymphoma. Breast and childhood brain/central nervous system (CNS) cancers were included in the analyses because of separate requests from concerned citizens. The TCR also evaluated the preliminary numbers of cancer cases occurring from 2007–2009, (received as of March 2010) compared to 1998-2007 for the same cancer sites. In order to protect patient confidentiality with such a small area of analysis (zip codes) and some rare cancer sites, data from 2007 were included with preliminary 2008 and 2009 data.

Incidence data, as opposed to mortality data, are the best indicator of the occurrence of cancer in an area because they accurately show the number and types of cancer diagnosed each year. In Texas, incidence data meet national standards for high quality data. The rest of this report examines the investigative methods the TCR used, the results of the investigation, recommendations, and general information on cancer risk factors.

Methodology:
According to the National Cancer Institute, a cancer cluster is a greater than expected number of cancers among people who live or work in the same area and who develop or die from the same cancer within a short time of each other. A cancer cluster investigation is designed with the specific intention of addressing the question “Is there more cancer in the area or population of concern than we would expect?” While these types of investigations can be used to investigate whether the amount of cancer in a community is more than expected, they cannot determine either the cause of the cancers or whether the cancers are associated with any environmental or other risk factors.

The TCR follows guidelines recommended by the Centers for Disease Control and Prevention for investigating these types of concerns and often works with the DSHS Environmental and Injury Epidemiology and Toxicology Unit and other state and federal agencies. In order to determine whether an elevation in cancer is occurring and whether further study is needed, epidemiologic and toxicologic evidence are considered. Such evidence may include the statistical significance of the findings; the magnitude of the observed effect; risk factors; documented exposures; the toxicity of the exposures; plausible routes by which exposures can reach people (ingesting, touching, breathing); the actual
amount of exposure; absorption into the body; the time from exposure to development of cancer; and the consistency of the findings over time. The occurrence of rare cancers or unlikely cancers in certain age groups also may justify the need for additional study.

If further study is indicated, the TFR and the Environmental and Injury Epidemiology and Toxicology Unit will determine the feasibility of conducting an epidemiologic study and whether a study could be designed to see if the cancer(s) can be related to the exposure of concern. Very few cancer cluster investigations in the United States proceed to this stage.

To determine whether a statistically significant excess of cancer existed in the geographic areas of concern, the number of observed cases were compared to what would be "expected" by applying state cancer rates to the 2000 Census population data for the area being investigated. Calculating the expected number(s) of cancer cases takes into consideration the race, sex, and ages of people who are diagnosed with cancer. This is important because cancer rates can be substantially different by race, sex, and age. If we are trying to determine if there is more or less cancer in a community compared to the rest of the state, we must make sure that the difference in cancer rates is not simply due to one of these factors.

The attached Tables 1–6 present the number of observed cases for males and females, the number of "expected" cases, the standardized incidence ratio (SIR), and the corresponding 99% confidence interval. The SIR is simply the number of observed cases divided by the number of "expected" cases. When the SIR of a selected cancer is equal to 1.0, then the number of observed cases is equal to the expected number of cases, based on the incidence in the rest of the state. When the SIR for a particular cancer is less than 1.0, there are fewer cases of that type of cancer in the area than we would have expected. Conversely, an SIR greater than 1.0 indicates that there are more cases of a specific type of cancer in the area than we would have expected. Because an excess of cancer may occur by chance alone, the role of chance is considered in the statistical analysis. To determine whether an SIR greater than 1.0 or less than 1.0 is statistically significant, or outside the variation likely to be due to chance, confidence intervals are also calculated.

A 99% confidence interval is used for determining statistical significance and takes into account the likelihood that the result occurred by chance. Because there is variability in the number of cancer cases that occur each year and some uncertainty in calculating the expected number of cases, the confidence interval provides a range in which we would expect the SIR to fall 99% of the time. If the confidence interval for the SIR contains a range that includes 1.0, the result is not statistically significant and the observed number of cases is within a range that is considered no different than the expected number of cases. The confidence intervals are particularly important when trying to interpret small numbers of cases. When dealing with a small number of cases and a small population (for example, a zip code), the confidence interval will be wide. Wide confidence intervals reflect greater uncertainty in the results. Additionally, if only one or two cases are expected for a particular cancer, then the report of three or four observed cases will result in a very large SIR. A more extreme example would be the situation where the expected number of cases was less than 1.0; in such an instance 1 case can result in a very high SIR. As long as the 99% confidence interval contains 1.0, the SIR is still within the range one might expect and is, therefore, not statistically significant.
Table 7 presents both the numbers of observed cases and the average annual numbers of cases for the same cancer sites from 2007–2009 (received as of March 5, 2010) compared to cases occurring from 1998–2007. In order to protect patient confidentiality with such a small area of analysis (zip codes) and some rare cancer sites, data from 2007 were included with preliminary 2008 and 2009 data. No statistics evaluation could be conducted since 2008-2009 data are not yet complete statewide, and sufficient population (denominator) data are not yet available. It should also be noted that because of the large year-to-year variation in the number of cases that may occur, it is impossible to draw any definitive conclusions from only three years of data.

Results:
Investigation of 1998–2007 Flower Mound Zip Codes 75022 and 75028:

The analysis of incidence data for zip codes 75022 and 75028, Flower Mound, Texas, from January 1, 1998–December 31, 2007, found childhood leukemia subtypes, childhood brain/CNS cancer subtypes, all age leukemia subtypes, and all age non-Hodgkin’s lymphoma to be within expected ranges in both males and females. A statistically significant elevation was found among females for breast cancer in zip code 75028 and both zip codes combined. Analysis summaries are presented in Tables 1–6.

Investigation of Preliminary 2007–2009 Flower Mound Zip Codes 75022 and 75028:

From 2007–2009, there were 5 cases of childhood leukemia (all subtypes) and 2 childhood brain/CNS cancers. Two additional childhood cancer cases reported to the TCR by concerned citizens were found to reside in zip codes other than 75022 and 75028 at the time of diagnosis, so they could not be included in the preliminary data. Comparison of the average annual number of cases between 2007-2009 and 1998-2007 does not take into account the population growth that occurred in this area between the time periods; more people usually results in more cases. Compared to 1998-2007, the average annual number of cases between 2007-2009 remained essentially unchanged for all childhood cancers. The average annual number of cases of all age acute leukemias, non-Hodgkin’s lymphoma and breast cancer were somewhat higher from 2007 to 2009.

Discussion:

1998-2007 Data

All leukemias (all ages and subtypes) and lymphomas fell within the expected ranges. Elevated SIRs could in part be explained by the small number of cases relative to the low number of expected cases. This is reflected in the wide ranges in the 99% confident intervals, as wide confidence intervals indicate high variability. Only the number of cases of breast cancer in females was found to be statistically higher than what would be expected.

Because of the inherent limitations associated with these types of investigations, we cannot determine with any degree of certainty why the number of breast cancer cases is higher than expected among females in zip code 75028. Breast cancer is the most commonly diagnosed
cancer in Texas and the United States, and these results may in part be explained by the rapid increase in the Flower Mound population. With a larger population we would expect to find more cases of cancer (Figure 1). Since a cluster analysis requires detailed population data broken down by age, race/ethnicity and sex, the most recent population data the TCR can use at the zip code level for this analysis are from 2000. However, population estimates for Flower Mound indicate that the population has increased from 44,173 in 1998 to 68,337 in 2007 (http://www.census.gov/popest/cities/cities.html). As a result, the expected number of cases is likely underestimated. Although this would be true for all cancer sites, because breast cancer is much more common, it might have contributed to the statistically significant result.

Other possible explanations for the result include chance and population demographics. Although the SIR was statistically significantly greater than 1.0, elevations can still occur by chance. In addition, the population in Flower Mound has higher average education and income levels compared to the state overall. As a result, mammography screening rates tend to be higher and identify more cases of breast cancer than communities with less screening.

Preliminary 2007-2009 Data

Although the average numbers of cancer cases for most cancers were higher from 2007-2009 compared to 1998-2007, it cannot be assumed that the number of cases over 10 years will be statistically significantly greater than expected. In addition, the rapid growth in the Flower Mound population will also influence the average annual number of cases and needs to be considered when comparing the two different time periods.

The TCR does not usually review preliminary data, particularly when those data only cover a few years. Cancer data can vary substantially from year-to-year, for instance you may find 8 cases one year and 2 the next; thus, to obtain an idea of what is happening in a community it is important to consider the number of cases captured over many years (generally, 10 years is preferable). Additionally, when using preliminary data such as these, comparative statewide data, the most appropriate data for statistical comparison, are not available. Extreme caution must be used when interpreting preliminary data such as these because the number of cases represented in the preliminary data could change. The receipt of additional information or a subsequent review of the cancer reports for coding validity/quality assurance purposes might change the status of the preliminary cases reported, impacting the actual number of cases.

Recommendations:

Due to the high level of citizen concern about the environment and more recently diagnosed cancer cases, as well as having only preliminary TCR 2008-2009 data available at this time, the TCR will continue to confirm cases reported from the public, work with the DSHS Environmental & Injury Epidemiology & Toxicology Unit, and update these analyses as new data become available.

Information on Cancer and Cancer Risk Factors:

Overall, the occurrence of cancer is common, with approximately two out of every five persons alive today predicted to develop some type of cancer in their lifetime. In Texas, as in the United States, cancer is the leading cause of death for people under the age of 85.
Also, cancer is not one disease, but many different diseases. Different types of cancer are generally thought to have different causes. If a person develops cancer, it is probably not due to one factor but to a combination of factors such as heredity; diet, tobacco use, and other lifestyle factors; infectious agents; chemical exposures; and radiation exposures. Although cancer may impact individuals of all ages, it primarily is a disease of older persons with over one-half of cancer cases and two-thirds of cancer deaths occurring in persons 65 and older. Finally, it takes time for cancer to develop, between 10–40 years can go by between the exposure to a carcinogen and a diagnosis of cancer.4

The chances of a person developing cancer as a result of exposure to an environmental contaminant are slight. Most experts agree that exposure to pollution, occupational, and industrial hazards account for fewer than 10% of cancer cases.5 The Harvard Center for Cancer Prevention estimates 5% of cancer deaths are due to occupational factors, 2% to environmental pollution and 2% to ionizing/ultraviolet radiation.6 In contrast, the National Cancer Institute estimates that lifestyle factors such as tobacco use and diet cause 50 to 75 percent of cancer deaths.7 Eating a healthy diet and refraining from tobacco are the best ways to prevent many kinds of cancer. It is estimated that one-third of all cancer deaths in this country could be prevented by eliminating the use of tobacco products. Additionally, about 25 to 30 percent of the cases of several major cancers are thought to be associated with obesity and physical inactivity.8

**Known Risk Factors for Cancers Examined in This Investigation:**
The following is a brief discussion summarized from the American Cancer Society and the National Cancer Institute about cancer risk factors for the specific cancers studied in this investigation.9,10

The occurrence of cancer may vary by race/ethnicity, gender, type of cancer, geographic location, population group, and a variety of other factors. Scientific studies have identified a number of factors for various cancers that may increase an individual’s risk of developing a specific type of cancer. These factors are known as risk factors. Some risk factors we can do nothing about, but many are a matter of choice.

**Childhood Lymphoid Leukemia:**
Possible risk factors for childhood lymphoid leukemia include having a sibling with leukemia; being white or Hispanic; being exposed to x-rays before birth; being exposed to radiation; past treatment with chemotherapy or radiation therapy; or having certain genetic disorders, such as Down syndrome.

**Childhood Acute Myeloid Leukemia:**
Possible risk factors for childhood acute myeloid leukemia include having a sibling, especially a twin, with leukemia; Hispanic ethnicity; being exposed to cigarette smoke or alcohol before birth; having a history of myelodysplastic syndrome; past treatment with chemotherapy or radiation therapy; being exposed to ionizing radiation or chemicals such as benzene; or having certain genetic disorders, such as Down syndrome, Fanconi’s anemia, or Noonan’s syndrome.
Acute Lymphocytic Leukemia (ALL):
Possible risk factors for ALL include the following: being male, being white, being older than 70, past treatment with chemotherapy or radiation therapy, radiation exposure, certain viral infections, or having a certain genetic disorder such as Down syndrome.

Chronic Lymphocytic Leukemia (CLL):
Possible risk factors for CLL include the following: being middle-aged or older, male, or white; a family history of CLL or cancer of the lymph system; or having exposure to herbicides or insecticides including Agent Orange, an herbicide used during the Vietnam War.

Acute Myeloid Leukemia (AML):
Possible risk factors for AML include the following: being male; smoking, especially after age 60; treatment with chemotherapy or radiation therapy in the past; treatment for childhood ALL in the past; being exposed to atomic bomb radiation or the chemical benzene; or having a history of a blood disorder such as myelodysplastic syndrome. Scientists estimate that as many as 1 out of 5 cases of AML is caused by smoking.

Chronic Myeloid Leukemia (CML):
Being exposed to high-dose radiation (such as being a survivor of an atomic bomb blast or nuclear reactor accident) is the only known environmental risk factor for chronic myeloid leukemia.

Non-Hodgkin’s Lymphoma: Risk factors for non-Hodgkin’s lymphoma include infection with Helicobacter pylori, human immunodeficiency virus (HIV), human T-cell leukemia/lymphoma virus (HTLV-I), Epstein-Barr virus, or hepatitis C virus. Other possible risk factors include aging, certain genetic diseases, radiation exposure, immune-suppressant drugs after organ transplantation, benzene exposure, the drug Dilantin, exposure to certain pesticides, a diet high in meats or fat, obesity, or certain chemotherapy drugs.

Childhood Brain/CNS Cancer: The vast majority of brain cancers happen for no apparent reason and are not associated with anything which the child or parent did or didn’t do, or anything that the child was exposed to in the environment. The only established risk factors for brain cancer are ionizing radiation and family history.

Breast Cancer: Simply being a woman is the main risk factor for developing breast cancer. Breast cancer can affect men, but this disease is about 100 times more common among women than men. White women are slightly more likely to develop breast cancer than are African-American women, but African American women are more likely to die of this cancer because they are often diagnosed at an advanced stage when breast cancer is harder to treat and cure. Other risk factors for breast cancer include aging, presence of genetic markers such as the BRCA1 and BRCA2 genes, personal and family history of breast cancer, previous breast biopsies, previous breast irradiation, diethylstilbestrol therapy, oral contraceptive use, not having children, hormone replacement therapy, drinking alcohol, and obesity. Secondhand smoke may also be a risk factor. Currently, research does not show a link between breast cancer risk and environmental pollutants such as the pesticide DDE (chemically related to DDT) and PCBs (polychlorinated biphenyls).
For additional information about cancer, visit the "Resources" link on our web site at http://www.dshs.state.tx.us/cr/.

Questions or comments regarding this investigation may be directed to Ms. Brenda Mokry, Environmental & Injury Epidemiology & Toxicology Unit, at 512-776-3606 or Brenda.Mokry@dshs.state.tx.us.

References:
Table 1
Number of Observed and Expected Cancer Cases and Race Adjusted Standardized Incidence Ratios,
Selected Childhood Cancers (Aged 0-19 Years), Zip Code 75022, Flower Mound, TX, 1998-2007

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<tr>
<th>Site</th>
<th>Males 0-19</th>
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<td></td>
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<td>SIR</td>
<td>99% CI</td>
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Note: The SIR (standardized incidence ratio) is defined as the number of observed cases divided by the number of expected cases. The latter is based on race-, sex-, and age-specific cancer incidence rates for Texas during the period 1998-2007.
The SIR has been rounded to the first decimal place.

*Significantly higher than expected at the p<0.001 level.
**Significantly lower than expected at the p<0.01 level.

Prepared by:
Brenda J. Molloy, Epidemiologist
Texas Cancer Registry Branch
Department of State Health Services
02/24/2010
Table 2
Number of Observed and Expected Cancer Cases and Race Adjusted Standardized Incidence Ratios, Selected Childhood Cancers (Aged 0-19 Years), Zip Code 75028, Flower Mound, TX, 1998-2007

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<th>Site</th>
<th>Males 0-19</th>
<th>Females 0-19</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Observed</td>
<td>Expected</td>
</tr>
<tr>
<td>Lymphoid Leukemias</td>
<td>3</td>
<td>2.6</td>
</tr>
<tr>
<td>Acute Myeloid Leukemia</td>
<td>0</td>
<td>0.5</td>
</tr>
<tr>
<td>Chronic Myeloproliferative Diseases</td>
<td>0</td>
<td>0.2</td>
</tr>
<tr>
<td>Myelodysplastic Syndrome &amp; Other</td>
<td>0</td>
<td>0.1</td>
</tr>
<tr>
<td>Myeloproliferative Diseases</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unspecified and Other Specified Leukemias</td>
<td>1</td>
<td>0.1</td>
</tr>
<tr>
<td>Ependymomas and Choroid Plexus Tumor</td>
<td>0</td>
<td>0.2</td>
</tr>
<tr>
<td>Astrocytomas</td>
<td>3</td>
<td>1.3</td>
</tr>
<tr>
<td>Intracranial &amp; Intraspinal Embryonal Tumors</td>
<td>1</td>
<td>0.6</td>
</tr>
<tr>
<td>Other Gliomas</td>
<td>1</td>
<td>0.5</td>
</tr>
<tr>
<td>Other Specified Intracranial &amp; Intraspinal Neoplasms</td>
<td>0</td>
<td>0.0</td>
</tr>
<tr>
<td>Unspecified Intracranial &amp; Intraspinal Neoplasms</td>
<td>0</td>
<td>0.0</td>
</tr>
</tbody>
</table>

Note: The SIR (standardized incidence ratio) is defined as the number of observed cases divided by the number of expected cases. The latter is based on race, sex, and age-specific cancer incidence rates for Texas during the period 1998-2007. The SIR has been rounded to the first decimal place.

*Significantly higher than expected at the p<0.01 level.
**Significantly lower than expected at the p<0.01 level.

Prepared by:
Brenda J. Mckey, Epidemiologist
Texas Cancer Registry Branch
Department of State Health Services
02/24/2010
### Table 3
Number of Observed and Expected Cancer Cases and Race Adjusted Standardized Incidence Ratios, Selected Childhood Cancers (Aged 0-19 Years), Zip Codes 75022 & 75028, Flower Mound, TX, 1998-2007

<table>
<thead>
<tr>
<th>Site</th>
<th>Males 0-19</th>
<th>Females 0-19</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Observed</td>
<td>Expected</td>
</tr>
<tr>
<td>Lymphoid Leukemias</td>
<td>7</td>
<td>3.5</td>
</tr>
<tr>
<td>Acute Myeloid Leukemia</td>
<td>0</td>
<td>0.7</td>
</tr>
<tr>
<td>Chronic Myeloproliferative Diseases</td>
<td>0</td>
<td>0.2</td>
</tr>
<tr>
<td>Myelodysplastic Syndrome &amp; Other</td>
<td>0</td>
<td>0.1</td>
</tr>
<tr>
<td>Myeloproliferative Diseases</td>
<td>0</td>
<td>0.1</td>
</tr>
<tr>
<td>Unspecified and Other Specified Leukemias</td>
<td>1</td>
<td>0.2</td>
</tr>
<tr>
<td>Ependymomas and Choroid Plexus Tumor</td>
<td>0</td>
<td>0.2</td>
</tr>
<tr>
<td>Astrocytomas</td>
<td>5</td>
<td>1.8</td>
</tr>
<tr>
<td>Intracranial &amp; Intraspinal Embryonal Tumors</td>
<td>1</td>
<td>0.8</td>
</tr>
<tr>
<td>Other Gliomas</td>
<td>1</td>
<td>0.6</td>
</tr>
<tr>
<td>Other Specified Intracranial &amp; Intraspinal Neoplasms</td>
<td>0</td>
<td>0.1</td>
</tr>
<tr>
<td>Unspecified Intracranial &amp; Intraspinal Neoplasms</td>
<td>0</td>
<td>0.1</td>
</tr>
</tbody>
</table>

| Site                                      | Observed   | Expected     | SIR    | 99% CI     |
|-------------------------------------------|------------|--------------|
| Lymphoid Leukemias                        | 4          | 2.8          | 1.4    | 0.2 - 4.5  |
| Acute Myeloid Leukemia                    | 1          | 0.5          | 1.9    | 0.0 - 13.8 |
| Chronic Myeloproliferative Diseases       | 0          | 0.2          | 0.0    | 0.0 - 21.8 |
| Myelodysplastic Syndrome & Other          | 0          | 0.1          | 0.0    | 0.0 - 54.9 |
| Myeloproliferative Diseases               |            |              |        |            |
| Unspecified and Other Specified Leukemias | 0          | 0.1          | 0.0    | 0.0 - 40.7 |
| Ependymomas and Choroid Plexus Tumor      | 0          | 0.3          | 0.0    | 0.0 - 19.3 |
| Astrocytomas                              | 1          | 1.6          | 0.6    | 0.0 - 4.7  |
| Intracranial & Intraspinal Embryonal Tumors | 0          | 0.4          | 0.0    | 0.0 - 13.1 |
| Other Gliomas                             | 1          | 0.5          | 2.0    | 0.0 - 14.8 |
| Other Specified Intracranial & Intraspinal Neoplasms | 0 | 0.1 | 0.0 | 0.0 - 69.7 |
| Unspecified Intracranial & Intraspinal Neoplasms | 0 | 0.1 | 0.0 | 0.0 - 60.0 |

Note: The SIR (standardized incidence ratio) is defined as the number of observed cases divided by the number of expected cases. The latter is based on race-, sex-, and age-specific cancer incidence rates for Texas during the period 1998-2007. The SIR has been rounded to the first decimal place.

*Significantly higher than expected at the p<0.01 level.
**Significantly lower than expected at the p<0.01 level.

Prepared by:
Brenda J. Mokry, Epidemiologist
Texas Cancer Registry Branch
Department of State Health Services
02/24/2010
Table 4  
Number of Observed and Expected Cancer Cases and Race Adjusted Standardized Incidence Ratios, Selected Cancers (All Ages), Zip Code 75022, Flower Mound, TX, 1998–2007

<table>
<thead>
<tr>
<th>Males</th>
<th>Observed</th>
<th>Expected</th>
<th>SIR</th>
<th>99% CI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acute Lymphocytic Leukemia</td>
<td>4</td>
<td>1.2</td>
<td>3.2</td>
<td>0.5 – 10.1</td>
</tr>
<tr>
<td>Chronic Lymphocytic Leukemia</td>
<td>1</td>
<td>1.8</td>
<td>0.6</td>
<td>0.0 – 4.1</td>
</tr>
<tr>
<td>Acute Myeloid Leukemia</td>
<td>0</td>
<td>1.6</td>
<td>0.0</td>
<td>0.0 – 3.4</td>
</tr>
<tr>
<td>Chronic Myeloid Leukemia</td>
<td>1</td>
<td>0.8</td>
<td>1.2</td>
<td>0.0 – 9.0</td>
</tr>
<tr>
<td>Aleukemic, Subleukemic, &amp; NOS</td>
<td>0</td>
<td>0.2</td>
<td>0.0</td>
<td>0.0 – 25.3</td>
</tr>
<tr>
<td>Non-Hodgkin’s Lymphoma</td>
<td>7</td>
<td>8.9</td>
<td>0.8</td>
<td>0.2 – 1.9</td>
</tr>
<tr>
<td>Breast</td>
<td>2</td>
<td>0.6</td>
<td>3.3</td>
<td>0.2 – 15.4</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Females</th>
<th>Observed</th>
<th>Expected</th>
<th>SIR</th>
<th>99% CI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acute Lymphocytic Leukemia</td>
<td>2</td>
<td>1.0</td>
<td>2.0</td>
<td>0.1 – 9.1</td>
</tr>
<tr>
<td>Chronic Lymphocytic Leukemia</td>
<td>1</td>
<td>1.1</td>
<td>0.9</td>
<td>0.0 – 6.7</td>
</tr>
<tr>
<td>Acute Myeloid Leukemia</td>
<td>3</td>
<td>1.3</td>
<td>2.2</td>
<td>0.3 – 8.2</td>
</tr>
<tr>
<td>Chronic Myeloid Leukemia</td>
<td>1</td>
<td>0.6</td>
<td>1.7</td>
<td>0.0 – 12.6</td>
</tr>
<tr>
<td>Aleukemic, Subleukemic, &amp; NOS</td>
<td>0</td>
<td>0.2</td>
<td>0.0</td>
<td>0.0 – 27.5</td>
</tr>
<tr>
<td>Non-Hodgkin’s Lymphoma</td>
<td>7</td>
<td>6.4</td>
<td>1.1</td>
<td>0.3 – 2.7</td>
</tr>
<tr>
<td>Breast</td>
<td>68</td>
<td>59.3</td>
<td>1.2</td>
<td>0.8 – 1.6</td>
</tr>
</tbody>
</table>

Note: The SIR (standardized incidence ratio) is defined as the number of observed cases divided by the number of expected cases. The latter is based on race, sex, and age-specific cancer incidence rates for Texas during the period 1998–2007. The SIR has been rounded to the first decimal place.

*Significantly higher than expected at the p<0.01 level.
**Significantly lower than expected at the p<0.01 level.

Prepared by:
Brenda J. Mokry, Epidemiologist
Texas Cancer Registry Branch
Department of State Health Services
02/24/2010
Table 5
Number of Observed and Expected Cancer Cases and Race Adjusted Standardized Incidence Ratios, Selected Cancers (All Ages), Zip Code 75028, Flower Mound, TX, 1998-2007

<table>
<thead>
<tr>
<th></th>
<th>Males</th>
<th>Females</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Observed</td>
<td>Expected</td>
</tr>
<tr>
<td>Acute Lymphocytic Leukemia</td>
<td>3</td>
<td>3.3</td>
</tr>
<tr>
<td>Chronic Lymphocytic Leukemia</td>
<td>3</td>
<td>3.5</td>
</tr>
<tr>
<td>Acute Myeloid Leukemia</td>
<td>3</td>
<td>3.5</td>
</tr>
<tr>
<td>Chronic Myeloid Leukemia</td>
<td>1</td>
<td>1.8</td>
</tr>
<tr>
<td>Acute, Subleukemic, &amp; NOS</td>
<td>2</td>
<td>0.5</td>
</tr>
<tr>
<td>Non-Hodgkin's Lymphoma</td>
<td>29</td>
<td>19.2</td>
</tr>
<tr>
<td>Breast</td>
<td>3</td>
<td>1.2</td>
</tr>
</tbody>
</table>

Note: The SIR (standardized incidence ratio) is defined as the number of observed cases divided by the number of expected cases. The latter is based on race, sex, and age-specific cancer incidence rates for Texas during the period 1998-2007. The SIR has been rounded to the first decimal place.

*Significantly higher than expected at the p<0.01 level.
**Significantly lower than expected at the p<0.01 level.

Prepared by:
Brenda J. Molzay, Epidemiologist
Texas Cancer Registry Branch
Department of State Health Services
02/24/2010

Investigation #10002
Table 6
Number of Observed and Expected Cancer Cases and Race Adjusted Standardized Incidence Ratios, Selected Cancers (All Ages), Zip Codes 75022 & 75028, Flower Mound, TX, 1998-2007

<table>
<thead>
<tr>
<th>Males</th>
<th>Site</th>
<th>Observed</th>
<th>Expected</th>
<th>SIR</th>
<th>99% CI</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Acute Lymphocytic Leukemia</td>
<td>7</td>
<td>4.6</td>
<td>1.5</td>
<td>0.5 - 3.8</td>
</tr>
<tr>
<td></td>
<td>Chronic Lymphocytic Leukemia</td>
<td>4</td>
<td>5.4</td>
<td>0.8</td>
<td>0.1 - 2.4</td>
</tr>
<tr>
<td></td>
<td>Acute Myeloid Leukemia</td>
<td>3</td>
<td>5.1</td>
<td>0.6</td>
<td>0.1 - 2.2</td>
</tr>
<tr>
<td></td>
<td>Chronic Myeloid Leukemia</td>
<td>2</td>
<td>2.7</td>
<td>0.8</td>
<td>0.0 - 3.5</td>
</tr>
<tr>
<td></td>
<td>Leukemic, Subleukemic, &amp; NOS</td>
<td>2</td>
<td>0.7</td>
<td>3.0</td>
<td>0.2 - 14.0</td>
</tr>
<tr>
<td></td>
<td>Non-Hodgkin's Lymphoma</td>
<td>36</td>
<td>28.1</td>
<td>1.3</td>
<td>0.8 - 1.9</td>
</tr>
<tr>
<td></td>
<td>Breast</td>
<td>5</td>
<td>1.8</td>
<td>2.7</td>
<td>0.6 - 7.7</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Females</th>
<th>Site</th>
<th>Observed</th>
<th>Expected</th>
<th>SIR</th>
<th>99% CI</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Acute Lymphocytic Leukemia</td>
<td>4</td>
<td>3.5</td>
<td>1.1</td>
<td>0.2 - 3.6</td>
</tr>
<tr>
<td></td>
<td>Chronic Lymphocytic Leukemia</td>
<td>3</td>
<td>3.2</td>
<td>0.9</td>
<td>0.1 - 3.4</td>
</tr>
<tr>
<td></td>
<td>Acute Myeloid Leukemia</td>
<td>5</td>
<td>4.4</td>
<td>1.1</td>
<td>0.2 - 3.2</td>
</tr>
<tr>
<td></td>
<td>Chronic Myeloid Leukemia</td>
<td>3</td>
<td>1.9</td>
<td>1.6</td>
<td>0.2 - 5.7</td>
</tr>
<tr>
<td></td>
<td>Leukemic, Subleukemic, &amp; NOS</td>
<td>0</td>
<td>0.6</td>
<td>0.0</td>
<td>0.0 - 9.5</td>
</tr>
<tr>
<td></td>
<td>Non-Hodgkin's Lymphoma</td>
<td>19</td>
<td>20.2</td>
<td>0.9</td>
<td>0.5 - 1.7</td>
</tr>
<tr>
<td></td>
<td>Breast</td>
<td>251</td>
<td>193.3</td>
<td>1.3*</td>
<td>1.1 - 1.5</td>
</tr>
</tbody>
</table>

Note: The SIR (standardized incidence ratio) is defined as the number of observed cases divided by the number of expected cases. The latter is based on race-, sex-, and age-specific cancer incidence rates for Texas during the period 1998-2007. The SIR has been rounded to the first decimal place.

*Significantly higher than expected at the p<0.01 level.
**Significantly lower than expected at the p<0.01 level.

Prepared by:
Brenda J. Molloy, Epidemiologist
Texas Cancer Registry Branch
Department of State Health Services
02/24/2010
<table>
<thead>
<tr>
<th>Site</th>
<th>Total Cases</th>
<th>Total Cases</th>
<th>Average Annual Cases</th>
<th>Average Annual Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Childhood Lymphoid Leukemias (0-19 Years)</strong></td>
<td>4*</td>
<td>11</td>
<td>1.3</td>
<td>1.1</td>
</tr>
<tr>
<td><strong>Childhood Acute Myeloid Leukemia (0-19 Years)</strong></td>
<td>1</td>
<td>1</td>
<td>0.3</td>
<td>0.1</td>
</tr>
<tr>
<td><strong>Childhood Brain/Central Nervous System (0-19 Years)</strong></td>
<td>2</td>
<td>9</td>
<td>0.7</td>
<td>0.9</td>
</tr>
<tr>
<td><strong>Acute Lymphocytic Leukemia (All Ages)</strong></td>
<td>5</td>
<td>11</td>
<td>1.7</td>
<td>1.1</td>
</tr>
<tr>
<td><strong>Chronic Lymphocytic Leukemia (All Ages)</strong></td>
<td>2</td>
<td>7</td>
<td>0.7</td>
<td>0.7</td>
</tr>
<tr>
<td><strong>Acute Myeloid Leukemia (All Ages)</strong></td>
<td>7</td>
<td>6</td>
<td>2.3</td>
<td>0.6</td>
</tr>
<tr>
<td><strong>Chronic Myeloid Leukemia (All Ages)</strong></td>
<td>4</td>
<td>5</td>
<td>1.3</td>
<td>0.5</td>
</tr>
<tr>
<td><strong>Other Leukemia Subtypes (All Ages)</strong></td>
<td>2</td>
<td>2</td>
<td>0.7</td>
<td>0.2</td>
</tr>
<tr>
<td><strong>Non-Hodgkin's Lymphoma (All Ages)</strong></td>
<td>25</td>
<td>55</td>
<td>8.3</td>
<td>5.5</td>
</tr>
<tr>
<td><strong>Female Breast (All Ages)</strong></td>
<td>118</td>
<td>251</td>
<td>39.3</td>
<td>25.1</td>
</tr>
</tbody>
</table>

*TCR has heard from parents of two children diagnosed prior to moving to Flower Mound or diagnosed after moving elsewhere.

Cancer analysis file as of 03/07/2010.
Figure 1. Newly Diagnosed Female Breast Cancer Cases and Population Increases in Flower Mound, Texas, 1998-2007
From: Zak Covar  
To: Rubinstein, Carlos, Seaton, Curti  
Date: 3/23/2010 6:29 PM  
Subject: Re: Ghg

If the rest get it there way, we will consider allowing them to move to texas to find work...I said consider

-----Original Message-----
From: Carlos Rubinstein  
To: Seaton, Curtis <CSEATON@tceq.state.tx.us>  
Cc: Covar, Zak <ZCovar@tceq.state.tx.us>

Subject: Re: Ghg

Well 5 makes a point!

Sent on the Sprint® Now Network from my BlackBerry®

-----Original Message-----
From: Seaton, Curtis(Curtis Seaton)  
To: Rubinstein, Carlos <CRubinst@tceq.state.tx.us>

Subject: Ghg

Gosh, imagine that, we lost ghg resolution vote. Had 5 with us though!
April 1, 2010

Summary of EPA Water Program Meeting
On Thursday morning Miguel Flores and leaders on his staff meet with leadership from the Office of Water to discuss several items of interest in our program efforts. No mention was made of the administrator's letter.

The meeting Agenda covered the following:
1. EPA priorities for the year (offered by Miguel)
   National:
   - Working with TCEQ to coordinate Federal and State performance measures.
   - Partnership enhanced by funding increases in 106 appropriations
   - Improved data management
   - Urban Waters Initiative - Using environment quality improvements to drive economic development (EPA's focus will be on disadvantaged neighborhoods).
   - Environmental Justice - improving the dialogue on environmentalism
   - Cleaning up America's Waters program agenda
   Region 6:
   - Nutrient Criteria
   - Bacteria impairments
   - Expansion of MS4s - Management practices and Low Impact Development
   - Pesticides General Permit implementation
   - TMDLs
   - 319 Program - focus on source water protection

2. TCEQ priorities for the year (offered by L'Oreal)
   - Sunset Review
   - Water Quality Standards adoption by the Commission and approval by EPA
   - Implementation Procedures approval
   - Permit timeframes - improvement in the percentage on time (need EPA to do their part)
   - Drinking Water - responding to "extensive" rule changes and Federal mandates
   - Pesticides general permit implementation
   - 303(d) listing strategies that reflect actual impairment and not based on inappropriate presumed uses
   - Requested data management help from EPA on ICIS
   - Requested funding to implement new programs and mandated program changes (examples: WET; Pesticides GP; Stormwater; Drinking water; TMDL)

3. Permits
   - General statements about Implementation Procedures. Included some discussion of WET but clear commitments from TCEQ to provide permits with WET limits and quickly to provide WET permit language to EPA for discussion and hopefully approval so that permits can be issued. No major concerns expressed by EPA and clear indications that they are eager to work with Texas to move forward on backlogged permit objections
   - Discussed that TCEQ has gone as far as we can on help. Disapproval will not help and the whole program should not be judge by a few permits we may disagree about.
   - Discussion of chlorine concerns related to discharges. Suggestion made by EPA to have Chlorine limits
   - Pesticides General Permit - EPA commitment to provide fact sheet when possible
• TCEQ commitment to submit new permit language on 316 (b) to try again to get EPA approval on backlogged permit objections
• TCEQ plan to submit new CAFO rule by year end

4. TMDLs
• Status of Border TMDL presented and plans for May meeting discussed
• TMDL “pace” status presented – plans for a future meeting to quantify expected results for 2010

5. Drinking Water
• SDWIS data management discuss
• New rule requirements discussed
Brian, thanks for the kind words. It means a great deal to me.

Mark

>>> Brian Christian 3/24/2010 8:43 AM >>>
Sir--I just wanted to send a brief note of thanks for your comments yesterday in the deputies' meeting. I very much appreciated you highlighting all of the huge issues that the agency is dealing with. More importantly, I appreciated the depth of concern you showed in the meeting (and that you show on an ongoing basis) for the well-being of your managers and every employee. I am very proud to work at this agency and for you. Please don't hesitate to let me know if I can be of service.

Brian
From: Zak Covar
to: terry.zrubek@governor.state.tx.us
date: 3/30/2010 11:02 AM
subject: Re: give me a buzz

Want some tire shoes?

-----Original Message-----
From: Terry Zrubek <terry.zrubek@governor.state.tx.us>
to: Covar, Zak <ZCovar@tceq.state.tx.us>

sent: 3/30/2010 10:53:56 AM
subject: RE: give me a buzz

Just concerned

-----Original Message-----
From: Zak Covar [mailto:ZCovar@tceq.state.tx.us]
sent: Tuesday, March 30, 2010 10:53 AM
to: Terry Zrubek
subject: Re: give me a buzz

Me too...you want me to leave and call?

-----Original Message-----
From: Terry Zrubek <terry.zrubek@governor.state.tx.us>
to: Covar, Zak <ZCovar@tceq.state.tx.us>

sent: 3/30/2010 10:52:00 AM
subject: RE: give me a buzz

Watching it

-----Original Message-----
From: Zak Covar [mailto:ZCovar@tceq.state.tx.us]
sent: Tuesday, March 30, 2010 10:49 AM
to: Terry Zrubek
subject: Re: give me a buzz

It's up right now in agenda

-----Original Message-----
From: Terry Zrubek <terry.zrubek@governor.state.tx.us>
to: Covar, Zak <ZCovar@tceq.state.tx.us>

sent: 3/30/2010 10:47:09 AM
subject: give me a buzz

About the waste tire item
Want some tire shoes?

Just concerned

Me too...you want me to leave and call?

Watching it

Its up right now in agenda

About the waste tire item
From: Zak Covar
to: terry.zrubek@governor.state.tx.us
date: 3/30/2010 10:57 AM
Subject: Re: give me a buzz

Will holler later... this is proposal so we have time. Don't think we are proposing to change much. What are you concerned about?

-----Original Message-----
From: Terry Zrubek <terry.zrubek@governor.state.tx.us>
To: Covar, Zak <ZCovar@tceq.state.tx.us>
Sent: 3/30/2010 10:53:56 AM
Subject: RE: give me a buzz

Just concerned

-----Original Message-----
From: Zak Covar [mailto:ZCovar@tceq.state.tx.us]
Sent: Tuesday, March 30, 2010 10:53 AM
To: Terry Zrubek
Subject: Re: give me a buzz

Me too... you want me to leave and call?

-----Original Message-----
From: Terry Zrubek <terry.zrubek@governor.state.tx.us>
To: Covar, Zak <ZCovar@tceq.state.tx.us>
Sent: 3/30/2010 10:52:00 AM
Subject: RE: give me a buzz

Watching it

-----Original Message-----
From: Zak Covar [mailto:ZCovar@tceq.state.tx.us]
Sent: Tuesday, March 30, 2010 10:49 AM
To: Terry Zrubek
Subject: Re: give me a buzz

Its up right now in agenda

-----Original Message-----
From: Terry Zrubek <terry.zrubek@governor.state.tx.us>
To: Covar, Zak <ZCovar@tceq.state.tx.us>
Sent: 3/30/2010 10:47:09 AM
Subject: give me a buzz

About the waste tire item
From: Zak Covar
to: terry.zrubek@governor.state.tx.us
Date: 3/30/2010 10:52 AM
Subject: Re: give me a buzz

Me too...you want me to leave and call?

-----Original Message-----
From: Terry Zrubek <terry.zrubek@governor.state.tx.us>
To: Covar, Zak <ZCovar@tceq.state.tx.us>
Sent: 3/30/2010 10:52:00 AM
Subject: RE: give me a buzz

Watching it

-----Original Message-----
From: Zak Covar [mailto:ZCovar@tceq.state.tx.us]
Sent: Tuesday, March 30, 2010 10:49 AM
To: Terry Zrubek
Subject: Re: give me a buzz

Its up right now in agenda

-----Original Message-----
From: Terry Zrubek <terry.zrubek@governor.state.tx.us>
To: Covar, Zak <ZCovar@tceq.state.tx.us>
Sent: 3/30/2010 10:47:08 AM
Subject: give me a buzz

About the waste tire item
From: Zak Covar
To: terry.zrubek@governor.state.tx.us
Date: 3/30/2010 10:49 AM
Subject: Re: give me a buzz

It's up right now in agenda

-----Original Message-----
From: Terry Zrubek <terry.zrubek@governor.state.tx.us>
To: Covar, Zak <ZCovar@tceq.state.tx.us>

Sent: 3/30/2010 10:47:09 AM
Subject: give me a buzz

About the waste tire item
The Honorable Calvin Tillman  
Mayor, Town of DISH  
5413 Tim Donald Road  
DISH, Texas 76247  

Dear Mayor Tillman:  

Thank you for your March 12, 2010 letter regarding air quality concerns in the Town of DISH. The Texas Commission on Environmental Quality (TCEQ) is committed to addressing your concerns. Our organizations both play an important role in protecting the citizens of Texas.

With regard to the seven day testing plan, we simply wanted to engage you and your colleagues to develop the best testing plan possible. A formal "sign-off" on the testing plan is not essential, but we welcome comments and input in any form you feel is appropriate. In order to have another "set of eyes" on this project, we have also asked that our partners at the U.S. Environmental Protection Agency take an active role in the sampling initiative.

You state that TCEQ's position has shifted over the past several months and you assert that this is due to the influence by the Texas Pipeline Association. Let me assure you that the TCEQ's position has remained consistent regarding these issues. From the beginning of this effort in 2007, TCEQ has stated that short-term and long-term data is needed to fully evaluate what actions are necessary and appropriate to protect human health and safeguard the environment. In fact, we have retested all of the sites addressed in the January 27th study. Results of these tests are pending. We will continue to aggressively monitor these and other sites throughout the Barnett Shale area.

In addition to the proposed monitoring event, TCEQ has also placed six additional air investigator positions in our Dallas/Fort Worth Regional Office. The TCEQ continues to address complaints quickly, and as you may know, TCEQ is taking enforcement action when warranted. Work on the installation of the stationary continuous monitor in DISH is also progressing.

In closing, it is my sincere desire to continue working with you to resolve these issues, and my invitation for you to participate in the proposed monitoring event and future actions remains open.

Sincerely,

Mark R. Vickery, P.G.  
Executive Director
From: Mark Vickery
To: Sadlier, John
Date: 3/29/2010 12:53 PM
Subject: Fwd: Re: Monitor

>>> < 

3/28/2010 8:05 AM >>>

Mark,

I had the town secretary call Coserv, hopefully that helps. I am excited to get the monitor up and running. I am hopeful someone within TCEQ will show me how to access it on the internet. Atmos has been driving around with a monitor, I am assuming to make sure our roads are not producing the toxins. Although, they are certainly too far for benzene too travel to the site. I would be interested in that data if they were to share it with you. I received your letter and spoke to Carl Edlund with the EPA. I would suggest that we let the permanent monitor run for a while and then discuss the seven day test again. Thanks.

Calvin Tillman
Mayor, DISH, TX

"Those who say it can not be done, should get out of the way of those that are doing it"

-----Original Message-----
From: Mark Vickery <MVICKERY@tceq.state.tx.us>
To: 
Sent: Fri, Mar 26, 2010 5:15 pm
Subject: Monitor

Hey Mayor, I wanted to follow up on the message I left you. You may already be ware, but we were able to get the electrical hookup completed. Installation f the Auto GC is moving ahead. I have also attached a PDF of my letter back to ou. Never sure how long it takes to get the hard copy delivered.

thx Mark
thx Ramon!

>>> Ramon Alvarez <  3/29/2010 12:02 PM >>>
Dear Keith and Mark,

Please see link below, regarding some questionable statements made by Ed Ireland during a capitol briefing where he tried to paint his group as the go-to source for the facts.


Regards,

Ramon

Ramón Alvarez, Ph.D
Senior Scientist
Environmental Defense Fund
44 East Ave, Suite 304
Austin, TX 78701

www.edf.org<http://www.edf.org/> 

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fyi only

>>> Daphne McMurrer 3/31/2010 12:53 PM >>>
Contractor talked to Mayor.......

Mark = Mark Wooton, one of the contractors

>>> <[redacted]· 3/31/2010 10:50 AM >>>
Hello all,

Mayor Tillman visited the DISH site while Mark was out there this morning. Mark gave him a brief tour and the photographer took a few pictures. The Mayor told Mark that it was his understanding that the GC would be collecting valid data within the next 2 weeks. Mark’s response was that he had heard the same thing, but that the GC operations was not his area of responsibility. He did tell the Mayor that Orsat personnel were en route to the site.

Ken, Thanks for your help this morning in getting the Zeno communicating. As soon as we can access the Zeno, Mark can finish verifying the WS/WD operations and raise the sensors package. He will also photo-document the site today.

Take care,

Earle

In a message dated 3/31/2010 10:36:39 A.M. Central Daylight Time, KROZACKY@tceq.state.tx.us writes:

Hi Kristin,

Mark Wooten just called to see about getting the Zeno to DIGI connection configuration finished.
I verified that the DIGI serial port configuration is correct 10.200.4.134 port 2001 and successfully made a Hyperterminal connection.

Chuck,

Mark did not know the password for the Dish Zeno, and the ones we tried did not work.

Can you please send the Zeno password to Mark, and Laura, so that she can set up the Zeno polling.

Mark said the MET is ready to go.

Carol and Amy (ORSAT) are enroute to get the PE PAMS AutoGC online.

Mark also mentioned that Ramiro ?? was around the site this morning with a photographer from Philadelphia.

More as things evolve,

Ken

******************************************************************************

Ken Rozacky
Texas Commission on Environmental Quality (TCEQ)
phone (512) 239-6942 or 512-239-1691  FAX (512)-239-1605
E-mail: krozacky@tceq.state.tx.us
Regular Mail: P.O. Box 13087, MC 165, Austin, Texas 78711-3087
Shipping: 12100 Park 35 Circle, MC 165, Austin, Texas 78753
******************************************************************************
FYI. Ms. Wehlad's reply after our conversation today.
From: Sarah Wehland <Sarah.Wehland@house.state.tx.us>
To: Ricky Anderson <RANDERSO@tceq.state.tx.us>
Date: 3/22/2010 1:40 PM
Subject: RE: UNT Community Meeting

Thank you Mr. Anderson...the e-mail was where I thought it might have landed. Again, thank you for your assistance and have a great visit with you son.

Regards,

Sarah Wehland
Asst. to Rep. Helen Giddings
972-224-6795 (o)
972-228-6796 (f)

-----Original Message-----
From: Ricky Anderson [mailto:RANDERSO@tceq.state.tx.us]
Sent: Friday, March 19, 2010 2:07 PM
To: Sarah Wehland
Subject: UNT Community Meeting

Ms. Wehland,

Representative Giddings called today requesting that I forward you information about the Texas Commission on Environmental Quality (TCEQ) representation at the UNT Community meeting to be held at a future date. I understood from the Representative that a two week notice was to be supplied to your office in advance of this meeting in order to have representatives from the TCEQ and the City of Dallas present to speak and answer questions pertaining to water run-off.

The Representative asked that I provide you our point(s) of contact so they could be called by your office to attend the meeting when a date is determined.

Our points of contact for this meeting will be representatives from our Dallas-Ft. Worth regional office. These representatives will be:

Tony Walker 817-588-5902
Sid Slocum 817-588-5901
Jeff Tate 817-588-5875

If we can be of additional assistance, please let me know.

Ricky Anderson
TCEQ
Assistant to the Deputy Executive Director
512/239-3900
From: Zak Covar
Date: 4/8/2010
Time: 10:00 AM - 11:00 AM
Subject: Mark, Staff re: Barnett Shale update
Place: ED 4213/Back
Attachments: weekly Barnett Shale meetings start time change...
From: Ricky Anderson
To: Covar, Zak
Date: 3/17/2010 11:35 AM
Subject: Fwd: DISH/Eagle Mtn Lake March 17 Update
Attachments: Fwd: DISH/Eagle Mtn Lake March 17 Update

FYI - delays on the monitor...
From: Keith Sheedy
To: exec Barnett Shale; Mark Vickery; Zak Covar
Date: 3/24/2010 11:10 AM
Subject: Good Barnett Shale news

From Dave Sullivan:
CoServ power pole is up at DISH. Should have connection to the trailer today or tomorrow. Orsat could have auto-GC to trailer in a day or so.
Auto-GC at Eagle Mtn Lake is running in its initial 2-wk warm-up mode and should be collecting valid data around April 1.
Come on down

-----Original Message-----
From: Michael Honeycutt
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>
To: Burnett, Pattie <PBURNETT@tceq.state.tx.us>
Sent: 3/30/2010 4:18:52 PM
Subject: Re: Fwd: Birth Outcomes Presentation

I have more info.

>>> Zak Covar 3/30/2010 4:18 PM >>>
She was invited, she should go. Shouldn't have much to add to meeting given we were not part of the study

-----Original Message-----
From: Pattie Burnett
Cc: Honeycutt, Michael <MHoneycu@tceq.state.tx.us>
To: Covar, Zak <ZCovar@tceq.state.tx.us>
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>
Sent: 3/30/2010 3:42:31 PM
Subject: Fw: Fwd: Birth Outcomes Presentation

Zak?
From: Stephanie Bergeron
To: Vickery, Mark
Date: 3/23/2010 11:04 AM
Subject: Re: Fwd: Re: CoServ&DISH site

:)  
-----Original Message-----
From: Mark Vickery
To: Bergeron, Stephanie <SBERGERO@tceq.state.tx.us>

Subject: Fw: Fwd: Re: CoServ&DISH site

yippeee

>>> Stephanie Bergeron 3/23/2010 10:02 AM >>>
You probably heard this already -- FYI.
From: Angela Burnett
To: Bergeron, Stephanie
Date: 3/22/2010 11:32 AM
Subject: Fwd: Re: CoServ&DISH site

Keith provided an update. The electricity is going in this week.

- - NOT INTENDED FOR RELEASE - -
confidential/privileged attorney client communication
exempt from public disclosure
** if you receive this email in error, please notify sender and delete it immediately **

Thanks,
Angela Burnett
Attorney/Team Lead, Contracts
OLS
x6005

>>> Keith Sheedy 3/22/2010 11:28 AM >>>
Dave, I just heard back from CoServ (I believe her name was Lauren Smith, supervisor in the construction division). Their contractor could not provide an exact date, but the power will be installed by the end of this week. I don't know if anything needs to be done so they can install the power pole (i.e., access into the fence), but please have Earle (or whoever else) contact them so we don't miss this window.
Thanks
Keith

Earle's contacts at CoServ:
Shannon Roland is who gave Earle the April 6 date. He has not heard back on a request to move up the date, [1] [2].
Doyle Hawkins is the CoServ engineer who gave Earle the quote.

Earle has an electrician lined up and doesn't expect any timing issues on connecting from pole to trailer.

The fencing contractor has everything up but the gates. He will hang the gates on Monday and then meet Earle at the site on Tuesday March 23. If the fencing is complete, Earle will move the trailer to the pad and leveling & tie-down will be done Tues. Orsat may be able to move the auto-GC to the site on Wed. March 24.

David W. Sullivan, Ph.D.
The University of Texas at Austin
Center for Energy & Environmental Resources
10100 Burnet Rd, Bldg. 133, MC R7100
Austin, TX 78758-4445
Attached is info related to other companies that would be able to handle spent catalyst if the company we discussed this morning would or could not.
Zak Covar - spent catalyst

From: Linda Vasse
To: Ashley K. Wadick; Donna Phillips
Date: 3/26/2010 4:45 PM
Subject: spent catalyst
CC: Nicole Bealle

Without blinking an eye, Nicole was able to rattle off three alternatives in our area for any companies that may be looking for places to take their spent catalyst from petroleum refining (K171 and K172 waste):

Techemet (Pasadena)
http://www.techemet.com/index.html

Duratherm (Texas City)

Eurecat (Pasadena)
http://www.eurecat.fr/
Randy Lee Loftis of Dallas Morning News just called. He is doing a big, far-ranging piece on the Barnett Shale for his paper. He asked for an interview with Mark early next week. As he said, he wants to talk to Mark for a very high-level view of the issue—where it came from, where it is, where it’s going, were his words. I told reporter that I would ask, but that Mark might not be available, and Mark might ask John Sadlier to fill in. The reporter is OK with that, if that is your decision.

Terry
From: John Sadlier
To: Vickery, Mark
Date: 3/18/2010 9:21 AM
Subject: Re: Dish Monitor

Yes, Matt told me yesterday. I up to pouring concrete and building the fence if you're game.

-----Original Message-----
From: Mark Vickery
To: Sadlier, John <JSADLIER@tcaq.state.tx.us>

Sent: 3/18/2010 9:18:30 AM
Subject: Dish Monitor

You and I may have to go wire the puppy up. Seems the Longhorns did not follow bidding procedures and the contractors have been told to stop work.

We may need to do something out of the box to get the monitor up and running.

:(
From: WWW - EXECDIR
To: Keith Sheedy; Zak Covar
Date: 3/23/2010 8:50 AM
Subject: Fwd: White Paper: Pipeline Leak Detection by Mass Balance
Attachments: White Paper: Pipeline Leak Detection by Mass Balance

Pattie suggested that I forward this to you as an FYI.
Thx,
Barbara
From: [commisr@tceq.state.tx.us>, <execdir@tceq.state.tx.us>
To:  
Date: 3/22/2010 3:24 PM
Subject: White Paper: Pipeline Leak Detection by Mass Balance
Attachments: ngas_massbalance.pdf

While pipeline issues typically are under the Texas Railroad Commission, I am sending you the attached white paper on pipeline leak detection as determination of same is becoming an increasingly important environmental issue -- as detailed in the introduction to the paper.

Perhaps you might route this transmittal to the TCEQ engineer who is responsible for greenhouse gas emissions, etc.

Should you have any questions regarding the paper and/or this transmission, please feel free to contact the undersigned.

Thank you.

Dr. Arnold E. Liu, EVP
QUANTUM DYNAMICS, INC.
CAGE 16851

QUANTUM DYNAMICS is a continuous U.S. Defense Logistics Agency "Certified Quality Vendor" and U.S. Navy "Quality / Best Value Contractor."
OVERVIEW:
NATURAL GAS
PIPELINE ACCOUNTING AND
PIPELINE LEAK DETECTION BY MASS BALANCE,
ECONOMIC AND ENVIRONMENTAL
BACKGROUND AND IMPLICATIONS,
THEORY AND HARDWARE IMPLEMENTATION*

Dr. Arnold E. Liu**
QUANTUM DYNAMICS, INC.

Abstract

Due to its abundance and environmental friendliness — when compared with fuel oil or coal — natural gas is emerging as the dominant preferred fuel for the for coming decades. The economic and environmental importance of precise measurement of natural gas is discussed, and the basic theory, techniques and prerequisites of on-line pipeline leak detection by mass balance for natural gas transmission pipelines are described, specifically including measurement equipment, software model and maintenance requirements.

Keywords: calibration, computational pipeline leak detection, flow measurement, equation of state, gas composition, lost and unaccounted for gas (LUGALUAF), mass balance, natural gas transmission pipeline, pipeline inventory, pipeline leak detection, pipeline leak location, pipeline model, pressure measurement, temperature measurement.

* This paper is an enhanced natural gas specific version of the author's previous paper on pipeline leak detection by mass balance available at the Pipeline Safety Trust website, http://www.psttrust.org/for-ar-gr/docs/massbalance_td.pdf.
** Correspondence address: QUANTUM DYNAMICS, INC., 3414 Independence Avenue, Woodland Hills, California 91367 (USA). Telephone (818) 719-0142.
0. INTRODUCTION

Natural gas is emerging as the dominant fuel of the forthcoming decades. This paper provides a short introductory discussion of the advantages of measurement systems and the implementation of computational leak detection in natural gas pipelines. The financial advantages of good measurement systems and the implementation of computational leak detection on natural gas transmission pipelines are discussed. Ancillary, on-line methods of leak detection such as periodic leak surveys or "sniffers", etc., are not considered herein — although such methods may be used in conjunction with computational leak detection.

0.1 Definition: What Constitutes a Leak?

Leakage from a natural gas transmission pipeline is by definition the loss of material such as gas being transported by the transmission pipeline. Hence, the determination of the mass balance of a pipeline is the only practical method of real-time on-line leak detection. The determination of the occurrence of real leakage is thus clearly closely coupled with the minimization of apparent loss of material due to poor flows accounting/messurement.

0.2 Background: Why Do We Need (Improved) Pipeline Measurement/Diagnostics Systems?

Natural gas is the cleanest burning fuel of all common hydrocarbon fuels.1

<table>
<thead>
<tr>
<th>Pollutant</th>
<th>Natural Gas</th>
<th>Fuel Oil</th>
<th>Coal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carbon Dioxide</td>
<td>117,000</td>
<td>154,000</td>
<td>208,000</td>
</tr>
<tr>
<td>Carbon Monoxide</td>
<td>40</td>
<td>33</td>
<td>208</td>
</tr>
<tr>
<td>Nitrogen Oxides</td>
<td>92</td>
<td>448</td>
<td>457</td>
</tr>
<tr>
<td>Sulfur Dioxide</td>
<td>0.6</td>
<td>1,122</td>
<td>2,591</td>
</tr>
<tr>
<td>Particulates</td>
<td>7.0</td>
<td>84</td>
<td>2,744</td>
</tr>
<tr>
<td>Formaldehyde</td>
<td>0.750</td>
<td>0.220</td>
<td>0.221</td>
</tr>
<tr>
<td>Mercury</td>
<td>0.000</td>
<td>0.007</td>
<td>0.015</td>
</tr>
</tbody>
</table>

The combustion of natural gas thus results in almost 30% less carbon dioxide than fuel oil, and just under 45% less carbon dioxide than coal — making natural gas the prime replacement fuel for the latter fuels, and the transition fuel to a more environmentally friendly energy economy.

Moreover, there are abundant domestic reserves in natural gas: the Potential Gas Committee recently increased its estimates of the United States' natural gas reserves by 35%, from 1,532 TCF in 2006 to 2,074 TCF in 2006.2

The recent cancellations of numerous planned coal-fired power plants in favor of their natural gas-fired counterparts are clear indications of the move toward natural gas as a more environmentally friendly fuel. The acquisition of natural gas assets by "big oil" and the massive construction of new natural gas transmission pipelines are clear indicators of the industry's anticipation of the anticipated 50% consumption growth in the forthcoming decades.3

1. Natural Gas 1998: Issues and Trends, DOE/EIA-0580(98), Table 2, p.58.
3. The Majors' Shift to Natural Gas, DOE/EIA, September 2001. Noteworthy, for example, is ExxonMobil's purchase of XTO Energy in December 2005, the largest energy industry acquisition in the past decade.
Natural Gas Pipeline Leak Detection By Mass Balance

Since

- N atural gas is the cleanest burning commonly available hydrocarbon fuel, emitting 30% and 45% less carbon dioxide per energy unit than oil and coal, respectively;
- N atural gas is abundant, with approximately 90 - 100 years of supply domestically available;
- N atural gas is economical, with prices already trending toward $3/MCF levels — which are commonly considered the trigger levels for a 30 TCF/Y annual domestic consumption within 20 years;

natural gas is emerging as the dominant "green" fuel for the forthcoming decades.

However:

- Free atmospheric methane, the primary component of natural gas, is itself a greenhouse gas with approximately 21x the global warming potential (GWP) per unit mass than carbon dioxide.  
- Even though methane emissions account for only 1.1% of total U.S. greenhouse gas emissions, they account for 66% of the greenhouse gas emissions based on global warming potential.

Hence, every natural gas consumption increases,

- It is a finite source of energy that must be conserved and wisely managed; and
- The leakage of methane into the atmosphere must be minimized.

These are clearly measurement intensive challenges.

Natural gas transmission pipeline systems transport billions of dollars per pipeline per annum, often passing through or near densely populated areas / high consequence areas (HCAs). Thus, super priority pipeline measurement systems — and the know-how of their fiscal and environmentally effective application — are required.

1. Provide accurate accounting / custody transfer of the natural gas delivered, providing the financial and data basis for a natural gas energy cr pipeline company's operations;
2. As data inputs to pipeline diagnostic / leak detection systems, to ensure that:
   a. The pipeline is functioning efficiently;
   b. Leaks of pipeline contents is jeopardizing neither
      i. the pipeline system hardware nor pipeline operation,
      ii. the pipeline operator's personnel nor the local population,
      iii. the environment;
   c. Punctures and other unintended pipeline damage resulting from third party excavation activities are promptly detected;

5. www.naturalgas.org/environment/natural-gas.asp
6. Under all circumstances the repair of small leaks is significantly less expensive; than the costs of a major pipeline section blowout resulting from long-term erosion.

For example, the Natural Gas Pipeline Rupture and Fire Near Carlsbad, New Mexico, August 19, 2000, TSB/SPAR-03/01, reports that pieces of a 30" section ejected during the initial explosion of 30" Pipeline 1103 extensively damaged two suspension bridges carrying gas pipelines 234' and 287', respectively, from the edge of the explosion crater. E PNG pipeline 1103 was restored to service until mid-2001.

At each in a leading pipeline at the Sonatrach (Algeria) LNG liquefaction facility led to an explosion on January 19, 2004; led to an explosion that destroyed one of the facility’s eight LNG liquefaction units — with a replacement cost of over $1 billion.

Arnold E. Liu

QUANTUM DYNAMICS, INC.
Natural Gas Pipeline Leak Detection By Mass Balance

"Incidents represent the more serious of the two types of events involving a release of gas. Nearly half of all incidents occurring in HCA's are due to "Third Party Damage"."

d. No theft of pipeline contents is occurring along the length of the pipeline, and to provide early detection of small leaks so that either a. Small "pin-hole" defects may be repaired without shutting down the pipeline, or b. The pipeline can be shut down in an orderly fashion before small defects erode to catastrophic proportions;

7. 12 people - camped on private property approximately 675 feet from the explosion crater died as the result of the 2000 EPNG Pipeline 1103 incident. 13 plant employees were killed in the 2004 Sempra LNG facility explosion.

Understandably, pipeline leakage/asset theft is a major concern of the populace living near existing or planned natural gas transmission pipelines — and the major cause of opposition to new pipeline projects. Conversely, the costs of injuries and deaths resulting from pipeline incidents are a major concern of pipeline operators. In the United States a single fatality results in multi-million dollar settlements to the family of the deceased.

8. The increased use of natural gas is considered by EPA to be a prime means for the mitigation of global warming. Plans for new co-fired power plants are being canceled in favor of natural gas-fired stations. However, especially in view of the rapid growth of natural gas consumption, natural gas pipeline leakage and Lost and Unaccounted for Gas (TUGS) may be of particular concern. Methane, the primary component of natural gas, is 21x worse than CO₂ as a greenhouse gas.


The PHMSA divides the gas releases into two broad categories:

- Incident. Any event meeting the criteria in the definition in 49 CFR 191.2. An event that involves a release of gas from a pipeline and (i) A death, or personal injury necessitating in-patient hospitalization; or (ii) Estimated property damage, including the cost of gas lost, of the operator or others, over $100,000 or more. A "Near miss" event that is significant, in the judgment of the operator, even though it did not meet the criteria above. HCA means High Consequence Area, as defined in 49 CFR 192.903.

- Leak. An unintentional escape of gas from the pipeline. This would include any unintentional release of gas from a pipeline that does not result in an injury, death, or over $100,000 in property damage.

Third party damage occurs dynamically. A small co-occidental detection by a splicer pigging or aerial survey is extremely unlikely. A bus, a real-time methodology of on-line leak detection is clearly entitled, especially to near areas where the high percentage of incidents that are caused by third party activities.

Timely, real-time detection of leaks requires an early real-time on-line pipeline leak detection will allow initiation of corrective action that will usually prevent small leaks from evolving to major incidents.

10. Nigerian NPC has been the victim of ongoing thefts of fuel from its pipeline systems. Any theft has resulted in fatalities, e.g. some 150 - 200 people were killed while attempting to collect gasoline from a pipeline near Ibadan on May 2, 2006.

NBC Nightly News (March 25, 2008, 18:30 EST) reported that between 100,000 and 300,000 barrels of oil are stolen from tankers every day — a quintessence to some $10 - $30 million. The theft has been especially significant, since Nigeria lives approximately 85% of its national budget — used to finance the war effort or land rehabilitation — from oil. Thus, pipeline theft and/or sabotage can have staggering national security ramifications. N otice that the size distribution could not even be accurately quantified.

Early detection and iteration of illegal tapping points allows the prompt dispatch of law enforcement to sites before major losses can occur.

11. I detected early, small leaks can be frequently be erroneously repaired using saddle patches or cementing-type patches without shutting down the pipeline — and incur the resulting transportation revenue loss and loss of supply during peak demand periods. I f the pipeline section is (temporarily) repaired using a patching methodology, then the adjacent sections should be subject to increased scrutiny, since corrosion is seldom localized.
Natural Gas Pipeline Leak Detection By Mass Balance

3. To minimize operator liabilities for the consequences of pipeline "incidents", as described above, potentially reducing insurance costs;

4. To minimize escalation liabilities that may result from news media accountability codes, such as Texas H.B. 1922, making operators accountable for Lost and Unaccounted for Gas ("LUGs");

5. To minimize widespread costs to the Nation resulting from panic buying in the wake of major pipeline interruptions;

6. To protect against and/or provide early notification of concerted attacks against a nation's energy infrastructure / delivery system;

7. To comply with government mandates such as NTSB Safety Recommendations P-05-5 (December 23, 2005) to PHMSA, to "Require operators to install computer-based leak detection systems on all lines unless engineering analysis determines that such a system is not necessary. (P-05-5)"

   Note that PHMSA recently issued an Advisor's Bulletin to remind "pipeline operators of the importance of prompt and effective leak detection capability in protecting public safety and the environment." PHMSA-2009-0421 / Federal Register, January 26, 2010. While the latter is primarily concerned with liquid pipelines, it has learnt that the same advice is applicable to natural gas pipelines.

8. To safeguard the safety and security of the population with respect to pipelines — and smooth the way for pipeline approvals.

9. To void fines and civil penalties that the PHMSA might levy over and above the repair costs and payments to third parties for resulting property damage, injury and/or death.

In addition to pipeline specific regulations, there are also significantly tightened requirements for improved pipeline accounting / leak detection for companies wishing to fulfill ISO 9000/9001/9002 and/or Sarbanes-Oxley compliance, e.g., with respect to "planning," "monitoring of routine business activities and key business processes," and "risk assessment."

12. Texas H.B. 1922 originally proposed a "hard cap" of 5% of LUG. The fact that a "hard cap" was negotiated out of the final version (since enacted as Texas Natural Resources Code 95.002) of the bill may be an indication of the severity of the LUG problem.

13. The EPNG Pipeline 1103 explosion on August 18, 2000 at the Pecos River crossing, NM, not only killed 12 people, but also resulted in supply shortages that sent natural gas prices to record highs in Winter-Spring 2000-2001.

   Similarly, the PNM arch-April 2000 leak in its North Slope pipeline resulted in the temporary loss of 5% of the Nation's domestic oil supply, and a large spike in retail oil prices worldwide.


   For example, it is well known that pipeline systems have been targeted by terrorist attacks in the US, and oil and gas pipelines were systematically attacked by the guerrillas in Cuba. (Presented at the 15th National Pipeline Conference October 1997. The Los Angeles Times commented on July 11, 2007, p. A2) that "Oil and gas pipelines around the world have become attractive targets for radical groups seeking to wreak havoc in an already economically disturbing energy supplies."

   Of special concern is the potential for systemic disruption of natural gas supply to gas-fired electrical generation could result in long-term losses of electrical generation that could not be easily replaced via the electrical grid - which would have significant consequences to national economies.

   Also see Footnote 10.

15. It appears that PHMSA has recently been imposing fines of approximately $2.5 million per event for major occurrences of leakage, e.g., the EPNG Pecos River Crossing, the BP North Slope, etc. While such fines are not significant costs to large oil and gas companies, one should simply note that the incremental cost for systems capable of providing early detection / leak detection is only a very small fraction of the cost of any leak / leak detection "incident" - and the pipeline operator has the daily advantage of providing superior and equitable fiscal accounting.

   Indeed, by decreasing "allowance for measurement error" the supplier / transporter can bid fractionally lower contract prices — and thereby capture larger markets here.
Natural Gas Pipeline Leak Detection By Mass Balance

0.3 Fiscal Significance of Improving Natural Gas Measurement Systems

Petroleum and/or natural gas/petrochemical leaks are the currency of all major energy companies, and pipeline systems can be via weda sv auta. into which said companies place their valuables via the pipeline packing/loading process. Just as all companies do not tolerate banking inaccuracies, or theft in financial processes, energy companies cannot afford to neglect the underlying basis of all of their finances, a accurate pipeline measurement / accounting, nor the auditing thereof via pipeline diagnostic / leak detection systems.16

TABLE 2. The Analogies Between Financial and Petroleum/Petrochemical Accounting

<table>
<thead>
<tr>
<th>FINANCIAL ACCOUNTING</th>
<th>FLOWA COUNTING</th>
</tr>
</thead>
<tbody>
<tr>
<td>Currency</td>
<td>Fluid, e.g. natural gas</td>
</tr>
<tr>
<td>Vault</td>
<td>Pipeline</td>
</tr>
<tr>
<td>Monetary Accounting</td>
<td>Flow Measurement/Accouting</td>
</tr>
<tr>
<td>Fiscal Audits</td>
<td>Pipeline Leak Detection</td>
</tr>
</tbody>
</table>

The following table provides an indication of the direct costs of poor natural gas measurement at industrial and transmission flowrates:

TABLE 3. ANNUAL COST OF MEASUREMENT ERROR / LUGS

<table>
<thead>
<tr>
<th>FLOWRATE</th>
<th>MEASUREMENT ERROR</th>
</tr>
</thead>
<tbody>
<tr>
<td>MCF/D</td>
<td>0.1%</td>
</tr>
<tr>
<td>-----------</td>
<td>-------</td>
</tr>
<tr>
<td>250</td>
<td>574</td>
</tr>
<tr>
<td>500</td>
<td>574</td>
</tr>
<tr>
<td>750</td>
<td>574</td>
</tr>
<tr>
<td>1,000</td>
<td>574</td>
</tr>
<tr>
<td>2,500</td>
<td>574</td>
</tr>
<tr>
<td>5,000</td>
<td>574</td>
</tr>
<tr>
<td>7,500</td>
<td>574</td>
</tr>
<tr>
<td>10,000</td>
<td>574</td>
</tr>
<tr>
<td>15,000</td>
<td>574</td>
</tr>
<tr>
<td>25,000</td>
<td>574</td>
</tr>
<tr>
<td>50,000</td>
<td>574</td>
</tr>
<tr>
<td>75,000</td>
<td>574</td>
</tr>
<tr>
<td>100,000</td>
<td>574</td>
</tr>
</tbody>
</table>

From the above table, we can see that even $3.00/MMMBTU, or 3% LUGS through good flow accounting yields nearly $3.5 million/year in additional billings at 100 MMSCF/D flowrates.

Note that many major natural gas transmission pipelines transport billions of cubic feet per day (Bcf/D) of natural gas, i.e., the act of 10 times higher than the highest flowrate 100 MMcf/D given above. Thus, a 3% measurement error in a 3 Bcf/D pipeline is equivalent to over $1 million/year at $3.00/MMMBTU.

The above analysis is based on very conservatively estimated nominal cost of only $3.00/MMMBTU, where OPEX is based on the following historical prices for natural gas:17

16. In the United States just as the Sarbanes-Oxley Act is imposing much tighter financial reporting on publicly held companies, new pipeline safety recommendations, such as:

- The PHMSA's Voluntary Plant Protection Program 2 (August 2004), and
- NTSB Safety Recommendation P-05-5 (December 23, 2005), to "Require operators to install computer-based leak detection systems on all lines unless engineering analysis determines that such a system is not necessary." (P-05-5)

are imposing greater flow accountancy procedures on pipeline companies. Indeed, comprehensive flow accounting and auditing must, in principle, if not in practice, be considered as being required of pipeline companies under Sarbanes-Oxley.

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### TABLE 4. HISTORICAL NATURAL GAS PRICES 2003 - 2008, $/MCF

<table>
<thead>
<tr>
<th></th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wellhead Price</td>
<td>4.88</td>
<td>5.46</td>
<td>7.33</td>
<td>8.39</td>
<td>6.97</td>
<td>5.07</td>
</tr>
<tr>
<td>Import Price By Pipeline</td>
<td>5.17</td>
<td>5.61</td>
<td>9.12</td>
<td>8.88</td>
<td>6.87</td>
<td>8.70</td>
</tr>
<tr>
<td>By LNG</td>
<td>5.23</td>
<td>5.80</td>
<td>9.09</td>
<td>8.83</td>
<td>6.83</td>
<td>8.87</td>
</tr>
<tr>
<td>Export Price By Pipeline</td>
<td>5.23</td>
<td>5.61</td>
<td>9.12</td>
<td>8.88</td>
<td>6.87</td>
<td>8.70</td>
</tr>
<tr>
<td>By LNG</td>
<td>4.79</td>
<td>5.92</td>
<td>9.26</td>
<td>7.19</td>
<td>7.07</td>
<td>10.03</td>
</tr>
<tr>
<td>City Gate Price</td>
<td>5.54</td>
<td>6.09</td>
<td>7.59</td>
<td>6.83</td>
<td>6.92</td>
<td>8.50</td>
</tr>
<tr>
<td>Residential Price</td>
<td>6.05</td>
<td>6.65</td>
<td>8.67</td>
<td>8.61</td>
<td>8.12</td>
<td>9.18</td>
</tr>
<tr>
<td>Commercial Price</td>
<td>8.40</td>
<td>9.43</td>
<td>11.34</td>
<td>12.00</td>
<td>11.32</td>
<td>11.98</td>
</tr>
<tr>
<td>Industrial Price</td>
<td>5.89</td>
<td>6.53</td>
<td>8.56</td>
<td>7.87</td>
<td>7.68</td>
<td>9.56</td>
</tr>
<tr>
<td>Electric Power Price</td>
<td>5.57</td>
<td>5.11</td>
<td>4.87</td>
<td>7.11</td>
<td>7.31</td>
<td>9.35</td>
</tr>
</tbody>
</table>

Even with natural gas prices at city gate stations / measurement and regulation stations fluctuating between $5.00 and $5.70/MCF in recent months, we see that Table 3 is very conservatively calculated with respect to the high costs of measurement error.

**NOTE**

Given that the United States' annual natural gas consumption is approximately 20 TCF/Y, a 3% measurement error / uncertainty / LUG corresponds to approximately 0.6 TCF/Y—which is equivalent to $1,800,000,000 per annum at $3/MCF. All of the assumptions in this calculation are generally considered conservative.

In a future 30 TCF/Y energy economy, a 3% measurement error / uncertainty / LUG at $5/MCF would be equivalent to $4,500,000,000 per annum.

In addition to the above costs of poor measurement / LUGs, a real leakage poses significant operational problems for natural gas energy companies.

**NOTE**

The inability to accurately determine real pipeline leakage results in the gradual deterioration of pipeline efficiency, and ultimately the catastrophic failure of the pipeline. Once a major pipeline failure occurs, repairs/remediation may require prolonged periods of time, with high emergency repair costs and the loss of revenues due to the requirement to shut down pipeline operations. Frequently, as was seen in the case of BP’s Macondo—April 2008 North Slope leakage problems, there is not enough pipe immediately available for repairs, resulting in prolonged transportation revenue losses for pipeline companies and higher fuel costs as consumers scramble to replace lost supply.

It is thus clear that the reduction of LUGs, say from 3% of LVs to 1%, is adequate to cover the incremental costs (if any) for improved flow measurement systems capable of performing pipeline leak detection—and that cost recovery typically occurs within the first year of operation.

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NOTE
Decreasing "allowances for measurement error" allows the suppliers of natural gas to offer/bid lower natural gas prices to purchasers. The competitive advantage of good measurement is thus clear: the low bidder becomes the largest supplier.

The schematic design of a typical pipeline flow accounting / leak detection system for a contiguous transmission pipeline section under single company management is shown in detail in Figure 1.

The schematic design of a typical pipeline flow accounting / leak detection system for a pipeline section with multiple custody transfer / sales outlets to multiple parties is shown in Figure 2. These graphical depictions focus primarily on natural gas applications—the most complex for pipeline leak detection applications, but are clearly applicable to much simpler liquid flows.

0.4 Pipeline Accounting and Leak Detection Systems
There are six primary elements that are necessary to maintain a sound pipeline system:

1. Excellent high accuracy, high resolution, high repeatability, high response pipeline instrumentation
2. A rigorous pipeline response / leak detection model
3. Regular maintenance of instrumentation, including referenced calibration
4. Regular maintenance of the software pipeline model, potentially via intelligent self-tuning to maximizes system sensitivity while simultaneously minimizing false alarms
5. Knowledgeable supervisory personnel
6. Instantaneous high reliability communication

These elements are discussed individually in the following sections.

NOTE
Pipeline leak detection by mass balance does not preclude the accounting / custody transfer of natural gas flows by cubic value or standard volume, but rather augments same and leads to a much more precise and equitable accounting.

This analysis of pipeline measurement and leak detection applies to both gaseous and liquid pipelines, whereby detection of leakage from gaseous pipelines is significantly more difficult than that of the liquid case—but has been successfully performed in both cases. The algorithmic technique is the same, but specific details vary.

This particular paper tends to stress natural gas pipeline leak detection simply because of the growing importance of natural gas—and because leak detection in natural gas pipelines is the most difficult.
Figure 1: Natural Gas Pipeline Accounting / Leak Detection System Schematic
(Typical Transmission Pipeline Section with No Outlets to Distribution)
Figure 2: Natural Gas Pipeline Accounting / Leak Detection System Schematic
(Typical Pipeline Transmission Pipeline Section with Outlets to Distribution Systems)

Upper case mass flows $M_1(t), M_2(t), M_3(t), M_4(t)$ are high pressure Transmission Pipeline Mass Flows. See Figure 1. Lower case mass flows $m_1(t), m_2(t), m_3(t)$ are Outlet Mass Flows to low pressure Distribution System Pipelines. Transmission pipeline flow state is monitored in the same manner as in Figure 1.
Natural Gas Pipeline Leak Detection By Mass Balance

1. PIPELINE INSTRUMENTATION

Pipeline instrumentation measures the quantity of fluids entering, passing through, and leaving the pipeline. Pipelines containing compressible gaseous material can be "packed", hence our analogy (in Table 2) of the pipeline being a vault into which varying amounts of "money" can flow.

1.1 FlowW ensing Systems (Marked 'F' in Figure 1)

Floww ensing systems determine the flux of material into, a long, and out of a pipeline system. Generally speaking, the flows ensors will indicate the volumetric flow. Of the various floww ensor types

"With regard to floww instrumentation, flowmeters with the highest accuracy are required for mass balance functions. Suitable types include turbine and displacement meters with pulse outputs. Office meters are not really suitable."

whereby it is noted that

"Turbine meters are of special interest because of their accuracy, their sensitivity at very low speeds, and their short time of response."

Quantum Dynamics clearly appears to be the very first in terms of quality."

Moreover, the industrys standard desk reference for pipelines and leading scientific flw etrology journals mention the utility of specific floww ensors, stating:

"The QUANTUM DYNAMICS twin-tube meters have been shown to be outstanding meters for leak detection purposes in gas lines."52

Such aerospace-grade twin-turbine meters have been shown to be of particular utility in leak detection applications, since they provide extremely high resolution, redundant flow measurement, extremely high reliability / calibration longevity, and the ability to detect any calibration deterioration.53

The initial calibration and routine follow-on calibration of the flows ensors is of paramount importance in pipeline leak detection applications. See Section 3.1.

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19. While there are inferred mass coriolis meters, e.g., these are not generally suitable for high flow high resolution applications, and especially not for low-speed gaseous applications.


Turbine meters may be used in both gaseous and low viscosity liquid applications, while displacement meters are used primarily in viscous (crude oil) applications.

While ultrasonic meters are being used increasingly in natural gas transmission pipeline operations, turbine meters exhibit greater repeatability than ultrasonic meters. "Source: Kegel, TM., "Uncertainty Issues Associated with a Very Large Capacity Flow Calibration Facility," Measurement Science Conference, 2-000-Jan-20, www.cestl.com/docs_publications/72_Uncertainty_issues_Associated_Very_Large_Capacity_Flow_Calibration_Facility.pdf. For this reason, turbine meters are used as the secondary standards at the OESRi large flow calibration facility. High sonic atomic meters used only as checkmeters. Such performance issues must clearly be considered in leak detection applications."

21. Results of the French Atomic Agency's (CEA/DTA) worldwide study on low measurement devices, available for review at QUANTUM DYNAMICS. A replication: nuclear containment vessel/lining leak detection.


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1.2 Pressure Measurement (Marked 'P' in Figure 1)

In gaseous pipelines, where compressible flow is present, fluid density is strongly dependent on the pressure. Thus, the pressure must be measured with the highest accuracy. Since thermophysical properties are always a function of absolute pressure, only the sensors providing direct indication of same should be used, and not gauge pressure. Transducers with the highest possible accuracy ±0.05% to ± 0.1% and reliability should be used.

In liquid flow applications, the fluid density is only weakly dependent on the pressure within moderate pressure ranges.

In both gaseous and liquid applications, accurate pressure measurement plays a role in the detection and determining the location of leakage.

1.3 Temperature Measurement (Marked 'T' in Figure 1)

In both liquid and gaseous pipelines, fluid density is dependent on the fluid temperature, with the density of liquids being particularly dependent on temperature.

The temperature of fluids is best measured with high response sheathed platinum Pt100 RTDs.

1.4 Gas Chromatographs (Marked 'GC' in Figure 1)

The compressibility, density, and calorific content of natural gas are functions of its pressure, temperature, and composition. In natural gas applications, the composition of natural gas is commonly determined by gas chromatographs.

Given the pressure, temperature, and composition of the flowing natural gas, state of the art equations of state are capable of calculating the compressibility, density, and heating value within the uncertainty of the most precise experiments, namely approximately 0.02%.

Thus, high accuracy gas chromatographs are required at key flow measurement stations for natural gas pipeline accounting and leak detection. Gas composition at key large volume transfer points should be determined with gas chromatographs, and composition at intermediate points determined by propagation based on flowrates, etc.

1.5 FlowComputers

Local flow computers process flow, pressure, and temperature data, together with composition data (from reference GCs) to obtain instantaneous mass, standard volumetric, and calorific flow. This provides the basis for high accuracy—and hence more equitable—sales / custody transfer and allows central material balance computers to perform more computationally intensive pipeline model calculations.

1.6 Ancillary Monitoring Equipment

In some cases, acoustical monitors (Marked 'A' in Figure 1) may be used on high pressure gas pipelines, to detect acoustic anomalies associated with large high-pressure high-volume leakage. Their range of utility is limited, however.

Other monitors, e.g., seismic monitors, fire monitors, etc., can be interfaced to the RTUs.

23. For these reasons, such meters are commonly used for critical “man-rated” space flight applications. For example, the resolution of twin-turbine meters was used to perform the critical Apollo mid-course correction burn that allowed all Apollo missions to be captured by the moon’s gravitational pull, and also to control the balanced flow-thrust system that landed Apollo missions upright on the moon.

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2. THE PIPELINE RESPONSE / LEAK DETECTION MODEL

While accurate instrumentation can be used to determine the flow into the pipeline,\(^1\) out of the pipeline, and at specific points along pipelines, a highly accurate pipeline response / leak detection model is required to determine the content / "inventory" of the pipeline and any flow anomalies between specific known locations.

NOTE

The following discussion of the pipeline model applies to both liquid and gaseous pipelines, the latter being the more complicated of the two. The differences in the implementation of the pipeline model software are primarily in the equation of state and representation of viscosity effects.

Pipeline leakage is defined as the loss of material being transported by a pipeline. Hence, the only truly rigorous method of real-time on-line pipeline leak detection is "mass balance," and the determination of the loss of transported material, given in mass units, from a pipeline (or pipeline section):

\[ \Delta m(t) = m_{in}(t) - m_{out}(t) - m_i(t) \]

whereby \( \Delta m(t) \) is the pipeline leakage as a function of time, \( m_{in}(t) \) is the measured flow into the pipeline, \( m_{out}(t) \) is the measured flow out of the pipeline, and \( m_i(t) \) is the pipeline inventory, etc. the amount of fluid determined to be contained in the pipeline.

The pipeline model requires the simultaneous solution of the following four equations:

<table>
<thead>
<tr>
<th>EQUATION</th>
<th>FUNCTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Continuity equation</td>
<td>Enforces conservation of mass</td>
</tr>
<tr>
<td>Momentum equation</td>
<td>Unbalanced force result in fluid accelerating/decelerating</td>
</tr>
<tr>
<td>Energy equation</td>
<td>Balances the energy of the fluid into/out of a pipeline</td>
</tr>
<tr>
<td>Equation of state</td>
<td>Relates the density of the fluid to its composition,</td>
</tr>
<tr>
<td></td>
<td>pressure and temperature</td>
</tr>
</tbody>
</table>

iterated along the length of the pipeline at as small an interval as computationally tractable from the program execution point of view.\(^2\)

Should an anomalous \( \Delta m(t) \) be determined that exceeds combined instrument and pipeline model uncertainties, then the pipeline leak detection software will iteratively drop along the pipeline forward and backward from known points/pressures upstream and downstream of the leak to determine the approximate location of the leakage/loss. In addition to run specific roughness factors, pressure drops due to valves, fittings, and configuration are taken into consideration. These are built into the pipeline model.

\(^{24}\) \( \Delta m(t) \) can also be the amount of fluid stolen from a pipeline via an illegal tap or puncture.

\(^{26}\) If the fluid is of variable composition, the propagation of the fluid must be taken into consideration computationally.

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NOTE

Even "tuned" systems will yield spurious "event" notification if the leakage notification threshold is set to very low levels. However, consideration of the monotonicity of $\frac{d\Delta m}{dt}$, $\frac{d^2\Delta m}{dt^2}$, and advanced adaptive filtering techniques (e.g., consideration of the autonomous/erratic systems associated with the above equations) can be used to flag unlikely/random "events" and, if unwanted, advise operators that the instruments at specific locations may require checking, or that parameters for specific pipeline sections may require reconsideration.

Using high precision instrumentation and the above modeling techniques in compressible gas pipeline applications, a new client recently reported:

"We use the high repeatability characteristic in a leak detection system being currently commissioned in [location] to the system employs comparably turbine meters; for in all, at regular intervals along a 62-mile pipeline. Any two units calibrated against each other gives a resolution of 0.02 percent of flow volume. By using high accuracy pressure and temperature transducers we are able to measure mass flow at an resolution of 0.05 percent. On our carbon monoxide line, which has a capacity of 6,250 lb/hr, the two units can track each other to detect leaks of 2.5 lb/hr. This corresponds to a 1/16-inch size leak pit hole in the wall of the pipe.

Our long term experience to date is limited to the hydrogen flow line which runs parallel to the CO line. The line, which has two units some 12 miles apart, is giving material balances within 0.25 percent per week. Initial tests on the CO line are showing similar trends.

By inducing known sized leaks at known points, we can check the effectiveness of the proprietary leak detection software and the performance of the instrumentation. The total system has shown that it can detect leaks of 100 lb/hr in 1-4 hours with a location accuracy of ±0.5 miles."

26. Great care must be exercised in the selection of the appropriate equation of state (or volume correction methodology) for pipeline mass balance applications. Reliable equations of state with the highest accuracy may be used—and the accuracy of the data correlation within specific pressure, temperature, and composition ranges must be carefully assessed.

27. Furness, R.A., "Twin Turbine Meter Experience," Short Course on Turbine and Vortex Meters, Cranfield Institute of Technology, 1993. Note that high resolution of the system allows small leaks to be determined within minutes, rather than waiting days/months until a flyover detects them that local vegetation has begun to turndown, etc.
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The following table demonstrates the accuracies obtained during a typical 10-hour custody transfer run by the pipeline custody transfer/leak detection system, implemented with high-precision flow instrumentation and a proprietary pipeline leak detection software package as shown graphically in Figure 1.

<table>
<thead>
<tr>
<th>Time</th>
<th>Meter 1 Mile 0.0 [MSCF]</th>
<th>Meter 2 Mile 9.4 [MSCF]</th>
<th>Meter 3 Mile 17.0 [MSCF]</th>
<th>Meter 4 Mile 22.9 [MSCF]</th>
</tr>
</thead>
<tbody>
<tr>
<td>00.05</td>
<td>81.56</td>
<td>82.32</td>
<td>82.16</td>
<td>81.79</td>
</tr>
<tr>
<td>02.05</td>
<td>246.73</td>
<td>245.99</td>
<td>246.32</td>
<td>246.68</td>
</tr>
<tr>
<td>04.05</td>
<td>406.82</td>
<td>406.04</td>
<td>406.13</td>
<td>406.73</td>
</tr>
<tr>
<td>06.05</td>
<td>570.54</td>
<td>569.16</td>
<td>569.54</td>
<td>570.40</td>
</tr>
<tr>
<td>08.05</td>
<td>731.78</td>
<td>729.89</td>
<td>730.15</td>
<td>731.36</td>
</tr>
<tr>
<td>10.05</td>
<td>893.94</td>
<td>891.78</td>
<td>892.05</td>
<td>893.27</td>
</tr>
<tr>
<td>Average Flowrate [MSCF/H]</td>
<td>81.238</td>
<td>80.946</td>
<td>80.969</td>
<td>81.198</td>
</tr>
<tr>
<td>Deviation from Meter 1 in %</td>
<td>0.000</td>
<td>-0.359</td>
<td>-0.307</td>
<td>-0.096</td>
</tr>
</tbody>
</table>

NOTE

All flow counting/material balance/pipeline leak detection software must, as a minimum, be run on redundant high-reliability computer hardware. S aid hardware must be located at secure sites with power backup and inter-computer/inter-site failover capabilities.

The importance of inputs to the pipeline model, both in the form of model parameters/tuning and actual real-time instrumentation inputs cannot be overstated. Poor definition of pipeline characteristics and/or poor instrumentation will invariably lead to numerous false alarms.

The area of computational pipeline leak detection is of growing importance, rivaled by increasing environmental and liability concerns, as well as by very increasing product values—and all very mandating mandates such as NTSB Safety Recommendation P-05-5 and Texas H.B.1 920. There are several references of note that discuss pipeline leak detection.

28. The hardware implementation utilized QUANTUM DYNAMICS fully integrated twin-turbine flow-pressure-temperature (FPT) sensors with QUANTUM DYNAMICS flow computers. The leak detection software consisted of the QUANTUM TECHNOLOGY (Houston, TX) "LeakOut" software package, which has since been transferred to QUANTUM DYNAMICS.

29. However, even the most accurate instruments and measurements can be of little use if the data is not systematically handled. Complete data collection and analysis is a daunting task, even for the most proficient users. Such techniques can be used to identify specific fixed errors arising hardware problems in larger systems, such as the physics of the system. The ability to perform a leak detection on a mass balance basis can be relatively improved if high-resolution and leak detection supervisory software is programmed to look for such anomalies.


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NOTE

The lowering of the lowest detectable leakage rates to sub-0.1% levels brings with it the reduction of Lost and Unaccounted for Gas ("LUGs") to said levels. When compared with the usual not uncommon 3-5% LUGs, the reduction of LUGs to 0.1% represents a very significant fiscal gain, the recovery of gas that would otherwise be unbillable, as significant competitive advantage for suppliers, reduced costs for users, and increase of supply without drilling for new sources of natural gas. These, in addition to safety and environmental concerns, are extremely compelling reasons for the implementation of pipeline leak detection.

The implementation of pipeline leak detection systems is thus very profitable and "green."
3. MAINTENANCE OF INSTRUMENTATION

In order to maintain an accurate pipeline accounting and leak detection system, the following must be implemented:

- A common calibration facility for liquid and/or gas flows, and
- A program for regular instrument maintenance.

3.1 Calibration Systems

The calibration of fluid flow measurement systems must be regularly maintained, and referenced to a common standard/calibration facility. This not only insures the accuracy of the flows sensors, but also ensures that they have exactly the same calibration bias for leak detection purposes.

NOTE

In pipeline leak detection applications, all sensors should be calibrated at the same flow rate calibration facility and/or against a common very high repeatability transfer standard. This insures that the bias of the individual flow rate calibration facilities does not become an issue. For example, if two flow rate calibration facilities with uncertainties of ±0.1% can yield results that differ by as much as ±0.2% for a given data point, on the other hand, if two flows sensors with ±0.02% repeatability are calibrated at the same facility, then the leak flow rate detectability can be as low as 0.04% — yielding a five-fold lowering of the lowest level flow leak detectability.

Alternatively, if calibration at a common facility is not possible, all calibration facilities should be intercompared via measurement assurance program (MAP) transfer standards, and each laboratory's flow rate calibration bias adjusted to the middle of the Gaussian distribution curve.

Similar arguments can be made for the calibration of multiple flow transfer standards at a single calibration facility, each of which is then used to calibrate systems in the field.

Improved methods of density determination and dramatically improved questions of state are leading to the possibility of significant improvements in "first principles/fundamental constants" based flow rate calibration facilities. Indeed, NIST has commented that a recent proposal for gaseous calibration based on fundamental properties would be

"a significant advance in natural gas flow measurement."

Very high repeatability flow rate transfer standards (FTS) may be required to transfer the flow rate calibration from the primary standard to the various field measurement units.

Similarly, calibration requirements for all ancillary instruments relating to the determination of the mass flow cannot be neglected. However, in situ flow rate calibration generally requires the greatest planning.

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31. NIST letter of August 6, 1997 to the author.

Arnold E. Liu
QUANTUM DYNAMICS, INC.
3.2 Measurement Station Design

Major measurement stations/locations should include piping design to allow periodic in situ calibration of flowmeters using high precision "state of the art" transfer standards.\(^{32}\) Not only do such designs facilitate regular calibration, but they also provide a means of minimizing/eliminating any installation-specific flange leaks.

3.3 Instrumentation Maintenance

The accuracy of instrumentation in the field must be maintained by regular continuous and ongoing programs of maintenance. The instrumentation must be regularly maintained, inspected, and calibrated. Filters and other consumables, etc., must be regularly replaced.

**NOTE**

The central leak detection software can be of utility in identifying instrumentation requiring maintenance.

In pipeline systems with multiple measurement points, an measurement point with systematically higher or lower flow readings proportional to the location's throughput would overall system imbalance can be flagged by software for calibration checks/adjustment. Such techniques can be used to identify deficiencies in a specific flow metering system in larger systems, e.g., a specific M & R station that is over- or under-delivering gas. Pipeline measurement and the ability to perform leak detection on a mass balance basis can thus be iteratively improved—assuming that the sensing subsystems have the requisite high repeatability and high resolution.

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\(^{32}\) The term "state of the art" is meteorology-specific term meaning that the transfer standard is of equal repeatability and resolution as the primary standard against which it is calibrated, i.e., once the transfer standard is characterized, its accuracy can be considered equal to that of the primary standard. In certain cases, NBS/NIST has even stated that the scatter in QUANTUM DYNAMICS transfer standards' performance is "likely an indication of the precision of the calibration procedure, and not a measure of the repeatability of the transfer standards."

Arnold E. Liu

QUANTUM DYNAMICS, INC.
Natural Gas Pipeline Leak Detection By Mass Balance

4. SYSTEM SOFTWARE / PIPELINE MODEL MAINTENANCE

The pipeline leak detection software must be maintained by knowledgeable pipeline and software engineers as new sections of pipeline are added to the pipeline monitoring system. Piping configuration, e.g. valve locations and pressure drop curves, elevation, roughness factors, etc., must be entered into the model for each pipeline section, and the model "tuned" for the specific sections of pipeline.

Additionally, filtering parameters must be periodically—possibly algorithmically—adjusted to eliminate spurious alarms and/or highlight any vents with a higher likelihood of leakage.
5. SYSTEM SUPERVISORY PERSONNEL

In addition to field maintenance personnel, calibration engineers, etc., engineers knowledgeable in pipeline instrumentation, pipeline response, and the pipeline model must be present at the Central Material Balance Computer Par m(s).

These skilled engineers and scientists will be responsible for supervising the system output, resolving alarm issues, and making fine adjustments to the model input parameters to minimize false alarms, but also to optimize system response in the event of actual leakage.

Experienced pipeline engineers from within the pipeline company must be trained, and/or the monitoring, configuring, and maintaining the pipeline leak detection outsourced to highly competent organizations, e.g., to the system integrator.

Inasmuch as specialists trained in the overall aspects of pipeline fluid mechanics, instrumentation, pipeline models, equations of state, etc., are rare, it is convenient to monitor system state of multiple pipelines from a single location. Thus, communications/infrastructure plays a vital role in pipeline leak detection.

NOTE

Ideally, pipeline accounting and leak detection could be outsourced to a dedicated and impartial third party measurement organization, potentially financed as a gas pipeline industry consortium, with additional grant support from national and state pipeline safety authorities, such as EPA, DOE, HHS, et al. This would ensure not only the highest accuracy custody transfers, but also an impartial full-time staff specializing in the metrology and maintenance necessary for real-time online pipeline leak detection.

The replacement of two sets of measurement systems (seller's and buyer's) by one superior and well-maintained measurement system, supervised by an impartial organization whose only interest is precise and equitable measurement/custody transfer and pipeline leak detection, has obvious financial, technological, and personnel advantages.

33. The usual precautions regarding mission critical data processing will, of course, apply. These include physical and power security, duplicate communication feeds, a slave's list, etc.
6. COMMUNICATIONS

Instantaneous high reliability communications are a key element of accurate pipeline accounting and leak detection.

All system timing can be referenced to the GPS system or to NIST via the ITS or ACTS protocol. The time stamped data from the pipeline monitoring RTUs are then transmitted using SSL and/or IPSec VPN methodologies via hard wired land lines, cellular connection or satellite communications to one or more Central Material Balance Computer for processing.

For optimal response, data should be processed in real time. Otherwise, the time stamped data can be used to reconstruct the state/inventory of the various pipeline sections ex post facto in near real time.
7. CONCLUSION / REQUARED EFFORTS

The movement of petroleum and petrochemical fluids, including natural gas, is the basis of all energy companies’ operations and income.

Inasmuch as flow accounting and flow auditing (in the form of pipeline leak detection) form the basis for financial accounting — and the latter from the basis for all corporate decisions — the accuracy of any energy company’s flow accounting and auditing cannot be overemphasized.

The following general comments apply to the implementation of pipeline instrumentation systems as pertains to the implementation of leak detection systems that are required to insure the accuracy and security of an energy company’s financial reporting:

1. A detailed study of the pipeline systems’ data, and communications requirements must be undertaken. Simultaneously, the state of the client’s current facilities/methodologies should be assessed, in order to determine whether they are accurate, reliable, and repeatable as necessary to support the high accuracy measurement and high resolution leak detection.

2. Pipeline accounting/leak detection systems accounting systems shall be implemented on:
   a. Major pipelines for high accuracy flow measurement and pipeline leak detection/security.
      This phase requires:
      i. Instrumenting the specific pipeline sections with high accuracy, high resolution flow instrumentation, that can be remotely monitored over communication links.
      ii. The establishment of high reliability, redundant Material Balance Computer (MBC) systems, designed for future expansion, as new pipelines or pipeline sections are added.
      iii. The establishment of high accuracy, high resolution, high repeatability calibration facilities and a transfer standard program to support the pipeline accounting/leak detection instrumentation.

   b. Smaller pipelines having less importance, at time and budget allow.

The above tasks must be performed as a fully coordinated and integrated effort. Based on past experience, it is unlikely that piecemeal attempts at pipeline leak detection will be successful.

We note that:

+ The costs for instrumenting high accuracy/high resolution pipeline accounting/leak detection systems are only marginally higher than the usual pipeline “flowmetering systems.” Indeed, when such instrumentation is strategically planned and acquired, the acquisition, deployment, and commissioning costs may actually be lower than piecemeal one-at-a-time acquisition of inferior measurement systems.

+ Minimization of product lost through poor accounting or leakage results in more biddable product/transportation fees, i.e., increased revenue. In a large scale custody transfer application, the increased revenue will quickly offset any incremental instrumentation costs for higher accuracy.

+ Any incremental costs for such systems are always significantly less than the single major pipeline incident that interrupts pipeline flow for one day: when leakage is determined early, it can frequently be repaired without shutting down the pipeline — and without the corresponding loss of pipeline revenue.

+ Early detection of small leaks and their (temporary) repairs frequently permit the scheduling of major repairs during more convenient / lower demand periods. It is not mean time, the leak detection software can provide increased surveillance of adjacent pipeline sections.

Arnaud E. Liu
QUANTUM DYNAMICS, INC.
Natural Gas Pipeline Leak Detection By Mass Balance

+The repair/remediation costs of events such as the August 2000 EPNG pipeline explosion at the Pecos River Crossing and the more recent November 2009 pipeline explosion in Bushland, TX will always be more significant than the cost of early detection of small leaks and their correction. 35

+Detection of small leaks and their correction before they can become major incidents significantly reduces a pipeline operator’s liabilities.

For example, in the 1999 Vatcom Creek explosion the pipeline operators faced $36 million in civil and criminal penalties and $45 million for safety improvements, a swell as $7.8 million fine for environmental damage. The families of two of the victims received $75 million from the companies involved in the incident, while the third family received an undisclosed amount. 36

+Damage to the operating company’s reputation—and to the gas transmission industry generally—may keep or delay for the operators future projects increasingly difficult to obtain, thus hindering the adoption of natural gas as an economical and environmentally sound replacement fuel for fuel oil and coal.

Thus, a proper pipeline measurement/accouting systems and the ability to perform pipeline leak detection by mass balance are not luxury, but rather essential to the safety and fiscal viability, and environmentally sound operation of any pipeline.

NOTE

The PHMSA recently issued an Advisory Bulletin to remind “pipeline operators of the importance of prompt and effective leak detection capability in protecting public safety and the environment.” 37 While the Advisory Bulletin is primarily concerned with liquid pipelines, its lessons are equally well the safety and environmental concerns apply to natural gas pipelines.

Especially in view of the large number of natural gas transmission pipelines that are being planned or are under construction to meet increased demand for this environmentally sound fuel, it is important that leak detection be part of the design and implementation considerations. This will minimize the short-term costs, provide public and environmental protection, and actually increase the saleable gas supply by minimizing allowances for measurement error and lost and unaccounted for gas. Eliminating LUGs is essentially equal to finding several percent more natural gas reserves without drilling.

35. The November 5, 2009 Bushland, TX, explosion and explosion created a crater about 100 feet wide and 15 feet deep and released 98 million cubic feet of natural gas. The fire reduced one house to ashes and seriously injured three people inside. I t also damaged several other homes and scorched several hundred square feet of land. As a consequence of the event, PHMSA has ordered EPNG to significantly reduce the pipeline operating pressure—which will result in a decrease in revenues for EPNG. Source: http://www.amerillc.com/str/str/200901w_news3.shtml


Natural Gas Pipeline Leak Detection By Mass Balance

ARNOLD E. LIU
Biographical Notes

Arnold E. Liu received his higher education at UCLA and Goettingen University's Mathematical Institute (West Germany), where he specialized in dynamic systems and bifurcation theory.

Liu is known among thermophysicists for his development of the bifurcating differential equation of state (DEOS) that rigorously describes not only the analytic behavior of pure fluids at supercritical temperatures, but also their nonanalytic behavior at subcritical temperatures, specifically including the two-phase transition region, where the DEOS is the only equation of state that yields $\frac{dP}{d\rho} = 0$. The application of the DEOS to methane, the primary component of natural gas, was presented at the 12th International Symposium on Equations of State.

Liu specialized in the mathematical description of fluid behavior, including phase transitions, the mathematical modeling of complex discontinuous behavior, and the application of thermophysical properties to the design of fluid flow measurement and calibration systems. He is the Executive Vice President and Director of Research and Development for QUANTUM DYNAMICS.

QUANTUM DYNAMICS is a small aerospace flowmetry engineering company that designed and built the flowmasurement systems that controlled the Apollo mid-course corrections, and the balanced flow/thrust systems that landed the Apollo missions upright on the moon—still today the most widely viewed instance(s) of precision flow measurement and control in history. Due to standardization of its products by United States Army Services, QUANTUM DYNAMICS has become the world's largest supplier of transfer standard grade flow instrumentation systems. Virtually 100% of the world's jet engine test stands use QUANTUM DYNAMICS flow instrumentation.

QUANTUM DYNAMICS is the only manufacturer of flow instrumentation that has been recognized as a U.S. Defense Logistics Agency "Certified Quality Vendor," a challenging accolade continuously since the inception of the DLA QVP. The DLA QVP review of its flow measurement and control systems led to the overall lifetime savings yielded by its superior quality, reliability, and precision. U.S. Government contracting officers are authorized to award Certified Quality Vendors contracts even if the latter's bid is up to 20% higher than "lowest apparent bid" by non-QVP vendors.

QUANTUM DYNAMICS and QUANTUM TECHNOLOGY (Houston, TX) implemented the pipeline leak detection systems described in the Pipe Line Rules of Thumb Handbook.
OK; we will reschedule.

On 3/29/2010 1:58 PM, Mark Vickery wrote:
> I need to run some diplomatic traps, can we reschedule?
> -----Original Message-----
> From: Larry Soward <lsoward@swbell.net>
> To: Vickery, Mark <MVICKERY@tceq.state.tx.us>
> 
> Subject: Re: Request
> 
> No
> 
> On 3/29/2010 9:19 AM, Mark Vickery wrote:
> 
> >> Hey the Chairman wants to sit in. That ok?
> >> -----Original Message-----
> >> From: Larry Soward <lsoward@swbell.net>
> >> To: Vickery, Mark <MVICKERY@tceq.state.tx.us>
> >> 
> >> Subject: Re: Request
> >> 
> >> Tuesday at 1:30 works for us. What number(s) you want us to call? Have a
great weekend!
> >> 
> >> On 3/25/2010 1:46 PM, Mark Vickery wrote:
> >> 
> >>> John claims to have an enforcement action pending against GHASP, but agreed to meet anyway. Would 1:30 on Tuesday
>work for you and Matthew?
> >>>
> >>>
> >>>
> >>> 3/24/2010 10:04 AM>>>
> >>>
> >>>
> >>> Mark, here are some possible dates for us to call you and John. Let me
>know which day works best and what times are best and then we can
>finalize a date/time. Thanks
> >>>
> >>> Friday, March 26
> >>> Monday March 29
> >>> Tuesday March 30
> >>> or any day April 5 - 9
> >>>
> >>> On 3/23/2010 3:54 PM, Mark Vickery wrote:
> >>>
> >>>
> >>> Roger that!
> >>>
> >>>
> >>>
> >>>
> >>> 3/23/2010 3:46 PM>>>
Let me visit with Matthew and we will offer several dates, times that you can look at to see what fits both of your schedules best. Thanks!

On 3/23/2010 3:29 PM, Mark Vickery wrote:

Larry, I think a phone call is fine. I would like to sit in as well. Do you have a time/date preference?

Mark, Matthew Tejada and I would like to talk to John Sadlier about several enforcement issues that GHASP presently intends to pursue in the Sunset review process. We mainly seek information and, if available, thoughts on how these issues might be addressed from TCEQ's perspective. If this discussion can be readily accomplished by telephone, that is the preference, but if John needs/wants the discussion to be in person, we will certainly accommodate that at a mutually agreed date, time, place. Accordingly, your approval to talk to John is therefore requested.

If you would like to talk to or meet with us before-hand, please let me know. We would certainly be happy for that opportunity.
From: Larry Soward <lsoward@tceq.state.tx.us>
To: Mark Vickery <MVICKERY@tceq.state.tx.us>
Date: 3/29/2010 3:52 PM
Subject: Re: Request

What does that mean?????

On 3/29/2010 1:58 PM, Mark Vickery wrote:
> I need to run some diplomatic traps, can we reschedule?
>     --Original Message--
>     From: Larry Soward <lsoward@tceq.state.tx.us>
>     To: Vickery, Mark <MVICKERY@tceq.state.tx.us>
>     Subject: Re: Request
>     
>     No

> On 3/29/2010 9:19 AM, Mark Vickery wrote:
> 
> >> Hey the Chairman wants to sit in. That ok?
> >> --Original Message--
> >> From: Larry Soward <lsoward@tceq.state.tx.us>
> >> To: Vickery, Mark <MVICKERY@tceq.state.tx.us>
> >> Subject: Re: Request
> >>
> >> Tuesday at 1:30 works for us. What number(s) you want us to call? Have a
> >> great weekend!
> >>
> >> On 3/26/2010 1:46 PM, Mark Vickery wrote:
> >>
> >>> John claims to have an enforcement action pending against QHASP, but agreed to meet anyway. Would 1:30 on Tuesday
> >>> work for you and Matthew?
> >>>
> >>>
> >>>
> >>>>
> >>>> Larry Soward <lsoward@tceq.state.tx.us> 3/24/2010 10:04 AM>
> >>>>
> >>>>
> >>>>
> >>>>
> >>>> Mark, here are some possible dates for us to call you and John. Let me
> >>> know which day works best and what times are best and then we can
> >>> finalize a date/time. Thanks
> >>>
> >>> Friday, March 26
> >>> Monday March 29
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> >>> or any day April 5 - 9
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> >>> On 3/23/2010 3:54 PM, Mark Vickery wrote:
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> >>>> Larry Soward <lsoward@tceq.state.tx.us> 3/23/2010 3:46 PM>
> >>>>
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> >>>>
> >>>>
Let me visit with Matthew and we will offer several dates, times that you can look at to see what fits both of your schedules best. Thanks!

On 3/23/2010 3:29 PM, Mark Vickery wrote:

Larry, I think a phone call is fine. I would like to sit in as well. Do you have a time/date preference?

Larry Soward

Mark, Matthew Tejada and I would like to talk to John Sadler about several enforcement issues that GHASP presently intends to pursue in the Sunset review process. We mainly seek information and, if available, thoughts on how these issues might be addressed from TCEQ's perspective. If this discussion can be readily accomplished by telephone, that is the preference, but if John needs/wants the discussion to be in person, we will certainly accommodate that at a mutually agreed date, time, place. Accordingly, your approval to talk to John is therefore requested.

If you would like to talk to or meet with us before-hand, please let me know. We would certainly be happy for that opportunity.
Mr. Vickery,
The O&G slide show Richard Hyde and Steve Hagle will be using today to brief legislators is attached. Please let me know if you need anything else.
Lori
O&G Rulemaking Overview

Presented by:
TCEQ

March 22, 2010
O&G Background – Previous Issues from Stakeholders

- Disruption to O&G industry
- Site-wide authorization would reduce flexibility
- Single set of statewide requirements do not accommodate variety across state (ex. urban/rural)
- Unclear and burdensome expectations on recordkeeping
- Concern over retroactive requirements
- Tanks and loading – emissions, controls, color requirements inappropriate
O&G Rulemaking General Concepts

- Single site wide authorization
- Minimum distance requirements of 50' to property line or receptors
- Incentivize recovery instead of destruction control
- Incentivize replacement of upgraded equipment – no registration
- Flexibility for changes at existing registered sites with negligible and typical emissions
- Guidance for source data, emissions estimates, and recordkeeping
- Follow up with Regions after 6 months of operation
O&G Rulemaking General Concepts

- No open ended pipelines or open topped tanks
- Tanks/process vessels painted white
- Routine leak detection and fugitive repair with option for gas imaging cameras
- Emissions based on release height/receptor distance
- Planned Maintenance, Startup, and Shutdown (MSS) emissions based on release height/receptor distance
O&G Rulemaking – Existing Sites

- Notify TCEQ with 'core' data and which rules are claimed by 2013
- Meet limits for planned MSS by January 5, 2012
- New rules triggered for equipment changes that increase actual emissions or for new equipment
O&G Rulemaking – Level 1 Permit by Rule (PBR)

- Notify Region prior to construction
- No fee
- Vapor recovery units (VRU) or other recovery systems encouraged - no destruction devices
- Includes wellheads, separators, heater treaters, tanks, VRU/other recovery methods, compressors/engines, fugitives/piping, methanol used in piping, and loading equipment
- Excludes thermal controls, amine units/other sweetening, glycol units
- Must meet emission limits for health and welfare protectiveness including annual limits for benzene
- ≤0.1 tons per year (TPY) H2S, ≤10 TPY VOC
- Title V (federal permitting) not triggered
O&G Rulemaking – Level 2 Permit by Rule (PBR)

- Register and receive TCEQ confirmation
- Includes Level 1 PBR equipment plus thermal controls, amine units/other sweetening methods, and glycol units
- Must meet emission limits for health and welfare protectiveness including annual limits for benzene
- May trigger Title V permitting based on emissions
- Cannot trigger Prevention of Significant Deterioration (PSD) or Nonattainment New Source Review (NNSR) permitting
O&G Rulemaking – Standard Permit

- Same as Level 2 PBR except not limited to 25/250 TPY
- Cannot trigger PSD or NNSR permitting
- Best Available Control Technology applies to tanks, processed, and fugitives
- Subject to Compliance History
O&G Rulemaking – Stakeholder Feedback Requested

- Current practices and options for controlled liquid loading into trucks
- Ordinances specifying tank colors other than white
- Records already required by other agencies (ex. RRC)
- Feasibility on control requirements for tank cleaning and degassing
Rule Schedule

- Stakeholder meeting (Austin) - April 8, 2010
- Rule Proposal - May 19, 2010
- Public Hearing (Austin) - June 29, 2010
- Adoption - October 15, 2010
Heads up...
From: Zak Covar
To: Brent Wade; John Sadlier
Date: 3/31/2010 11:36 AM
Subject: corpus

we know about it?
Attached is a copy of the Cook Report. I included the main conclusions.

The report doesn't say a lot about how they came up with their conclusions. Looks like they did a survey, but they don't give details about how they conducted it.

We're talking with DSHS to get their take on it, but folks are out for spring break. I'll let you know if they have any more info.

Mike

Asthma a six-county profile of children, ages 0-14 years.

CONCLUSIONS:
Children are being diagnosed with asthma at an increasing rate, as they get older until peaking at 25 percent of the population around age 9, then the incidence of asthma becomes level at about 20 percent of children in each age group.
For children ages 8–9, one in every four has asthma and one in every five children ages 10–14. Children in our community ages 6–9 are three times more likely to have asthma than the average for that age group in the State of Texas.
In our six-county area, older children ages 11–14, far exceed both the state and national rates of asthma.
From: Carlos Rubinstein
To: Vickery, Mark, Covar, Zak
Date: 3/24/2010 7:06 AM
Subject: Fw: World Bank
Attachments: World Bank

This has to do with Texas being recognized by world bank as one of 4 model programs re wq improvement and a $4 billion program they are funding with India. Have talked with Gov's office about this.

L'oreal would give a 25 min presentation in India (world bank) pays all.

If we issue a press release on this, Gov's office may follow in that we are one of 4 around the world to be chosen as a model water quality program!

Will call later with details...

Carlos

Sent on the Sprint® Now Network from my BlackBerry®
From: Mark Vickery
To: Sheedy, Keith
Date: 3/26/2010 4:57 PM
Subject: Re: Fwd: flower_mound32010.pdf

thx!

>>> Keith Sheedy 3/26/2010 4:21 PM >>>
From our discussion today, here is the DSHS study of the occurrence of cancer in and near the Town of Flower Mound.

>>> Shannon Ethridge 3/26/2010 10:28 AM >>>
As requested. Carrie is still working on the DISH blood/urine analysis study. Susan thinks they will have everything completed in a couple of weeks.

>>> "Prosperie, Susan" <Susan.Prosperie@dshs.state.tx.us> 3/26/2010 10:23 AM >>>
here u go
From: Jim Harrison
To: Curtis Seaton; Daniel Womack; Kevin Patteson; Mark Vickery; Pattie B.
Date: 3/23/2010 4:48 PM
Subject: Fwd: Select Committee on Federal Legislation

fyl...

>>> Mike Hoke 3/23/2010 4:45 PM >>>
Brad Westmoreland in Rep. Zerwas office tells me that they are postponing the cap-and-trade portion of the April 5 hearing. With the healthcare reform bill passing, they are going to use the entire hearing to discuss that issue. They hope to get to cap-and-trade before the end of April. He will let us know the new date.

He also said that Commissioner Ames-Jones was planning to represent the Railroad Commission and Chairman Smitherman was going to speak for the PUC.

Mike Hoke
Legislative Liaison
Texas Commission on Environmental Quality
(512) 239-4899
Latest on Clean School Bus...
Becky,

- The TCEQ posted an ARRA Request for Grant Activities (RFGA) on March 8, 2010, with a deadline to apply of April 15, 2010. Since then, the TCEQ has extended the RFGA application deadline to April 30th so that school districts have additional time to submit applications.
- We have received one ARRA application ($265,628) as a result of the (RFGA) and are working with the ISD to obtain additional information for approval.
- We have started an aggressive campaign of calling ISDs in nonattainment and near nonattainment areas. As of today, we have called 214 out of 295 ISDs and will continue to call the remaining ISDs.
- Other outreach activities for the ARRA RFGA include issuing a news release, making presentations at Pupil Transportation meetings, updating the Clean School Bus Web site, and mailing letters to superintendents. We have also coordinated outreach with Texas PTA and local council of governments. Future outreach includes sending a letter to superintendents via the Texas Education Agency.
- The Texas Procurement and Support Services Division has informed us that they are working on posting the Request for Proposal to get state pricing, as required by Rider 27, as soon as possible.

Attached is the revised CSB status report.

Thanks,

Joe
From: <matthew.kuryla@bakerbotts.com>
To: <mvickery@tceq.state.tx.us>
Date: 4/2/2010 3:04 PM
Subject: Nothing new

Call if you'd like an update. [713-504-0313]

Happy Easter!
Mr. Vickery,

Mr. Joel Pardue of the ARRA Accountability Team in Governor's Office called me this morning.

Mr. Pardue indicated that he had met recently with the TCEQ ARRA folks in Budget and Planning. He stated that he was interested in getting more information about the TERP program's fraud risks and the program's internal controls. I indicated that I would be happy to coordinate a meeting for him with the program. He indicated that he will contact me next week to let me know when he would like to meet. I will keep you posted.

Steve
Mark and Zak,

Attached, FYI, is a copy of the Region's 300-day plan for this year. Al asked me to share it with you, and to thank you for contributing your priorities.

We look forward to working with you to make progress on your specific priority issues, and on the many other issues that we are working on together to protect the environment and public health in your State.

Larry
Administrator’s Priorities

1. Taking Action on Climate Change
2. Improving Air Quality
3. Cleaning Up Our Communities
4. Assuring the Safety of Chemicals
5. Protecting America’s Waters
6. Expanding the Conversation on Environmental and Working for Environmental Justice
7. Building Strong State and Tribal Partnerships

Looking ahead 300 days

“These are exciting times at EPA, and as I am sure you have noticed, the pace of change is breathtaking. As we approach our Agency’s 40th birthday in December, actions are underway to expand most of our nation’s environmental programs. I am certain it reminds our charter employees of the first days of EPA and brings a renewed excitement and commitment to all of us.”

- Al Armendariz

Taking Action on Climate Change
Promote innovative energy projects to meet the nation’s energy needs:
- Sign on 50 new partners in clean energy and climate program
- Maintain green status for Region 6 to achieve ISO 14001 compliance by June 2010
- Update Regional Clean Energy Climate Change Strategy annual commitments by June 2010
- Provide training on deep injection well reservoir analysis, mechanical integrity testing, and permitting to Region 9 by July 2010
- Design online program estimating the economic and environmental benefits of Web based training events and flexplace; post cost savings/reduction in CO2 emissions on the Internet by December 2010
- Partner with the Office of Weather to hold an Energy Audit Workshop for Water Utilities in the Region by May 2010
- Serve as carbon consultants to HUD-DOT/DFW FEB partners
- Host Green Infrastructure workshops in NM, OK, NWAR and DFW area by August 2010

Improving Air Quality
Ensure clean air for communities:
- Implement strategy with TX to achieve federal enforceable air permits; take final action on Qualified Facilities, Flexible Permits and New Source Review SIPs
- Complete air quality designations for the new lead and particulate matter standards
- Complete proposed LDEQ’s 8-hr ozone redesignation plan for Baton Rouge by January 2011
- Work with State and local officials to propose the reclassification of the DFW area to serious 8-hour ozone nonattainment by August 2010
- Propose action on at least 1 Regional Haza SIP
- Reduce SIP backlog by processing 25 backlog SIPs; look to new streamlining processes with our States to speed up Agency SIP approvals
- Complete priority air toxics monitoring effort with States at 17 schools
- Provide $1M in new air tox funds to States for monitoring and technical studies for energy/air quality assessments by May 2010
- Install RadNet monitors in Farmington and Albuquerque, NM
- Reduce emissions of hazardous air pollutants from 75 incinerators, boilers and halogen acid furnaces burning hazardous waste
- Conduct 35 CAA compliance evaluations of facilities in or affecting nonattainment areas
- Initiate 3 CAA enforcement actions at facilities in or affecting nonattainment areas
- Conduct 5 compliance evaluations at facilities in the oil and gas sector

Cleaning Up Our Communities
Make land available for Reuse:
- Complete assessment of soil lead contamination in affected public areas from a battery recycler by September 30, 2010
- Complete 4 NPL remedies, select 5 new remedies, control groundwater migration at 1 site, make 5 sites ready for reuse, achieve human health protection at 2 sites, and complete 25 final site assessments
- Complete Superfund site investigation in Mossville, LA by September 2010
- Complete Tar Creek OU4 revision and begin relocation in Trecce, KS by September 2010
- Conduct 100 brownfield assessments
- Complete 19 Superfund-lead removal action responses
- Reduce toxic chemicals by 110,000 lbs through NPEP partnerships
- Issue 2 ready for reuse determinations promoting RCRA facility revitalization
- Complete corrective action construction at 22 priority RCRA sites
- Control human exposure to toxics at 15 priority RCRA facilities
- Cleanup 2 LUST sites on Indian land

Improve the environment along the US/Mexico Border:
- Remove 400,000 tires from legacy piles
- Encourage scrap tire best practice management; finalize 1 municipal agreement
- Conduct 1 household hazardous waste collection event
- Disburse $12M through the BEIF grants and provide 700 new service connections to safe drinking water and 100,000 waste water connections

WE CARE: Workforce Diversity - Environmental Stewardship - Character - Accountability - Respect - Excellence

March 5, 2010

www.epa.gov/region6
Over the next 300 days, we will focus our energy, talents and resources to accomplish these shared priorities:

Assuring the Safety of Chemicals
Prioritize decisions to maximize environmental benefits:
• Conduct 21 Facility Response Plan reviews and exercises at oil storage facilities
• Conduct 125 risk management plans
• Improve State and Agency emergency preparedness by conducting 8 exercises
• Achieve Agency Core National Approach to Response score of 80% and 750 on core COOP Assessment Tool
• Reach 400 farm worker families in the Rio Grande valley with “take home” pesticide exposure information
• Convene an Interactive training session in San Antonio with State Lead Agencies on the new pesticide containment rule in April 2010
• Conduct 5 evaluations to ensure compliance with CAA’s chemical accident prevention provisions
• Complete lab construction modifications by August 2010 to accept chemical agent samples and agent standards from the Department of the Army

Expanding the Conversation on Environmentalism and Working for Environmental Justice
Partner with vulnerable communities to address concerns related to environmental justice priorities:
• Improve community access to decision makers by holding at least 3 community meetings; draft method to prioritize issues
• Provide technical air support to 3 community based efforts: Port Arthur Showcase Community, Corpus Christi, and Shreveport
• Establish Tools for Schools, an indoor air quality program in 25 New Orleans area schools
• Initiate the collection of blood lead data in AR through the University of Arkansas and Arkansas Dept. of Health
• Train at least 1,000 Houston caregivers of high risk families on the prevention of lead poisoning from lead paint
• Target State RCRA permit oversight and correction action in priority communities
• Develop and implement Port Arthur Showcase Community Action Plan by May 2010; conduct joint performance evaluation of the public water system with TCEQ
• Conduct comprehensive assessment of Mossville public water system, including drinking water sampling by April 2010
• Issue 2 CAA enforcement actions at facilities affecting impacted communities

Protecting children where they live, learn and play:
• Educate more than 500 on Renovation, Repair and Painting Rule
• Distribute 15,000 2010 Lead Based Paint Planners to cities, states, tribes, non-profits and universities
• Implement indoor air quality Tools for Schools in 100 Regional schools impacting over 75,000 students
• Award up to 4 cooperative agreements totaling $150,000 to projects that address exposure to indoor environmental hazards
• Train 100 daycare providers on health impacts of environmental hazards to children

Protecting America’s Waters
Ensure safe drinking water:
• Ensure 95% of the population served by community water systems will receive drinking water meeting all health-based standards (person-month basis)
• Maintain Water Response Team capabilities; 1 training and 1 exercise by December 2010
• Work with State partners to address/resolve 350 noncompliant fixed base Public Water Systems

Provide leadership to restore and protect watersheds and coastal waters:
• Complete 200 TMDLs in the 5-State Region
• Achieve improvement in water quality conditions in 12 watersheds
• Issue Oklahoma CAFO general permit by September 2010
• Coordinate with stakeholders to reduce disposal of pharmaceuticals in water; hold 2 medication take-back events

• Utilize GIS technologies to prioritize watershed protection and restoration activities by August 2010
• At Bayou aux Carpes CWA Section 404(c) site oversee monitoring studies and wetlands mitigation measures by December 2010
• Conduct 60% of the CAFO inspections in impaired watersheds or in response to citizen complaints
• Conduct 60% of the NPDES inspections in impaired watersheds or in sensitive waterbodies
• Implement the Regional SSO enforcement strategy for 2 priority municipal systems

Building Strong State and Tribal Partnerships
Addressing State Priorities:
• Partner on improving the administration of programs with limited resources (OK)
• Assist with challenges surrounding the attainment of the proposed new 8-hr ozone standard (OK, LA)
• Develop appropriate nutrient criteria; complete Illinois River TMDL; work with States to develop Illinois River Watershed model (AR, OK)
• Assist ADEQ with study associated with Fayetteville Shales natural gas drilling (AR)
• Assist with hazardous waste materials cleanup from sites without PRPs (AR)
• Assist with Greenhouse Gas regulations and impacts (LA)
Region 6 - 300-Day Plan - 2010

Over the next 300 days, we will focus our energy, talents and resources to accomplish these shared priorities:

- Assist in development of alternative energy projects and improved GHG reporting (NM)
- Assist with needed wastewater infrastructure improvements (LA)
- Clarify CWA protection to non-navigable waters (NM)
- Enforce and complete the cleanup legacy pollution sites at and around LANL (NM)
- Work to address environmental justice priorities to promote public health (NM)
- Work with States to develop and publish tools to effectively ensure compliance with new NAAQS (TX)
- Work with State on SIP development process; identify issues early (TX)
- Assist with challenges surrounding cost sharing when using Recovery Act money at Superfund sites (TX)
- Provide funding to States for Diesel Emission Reduction Program; complete competition for $13M for DERA projects (TX)
- Develop acceptable 5-year ambient air monitoring network assessments with States by July 2010 (TX)
- Award nearly $11M LUST prevention and cleanup funding to States and Tribal consortia (TX)
- Inspect approximately 1,000 UST facilities in LA and TX to help meet the Energy Policy Act 3 year Inspection requirement (TX)
- Conduct 2 pesticide State Lead Agency workshops (TX)
- Work collaboratively with States on a comprehensive nutrient database and criteria options for the Red River by December 2010 (TX)
- Work collaboratively with the Gulf Ecology Division on a Hypoxia comprehensive nutrient database and water quality criteria options (TX)
- Complete a State Review Framework review with ODEQ by September 2010 (TX)

Safeguarding our Tribal Trust responsibilities:
- Ensure drinking water meets all health standards (person-month basis) for at least 95% of the Tribal population served by Community Water Systems (TX)
- Work with the Tribal Office and the Taos Pueblo to provide adequate chlorination of drinking water by June 30, 2010 (TX)
- Develop Regional guidance on Tribal Performance Partnership Grants providing information and assistance to interested Tribes (TX)
- Provide 2 solid waste grant training opportunities to the Tribes (TX)
- Address and close 4 open dumps in Indian Country (TX)
- Inspect 35 UST facilities on Indian land (TX)
- Approve 2 Tribal integrated solid waste management plans (TX)
- Hold 3 on-site waste water training sessions, including basic and advanced courses for Tribes and Pueblos in NM (TX)
- Work with Indian Health Services to assist San Felipe Pueblo in implementing a safe drinking water plan (MX)

Focusing on Our People and Our Resources
Developing our People:
- Graduate 2 classes of GS 12/13 LDP course; contribute coaches and mentors from management (TX)
- Provide 41 training courses for Regional employees (TX)
- Seek collaborative ways to improve the workplace through monthly Labor Management Committee meetings (TX)
- Provide 30 coaching sessions for 30 managers (TX)

Ensure integrity of our financial management:
- Achieve a reduction in ULOs to below $1.5M from the FY2010 beginning of year balance of $7.2M (TX)
- Close out 95% of grants ending in FY08 and earlier by December 31, 2010 (TX)

American Reinvestment and Recovery Act:
- Work with our ARRA partners to increase financial draw downs and ensure transparency (TX)
- Celebrate ARRA ground-breaking event at projects in each of our States (TX)

Questions?
Please talk with your supervisor about our goals (TX)

Our 2009 Accomplishments Report is available at www.epa.gov/region6 (TX)

WE CARE: Workforce Diversity - Environmental Stewardship - Character - Accountability - Respect - Excellence
Mark Vickery - Fwd: Program costs

From: Mark Vickery
To: Huff, Donna
Date: 3/24/2010 2:02 PM
Subject: Fwd: Program costs
CC: Pattie Burnett

Here is the email that was sent to Mike Eastland on March 11. Thanks. Pattie

>>> Mark Vickery 3/11/2010 11:40 AM >>>
Mike,

We have many discussions regarding this issue and simply have not been able to see the justification and contract flexibility to increase the administrative cost. Allowing the 10 percent rate to be applied to total program administrative costs already constitutes an increase in the amount of administrative costs allowable. The TCEQ will continue to approve indirect costs at a rate that shall not exceed 10 percent of total administrative costs.

The current DACM contracts expire on August 31, 2011. The TCEQ intends to negotiate new contracts with the counties before the expiration date. At that time, the counties may request a different method of calculating the indirect costs portion of administrative costs. Sufficient documentation would be required to justify the different method of calculation.

Thanks for your continuing efforts to make the DACM program a success.

Mark
From: Mark Vickery
To: Starfield.Lawrence@epamail.epa.gov
Date: 3/30/2010 3:20 PM
Subject: Re: Meeting

That's what I figured! Aren't those liberal rags for sale :)

>>> <Starfield.Lawrence@epamail.epa.gov> 3/30/2010 3:09 PM >>>
New York Times, Washington Post, -- oops. That was supposed to be a surprise!

Re: Meeting

Mark Vickery
to:
Lawrence Starfield
03/30/2010 02:33 PM

sure, but we need a certification attesting to who is on the line :)

>>> <Starfield.Lawrence@epamail.epa.gov> 3/30/2010 1:13 PM >>>
Checking...

On a related matter, will you have a speakerphone available for our meeting, in case staff from DC want to listen in?

Larry
From: Mark Vickery
To: Sadlier, John
Date: 3/23/2010 3:28 PM
Subject: Fwd: Re: KHOU Valero story

done.....also talked to Carlos in D.C.....he's fine with the final result.

>>> Mark Vickery 3/23/2010 10:20 AM >>>
give the EAs a heads up plz. thx

>>> Andy Saenz 3/23/2010 10:12 AM >>>
Long awaited "Investigative report" on tax abatement issue.

From: Mark Vickery
To: Saenz, Andy
Date: 3/23/2010 10:20 AM
Subject: Re: KHOW Valero story

give the EAs a heads up plz. thx

>>> Andy Saenz 3/23/2010 10:12 AM >>>
Long awaited "investigative report" on tax abatement issue.

From: Zak Covar
To: Lucas, Connie
Date: 3/31/2010 12:12 PM
Subject: Re: brent wade just called ya about the Armbrister deal........

Thx
-----Original Message-----
From: Connie Lucas
To: Covar, Zak <ZCovar@tceq.state.tx.us>

Sent: 3/31/2010 12:12:18 PM
Subject: brent wade just called ya about the Armbrister deal........

garbled message from Susan Clewis - but the property was a day spa (not baseball field)....

239-6566 if you need to holler at him!

Con
From: Stephanie Bergeron
To: Vickery, Mark, Covar, Zak, Rubinstein, Carlos
Date: 3/30/2010 8:06 AM
Subject: Fw: El Paso
Attachments: El Paso

FYI
Just a heads up that Roberto Puga is headed to El Paso this evening. The purpose is for a meeting and site tour for bidders. He'll be leaving El Paso Wednesday night or Thursday morning, so short trip. However, he is meeting with Senator Shapleigh at the Senator's request.

Caroline
From: Mark Vickery
To: Wendell, Ware
Date: 3/23/2010 1:21 PM
Subject: Re: Devon fire investigation
Attachments: TCEQ_RRC_Jurisdiction.doc

Ware, this may be more than you need, but here you go. We are available if you prefer a briefing.

Mark

Both Agencies would perform an investigation in this case - RRC related to discharges of materials (liquids) and TCEQ for air emissions (including off-site impacts from smoke). As you know, TCEQ responded to the incident and did not note any off-site impacts. I've attached a document which lays out our respective jurisdictions. The pertinent sections have been excerpted below.

Jurisdictional Issues -
Spills - Classification of a spill determines which agency has jurisdiction over the spill. Spills are generally classified by (1) the type of substance; (2) the source of the spill; (3) the geographic location of the spill; and (4) the size of an oil spill in coastal waters or along coastal shorelines. TCEQ has jurisdiction over spills of hazardous substances and refined petroleum products. RRC has jurisdiction over crude oil spills resulting from exploration, development, or production of oil or gas. RRC also has jurisdiction over minor spills of crude oil (240 barrels or less) resulting from exploration, development, or production of oil or gas in coastal areas. The GLO has jurisdiction over oil spills in coastal areas. See State of Texas Oil and Hazardous Substances Spill Contingency Plan (TNRCC, RG-290, November 1997).

Texas Natural Resources Code, § 40.004(a) - The General Land Office is the state’s lead agency for response to actual or threatened unauthorized discharges of oil and for cleanup of pollution from unauthorized discharges of oil into coastal areas. The GLO has jurisdiction for oil spills from an oil tanker or an offshore oil rig (Oil Spill Prevention and Response Act of 1991). The GLO has jurisdiction over and will respond to any actual or threatened discharge that enters or threatens to enter coastal waters (31 TAC § 19.31).

30 TAC § 327.1 - The Texas Commission on Environmental Quality has jurisdiction over discharges or spills that result in a release to the environment within the territorial limits of the State of Texas, including the coastal waters of the state, except discharges or spills of oil that enter or threaten to enter coastal waters of the State; discharges and spills from activities subject to the jurisdiction of the Railroad Commission of Texas under the Texas Water Code, §26.131; discharges or spills of 240 barrels or less of oil into coastal areas as a result of activities associated with the exploration, development or production of oil or gas which are under the jurisdiction of the RRC; discharges or spills occurring during the normal course of rail transportation; etc.

MOA - TCEQ/USSCG 8th District - The Coast Guard has regulatory authority throughout the navigable waters of the United States, the high seas, and other waters over which the U.S. has jurisdiction. The TCEQ has statutory authority for the protection of the environment of the State under the Hazardous Substances Spill Prevention and Control Act (HSSPCA). Pursuant to HSSPCA, TCEQ promulgated the “State of Texas Oil and Hazardous Substances Spill Contingency Plan.” The GLO has statutory authority for the protection of coastal waters of the State from spills of oil under the Oil Spills Prevention and Response Act. The Coast Guard shall serve as the lead agency for “leaking” abandoned unknown containerized substance. The TCEQ shall serve as the lead agency for “not leaking” abandoned unknown containerized substance.

>>> Ware Wendell <Ware.Wendell@senate.state.tx.us> 3/23/2010 11:38 AM >>>

Mark,

Which agency has the primary duty to investigate the fire at the Devon site? Is it TCEQ, RRC, or both? Who is tasked with these fire/explosion/safety issues?

Thanks,
Ware

Ware V. Wendell, J.D.
Chief of Staff
State Senator Wendy Davis - District 10
Office: (512) 463-0110
Fax: (512) 475-3745
Fine with me.

>>> Mark Vickery 3/19/2010 12:36 PM >>>
Ok?
We have a bet to see who can make Pam the most upset the fastest. We're going to double dog dare on the dare protocol so we will see who gets first crack at her.

-----Original Message-----
From: Mark Vickery
To: Covar, Zak <ZCovar@tceq.state.tx.us>
To: Bergeron, Stephanie <SBERGERO@tceq.state.tx.us>
To: Hyde, Richard <RHyde@tceq.state.tx.us>
Subject: Re: EPA

Crack

-----Original Message-----
From: Zak Covar
To: Bergeron, Stephanie <SBERGERO@tceq.state.tx.us>
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>
To: Hyde, Richard <RHyde@tceq.state.tx.us>
Subject: Re: EPA

Game on

-----Original Message-----
From: Stephanie Bergeron
To: Covar, Zak <ZCovar@tceq.state.tx.us>
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>
To: Hyde, Richard <RHyde@tceq.state.tx.us>
Subject: Re: EPA

Don't have my sugar-free mints with me...

-----Original Message-----
From: Zak Covar
Cc: Bergeron, Stephanie <SBERGERO@tceq.state.tx.us>
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>
To: Hyde, Richard <RHyde@tceq.state.tx.us>
Subject: Re: EPA

That sugar-free gum should help balance her

-----Original Message-----
From: Hyde, Richard(Richard Hyde)
To: Covar, Zak <ZCovar@tceq.state.tx.us>
Cc: Bergeron, Stephanie <SBERGERO@tceq.state.tx.us>
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>
Subject: EPA

Should be a good mtg today. Steph just had her third cup of coffee! No latte just straight coffee!
From: Stephanie Bergeron  
To: Vickery, Mark, Covar, Zak, Hyde, Richard  
Date: 3/23/2010 12:44 PM  
Subject: Re: EPA  

Verbal delivery with inflection would have been better for my reply -- doesn't work with email.

-----Original Message-----  
From: Mark Vickery  
To: Covar, Zak <ZCovar@tceq.state.tx.us>  
To: Bergeron, Stephanie <SBERGERO@tceq.state.tx.us>  
To: Hyde, Richard <RHyde@tceq.state.tx.us>  
Subject: Re: EPA  

:)  

>>> Stephanie Bergeron 3/23/2010 12:42 PM >>>  
Now, that's inappropriate . . .  

-----Original Message-----  
From: Mark Vickery  
To: Covar, Zak <ZCovar@tceq.state.tx.us>  
To: Bergeron, Stephanie <SBERGERO@tceq.state.tx.us>  
To: Hyde, Richard <RHyde@tceq.state.tx.us>  
Subject: Re: EPA  

Crack  
-----Original Message-----  
From: Zak Covar  
To: Bergeron, Stephanie <SBERGERO@tceq.state.tx.us>  
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>  
To: Hyde, Richard <RHyde@tceq.state.tx.us>  
Subject: Re: EPA  

Game on  
-----Original Message-----  
From: Stephanie Bergeron  
To: Covar, Zak <ZCovar@tceq.state.tx.us>  
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>  
To: Hyde, Richard <RHyde@tceq.state.tx.us>  
Subject: Re: EPA  

Don't have my sugar-free mints with me . . .  
-----Original Message-----  
From: Zak Covar  
Cc: Bergeron, Stephanie <SBERGERO@tceq.state.tx.us>  
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>  
To: Hyde, Richard <RHyde@tceq.state.tx.us>  
Subject: Re: EPA  

That sugar-free gum should help balance her  

-----Original Message-----  
From: Hyde, Richard(Richard Hyde)  
To: Covar, Zak <ZCovar@tceq.state.tx.us>  
Cc: Bergeron, Stephanie <SBERGERO@tceq.state.tx.us>  
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>
From: Pattie Burnett
To: Covar, Zak
Date: 3/31/2010 2:29 PM
Subject: Fwd: Re: City of Houston

>>> Mark Vickery 3/31/2010 1:42 PM >>>
Danke
-----Original Message-----
From: Pattie Burnett
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>

Sent: 3/31/2010 1:40:11 PM
Subject: Re: City of Houston

Last contract was FY 05 for $1.4 million.

>>> Mark Vickery 3/31/2010 1:28 PM >>>
Yep the old contract. Thx
-----Original Message-----
From: Pattie Burnett
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>

Sent: 3/31/2010 1:27:30 PM
Subject: Re: City of Houston

We don't do any more, but I think you know that. We think it WAS slightly under a $1 mil for Houston, but we are confirming that number. We think we stopped in 06-07. Back in a sec. with more hopefully.

>>> Vickery, Mark(Mark Vickery) 3/31/2010 12:35 PM >>>
Can u plz find out how much money the local program contract was for the city. Yearly cost. Thx
Sure thing Boss. Will set it aside.

-----Original Message-----
From: Zak Covar
To: Sifuentez, Elizabeth <ESIFUENT@tceq.state.tx.us>
Cc: Burnett, Pattie <PBURNETT@tceq.state.tx.us>

Sent: 3/26/2010 10:08:05 AM
Subject: Re: FY 2011 Contingency

Heads up...we will need up to 350k for the chiefs office for barnett shale special inventory project. We will work with brymer on what they need beyond ppg funds.

-----Original Message-----
From: Elizabeth Sifuentez
Cc: Anderson, Ricky <RANDERSO@tceq.state.tx.us>
To: Covar, Zak <ZCovar@tceq.state.tx.us>
Cc: Burnett, Pattie <PBURNETT@tceq.state.tx.us>

Sent: 3/24/2010 3:33:32 PM
Subject: FY 2011 Contingency

Good Morning,

After providing the $300K to CEO for the Houston Lab, FY 2011 Contingency Budget is $1.5M. Please let me know if you have questions or want to discuss.

Thanks,
Zak Covar - Dose Response Workshop - Toxicology Division Kudos

From: Susana Hildebrand
To: Allison Jenkins; Angela Curry; Carla Kinslow; Darrell McCant; Gulan Sun; Jong-Song Lee; Joseph Haney; Lindsey Jones; Manny Reyna; Mary Lively; Michael Honeycutt; Neeraja Erraguntla; Roberta Grant; Shannon Ethridge; Tracie Phillips
Date: 3/26/2010 5:39 PM
Subject: Dose Response Workshop - Toxicology Division Kudos
CC: Ricky Anderson; Zak Covar

Tox Staff,
I commend you all on the Dose Response Workshop that you hosted here at our agency last week. As you know, this issue has significant consequences to any regulatory agency’s ability to assess, understand, and appropriately respond to real environmental risks. However, the value of hosting this conference goes beyond simply the discussion of the subject matter.

Your efforts resulted in a world-class conference and discussion with international attendees, both in person and on the web/phone. It is so valuable to be able to have these in-depth conversations and interactions with others who share your expertise and training and can appreciate the complexities of the highly specialized field you are in. I am very proud to have you in the Chief Engineer’s Office and very proud that you all had an opportunity gain knowledge and information from the other attendees and to share the wealth of your own experience with others. Your efforts not only reflect well on the Toxicology Division, but on the agency as a whole.

Please know that you are all Tox Rock Stars to me. I would like to acknowledge some of the extra efforts extended that helped make the conference a success.

*Allison* for helping organize, acting as rapporteur, and monitoring the email box for questions
*Angela* for helping organize and handling computer support including loading and changing presentations
*Gulan* and *Lindsey* for the displays
*Darrell* for driving a van
*Kip* for being a breakout session chair and driving a van
*Robert* for helping organize and driving a van
*Allison, Tracie, Neera, Lindsey, and Shannon* for acting as backup rapporteurs
*Mike* for chairing the meeting on the first day and presenting on the 2nd and
*Mary* for picking up the critical details like supplies, administrative support, dealing with meals and the caterer and the registration.

A great job done by all!

Susana

---

Susana M. Hildebrand, P. E. | Chief Engineer | TCEQ
12100 Park 35 Circle, Bldg. F | Austin, Texas 78753 | Mail: MC-206, P.O. Box 13087, Austin TX 78711-3087 | (512) 239-4696 Fax: (512) 239-1794 |  shildebr@tceq.state.tx.us
Good day,

Attached is the FTE Mid-Month Report.

Please let me know if you have questions or need additional information.

Thanks.

Lyn
x0128
Mid-Month FTE Report
as of March 19, 2010

Agency FTE Cap for FY 2010 = 2980.3

Mid-Month Actual FTE Count From 03/01/2010 - 03/19/2010

| 2942.06 | Mid-Month Actual FTEs including 29 contractors based on hours paid |
| 38.24  | FTEs below the Agency FTE Cap |

FTE Fiscal Year Average

| 2942.14 | FTE Fiscal Year Average |
| 38.16  | FTE Fiscal Year Average below the Agency FTE Cap |

Position Count as of March 22, 2010

| 2921   | Full-Time Filled Positions |
| 18     | Part-Time Filled Positions |
| 2939   | Total Filled Positions |
| 97     | Total Vacant Positions |
| 52     | Vacant Positions Posted |
| 45     | Vacant Positions Not Posted (Including 7 Agency Strike-Outs) |

Additional Information for the period of 03/01/2010 to 03/19/2010

| 8      | Employee Separations |
| 8      | Employee New Hires |
Good Morning!

The Governor’s Office Reps were appreciative of the time we took to meet with them and the materials provided. You all did a great job of representing the agency. Thank you for your time and dedication to make this a success.

Have a great weekend.

Elizabeth
From: Ashley Morgan
To: Jim Harrison; Pattie Burnett
CC: Barbara Robinson; Zak Covar
Date: 3/31/2010 9:57 AM
Subject: Fwd: Re: Request to Post

The Senator (and his staff) will be so excited to hear this!
Thanks,
Ashley

>>> Pattie Burnett 3/31/2010 9:54 AM >>>
FYI, this will be posted shortly. Mark said we should write Sen Nichols a letter letting him know. Thanks. Pattie

>>> Connie Lucas 3/31/2010 9:50 AM >>>
The FJD on the posting for SBEA.

>>> Dana Lively 3/31/2010 9:48 AM >>>
Here you go..Please let me know if you need anything else.

Thanks!

Dana Lively
Executive Assistant
Small Business and Environmental Assistance Division (MC-112)
TCEQ
Phone: (512) 239-6774
(mailto:DLively@tceq.state.tx.us)

>>> Connie Lucas 3/31/2010 9:47 AM >>>
Hi Dana!

Could you please send me the FJD on the RTP that you brought up this morning?

Thx,
Con
Kelly,

You rule! Great job on the mercury ecos resolution! You are having national impact.

Zak
Sweet! Good job!

-----Original Message-----
From: Seaton, Curtis (Curtis Seaton)  
To: Rubinstein, Carlos <CRubinst@tceq.state.tx.us>  
To: Covar, Zak <ZCovar@tceq.state.tx.us>  

Sent: 3/24/2010 11:08:30 AM  
Subject: Hg

Passed as amended!
From: Charles Maguire
To: Zak Covar
Date: 3/22/2010 6:01 PM
Subject: phone call

Zak
Sorry I missed your call.... they are supposed to come and interrupt me when you call. I'll make sure that is understood..... I think the fact Diane was involved related to Sunset made them think I could not break away..... I could have ... sorry.

I'll call tomorrow morning... or if you need me this evening my Blackberry is 512-739-7469.
Thanks
Charles
Just wanted you to know that Alfonzo Caso was interviewed for the PS IV in TERP but was not first choice for the position. Please let me know if you need any additional information.

Thanks.
Pattie
From: Mark Vickery
To: jwimberley@texasdisposal.com
Date: 3/24/2010 4:35 PM
Subject: Re: Many Thanks

Thanks Jim. Pleasure was all mine. Look forward to working with you. Mark

Sent: 3/24/2010 4:13:15 PM
Subject: Many Thanks

Hi Mark....Jim Wimberly here!
Just a quick note of thanks for your time last week. I enjoyed meeting you and learning more about TCEQ. Please let me know if there is anything I can do to help you and your fine organization in the days to come.
Sincerely,
Jim
From: Mark Vickery
To: Rubinstein, Carlos
Date: 3/24/2010 7:22 AM
Subject: Re: World Bank

Yep. Let's talk Sunset next week over a beverage. Need to bounce some ideas. Tell world bank that I need a loan ;)

-----Original Message-----
From: Carlos Rubinstein
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>

Sent: 3/24/2010 7:19:09 AM
Subject: Re: World Bank

Very - I was invited to visit with World Bank very late last week and met with them Monday afternoon for a bit more than an hour.
Can you say Sunset... ;)

Sent on the Sprint® Now Network from my BlackBerry®
-----Original Message-----
From: Mark Vickery
To: Rubinstein, Carlos <CRubinst@tceq.state.tx.us>

Sent: 3/24/2010 7:17:43 AM
Subject: Re: World Bank

That's cool

-----Original Message-----
From: Carlos Rubinstein
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>

Sent: 3/24/2010 7:16:53 AM
Subject: Re: World Bank

One from Australia, one from Denube (sp), one from China (I think), and us!
The funding provides $4B for WQ improvements on the Ganges River. We are particularly liked because of our partnership (Clean Rivers) and overall effective WQ programs!

Sent on the Sprint® Now Network from my BlackBerry®
-----Original Message-----
From: Mark Vickery
To: Rubinstein, Carlos <CRubinst@tceq.state.tx.us>

Sent: 3/24/2010 7:14:23 AM
Subject: Re: World Bank

Roger that. Do we know who the other model programs are?

-----Original Message-----
From: Carlos Rubinstein
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>

Sent: 3/24/2010 7:10:31 AM
Subject: Re: World Bank

Yup - they wanted me to go but it is April 16-17.

Can you imagine the good press we can get from this!

Sent on the Sprint® Now Network from my BlackBerry®
-----Original Message-----
From: Mark Vickery
To: Rubinstein, Carlos <CRubinst@tceq.state.tx.us>

Sent: 3/24/2010 7:09:11 AM
Subject: Re: World Bank

Loreal going to Bollywood?

-----Original Message-----
From: Rubinstein, Carlos(Carlos Rubinstein)
From: Jim Harrison
To: Mark Vickery; Pattie Burnett; Ricky Anderson; Zak Covar
Date: 3/23/2010 5:49 PM
Subject: Texas Energy Report: KEFFER TO LEAD BRIEFING ON BARNETT SHALE ACTIVITY

Fyi. This briefing just popped up on the TX Energy Report website. Ky Ash with Rep. Keffer's office says the Barnett Shale Energy Education Council asked the Chairman to sponsor this briefing at the capitol and invited us to attend.

Someone from IGR will attend and monitor.

KEFFER TO LEAD BRIEFING ON BARNETT SHALE ACTIVITY

Trade groups says it's part of a statewide education campaign.

House Energy Resources Committee Chairman Jim Keffer (R-Eastland) will host a briefing tomorrow for the Barnett Shale Energy Education Council regarding natural gas drilling and production the natural gas-rich region of North Texas.

The briefing is being billed as "the first element of a comprehensive educational tour BSEEC is undertaking to provide accurate information to the public and elected officials throughout the state."

The event is scheduled for 3 p.m. Wednesday in the Capitol Extension, Room E2.026.
A message from TBPG Board Chair, Barbara Roeling:

Licensees,

The Texas Board of Professional Geoscientists received the attached letter from US Representative Pete Sessions. The letter was targeted for individuals who reside in Representative Session's district that have a background in, or are currently involved in the Oil and Gas Industry. In the letter, Representative Sessions is seeking input regarding how the Administration's 2011 Budget and associated spending priorities may impact energy exploration and production.

This information is being forwarded to our licensees in the event you are interested in providing input to Representative Sessions.

Thank you,

Barbara Roeling, PG

TBPG Board Chair

512/936-4400 TBPG Office
February 26, 2010

Lynn Clark
Chairman
Texas Board of Professional Geoscientists
PO Box 13225
Austin, Texas 78711-3225

Dear Lynn:

On February 1, 2010, President Barack Obama released his Administration’s Fiscal Year 2011 Budget. Although the budget is non-binding, the lengthy document details the President’s spending priorities and serves as an outline for Congress to follow. This year, like last year, President Obama has targeted the oil and gas industries as revenue raisers for the government through increased taxes. Some of the budget provisions are extremely troubling due to the impact they will have on energy exploration and production. The provisions will impact both large energy companies and small independent producers. The following is a list of the President’s oil and gas budget proposals (The Budget for Fiscal Year 2011, p. 161 162). I have also included a larger copy of the budget documents in this letter.

S-8. Mandatory and Receipt Proposals—Continued

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<tr>
<td>Income from oil and gas production</td>
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<td>Oil and gas company profits</td>
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I would like to take this opportunity to highlight a few of the budget provisions that may affect your business.
Intangible Drilling Costs

Currently, independent producers and major oil companies can expense all or some of their intangible drilling costs. Intangible drilling costs include labor, fuel, equipment and costs associated with engineering; their expensing creates incentives to explore. These are especially important to costly offshore projects. The President’s budget calls for the repeal of the intangible drilling cost expense. This will undoubtedly discourage new domestic exploration. With this new tax burden, which would cost $5.6 billion over the next five years, many producers would not have adequate capital for new plays, making domestic exploration less competitive in the global economy.

Marginal Well Tax Credit

The President’s budget also repeals the tax credit for marginal wells. Marginal wells produce lesser amounts of oil and gas and are at a greater risk of being shut down when prices are low. According to the Independent Petroleum Association of America (IPAA), marginal wells account for 20% of American oil and 12% of natural gas. This tax credit provides an important safety net for energy producers and is critical to maintaining a stable energy supply.

Manufacturing Tax Deduction

In 2004, Congress passed the American Jobs Creation Act (PL. 108-357) to help spur American manufacturing. This bill created a tax deduction for domestic manufacturers—often referred to as “Section 199.” The “Section 199” deduction keeps high-paying jobs in the US and encourages investment. President Obama has proposed repealing this deduction for the oil and gas industry and would require them to pay higher taxes than other industries. The cost to the oil and gas industries would be approximately $7.3 billion over the next five years.

Overall, these new taxes levied on the oil and gas industry discourage investment in domestic natural resources, push jobs overseas, and continue our reliance on oil and gas imports. The development of reliable energy sources is critical to our economic prosperity and national security, and I am dismayed at the Administration’s attempts to stifle exploration and production. In Texas especially, natural gas and oil are key components to the state’s economy. I support a robust energy policy that capitalizes on all sources of energy – including alternative and renewable resources. However, the United States still relies on fossil fuels and targeting the oil and gas industries, which provide needed jobs to American workers, is irresponsible.

Republican Energy Solutions

In Congress, I have cosponsored the American Energy Act (H.R. 2846), which was introduced by the Republican Minority Leader John Boehner (R-OH). The American Energy Act takes a comprehensive approach to America’s energy policy, and it does not pick winners and losers. The legislation removes barriers to exploration and production of domestic resources, provides tax incentives for energy efficiency, invests in renewable energy, expedites the permitting process, and addresses cumbersome environmental lawsuits. I believe that an “all of the above” solution should drive our energy economy and that the tax proposals in the President’s budget hurt – not help – our quest for energy independence.

As a member of the Rules Committee, I am responsible for handling the Rule for energy bills that will come to the House floor for vote. For that reason, your individual feedback on how
these tax provisions would affect you or your business is helpful during debate. Your opinions on this topic are extremely valuable to me, my staff, and other members of Republican leadership when we move forward to discuss these issues in Congress. If you have any questions regarding the oil and gas tax provisions in the President’s budget or if you would like to share your thoughts on America’s energy industry, please feel free to contact me or my Legislative Assistant Evan Shoop at 202.225.2231 or email her at Evan.Shoop@mail.house.gov.

Sincerely,

[Signature]

Pete Sessions
Member of Congress

PS\ES
### S-8. Mandatory and Receipt Proposals—Continued

(Deficit increases (+) or decreases (-) in millions of dollars)

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<tr>
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<td>Increase geological and geophysical amortization period for independent producers to seven years</td>
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<td>Subtotal, expanded information reporting</td>
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<td>Require increased information reporting for certain government payments</td>
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<td>Increase information return penalties</td>
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## S-8. Mandatory and Receipt Proposals—Continued

(Deficit increases (+) or decreases (-) in millions of dollars)

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<td>Defer deduction of interest expense related to deferred income</td>
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<td>Reform foreign tax credit: Determine the foreign tax credit on a pooling basis</td>
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<td>Tax currently excess returns associated with transfers of intangibles offshore</td>
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<td>Limit shifting of income through intangible property transfers</td>
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<td>Modify tax rules for dual capacity taxpayers</td>
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<td>Combat under-reporting of income on accounts and entities in offshore jurisdictions</td>
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<td>Eliminate fossil fuel tax preferences</td>
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<td>Repeal enhanced oil recovery credit</td>
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<td>Repeal exception in passive loss limitations for working interests in oil and natural gas properties</td>
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### S-8. Mandatory and Receipt Proposals—Continued

(Deficit increases (+) or decreases (-) in millions of dollars)

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<td>Increase geological and geophysical amortization period for independent producers to seven years</td>
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<td>Subtotal, coal tax preferences</td>
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Who Protects the Texas Environment?

Hint: It Isn't the State Agency That's Supposed To

Investigative Report
by Greg M. Schwartz

The Texas Commission on Environmental Quality's mission statement says the agency "strives to protect our state's human and natural resources consistent with sustainable economic development. Our goal is clean air, clean water, and the safe management of waste." But the agency's numerous critics charge that the environmental protection of Texas is repeatedly trumped by politically motivated management decisions concerned only with the economic development part of the equation.

Neil Carman "There is so much dirt on the agency and most of it has never been investigated," says Neil Carman, clean air director for the Sierra Club's Lone Star Chapter, based in Austin. From 1980 to 1992, Carman worked as an investigator and inspector for the Texas Air Control Board, a predecessor agency that was merged into what is now the TCEQ. Carman says he has a list of criminal cases against the TCEQ that have never been pursued, compiled from trading war stories with other investigators around the state. One of the primary areas of malfeasance Carman cites is the TCEQ's air permitting system.

"TCEQ issued more than 150 state flexible air permits from 1995-2009 to major industrial plants by using an illegal permitting program that circumvented the Clean Air Act," Carman says. These plants include many large industrial sources of toxic air pollutants, particulate matter, ozone-forming compounds, acid rain-producing gases, and haze-forming chemicals. The U.S. EPA Region 6 headquarters listed 142 plants in Texas in a September 25, 2007, letter that was sent to companies. The letter indicated
the need for grandfathered, industrial plants that hold so-called "Flexible Permits" to reduce pollution and comply with the Clean Air Act.

Carman authored a 1999 report on behalf of the Sierra Club and the Galveston-Houston Association for Smog Prevention. The report identified about 1,070 Texas plants partly or totally grandfathered under the state law known as the Texas Clean Air Act.

"We have a permitting system that creates enforcement nightmares," Carman says. He said the TCEQ has issued somewhere around 86,000 permits for industrial plants and facilities since 1971, and only denied about 15. Eighty-six thousand permits over 40 years averages out to 2,150 a year-more than eight every single day. Carman says the incredulous number comes directly from the permit numbers assigned by the TCEQ.

"People are shocked when they hear about all the air permits being more than 86,000-and that is a dated total. But that is good for 'bidness' in Texas. They issue this stuff like candy, every day, statewide. ... They've got an army of permit engineers," says Carman, who adds that the number is probably more like 87,000 now, since 86,000 was topped in 2008.

Carmen says that in 1995, the Texas Legislature, under then Governor George W. Bush, authorized the flexible permit system for grandfathered polluting plants, enabling them to "to put a permit on grandfathered facilities without doing much. ... They didn't want to have to comply with the Clean Air Act."

Carmen says the stakeholder process that he was a part of to advise on the situation "was sabotaged and torpedoed."

"Our TCEQ stakeholder meetings and discussions during 1994-1995 were sabotaged and torpedoed when the refineries and other companies-who had representatives in the stakeholder group-went behind our backs to the Legislature with a bill to legalize Flexible Permits, rather than go through the TCEQ's regulatory process to draft a new air permit language approving the Flexible Permits.

"A number of the public stakeholder members in the environmental community resigned from the TCEQ stakeholder groups because they were so pissed off this happened," Carman said.

"Now EPA (under new leadership) is after the Flexible Permits because they are illegal," Carmen says. He says that the permitting system has no mechanism for public participation, no modeling to project pollution levels, and has sham reviews that allow such facilities to average their worst pollution days into a plant-wide cap.

**Texas tops in pollution**
Luke Metzger Texas leads the nation in air pollution and greenhouse gas production, making it the American ground zero in the political battle over global climate change. If the Lone Star State seceded to become its own country, it would become the seventh-largest polluting country in the world, says Luke Metzger, director of Environment Texas, a statewide citizen-based environmental advocacy organization.

"The thing we've cited the most (in criticizing the TCEQ) is the enforcement program," Metzger says. He cites a 2003 State Auditor's Report (http://www.sao.state.tx.us/reports/main/04-016.html) indicating that the TCEQ "does not consistently ensure violators are held accountable." The report also said that TCEQ's "enforcement function does not: consistently issue enforcement orders or settle enforcement cases within its required timeframes; calculate penalties accurately; or fully collect delinquent penalties." But the state auditor's office has no enforcement arm and a spokesperson was clueless when asked who, if anyone, was tasked with such enforcement.

The TCEQ defends its record.

"We disagreed with many of the (State Auditors Office's) 2003 findings but improved many of our processes as a result of an internal review that began in late 2004," says TCEQ spokesman Andy Saenz. He said improved
processes included accelerated enforcement time lines and increased accountability for timeliness of enforcement actions; establishment of a field citation program for certain violations; and improved delinquent penalty collection procedures. Saenz said the volume of effective enforcement actions and associated penalties has also increased significantly in the past five years.

Bryan ShawTCEQ Chairman Bryan Shaw is well-aware of the criticism his Austin-based agency faces. When he appeared on a Texas Public Policy Foundation (TPPF) panel discussion in Austin this past February titled, "New Ozone Standards: The Texas Challenge," he said the TCEQ enforcement system "is just misunderstood, not broken."

"I would offer that the opposite is true," Shaw said, regarding allegations that the TCEQ is lax in enforcement. He went on to say the state's mission is to customize its approach "to get the (economic) success we've seen."

The health of the state economy is certainly a valid concern, particularly with the historically foul conditions that have plunged the nation into its worst economic crisis since the Great Depression. But at what price does the public health suffer?

A rundown of troubling decisions at the agency could fill a book. Here is a small sample of the more notable
instances in recent years in which the TCEQ's actions have come into serious question. The agency:
. Enforced few or no penalties for industrial plants (http://www.houstonpress.com/2009-12-17/news/a-quiet-hell/) along the Houston Ship Channel that repeatedly exceeded toxic pollution limits;
. Refused to hold public hearings over the high levels of toxicity spewing from a cement plant (http://www.dallasnews.com/sharedcontent/dws/news/texasouthwest/stories/DN-txi_09.ART.State.Edition2.4ad5466.html) in Midlothian;
. Granted a highly questionable permit to the Andrews County low-level nuclear waste dump (http://www.texasobserver.org/article.php?aid=2729) in West Texas, over the objections of the agency's own scientists; and
. Approved the controversial re-permitting of the ASARCO copper smelter (http://www.pdfdownload.org/pdf2html/view_online.php?url=http%3A%2F%2Fwww.shapleigh.org%2Fsystem%2Freporting_document%2Ffile%2F196%2FASARCO in El Paso update 1.09.pdf) in El Paso (a decision that was later blocked by the EPA). This latter decision has the TCEQ embroiled in a contentious legal battle with a state senator, a battle with potentially global implications. (Also see Dallas Morning News (http://www.dallasnews.com/sharedcontent/dws/news/longterm/stories/011809dnproson3asarco.327a14b.html) story.)
State Sen. Eliot Shapleigh vs. the TCEQ

Eliot Shapleigh In the ASARCO case, State Sen. Eliot Shapleigh (D-El Paso) has been a relentless watchdog for his district in challenging the TCEQ and Tucson, Arizona-based ASARCO LLC, a subsidiary of diversified mining firm Grupo México, over the re-permitting of the copper smelter in his district. Shapleigh led a vain struggle in the Texas Senate to block Bryan Shaw's appointment as the TCEQ's chairman, but Shaw was confirmed by a 22-7 vote. It would have taken 11 votes against to scuttle the appointment.

Shapleigh doesn't mince words when it comes to his disgust with the agency.

"When it comes to emissions, TCEQ has already seceded from America. Polluters have captured and deeply corrupted this agency ... to the point that the chairman meets in secret with the polluter lobbyists," says Shapleigh, referencing Governor Rick Perry's 2009 rhetoric about potential secession as well as the state's Flexible Permit system that has enabled companies to avoid complying with the federal Clean Air Act.

Shapleigh trumpets billing records obtained from ASARCO's law firm, Baker Botts LLP, that became public in ASARCO's bankruptcy. The records showed what Shapleigh says are repeated, illegal ex parte
communications between the firm and the TCEQ staff and commissioners. The senator has sued the TCEQ to gain access to the records of those meetings (with the Environmental Defense Fund fronting the legal bills).

In legal terms, ex parte refers to situations in which only one party appears before a judge or decision maker. The ex parte communications at issue occurred leading up to the ASARCO permitting decision in February 2008. Shapleigh argues that this gave ASARCO an inside track to the commissioners without affording the same opportunity to other parties that contested the permit. Records obtained by Shapleigh show that the ex parte communications took place between an ASARCO lobbyist employed by Baker Botts and then-TCEQ Chairman Buddy Garcia. Shapleigh believes the records of these meetings will lead to a criminal investigation of high-ranking TCEQ officials.

Both a state district court and the Texas attorney general have ruled that the TCEQ must release these records. The agency is now appealing to the state's Third Court of Appeals, claiming executive privilege, the discretionary right to withhold information from lawmakers.

Although the governor appoints the TCEQ's three commissioners, the TCEQ is not a constitutionally derived agency. It was created by the Legislature. Shapleigh and his legal team have therefore argued that no such
executive privilege exists and that the "legislative purpose exception" gives legislators the right to see these documents.

How long it takes the get a ruling from the court is of potentially critical importance to the outcome, since Shapleigh is not running for re-election and will no longer be a state senator come next January. Shapleigh's legal staff says there's no precedent for what would happen to a case if a plaintiff legislator is no longer in office before it's decided. So the fate of the case could enter a nebulous gray area if it drags on into 2011, which highlights the importance of the case being ruled on sooner rather than later.

"The legal opinion from our attorneys is that my successor is a party of interest (on the case)," Shapleigh says. The senator noted that the Democratic contender for his seat, former El Paso County District Attorney Jose Rodriguez, has a strong environmental record. Shapleigh says he would expect Rodriguez to continue the case if he defeats Republican Dan Chavez. The popular Austin political blog, Burnt Orange Report, has cast Rodriguez as a prohibitive favorite, noting that El Paso County is overwhelmingly Democratic and that Chavez has never won an election.

A member of Shapleigh's legal team says that while the appeal theoretically could take up to two years, it probably won't. He said three of the six justices on the court sit on
the panel to rule on oral arguments and, in this case, two of the three are Democrats. If the TCEQ is hit with an unfavorable ruling, the agency could further appeal to the state's Supreme Court.

Shapleigh's assertion that the TCEQ has already seceded from America when it comes to emissions (due to willful noncompliance with the Clean Air Act) raises a critical global issue stemming from the situation in Texas.

"The ASARCO case is the roadmap for how polluters have captured and corrupted a Texas agency, the campaign of Rick Perry, and the emissions profile of the world," says Shapleigh. "Rick Perry wins if the truth is blocked. If the secrets at TCEQ come to the public, the public will be outraged."

When queried on why the TCEQ seeks to withhold these documents when it only makes it look like the agency does indeed have something to hide, TCEQ spokesman Terry Clawson merely reiterated the agency's statement made following Shapleigh's February press conference about the case.

"While we do not comment on pending litigation, obviously the TCEQ takes exception to the senator's assessment of the agency and his accusations," Clawson wrote in an e-mail.
In his recent campaign commercial, Perry preaches to voters about how he'll keep the feds from messing with Texas. But if Shapleigh's suspicions about criminal misdeeds by the TCEQ are proven true, then it will show that it's Perry and his cronies (http://www.shapleigh.org/news/3819-from-the-senator-s-desk) who are the ones that are messing with Texas.

Shapleigh characterizes the situation with ASARCO as "the most threatening air permit in the world," saying it exposes the way that things have been done in Texas. The lax environmental regulation and unenforced emissions standards make Texas the USA's most polluting state and a key battleground in the fight against global climate change.

**Cleaning up Texas is critical**

Andy Wilson, policy analyst for global warming and campaign finance reform in Public Citizen's Texas state office, emphasized the importance of the Lone Star State in the bigger picture.

"Because Texas is by far the most polluting of the states, what happens in Texas matters not only nationwide but worldwide," Wilson says. "What happened with the ASARCO case was TCEQ ended up wringing their hands and saying, 'We don't even know if we can legally turn down this permit application.' If the agency that is supposed to protect Texans from dirty air and water
doesn't even know if it can stop one of the worst polluters from starting up their operations again, something is seriously broken.

"It's like TCEQ never met a permit it didn't like," Wilson says. "The questions asked by the agency are never: 'Do we need this facility? What are the cost-benefits to health and quality of life? What are the cumulative impacts of permitting all of these new sources of pollution?"

Like Shapleigh, Wilson and Public Citizen also point a finger at Rick Perry as a major culprit in undermining responsible environmental compliance in Texas.

"Rick Perry's campaigns are funded by-among a lot of other bad actors-the big polluters. Follow the money. When an oil or gas company gives money to the governor, it's not out of the kindness of their hearts. Whether there are implicit strings attached to donations or not, it doesn't matter. You can see what a decade of Perry's policies at TCEQ have wrought, including a TCEQ commissioner (Bryan Shaw) who even questions the validity of what every climate scientist in the state of Texas believes," says Wilson, referring to Shaw's dissent against the scientific community's consensus that greenhouse gases caused by humanity do contribute to global warming.

The website of Project Vote Smart, which tracks campaign contributions and aggregates the numbers for major
sectors of the economy, shows that the Energy and Natural Resources sector gave Governor Perry $2.4 million in 2002, $1.2 million in 2004, $2.4 million in 2006, and $1.3 million in 2008-more than $7.4 million in all.

"Rick Perry uses those campaign dollars to endear himself to the most reactionary elements within his own political party by making inaccurate statements about climate science and suing the EPA," Wilson says.

Perry and Attorney General Greg Abbott have filed suit to overturn the EPA's finding that greenhouse gases are a threat to public health. Such a finding sets the stage for regulation of the gases that scientists have linked to global climate change. Texas leads the nation in carbon emissions. Perry argues that that curbs on greenhouse gases like carbon dioxide could cost state businesses and jeopardize jobs. The suit argues that the EPA based its finding on faulty science, but many observers and pundits immediately labeled this a frivolous lawsuit.

"All of this reactionism isn't going to help anyone," Wilson said. "The EPA has already said that TCEQ's Flexible Permitting process is unacceptable, and they are continuing to review a backlog of complaints against TCEQ that racked up, conveniently, during the Bush Administration. The more (Texas policymakers) bluster, the worse shock we're going to be in for when we actually have to comply with federal clean air and water
Wilson says the good news is that it doesn't have to be this way, citing how Texas cut CO2 output by four percent between 2005 and 2007 (before the recession even started—later results are not available) by being a leader in the wind industry and trying to tackle energy efficiency.

He claims Texas could cut CO2 output by two percent per year for the next 10 years by: setting a more aggressive goal for installing solar power; continuing to build wind power facilities; using money from the Texas Emissions Reduction Program to subsidize the purchase of more fuel-efficient cars; building mass transit instead of more toll roads; and being smarter about energy efficiency.

"Most of these policies, especially those which favor efficiency (using less oil, gas, and electricity for the same outcome), will save consumers money. (The cost of) Wind (power) already undercuts some traditional power plants and provides a hedge against spikes in the cost of fossil fuels, so we can switch to cheaper, cleaner, and cooler ways of doing business in our state. There is no downside to any of this," says Wilson. "And guess what—two percent per year for 10 years is 20 percent by 2020, which is at least approaching what our best science tells us we should do. That might not be the breaking point that puts our CO2 levels down to a safe level, but it's a good start."
"What's the first rule when you find yourself in a hole? Quit digging. TCEQ keeps trying to toss people shovels."

On the flip side, the arguments against stricter environmental regulation are typically based on economic fear-mongering. The fact sheet distributed at the Texas Public Policy Foundation's February panel discussion on ozone standards claims that "if pending federal legislation like Waxman-Markey (http://www.grist.org/article/2009-06-03-waxman-markey-bill-breakdown/) (HR 2454: American Clean Energy and Security Act of 2009) were enacted, those trends (of Texas' economic growth in the past decade) would be reversed and continued economic growth would become impossible."

Shapleigh says he's heard these arguments for years and that they don't stand up.

"Toxic polluters have made untrue claims like that for a century. ASARCO bullied El Paso for 100 years, saying good jobs will leave (if the company doesn't get what it wants). Now we have a $250 million mess and ASARCO contaminants are affecting our job profile," Shapleigh says.

The $250 million figure comes from discussions Shapleigh says he's had with EPA officials. A remediation cost of only $52 million has been agreed upon by the EPA, TCEQ and ASARCO. Shapleigh countered that agreement with a
letter to the Texas attorney general's office, saying that $52 million would do only the "bare minimum" to rehabilitate the site and would severely limit future use of the land. He also noted that it was the "Bush-era EPA" that agreed to that figure.

Some environmentalists in Texas are hopeful that the Sunset Advisory Commission's review of TCEQ (http://www.texastribune.org/stories/2010/jan/19/riding-sunset/) taking place this year could lead to changes in the agency. Shapleigh quickly dismissed such a notion, saying he believes the powers that be have already co-opted the process. He may have a point. The public testimony on the TCEQ sunset review is not scheduled until mid-December—right before the holidays—and the decision is scheduled for January 12.

**Economic concerns vs. environmental protection**
Where should the line be drawn between economic concerns and environmental protection? The Texas Public Policy Foundation's fact sheet—based on a study by The American Council for Capital Formation (ACCF), whose goals are "strong capital formation, a balanced regulatory regime, and cost-effective environmental policies," claims that enactment of the Waxman-Markey climate and energy bill would cause Texas to lose from 144,000 to 196,000-plus jobs by 2030. It also states that by 2030, gas prices could rise 26 percent, natural gas prices could rise as much as 73 percent and that residential electricity
rates could rise by 50 percent.

Public Citizen's Andy Wilson objects to these projections. He says, "The TPPF has no transparency in the economic models they're using ... so there's no way to verify that this isn't just a garbage in, garbage out study," said Wilson. "ACCF did a whole series of these type of sham studies last year and the year before, and they used non-transparent, non-peer-reviewed economic models. Their assumptions are not only suspect, but probably wrong. ... And let's be honest, it's paid for by people who have an interest in propagating the status quo."

The fact sheet goes on to claim that the Texas gross state product could decline by $30 billion to $41 billion by 2030, reducing state revenues by $2 billion to $3 billion. It was against this backdrop that TCEQ Chairman Bryan Shaw and State Rep. Warren Chisum (R-Pampa) appeared with Michael Taylor, deputy district director for U.S. Rep. Joe Barton (R-Fort Worth), and Derek Seal (former TCEQ general counsel) on the TPPF's February panel to discuss—and mainly criticize—the EPA's proposed stricter ozone standards.

"My assessment is that EPA has mistaken a causal relationship for what is actually correlation," Shaw said, in reference to the recent EPA finding that gases blamed for global warming threaten public health. Shaw was echoing sentiments from Governor Rick Perry's federal lawsuit filed
in February to prevent regulation of greenhouse gases.

Rick PerryIn announcing the lawsuit, Perry said, "The EPA's misguided plan paints a big target on the backs of Texas agriculture and energy producers and the hundreds of thousands of Texans they employ. This legal action is being taken to protect the Texas economy and the jobs that go with it, as well as defend Texas' freedom to continue our successful environmental strategies free from federal overreach."

"You're spending money chasing the wrong rabbit," Shaw said, in regard to proposed efforts to reduce smog limits to 60-70 parts per billion (ppb). "It will offer the illusion of environmental protection while actually costing us time, money and jobs." He believes the current level of 76 ppb is adequate.

Elena CraftElena Craft is an air quality specialist with the Environmental Defense Fund in Austin. She disagrees with Shaw's assessments.

"There is no scientific foundation for the position that TCEQ has proffered," Craft says. "The evidence is overwhelming in demonstrating the correlation between high ozone (http://blogs.edf.org/texasenergyexchange/2010/02/11/tceq-at-it-again/) days and hospital admissions. Shaw makes it seem as though the relationship between high ozone
days and hospitalizations is some kind of red herring—this is simply not true.

"As TCEQ fails to provide a sound scientific rebuttal of the (EPA's Clean Air Scientific Advisory Committee) consensus review, the only logical explanation for TCEQ's position is that the position is one based on policy and/or politics, and not science (http://www.texasobserver.org/forrestforthetrees/how-tceq-abuses-science )," Craft says.

"Commissioner Shaw is charged with protecting public health of all Texans. His decisions directly impact the day-to-day lives of Texas citizens. His carefree approach in managing this responsibility is at the minimum irresponsible and at the maximum a serious threat to public health," Craft says.

The debate with regulatory agencies is only half the battle over clean air issues though. The TCEQ clearly has some political support for its positions, starting with Governor Rick Perry but also including many state and federal legislators who agree with Perry and Shaw's approach. Texas Public Policy Foundation panelist Michael Taylor's boss, U.S. Rep. Joe Barton, the ranking Republican member of the House Energy and Commerce Committee, was listed as one of 17 "Climate Killers (http://www.rollingstone.com/politics/story/31633524/theclimate_killers/)" in a January 6, 2010, Rolling Stone
article that labeled these polluters and climate change deniers as "the planet's worst enemies."

"This is sort of a multi-pronged attack on states that don't agree with the most stringent environmental policies," Taylor said, during the panel discussion about the proposed new ozone standards. "EPA, and this current administration, is taking a very top-down approach ... (which) ... is currently not achievable through using the legislative process."

Taylor said that Republicans "have to win back the House and the Senate" to pass significant changes to the Clean Air Act. This sentiment highlights a pivotal political battle taking place this year.

The new EPA Region 6 Administrator, Alfredo "Al" Armendariz, Ph.D., is a popular choice with Texas environmentalists. He has led the EPA's new crusade to crack down on the Lone Star State's noncompliance with the Clean Air Act.

The Sierra Club's Neil Carman says that the EPA's current political capital could hinge on the outcome of the 2010 midterm elections.

"He has to be careful about sticking his neck out," Carmen says of Armendariz. "Right now it's warp speed ahead at EPA, but if the Democrats lose seats in the fall ... EPA will
start to back away."

Lisa P. JacksonEPA Administrator Lisa P. Jackson didn't mention Texas by name in her March 8, 2010, speech at the National Press Club (http://yosemite.epa.gov/opa/admpress.nsf/8d49f7ad4bbcf4ef852573590040b7f6/70ba33a218b8f22f852576e0006b2a53!OpenDocument) in Washington, D.C. But it seemed that the economic fear-mongering being bandied about during the February Texas Public Policy Foundation panel discussion was exactly the type of talk she was referring to in her pointed comments.

"Well-conceived, effectively implemented environmental protection is good for economic growth. Let me repeat that: environmental protection is good for economic growth," stated Jackson. ... "A weak environment means a weak consumer base. And unhealthy air means an unhealthy atmosphere for investments."

The woman that Rolling Stone called "the most progressive EPA chief in history" in a recent profile that dubbed her "The Eco-Warrior (http://www.rollingstone.com/politics/story/31820267/theecowarrior/print)," continued to hammer against the argument that strong environmental protection and a strong economy can't go together.

"(Smart environmental protection) creates a need-in other
words, a market for clean technology-and then drives innovation and invention-in other words, new products for that market. This is our convenient truth: smart environmental protection creates jobs," said Jackson.

Jackson cited numbers indicating that over the past 30 years, emissions of six dangerous air pollutants that cause smog, acid rain, lead poisoning and other environmental insults decreased by 54 percent, while gross domestic product grew by 126 percent, with innovation being the key.

"The economic costs of unchecked climate change will be orders of magnitude higher for the next generation than it would be for us to take action today. ... It's time to put to rest the notion that economic growth and environmental protection are incompatible. It's time to finally dismiss this false choice."

Jackson was certainly targeting the industrial crowd when she said, "... ever-expanding economic opportunity is not possible without sustainability. Without protection for the water, air and land that people depend on, we can only go so far. Without clean energy, the global economy will be running on empty within our lifetimes."

**Al Armendariz: A new hope at EPA Region 6?**

Al ArmendarizThe November 2009 appointment of Armendariz as the administrator of the Dallas-based EPA
Region 6—which oversees Texas, Louisiana, Arkansas, New Mexico, Oklahoma, and 66 tribal nations—signifies an end to a status quo in Texas dating at least back to 1995. Armendariz, an associate professor at Southern Methodist University, where he taught environmental and civil engineering before joining the EPA, has been a critic of the TCEQ in the past. His selection for the post at the EPA was cheered by environmentalists across Texas.

The Austin environmental community gave a reception for Armendariz at El Sol Y Luna on Sixth Street in February. Tom "Smitty" Smith, director of Public Citizen's Texas office, introduced Armendariz as just the right person for the job.

"When the opening came, we all thought, 'Who would be our dream candidate?' And we all thought of Al," Smith said.

Armendariz addressed the audience and gave a clear indication that it was a new dawn at the EPA.

"Lisa (Jackson) clearly wanted to pick somebody who had the support of grassroots environmental groups (in Texas)," said Armendariz. "I want you to realize that this regional office is now your regional office."

He went on to note that he'd started to really appreciate the concerns about air quality in the region because, "I
probably spend half of my time (in overseeing the entire region) on Texas air issues."

"It took almost 20 years to dig us into this hole," Armendariz said. "It's going to take a little time to dig us out. ... The way things have been done for the last 15 years is going to end-and it's going to end soon," said Armendariz, a comment that received a round of massive applause. "We have to be careful that we do it properly, so that we win all the arguments we want to win."

The Sierra Club's Carman says the 15-year reference in Armendariz' address was to the Flexible Permit system started in 1995. He had talked to Armendariz earlier, and Carman said the administrator told him that he initially had no idea "what a horrible mess it is" with the Flexible Permit system.

When asked afterward about the increasingly testy relationship between the EPA and the TCEQ, Armendariz didn't back down.

"We've told TCEQ that we do have some concerns about how they're running some of their programs, especially clean air," Armendariz said. "I am optimistic that we will reach an agreement relatively soon."

*This Investigative Report was made possible by contributions to The Austin Bulldog, which operates as a*
501(c)(3) nonprofit charity. The Austin Bulldog has many other investigative projects waiting to be funded. You can bring these investigations to life by making a tax-deductible contribution (http://www.theaustinbulldog.org/index.php/contribute-to-investigative-journalism.html).

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House Natural Resource Committee

Chair: Rep. Allan Ritter
Date/Time: Thursday, April 15, 2010 at 9:00 a.m.
Room: TBD – Capitol, Austin, TX

The House Natural Resource Committee will meet on Thursday, April 15, 2010, at 9:00 a.m. to hear invited and public testimony on the following interim charges:

Charge #1
Evaluate groundwater regulations and permitting processes throughout the state, including the role of state agencies in groundwater management, the development of desired future conditions, and the adoption of groundwater management plans in relation to regional and state water planning.

Agenda: TBD

Invited Testimony: L'Oreal Stepney

Resource Witness: Kelly Mills

Hearing Monitor: Ashley Morgan

If you have any questions or need additional information, please contact IGR at 239-3500.
From: Michael Brow  
To: legislativehearings  
CC: IGR  
Date: 3/19/2010 3:45 PM  
Subject: Hearing Notice for HC on Natural Resources April 29, 2010

House Natural Resource Committee

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Invited Testimony: Kelly Mills

Resource Witness: TBD

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If you have any questions or need additional information, please contact IGR at 239-3500.
Attached is the hearing summary for House Committee on Appropriations that was held today, March 8, 2010.

Thank you,
Tangelo
IGR
x3786
HEARING SUMMARY
81st LEGISLATIVE SESSION

Committee: House Committee on Appropriations

Date of Hearing: March 8, 2010

Hearing Topic: Interim Charge No. 1: Monitor the performance of state agencies and institutions, including operating budgets, plans to carry out legislative initiatives, caseload projections, performance measure attainment, implementation of all rider provisions and any other matter affecting the fiscal condition of the agencies and state. The committee will discuss the current revenue outlook, supplemental needs in the current biennium and agencies' 5% reduction plans.

Invited testimony was requested from the Legislative Budget Board (LBB), Comptroller’s Office (CPA), Employee Retirement System (ERS), Correctional Managed Health Care Committee, Texas Department of Criminal Justice (TDCJ), Health and Human Services Commission (HHSC), Texas Education Agency (TEA), and the Texas Higher Education Coordinating Board (THECB).


Summary of Significant Testimony:

Comptroller of Public Accounts, John Heleman: Provided a revenue and economic outlook for Texas. Mr. Heleman stated that national economic outlook is worse than what Texas is experiencing. One indicator of Texas’s stronger economy is that Texas consumers have a higher consumer confidence index (78.3%) versus the national average (46.0%). Further, the national unemployment rate is 9.7% while Texas is faring better at an 8.2% rate. Mr. Heleman stated Texas is also experiencing a slow upward trend while the rest of the nation is not following that trend. In fact, Texas had been losing jobs since the fall of 2008; however, starting in January 2010 Texas began gaining jobs each month. For example, in January 2010 Texas added over 30,000 jobs with two-thirds of these coming from temporary help firms. Mr. Heleman stated that the gain in temporary help firm jobs is consistent with a recovering economy where businesses are leery to hire permanent workers. In contrast, the U.S. Jobs Report stated that the national average job decline last month was 36,000 jobs.

Following the economic discussion, Mr. Heleman reviewed current revenue collections. Mr. Heleman said the biggest lose in revenue is from the sales tax. Sales tax revenue was down 14 percent compared to the previous year; however, there are signs of recovery because sales tax revenue for February 2010 was only down 8.8%, which is lower than previous double digit declines.
Members of the committee asked Mr. Heleman to explain how these numbers compare the numbers that were used in the development of the revenue estimate. Mr. Heleman stated that the first six months of this year are several percentage points behind what was used for the revenue estimate. However, a decrease in revenue was factored into the revenue estimate. Representative Isett asked Mr. Heleman to provide a recap of the revenue estimate by revenue category so the committee could compare what was estimated and the actual amounts. Rep. Isett stated that this would be more helpful in determining where the state sits financially.

Mr. Heleman also reviewed the Rainy Day Fund. He stated that the Rainy Day Fund has a balance of $7.6 billion which is expected to increase to $8.2 billion by the end of this biennium and will be available for funding for 2012 and 2013.

Legislative Budget Board, John O’Brien: Provided a summary of the projected shortfall for the 2012-2013 biennium. Mr. O’Brien stated that a conservative estimate of the expected shortfall is $11 billion, but that estimate could be as high as $15 billion. Mr. O’Brien stated that this dollar amount is arrived at by simply deducting the $87 billion budget for 2010-2011 from the $75 billion amount the Comptroller certified. Mr. O’Brien stated that the $12 million difference in the budget was funded with stimulus funds and the use of some fund balances. There is also an approximate $1 billion unexpected increase in the available school fund that could be used next session. Mr. O’Brien stated that the exact amount of the shortfall will be impacted by total revenue collected through the end of this year, agencies’ supplemental funding needs, and whether federal healthcare legislation passes and its cost to Texas.

Mr. O’Brien also discussed state agencies’ 5% reduction plans (plans) that were submitted in February. The plans provided $1.7 billion in funding from all agencies. $570 million of this was for FY 2010 and $1.2 billion for FY 2011. Mr. O’Brien stated that there were several trends in these plans such as; implementing a hiring freeze, recapture of vacancies, reducing travel, deferring capitol projects and method of finance swaps.

Mr. O’Brien said the process for implementing these plans is twofold. For FY 2010, unless the LBB decides to hold a meeting and alter agency plans, the agencies are directed to implement the plans as they submitted them. Agencies will be required to monitor their savings and at the end of the fiscal year, agencies will be required to transfer the funds into a special account with the Comptroller of Public Accounts. Mr. O’Brien indicated that some state agencies have requested exceptions to the 5% reduction and these exceptions will be considered in the next few weeks. In contrast, the process for FY 2011 will include legislative input; LBB staff will introduce a supplemental appropriations bill that will reduce agency appropriations by the required amount. The total amount of reductions for FY 2011 could change based on whether agencies actually reduce FY 2010 budgets by the designated amounts. The Legislature would be able to alter agency plans as they see fit.

Following these two presentations the committee went through the invited agencies’ 5% reduction plans and the impact of these plans on each respective agency.

**IGR Contact:** Tonya Baer
From: Kevin Patteson  
To: Vickery, Mark  
Date: 3/24/2010 1:25 PM  
Subject: Re: Fwd: FYI  

What was she appointed to?  

----Original Message----  
From: Mark Vickery  
To: Seaton, Curtis <CSEATON@tceq.state.tx.us>  
To: Womack, Daniel <DWomack@tceq.state.tx.us>  
To: Patteson, Kevin <KPatteson@tceq.state.tx.us>  
Sent: 3/24/2010 1:20:59 PM  
Subject: Fwd: FYI  

FYI, here's her background:  

Layla Mansuri joined EIP in 2008, after practicing environmental and administrative law with the Austin, Texas firm Lowerre & Frederick, where she represented landowners and conservation groups. In addition, Ms. Mansuri clerked for the U.S. Environmental Protection Agency's Office of Environmental Justice, Public Citizen of Texas, Inc., and the Environmental Defense Fund. Layla Mansuri earned her JD from the University of Texas School of Law and graduated summa cum laude from Texas A&M University with a BS in Bovenvironmental Science.

>>> Stephanie Bergeron 3/24/2010 1:08 PM >>>

From: R6 Mailroom/R6/USEPA/US To: Date: 03/23/2010 02:52 PM Subject: AEM: Layla Mansuri

This is being sent as R6 All Employee Memo - Please do not reply to this mass mailing  
This memo and all Region 6 "All Employee Memos" may be viewed on the Region 6 Intranet (http://region6.epa.gov/AEM)  

* NO HARD COPY TO FOLLOW *
What happened to Starfield??

daniel

>>> Mark Vickery Wednesday, March 24, 2010 1:20 PM >>>
FYI, here's her background:

Layla Mansuri joined EIP in 2008, after practicing environmental and administrative law with the Austin, Texas firm Lowere & Frederick, where she represented landowners and conservation groups. In addition, Ms. Mansuri clerked for the U.S. Environmental Protection Agency's Office of Environmental Justice, Public Citizen of Texas, Inc., and the Environmental Defense Fund. Layla Mansuri earned her JD from the University of Texas School of Law and graduated summa cum laude from Texas A&M University with a BS in Bioenvironmental Science.

>>> Stephanie Bergeron 3/24/2010 1:08 PM >>>

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 *******************************************************
NO HARD COPY TO FOLLOW
From: Stephanie Bergeron
To: Covar, Zak; Vickery, Mark
Date: 3/24/2010 1:08 PM
Subject: FYI

From: R6 Mailroom/R6/USEPA/US To: Date: 03/23/2010 02:52 PM Subject: AEM: Layla Mansuri

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******************************************************************************
NO HARD COPY TO FOLLOW
Good morning,

The TCEQ Governance Key Performance Measures Audit report is available at the following link:
http://home.tceq.state.tx.us/internal/comm/la/CAOAuditReports/FY10/10_002_tceq_governance_key_performance_measures.pdf

Thank you,

Monica

Monica Melant, CTP
Executive Assistant / ASC
Texas Commission on Environmental Quality
Chief Auditor's Office
Office: (512) 239-1616 or 0500, Fax: (512) 239-3333
mmelant@tceq.state.tx.us

Please consider whether it is necessary to print this e-mail
From: Waleska Carlin
To: Anderson, Ricky; Covar, Zak; Haase, Lynne; Morales, Annie; Ogle, Jes...
CC: Coggin, Frank; Coombes, Scott; Hyde, Richard
Date: 3/8/2010 6:30 AM
Subject: CAO Spring 2010 Follow-up RE: Data Standards Audit #08-004
Attachments: README.doc; 08-004 Data Standards Follow Up Matrix_September_09b.UPD.doc

The Chief Auditor's Office (CAO) has initiated the spring 2010 Follow-up on open internal and external audit recommendations.

What is the purpose of a follow-up?
To keep the Commissioners and Executive Management informed of the status of previous audit recommendations, CAO is requesting updated status information from divisions which have received an internal or external audit.

What do you need to do?
To minimize the time and paperwork required, we have attached two Word documents. These documents contain instructions for reporting the information to CAO and a matrix table which your division will use to update the status of audit recommendations. The matrix should be saved to Word and used to prepare your status update.

The matrix reflects the status of audit recommendations as of the last time your office provided an update. You may also notice that some recommendations have "Auditor's Comments" which were added during our last follow-up. In addition, recommendations which have been successfully implemented have been shaded (shading should be performed by CAO only). These do not require further update. Review and update the "unshaded" recommendations to reflect any changes made since the last follow-up.

Please attach electronic documentation which documents actions taken to address audit recommendations which have been implemented since the last time you reported. For example, if recommended policies were established, please attach a copy of those policies. Lastly, please coordinate as needed with any staff outside your division/office who is involved with the implementation of audit recommendations. (Coordinating staff names are indicated in parentheses, where applicable. See instructions).

What is the deadline?
CAO requests that the following documents be returned to us via e-mail to Waleska Carlin (wcarlin) by no later than April 2, 2010:
Updated matrix (word document, without the signatures)
A pdf copy of the final updated matrix (with the signatures)
All supporting documentation

Please note the final updated matrix should include all the required signatures on the last page.

Please let me know if you have questions about the process. You can contact me at ext. 1322 or Steve Goodson at ext. 0780 for more information.

Thank you.
From: Douglas Falls
To: Daily Clips Service
Date: 3/5/2010 7:37 AM
Subject: Friday clips
Attachments: 03-05-10andrewsresidents.pdf; 03-05-10tceqtabegin.pdf; 03-05-10williamsgas.pdf; 03-05-10wading.pdf; 03-05-10baylorpartners.pdf; 03-05-10lawmakers.pdf; 03-05-10lawmakersoffer.pdf

5 March 2010

Andrews residents grateful for arsenic-cleansing water filters
Midland Reporter-Telegram - - When Permian Basin Regional Medical Center spokeswoman Tasa Watts was notified she would get a reverse osmosis water unit installed in her home, she was extra surprised.

TCEQ to begin Hillcrest study
KRIS News, Corpus Christi - - The Texas Commission on Environmental Quality has laid out its plan to survey the Hillcrest neighborhood for potentially harmful chemicals.

Williams gas responds to report on methane plumes
Dallas Morning News blog - - Here's the response from Williams Production about the reports of methane plumes in the Barnett Shale.

Wading into ecology and water supply on the Colorado River
Austin American-Statesman blog - - On Saturday, you can join Claude Morris and the Travis County Colorado River Monitoring Trip to learn about the ecology, birds and vegetation along the river.

BU partners with EPA for peer audits
Baylor Lariat - - Baylor is participating in a voluntary Environmental Protection Agency-sanctioned peer audit, which began Monday and will end today. Baylor's audit is one of several that will be taking place at various universities that are participating in the first EPA-sanctioned peer audit program in Texas.

Lawmakers from coal states seek to delay emission limits
New York Times - - Coal-country lawmakers moved Thursday to impose a two-year moratorium on potential federal regulation of carbon dioxide and other climate-altering gases.

Lawmakers offer bills to suspend EPA rules
Wall Street Journal - - Democratic coal-state lawmakers introduced legislation Thursday to suspend for two years Environmental Protection Agency rules aimed at limiting greenhouse-gas emissions from power plants, factories and oil refineries.
From: Texas Commission on Environmental Quality <tceq@service.govdelivery.com>
To: <zcovar@tceq.state.tx.us>
Date: 3/5/2010 7:36 AM
Subject: Today's E-Clips are up

Today's electronic news clips are now available on the T-Net at

http://home.tceq.state.tx.us/internal/exec/communication/e-clips/friday/friday.html

Update your subscriptions, modify your password or e-mail address, or stop subscriptions at any time on your User Profile Page [https://service.govdelivery.com/service/user.html?code=TXTCEQ]. You will need to use your e-mail address to log in. If you have questions or problems with the subscription service, e-mail support@govdelivery.com.

This service is provided to you at no charge by the Texas Commission on Environmental Quality. Visit us on the web at www.tceq.state.tx.us [http://www.tceq.state.tx.us].

GovDelivery, Inc. sending on behalf of the Texas Commission on Environmental Quality. 12100 Park 35 Circle. Austin TX 78753. 512-239-1000
CAO Follow-up Process Instructions/Checklist

The matrix contains recommendations from an internal or audit report related to your program area. Where more than one report has been issued for your division, a separate matrix will be provided for each report. The top left cell of the table contains the audit name, report number, and the date the report was issued.

The follow-up coordinators, Managers, and responsible parties are also listed on the matrix. Program area can update this information, if needed.

1 Review your file copy of the pertinent audit report, the detailed recommendations, and management's response. Each recommendation included in the report will have a corresponding row in the Audit Recommendations Status Report table. Please do not change/ delete the existing information in any of the columns.

2 **Status:** What is the current status of the recommendation? Please use the following codes to designate the extent to which your action plan has been completed. Note that we have shaded recommendations which have been implemented or otherwise settled. Therefore, where you are the contact, please update the status on those outstanding recommendations which have not been shaded. Again, please do not change/ delete the existing information in any of the columns.

<table>
<thead>
<tr>
<th>I = Implemented</th>
<th>N = Not Implemented</th>
</tr>
</thead>
<tbody>
<tr>
<td>P = In Process, Currently Active</td>
<td>D = In Process, but Action Delayed</td>
</tr>
</tbody>
</table>

* If you have responded with an N and do not intend to implement the recommended change, please explain your rationale. The Commissioners will review your rationale and decide whether the recommended changes should be postponed or dropped.

* If you have responded with an I, we ask that you please attach documentation supporting implementation with the updated matrix. Examples of supporting documentation include, but are not limited to:
   - OPPs
   - Rules
   - Statutes
   - Publications (e.g., reports, newsletters, pamphlets)
   - Manuals
   - Memos
   - E-mails
   - Workgroup Meetings Minutes
   - Written Procedures / Flowcharts
   - Website Information
   - Reporting Requirements Notifications
   - Billing Statements / Procurement Forms / Invoices / Vouchers

Please be sure to include the number of the recommendation / a descriptive title on all supporting documents.

3 **Target Date:** When is this recommendation expected to be complete? This is the date you plan to complete the recommended changes or management's action plan. This date should not change without management approval once it has been set. If your target date is extended, please explain why and do not delete the old target date.

4 **Corrective Action Plan:** What are your planned actions to accomplish the recommended changes? An action plan should lay out the tasks, the persons responsible, and specify the deliverables and estimated completion dates. For a complex or detailed plan, add more rows as necessary. Remember, quantify where possible to show the $ effects of changes you make. Quantification is requested and should have some basis of support, even estimates. Where quantification is not possible, discuss the anticipated benefits or other potential impact(s).
5 **Primary Responsibility:** Who is the *key contact* for ensuring that the action plan is completed for this recommendation? We ask that the program area update this information as needed on the updated matrix. Also, include their phone number.

6 *Coordinate responses* with other parties. The coordinating staff names are indicated in parenthesis, where applicable. Coordinate, as needed, with any staff outside your division who is involved with the implementation of audit recommendations. Please do not leave these areas unaddressed.

7 Send the updated matrix to wcarlin@tceq.state.tx.us by April 2, 2010. We are requesting two copies of the matrix be sent to us; one word document and a pdf version with the signatures on the last page.

Please scan and email all *supporting documentation* to evidence work performed to address audit recommendation(s).
Coordinator: Vacant, Manager, Process Automation and Central Registry, Permitting & Registration Support (PRS), OPR
Responsible Deputy Director and Director: Marilyn Querejazu (Primary) and Annie Morales (secondary).
- Richard Hyde, Deputy Director, Office of Permitting & Registration (OPR)
- Zak Covar, Deputy Executive Director (DED)

Please coordinate to provide one matrix with all updates and appropriate signatures. Please insert current update at the bottom of the cell for each recommendation.

<table>
<thead>
<tr>
<th>Internal Audit Report # 08-004</th>
<th>Status</th>
<th>Target Date</th>
<th>Corrective Action Plan (N/A if completed)</th>
<th>Primary Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Data Standards Audit</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>May 2008</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Recommendation Implementation Status Code:
I = Implemented
P = Pending, currently Active
N = Not Implemented
D = In Process, but Action Delayed
1. Designate the Information Technology Steering Committee (ITSC) to oversee and resolve Agency core data issues.

FY 2009

Recommendation 1a: The ITSC will provide direction and guidance to the OPR, Deputy and CR Management on developing, implementing and distributing Agency data standards, including its definitions, and a vision for the existence and purpose of the CR system. The ITSC will act as a visible and ongoing voice and will ensure expected benefits from the Agency data standards and the CR system are realized and objectives are met. Target date for Ongoing Initiatives and deliverables will commence 1st Quarter FY 2009.

June 2009

OPR Comment 3/27/09: Recommendation 1a-3 The processes related to these recommendations are in place and will be utilized as issues are raised through the escalation process.

CAO Comment 4/15/09: Internal Audit has reviewed available ITSC summaries and its own notes from the March 16 2009 meeting. Although ITSC has said that it welcomes its role overseeing agency core data issues, IA would prefer to see a notation to this effect in the ITSC record. IA feels that this would make a clearer and more lasting statement to agency programs.

OPR Comment 9/11/09: Notation of the ITSC role in overseeing agency core data issues was made at the May 11, 2009 ITSC. See Item number three on the meeting minutes: http://home.tcoq.state.tx.us/itnotech/itsteer/2009/itsc_summary_20090511.pdf. This recommendation is implemented.

CAO Comment 9/21/09: Upon review of the included referenced ITSC minutes, CAO agrees that this recommendation is implemented.

Recommendation Implementation Status Code:
I = Implemented  P = Pending, currently Active
N = Not Implemented  D = In Process, but Action Delayed
2. Require the Office of Permitting & P Registration (OPR) and the CR Management to provide periodic core data quality reports (data errors / issues), including suggestions and/or modifications to correct recurring errors.

11/2008

Recommendation 2 – The ITSC will assist the OPR Deputy with major core data errors/issues, problems, policy conflicts, and removal of obstacles preventing resolution. The ITSC will be the ultimate decision-maker for resolution of unresolved errors/issues escalated via the OPR Data Quality Review Board. The ITSC will review data quality reports, prioritize issues, and establish target dates for issues and policy conflicts resolution. The ITSC will monitor expected target dates to ensure resolution of issues/errors is progressing and promptly achieved. Target date is ongoing. Initiatives and deliverables will commence November 2008.

June 2009

OPR Comment 3/27/09: Recommendation 1–3 The processes related to these recommendations are in place and will be utilized as issues are raised through the escalation process.

CAO Comment 4/15/09: Internal Audit has reviewed available ITSC summaries and its own notes from the March 16 2009 meeting. While the Permitting and Registration Support Division of OPR has promised to provide recurring reports on core data quality, IA would prefer that ITSC acknowledge this commitment by requiring periodic core data quality reports on the record.

OPR Comment 9/11/09: The ITSC assigned OPR to give regular (quarterly) updates to the ITSC during the May 11, 2009 ITSC. See item number three on the meeting minutes http://home.tceq.state.tx.us/infotech/itsteer/2009/itsc_summary_20090511.pdf
This recommendation is implemented.

Feb 2010

CAO Comment 9/21/09: The past quarter does not include a data standards update. According to the next issue, a periodic update is coming soon but is not yet scheduled. Another check should be made in Spring 2010 to see whether the ITSC is still monitoring core data issues and data quality in CR.
3. Require the OPR to establish P consistent requirements for permit modifications resulting from changes to core data.

11/2008

Recommendation 3 – The ITSC will support and promote acceptance of the Agency core data standards, including its definitions, and will ensure program areas revise their requirements for permit modifications in lieu of requests for core data changes. The ITSC will promote consistent requirements for permit modifications via a team-based approach from program areas involved and/or impacted by the proposed change(s). Target date is ongoing. Initiatives and deliverables will commence November 2008.

June 2009

Recommendation 1-3 The processes related to these recommendations are in place and will be utilized as issues are raised through the escalation process.

CAO Comment 4/15/09: Internal Audit has reviewed available ITSC summaries and its own notes from the March 16 2009 meeting. IA will review the record for evidence that ITSC has required and as necessary guided OPR to establish consistent permit modification rules with regard to core data. This recommendation will be considered closed when the data conflicts caused by this condition are alleviated to the extent reasonably possible.

OPR Comment 9/11/09: OPR is scheduling an ITSC update during the first quarter of FY 10 which will highlight some of the initial changes to the agency data standards as well as the technical approach to resolve conflicts over Definition of Site and Permit Modification requirements.

CAO Comment 9/21/08: CAO agrees that this recommendation is in process as ITSC and OPR work on permit modification and data quality issues.

Recommendation Implementation Status Code:
I = Implemented  P = Pending, currently Active
N = Not Implemented  D = In Process, but Action Delayed
4. Establish an Office level Data Quality Review Board that will convene in response to issues raised by the CR Management which may be outside the OPR. (see recommendations 6 and 8). The Data Quality Review Board will also be part of the escalation process prior to going before the ITSC for resolution, as described in CR Management response 9.

5. Provide data reports developed by CR Management to the ITSC. These data quality reports should include inconsistencies, that CR Management encounters during the implementation and enforcement of TCEQ data standards, including data errors / issues, with suggestions and/or modifications to correct recurring errors.

11/2008

Recommendation 4 – The OPR Deputy agrees with this recommendation and will establish an Office level Data Quality Review Board that will convene in response to issues raised by CR Management. The Data Quality Review Board will also be part of the escalation process prior to going before the ITSC for resolution. This task will be implemented by November 2008.

OPR Comment 3/27/09: Recommendation 4 – The OPR Data Quality Review Board is in place and has met and will continue to meet monthly to resolve data quality issues that were escalated by the Central Registry Change Control Board. It was also during the March 2008 meeting that it was decided that all new permits and registrations must be issued to a legal entity and not to assumed names. See the following TNet page for additional detail:

http://home.tceq.state.tx.us/ internal/opr/ p rsc/rc/cbb/ cbb.html

CAO Comment 2/6/09: During its first meeting in March 2008, the Data Quality Review Board agreed to meet monthly to review issues that have reached an impasse at CR's CCB. CAO agrees that this recommendation is implemented.

Recommendation 5 – The OPR Deputy agrees with the recommendation of providing data quality reports to the ITSC. The Permitting and Remediation Support Division Director will coordinate the scheduling of this reporting. The recommendation will be implemented by September 2008.

OPR Comment 3/27/09: Recommendation 5 – The data quality reports are implemented and have been provided to the ITSC. The reports are updated weekly and available for review at any time by contacting Greg Rogers, PACC Section Manager.

CAO Comment 4/8/2009: Data quality reports have begun as of the 3/16/2009 ITSC meeting.

Thanks alot Mark. Enjoyed meeting you and your team as well.

If you ever want to come out to get a tour of the complex, please let me know.

Regards

Mike

----- Original Message ----- 
From: "Mark Vickery" [MVICKERY@tceq.state.tx.us] 
Sent: 03/29/2010 01:15 PM EST 
To: Michael Zamora 
Subject: Hey Mike

Just wanted to send you a note so that you have my email address. Enjoyed the presentation the other day and look forward to working with you.

Mark
6. Establish arbitration procedures for data issues to effectively work across program areas.

Recommendation 6 — CR management agrees with this recommendation and will convene a quarterly Data Quality Review Board consisting of all affected program areas. The focus of this board will be to resolve conflicts between the program areas and CR regarding merge issues. This board will assume the authority to overrule a program area's request to not merge. The arbitration procedures and initial meeting will be completed by November 2008.

OPR Comment 3/27/08: Recommendation 6 – The Central Registry Data Quality Review Board (known as the Change Control Board or CCB), is in place meets quarterly and more frequently if needed. The next scheduled meeting is on April 23, 2009. See the following TNet page for additional information on CR's Change Control Board and Data Quality Review Board:

http://home.tcsq.state.tx.us/internal/opr/prs/cr fences/ccb.html

CAO Comment 4/8/09; OPR has established a Change Control Board and a Data Quality Review Board. More information can be found at the above link. The DQRB is composed of OPR Division Directors (and division directors from other offices when needed) to resolve impasses at the Change Control Board. Issues that the DQRB does not resolve go on to the ITSC. Both the CCB and the DQRB have posted meeting minutes on the above intranet page.

Recommendation Implementation Status Code:
I = Implemented  P= Pending, currently Active
N = Not Implemented  D = In Process, but Action Delayed
Recommendation implementation Status Code:
I = Implemented  P = Pending, currently Active
N = Not Implemented  D = In Process, but Action Delayed
7. Revise and implement a process to

Recommendation Implementation Status Code:
I = Implemented    P = Pending, currently Active
N = Not Implemented D = In Process, but Action Delayed

Recommendation 7 – CR Management agrees that there are agency inconsistencies in the implementation of the process to centralize requests for Core Data changes through the CR team. CR Management will update and clarify the process for making

Annie Morales, CR Team Leader, PRS, OPR
8. Develop procedures to carry unresolved data issues to the Data Quality Review Board and ITSC for resolution.

09/2008

Recommendation 8: CR management agrees with this recommendation and will establish an escalation process with a proposed end point at the ITSC for unresolved data issues and program area data conflicts. This process will be developed by November 2008. Dorca Zaragoza-Stone, PRS Director, will present the process to the ITSC for approval by February 2009.

CAO Comment 4/6/09: ITSC has been made aware of the potential that data issues from Central Registry will be brought forth. ITSC Meeting Minutes 3/16/09. [ile: ITSC audit update.pdf]

In addition, CR Management will develop organizational points of contact relating to core data issues. This will clarify contacts for all program areas at the staff, team leader, and manager levels. Target date is November 2008.

OPR Comment 3/27/09: Recommendation 8: The escalation process is in place. See the CR CCB TNot page for the details.

http://home.tceq.state.tx.us/internal/opr/prs/cr/ccb/ccb.html


OPR Comment 3/27/09 Continued: In addition, organization points of contact have been improved by multiple program areas. This means there is a staff to staff, Team Leader to Team Leader, Section Manager to Section Manager, contact agreement.

CAO Comment 4/6/09: Contact list confirmed. [Go to ccb page link above, click on “Program Area Contacts”] CAO agrees that this recommendation is implemented.

Recommendation Implementation Status Code:
I = Implemented  P = Pending, currently active
N = Not implemented  D = In process, but action delayed
9. Expand current data standards to include additional commonalities and clarification on issues such as assumed names, agency definition of "site," and permit modifications due to Core Data changes.

11/2009

Recommendation 9 – CR management agrees with this recommendation and will update the TCEQ data standards document to include additional commonalities and clarification on issues such as assumed names, agency definition of "site," and permit modifications due to core data changes. This will be completed on an ongoing basis based on the resolution of the individual issues with a target date of August 2009.

OPR Comment 3/27/09: Recommendation 9 – Changes to the agency Data Standards will reflect changes resulting from this audit. Improved guidance resulting from the assumed name decision will be issued by the end of the 3rd quarter FY09.

CAO Comment 4/9/09: Parts 9A-9E below have been provided as solutions and implementation steps by management after the audit. Issue 9 will be fully implemented when the last of the sub-parts have been implemented.

OPR Comment 9/14/09: The agency Data Standards have been changed to reflect the direction provided by OPR management to not issue permits or registrations to an assumed name. This will prevent multiple Customer Numbers from being issued to the same individual with different DBAs.

During the summer of 2009, the CR CCB developed a special work group to address the technical issues related to the conflict over the definition of site. This process has resulted in a Software Requirements Specification document which will result in changes to agency Data Standards and the business processes of agency program areas. Changes to the standards will be completed closer to the implementation of the changes in Central Registry which will be in fourth quarter FY10.

CAO Comment 9/21/09: This recommendation is pending and will be re-evaluated at the Fall 2010 followup.
A. Update the "Orientation to Data Standards:

CR Management will update the "Orientation to Data Standards for Supervisors" presentation with these changes. This will be completed on an ongoing basis based on the resolution of the individual issues with a target date of August 2009. CR Management will update the online "Data Standards" training with these updates by November 2009.

OPR Comment 3/27/09: The Orientation to Supervisors presentation is updated and includes elements of this audit. This presentation is delivered quarterly to new supervisors.

CAO Comment 4/9/09: Orientation to Data Standards for Managers has been updated and is available at:
http://home.tceq.state.tx.us/internal/opr/prs/cr/ccb/cr_outreach_presentations.html

CAO agrees that this recommendation has been implemented.
Recommendation Implementation Status Code:
I = Implemented  P = Pending, currently Active
N = Not Implemented  D = In Process, but Action Delayed

CAO Comment 9/21/09: CAO agrees that this issue is in process and will be evaluated in the Spring 2009 followup.

Greg Rogers,
Section Manager,
Process
Recommendation Implementation Status Code:
I = Implemented  P = Pending, currently Active
N = Not Implemented  D = In Process, but Action Delayed

CR Management will request a legal opinion regarding the use of assumed names on permits and registrations and will begin making the appropriate changes in CR if warranted by this opinion. Target implementation date is November 2008.

Greg Rogers,
Section Manager,
Process
D. Develop and provide a definition of a site for Executive management, raise the necessary change request for CR modification, and implement the agreed upon rules for managing sites.

P 08/2009 CR Management will develop and provide a definition of a site for Executive management, raise the necessary change request for CR modification, and implement the agreed upon rules for managing sites by August 2009.

08/31/09 OPR Comment 3/27/09: The Central Registry CCB has established a Definition of Site Workgroup to 1) document all the agency rules, statutes, and business processes that result in a fragmented approach to site definition, and 2) create a recommendation that uses a combination of technical and administrative solutions. The recommendation will be finalized by August 31, 2009.

CAO Comments 4/8/09: This recommendation is pending. The “Definition of Site” Project has been given space on the CR Change Control Board web page.

OPR Comments 9/11/09: The Definition of Site webpage is up to date with the latest information from the Facilitated Additional ID Requirements (FAIR) Joint Application Development (JAD). The JADs completed on 8/12/09 and resulted in two major accomplishments. 1) the group identified additional functionality that the program areas would need to minimize the current conflicts at the Regulated (RE) level; and 2) the group discussed several options of how the agency can define the Regulated Entity and found a majority opinion. The final recommendation is expected in first quarter FY 10 which will include the database impact analysis for several agency enterprise database. Details from the JADs can be found under CCB projects at: http://home.tceq.state.tx.us/internal/opr/prs/crcb/ccb.html

CAO Comment 9/21/09: CAO agrees that this issue is in process and will be re-evaluated in the Spring 2010 followup.

Recommendation Implementation Status Code:
I = Implemented  P = Pending, currently Active
N = Not Implemented  D = In Process, but Action Delayed
E. Develop an online orientation to the CR data model.

CR Management will develop an online orientation to the CR data model by November 2008.

OPR Comment 3/27/08: Three new online training presentations have been developed for an improved understanding of the Central Registry data model. See the following link:
http://home.tcoq.state.tx.us/internal/op/prs/central_registry/PACR/TRM/TRM_OCR_Training.html

CAO Comment 4/6/08: CAO agrees that CR Management has developed an online orientation to the CR data model. This recommendation is considered implemented.
10. Assign direct access into the CR database on a "need to have" basis, and harden input controls to minimize data entry errors by users with direct access to the CR database.

3/2009 Recommendation 10 – CR Management agrees with the need for additional input controls. The process to assign direct edit access into the CR database on a "need to have" basis is in place. However, CR Management will apply more specific security controls to key fields and will establish a further restricted access role. Target date is March 2009.

OPR Comment 3/27/09: Recommendation 10 – CR Management removed the edit rights of all the regional edit users and created an enhancement to CR Security which will force program area coordination prior to making edits that impact other program areas.

CAO Comment 4/8/09: Please provide documentation of the rights removal. This could be an e-mail to the regional users informing them of the change. Also, can you demonstrate the roadblock to modification that takes place when other program interests will be affected?

OPR Comment 4/9/09: Please see attached e-mail from Karen Young: one of CR's listserv administrators. As well as presentations for Regions and CR Secured Component presentation to FOD's management in August of 2008 at http://home/interal/prs/prs/crc/crc.css.html

CAO Comment 4/9/09: Upon review of the specified information, CAO agrees that the recommendation has been implemented.

Recommendation Implementation Status Code:
I = Implemented  P = Pending, currently Active
N = Not Implemented  D = In Process, but Action Delayed
11. Develop and provide to the Data Quality Review Board and ITSC periodic core data quality reports (data errors / issues), including suggestions and/or modifications to correct recurring data errors.

10/2008

Recommendation 11 – CR Management agrees with this recommendation and will complete critical data quality reports on a monthly basis and provide summaries as requested by the ITSC and Executive Management. The regular data quality reports will be provided by Greg Rogers, and will be in place by November 2008.

OPR Comment: 3/27/09: Recommendation 11 – The Data Quality reports which reflect a general state of the data are updated weekly and are a main charge of the CR CCB to improve the quality. See the attached TNet page for the reports.

http://home.tcoq.state.tx.us/opr/prs/cr/ccb/ccb.html under “CR Data Quality Report”

CAO Comment: 4/9/09: The recent data quality report was found as noted. Graphs show data from prior periods. CAO agrees that this recommendation is implemented.

Vacant, Manager, Process Automation & Central Registry Permitting and Registration Support Division Office of Permitting & Registration OPR

Lynne Haase, Director, Permitting and Registration Support Division, OPR

Richard Hyde, Deputy Director, OPR

Zak Covar, Deputy Executive Director (DED)

Recommendation Implementation Status Code:
I = Implemented  P = Pending, currently Active
N = Not Implemented  D = In Process, but Action Delayed
Hi Zak,

Just touching base re: your review/comments of Kathleen's appraisal. Let me know if you have concerns or are ok with signing.

Thanks!

SBP

Confidential/Attorney-Client Privileged Communication

>>> On 3/5/2010 at 2:32, <SBERGERO@tceq.state.tx.us> wrote:
attached for your review and approval...it's Kathleen's (which is unfortunately way past due). The good news is that she's doing a great job.

SBP

Confidential/Attorney-Client Privileged Communication
Performance Appraisal and Action Plan for Directors

<table>
<thead>
<tr>
<th>Employee Name</th>
<th>Kathleen C. Decker</th>
</tr>
</thead>
<tbody>
<tr>
<td>Office/Division</td>
<td>OLS/Litigation Division</td>
</tr>
<tr>
<td>Job Title</td>
<td>Division Director</td>
</tr>
<tr>
<td>Supervisor</td>
<td>Stephanie Bergeron Perdue</td>
</tr>
<tr>
<td>Appraisal Period</td>
<td>July 1, 2008 to July 1, 2009</td>
</tr>
<tr>
<td>Overall Appraisal Rating</td>
<td></td>
</tr>
</tbody>
</table>

Instructions
Using the Performance Appraisal Rating Definitions, carefully analyze the employee's performance under each category and the number in the box that best reflects the employee's performance during the review period. Consider the employee's specific duties on the Functional Job Description and cite examples of how the employee met the standard. 4 = Exceeds performance standards; 3 = Meets performance standards; 2 = Does not meet performance standards consistently; 1 = Fails to meet performance standards.

Performance Expectations/Factors

<table>
<thead>
<tr>
<th>Leadership - Takes initiative; requires little monitoring. Assesses problems and develops alternative solutions. Provides clear direction and sets priorities. Clarifies roles and responsibilities. Leads by example and exerts constructive influence when working with others. Utilizes skills to motivate employees, influence positive performance, and impact achievement of organization goals. Appreciates need for, and positively impacts, diversity in the workplace. Acts professionally and responsibly within and outside of the agency; adheres to the agency's code of ethics and contributes to a positive image.</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Rating</strong></td>
<td>4</td>
</tr>
</tbody>
</table>

Comments: When Ms. Decker assumed the duty of division director on July 1, 2008, the enforcement docket had approximately 775 active cases which included a substantial backlog of older cases that had not been processed in a timely manner. She immediately assessed the situation and developed a course of action to address the backlog as the main priority for the division. In order to accomplish this task, Ms. Decker concluded that a new agenda coordinator was needed to ensure that the situation did not continue due to delays in processing and attorney failure in returning backup in a timely manner. Ms. Roberts was reassigned to assume these duties and she was encouraged to work with the attorneys to address the delay in turnaround of backup materials. This reorganization positively impacted the division and helped to ensure a professional and timely production of orders for agenda in support of the organizational goal of effective enforcement.

Ms. Decker reviewed and assessed the remediation section of the division and concluded that additional staffing was needed to ensure the timely processing of work and that the Remediation Division was receiving professional and timely customer service and support. She hired a new remediation senior to replace Ms. Sweeney who had accepted the position of special counsel to the OLS Deputy. In addition, Ms. Decker developed and implemented a plan to assimilate two enforcement attorneys into the remediation section which was finalized within three months after she assumed the new duties of director. Ms. Decker also reassigned Ms. Backens to the division's oversight of law clerks and interns utilizing Ms. Backens prior management background, knowing that she would be able to handle and not be distracted from her regular duties if she were to assume this additional assignment. Ms. Decker submitted and successfully obtained authorization from executive management to allow Ms. Watson, an attorney in this section, to participate in the family friendly program which would allow her to reduce her work hours from 40 to 30 hours per week. Ms. Watson's participation in this program has been a positive influence on the morale of the section and allowed her to continue to develop her skills as an attorney and mentor newer attorneys.

Ms. Decker also worked with the Special Investigations section of the division to obtain funding to hire a Travis county assistant district attorney to prosecute environmental crimes investigated by the unit and the Texas Task Force. The project was discussed with executive management during the winter and spring of 2009. Final authorization to fund and contract with the county was successfully obtained in August 2009.

To develop and build for the future, Ms. Decker authorized, in addition to management staff, five attorneys in the division to take the Hiring Process course, one of the first steps in succession planning and to influence positive performance and build morale. In February 2009, Ms. Decker nominated Ms. Roberts for the Aspiring Leaders Program. The nomination was accepted by OLS management and Ms. Roberts began participation in the program in March 2009. Additionally, Dinhia Tadema, was reassigned from her enforcement duties to take on a newly created position by Ms. Decker to provide support for the Water Supply and Water Quality Divisions which included working with program staff to address impaired systems; to obtain emergency orders from the Executive Director and present them to the Commissioners for approval at agenda. She was also tasked with providing legal support for receiverships and to act as liaison with the Texas Attorney General during the pendency of those actions.
September 2008. They were chosen as the most qualified individuals but with their addition, diversity within the division expanded. In August 2008, Ms. Decker attended the Sunbelt Minority Recruitment conference and successfully recruited Sharesa Alexander who joined the division in April 2009.

**Decision-making/Work Judgment** – Develops strategies and implements business plans with insight and consideration for the broad organizational perspective. Addresses issues with exercise of sound judgment and discretion. Accomplishes goals and objectives according to work plans and with appropriate sense of urgency. Delegates effectively and appropriately. Works effectively with external parties or stakeholders to achieve necessary results.

**Comments:** Beginning in September 2008 Ms. Decker initiated a work group to address the issue of funding to assist persons who are financially unable to pay an administrative penalty for failing to permanently remove underground petroleum storage tanks (PSTs) from service. Division level management representatives from Enforcement, Financial, SBEA, Remediation, and Field Ops were invited to join with the Litigation Division. The initial meeting was held to address the high number of PST tank removal cases being referred to Enforcement and LD along with the seemingly inconsistent penalties, low rate of settlement and low rate of compliance. Over the course of time and after many successful discussions, optional solutions were developed and presented to Executive Management. A policy was implemented to assess a penalty per system, criteria were developed to administratively resolve cases under certain circumstances and a method of funding to pull the tanks was created.

Ms. Decker effectively delegated the task of division enforcement training to three attorneys who were tasked to develop, along with this assistance of program staff, comprehensive course materials for air, water and waste enforcement. The materials were to include basic permitting criteria and computer data entry and retrieval. The air and waste courses have been conducted and materials have been placed on CDs for new attorney’s use in the future.

**Planning/Organization** – Establishes division goals/objectives in support of agency mission. Establishes procedures for work accomplishments. Prioritizes, anticipates problems, and implements plans. Effectively manages projects and meets established deadlines. Coordinates activities with peers. Projects needs and budget resources to meet demands. Effectively monitor and evaluate new state and federal enforcement developments, proposed rulemakings and legislation, and assess their effect upon division and agency compliance and enforcement operations. Appropriately coordinates and implements the Supplemental Environmental Project and Audit Programs for the agency.

**Comments:** In conjunction with acquiring a new agenda coordinator, Ms. Decker realized that the agenda backup procedural process needed to be improved. Ms. Decker successfully worked with the General Law division to arrange a new secretarial preparation sequence that would be more effective. Previously, the backup was not prepared until it was due for filing with the Chief Clerk which placed a strain on attorneys to make revisions in a timely manner. Ms. Decker created a new system that requires the enforcement attorneys to develop the backup at the time the order is drafted. All documents are then to be reviewed and approved by their respective senior attorneys prior to being forwarded to the agenda coordinator. Previously, senior attorneys did not review the backup materials. This new procedure has instituted a new accountability standard for both the individual enforcement attorneys and their seniors.

Ms. Decker also initiated quarterly case reviews beginning in July 2008 for enforcement attorneys that historically had not been performed by either the division director or the senior attorneys. Each attorney, along with their senior, is required to attend a meeting to discuss each case individually, including status and future action. These meetings have identified many attorneys with substantial problems in meeting deadlines, referring cases to SOAH and processing default orders. To facilitate the timely processing of cases, deadlines were established for all attorneys to meet when processing default orders and promptly referring cases to SOAH after the filing of an answer to the EDRP. Additionally, the time period for filing an EDRP was shortened from 50 days to 30. In January 2009, Ms. Decker revised the enforcement attorney performance plans to increase the amount of orders that must be processed through agenda. The number was increased from 8 to 10 for Attorney IIs, from 8 to 14 for Attorney IIIs and from 14 to 18 for Attorney IVs and Vs. The performance plan was also revised to establish guidelines and include an accountability standard for promptly processing cases from the receipt of a referral from the Enforcement Division to final resolution via an agreed order, default order or proposal for decision at agenda.

As a result of the increased productivity in the division, a backlog for docketing the division’s enforcement orders at agenda developed. Ms. Decker successfully negotiated with the Office of Compliance and Enforcement and the Office of General Counsel to increase the number of agenda slots allotted to the Litigation Division. Prior to July 2008 the division had been presenting 14 cases at each agenda. As a result of these negotiations, the division presented 75 cases on the October 8, 2008 agenda and 30 cases on the December 19, 2008 agenda. In March 2009 the division began presenting 21 orders at all agendas. An additional 75 orders were approved on June 26, 2009 and thereafter orders were scheduled at a rate of 30 per agenda through the end of FY09. Because of the successful reduction in backlogged cases, the division reduced the amount of orders filed with the Office of the Chief Clerk back to 21 as of...
Under Ms. Decker's new procedures, the division's active caseload was successfully reduced to approximately 500 cases and the division achieved the goal of resolving almost all cases with a docket number of 2006 or older by the end of FY 09. In addition, the amount of outstanding 2007 orders was substantially reduced from 164 to 46.

Ms. Decker also found that additional staff were needed to assist the Supplement Environmental Project (SEP) program coordinator. Ms. Decker successfully negotiated with the General Law Division to obtain paralegals to track and monitor SEP activities and draft third-party SEP contracts. She also creatively initiated a new venue for enforcement attorneys to earn additional merits for their performance plan by allowing attorneys to draft and negotiate new custom SEP contracts. Ms. Decker also assigned new duties to her executive assistant to have her assist the SEP coordinator which allowed more time for the coordinator to effectively manage her program. Ms. Decker also reassigned the task of creating agenda summaries from the agenda coordinator to her executive assistant which freed up more time for the coordinator to review backup materials and prepare them for agenda.

Customer Service – Continually seeks feedback from internal and external customers and designs processes to improve services. Identifies customer needs and takes action to meet those needs; continually searches for ways to increase internal (most external people are not satisfied in enforcement actions) customer satisfaction. Emphasizes the need to deliver quality services; defines standards for quality and evaluates processes against those standards in an effort to improve organizational performance. Plans, directs, monitors, and ensures division output, outcome, and efficiencies toward achievement of agency performance measures. Timely, accurately, and effectively provide legal advice to the Deputy of Compliance and Enforcement and program personnel, the Executive Director, and the Commissioners on enforcement and compliance matters. Make recommendations on agreed enforcement orders and supervise contested enforcement proceedings.

Comments: To improve the agenda backup process and to ensure a quality product, Ms. Decker coordinated with the Enforcement Division director to institute a pre-agenda work group that was tasked with reviewing every case set for agenda the following week. In the beginning only Ms. Decker and the agenda coordinator attended these sessions. However, it became clear that this event would be a good tool for educating the enforcement seniors so Ms. Decker included Mr. Huhn and Ms. Yadav. In the past the seniors had never participated in the review of their attorney's backup prior to it being submitted to the agenda coordinator. This working group has proven to be a valuable tool to support proper agenda preparation; to find errors in the orders and penalty calculation worksheets and, it is instrumental in developing senior staff's working knowledge of the 2002 penalty policy and enforcement protocol.

In the spring of 2009 Ms. Decker initiated a new procedure for handling a default by respondents at preliminary and contested case hearings at SOAH. After careful research and analysis she determined that defaults could be handled by requesting a remand from SOAH and then presenting the matter to the Commissioners as an enforcement default order in lieu of the traditional method of handling via a Proposal for Decision from the administrative law judge. She worked effectively with the Office of General Counsel and the State Office of Administrative Hearings to ensure that the process would not be rejected by OGC staff or ALJs if her staff went forward with this new process. She also consulted with the Enforcement Division to ensure that the division director approved of this new method. The new process proved to be very successful and, as a result, agenda openings were created for other matters to be considered in a more expeditious matter. The process also helped to reduce travel expenses for the Enforcement Division because the regional investigators and enforcement coordinators were no longer required to attend agenda. It also freed up time for the ALJs because after remanding the matter back to the Executive Director they were no longer required to draft a Proposal for Decision and attend agenda to present it to the Commissioners.

In December 2008 Ms. Decker was asked to join a work group of TCEQ staff members from the Air Quality Division, Field Operations Division and Special Counsel to the Executive Director to meet with Goodyear representatives and counsel to address the reduction of styrene at the Houston Chemical Plant. After the first meeting, Ms. Decker, Mr. David Brymer from the Air Quality Division and Mr. Sal Tahiri from the Field Operations Division continued to meet with Goodyear to negotiate an addendum to add requirements for styrene to a Voluntary Emission Reduction Agreement for 1,3 butadiene. The addendum was successfully negotiated, drafted and signed in May 2009.
**Communication**

Listens actively and responds appropriately. Expresses thoughts and ideas to others, and presents information (written and/or verbal) that is clear and understandable. Attends regularly scheduled meetings. Shares information with others, as appropriate. Timely and effectively communicates and coordinates with the Texas Attorney General’s Office and the Environmental Protection Agency on civil enforcement matters, and serves as liaison with federal, state, and local criminal prosecutors concerning the environmental criminal enforcement program. Accurately and effectively testifies and makes presentations before local, state, and federal governmental bodies and other associations and groups concerning enforcement policy and procedure.

**Comments:** Ms. Decker listens to her staff and management in an attempt to provide effective leadership for the division. She expresses her opinions and ideas in a thoughtful manner although at times, when appropriate, a stern approach is needed when attempting to guide and coach attorneys who are providing substandard work product. Ms. Decker attended all regularly scheduled meetings and adjusted her schedule as needed to ensure that staff had access to her to discuss problems and to provide a resource for efficiently handling projects. Ms. Decker at times adhered to an open door policy as requested by executive management.

Ms. Decker timely and effectively coordinated with the Texas Attorney General’s Office (AG) on civil enforcement matters that had been referred to the AG for filing suit in state or federal district court. Although she did not personally handle, she ensured that the Environmental Crimes Unit of the division effectively worked with local, state and federal prosecutors and other governmental agencies to prosecute environmental crimes and to provide training for local law enforcement agencies. Additionally, in February 2009, Ms. Decker worked with the Office of General Counsel on the Rhine v. State decision pending before the Texas Court of Criminal Appeals. Ms. Decker and Mr. Trobman worked closely with AG appellate staff in developing a post argument brief/letter for the Court’s consideration to enhance the chances of a successful outcome on that case after a poor oral argument on the merits.

**Financial/Resource Management**

Ensures budget dollars are used responsibly. Identifies and introduces innovative ways to reduce costs; justifies any anticipated overspending or fund lapses in excess of three percent of the total budget by May 31 of each fiscal year. Makes good use of available resources. Makes reasonable requests for resources and works toward cost containment; guards against waste/pilferage of material resources. Budgets time wisely on a priority basis and encourages effective time management among staff.

**Comments:** Ms. Decker ensured that Litigation Division budget dollars were used responsibly and effectively. She encouraged attorneys to seek continuing legal education training in the city were they were located to cut travel costs while at the same time allowing each attorney to attend enough courses to satisfy all individual CLE requirements and encouraged participation in in-house training sessions. Ms. Decker also participated in OLS director’s meetings to discuss whether the office would continue to support multiple recruiting activities at the law schools around the state. She advocated reducing recruiting to one time each year at each school which saved travel costs for the office and kept the attorneys in the office to pursue their workload.

Ms. Decker budgets and uses her time at work wisely. She effectively instituted new practices and procedures and accomplished set goals for the division without having to work extensive overtime. She appropriately managed her resources to successfully establish new standards of accountability for the division. Ms. Decker addressed time management issues with individual staff and encouraged their participation in time management courses to develop their efficiency in handling multiple priorities.

**Staff Management**

Hires competent staff; builds effective teams to implement objectives. Challenges staff; provides growth opportunities. Develops employees through formalized training, continuing educations programs, and coaching techniques; ensures staff complete core training. Develops succession planning for key positions. Provides staff with accurate, complete, and continual feedback; recognizes and celebrates exceptional performance and takes corrective action to improve poor performance. Conducts all performance appraisals on time; evaluates performance based on results. Provides employees with required resources. Empowers staff to act with appropriate authority and take responsibility for their work processes. Ensures that new employees’ performance plans are administered in a timely fashion in accordance with agency policy with well written tasks and standards.
growth opportunities and to challenge them to develop expertise in at least one media. Attorneys in the enforcement division were encouraged to choose water, waste or air as their particular area of interest and to develop business relationships with the agency staff in those programs. New training opportunities utilizing the Austin and San Antonio regional offices were encouraged and attorneys were given the chance to accompany regional investigators on MSW and PST investigations in central Texas to allow them to see how and what the investigators look for and review during an investigation. The program proved to be successful and many attorneys took the opportunity to participate in the field investigations.

During the course of the year, in-house continuing legal education seminars were developed with the assistance of staff from the Air and Waste programs of the TCEQ. An Air training class was developed and held in July 2008 which included presentations on Basics of Air Permitting, Title V Permits, Emissions Events and Enforcement. Another training class for Waste was conducted in November 2008. Presentation topics included RCRA and Industrial Hazardous Waste, Waste Minimization, Affected Property Assessment Reports, Municipal Solid Waste Rules and Underground Storage Tank Rules. OCE enforcement coordinators were also invited to attend and utilize the agency experience from other programs. A Water training class is in development for a future date.

Blas Coy from the Office of Public Interest Counsel was invited to speak and give a presentation during a Litigation Division meeting in August 2008. He explained his duties and how the office carried out its function. Tracy Gross from the Office of General Counsel was invited to speak at another division meeting in October 2008 to give a perspective on what the OGC is looking for in the preparation of agenda backup materials. Jennifer Cook presented a class on the use of compliance histories and the use of NOVs for penalty calculations.

Tony Benedict from the AG’s office was invited to give a day long presentation in November 2008 regarding the taking and defending of depositions and the use of experts.

In December 2008 Ms. Decker developed a succession plan for the division. Senior attorneys were graded on their ability to assume the director’s duties and training courses were outlined to facilitate growth in areas needing development and experience. During the course of the year, all three senior attorneys were given the chance to be acting director when Ms. Decker was on vacation or otherwise engaged in other activities taking her away from the office. Several staff attorneys were noted for development purposes also. Five attorneys were requested to attend the Hiring Process training program and were given the opportunity to mentor new attorneys and participate in other duties normally associated with a path towards management. These individuals were also given projects to utilize and enhance their research and writing skills.

Ms. Decker continued the Employee of the Quarter program, but expanded it to allow additional attorneys to be recognized each quarter for their excellent work performance. Ms. Decker also handed out “Old Dog” certificates in November 2008 for all attorneys participating in the aged case agenda on October 22, 2008 which proved to be a morale booster and acknowledgement that the division was on its way to clearing the huge backlog of old cases. Ms. Decker regularly sent emails to the enforcement and remediation attorneys as a supplement to regular division meetings to keep them up to date on the progress of the division and to encourage continuing success. Other e-mailings were sent to advise the attorneys of changes in policies and practices.

Unfortunately corrective action was needed for several individuals during the course of the year. The deficiencies were pointed out to the individual attorneys and employee conference records were drafted, discussed and signed by both the attorney and management staff. These records were created as a reminder that corrective action was needed and served as an outline on how to correct the behavior and improve work product. During the course of quarterly case reviews, deficiencies were pointed out and advice on how to solve the situation was presented to the attorneys by Ms. Decker to encourage a successful result on the case. One attorney was not awarded a career ladder promotion at the expiration of his initial 18 months with the division. Ms. Decker met with the attorney and discussed his failings and why they led to her decision not to promote. Ms. Decker showed the attorney what was expected of him in the future and let him know that if he made improvements and demonstrated that he deserved to be promoted, then the promotion would be forthcoming in the future, but only after it was earned. The discussion was performed in an encouraging manner and the meeting was concluded on a positive note.

| 3 |  
|---|---|
| **Job Knowledge/Professional Growth** | Completes core training as required. Involved in self-directed learning. Analyzes own developmental needs and improves capabilities to meet the changing requirements of the job. Accepts feedback with a positive attitude. Keeps abreast of literature in field and participates in professional organizations. |
General Performance Comments and Recommended Action Plan

Thanks to Kathleen’s leadership and perseverance, the Litigation Division’s enforcement backlog has been eliminated. But for Kathleen’s thoughtful and deliberate review of every facet of the LD’s processes, the backlog would likely remain. She has challenged attorneys to be the very best professionals they can be and instilled the value that the enforcement attorney’s job is more than ‘filling in blanks.’ She has adjusted job responsibilities for some attorneys to build on their strengths as well as work with attorneys who were not performing at a satisfactory level. Kathleen dealt with performance concerns by stating what her expectations are and providing suggestions on how to improve. As most managers will readily recognize, addressing performance is one of the most difficult aspects of management. This latter item has resulted in some subtle ‘push back’ which has been difficult for Kathleen. To this end, I say to hang in there and keep addressing the concerns in a professional and diplomatic manner with the big picture in mind.

Overall Rating  (Sum of rating divided by number of items rated = Overall rating) | 3.5

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Employee Comments:

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Reviewer Comments:
From: Steve Goodson
To: Sadlier, John
CC: Covar, Zak; Trobman, Les; Vickery, Mark
Date: 3/25/2010 1:12 PM
Subject: Final Memo: Monitoring Operations Data Inquiry
Attachments: 10-403 Final Report.pdf

Mr. Sadlier,

Attached is the final memo from the Monitoring Operations Data Inquiry. Please let me know what questions you may have.

Steve
To: John Sadler, Deputy Director, OCE  
From: Steve Goodson, Chief Auditor  
Subject: Monitoring Operations Data Inquiry  

Date: March 25, 2010

Background
On Wednesday, February 3, 2010, the Chief Auditor's Office (CAO) received a complaint via the email box fraud@tceq.state.tx.us. The complaint alleged that information given to upper management and subsequently presented to the public was inaccurate and misleading. The complaint further alleged that Monitoring Operation's management presented the information to upper management knowing that the information was inaccurate.

Specifically, the complaint referred to information resulting from the December 15-17, 2009 air monitoring activity in the Fort Worth, Texas. The complaint stated that the data presented showed that "no measured concentrations of the 22 target compounds exceeded TCEQ long-term or short-term screening values when the canisters were analyzed by gas chromatography." The complaint indicated that Monitoring Operation's management had been made aware that the technique used had a limitation and that the technique's limit of detection for 1,3-butadiene, isoprene, and benzene were above TCEQ long-term health-base appropriate comparison values. The complaint further stated that the samples were analyzed by a more sensitive technique that indicated that benzene was detected at levels greater than the long-term health based appropriate comparison level/ESL. The complaint claimed that the laboratory report was published on January 22, 2010 and as of February 3, 2010 there was no indication that upper management, nor the public, had been contacted to correct the inaccuracy.

Objective
Our objective was to understand the facts and circumstances surrounding the reporting of the results from the December 15-17, 2009 air monitoring activity in Fort Worth, Texas in order to determine:

1. whether information given to upper management and subsequently presented to the public was inaccurate and misleading,
2. whether Monitoring Operation's management presented the information to upper management knowing that the information was inaccurate, and
3. whether samples analyzed by a more sensitive technique did indicate benzene at levels greater than the long-term ESL and whether that information was provided to upper management and the public.
Conclusions
The initial information provided to the OCE Deputy, while technically accurate, could be considered to be misleading. The field Near Real-Time Analytical Results (field analysis) indicated that certain compounds were not detected in the field survey. Evidence shows that the near-real time analytical results, in most cases, showed no detectable levels of the various compounds being measured. However, evidence also shows that the techniques used in the field had a limit of detection above the ESL for long term health effects. The near-real time analytical technique was not designed to detect the presence of certain compounds at low levels. A disclaimer was placed on the field analysis reports indicating that the data was for screening purposes only and may not meet established quality control acceptance criteria. This information was presented to the public on January 12, 2010. A January 26, 2010 revision to the field analysis reports added additional disclaimers regarding the limits of detection.

We found no evidence to show that Monitoring Operations management was aware that the information could be misleading at the time it was presented to the OCE Deputy. We did find evidence of the OCE Deputy questioning the analytical practices used in the field and the validity of the data and requiring that additional clarification, analysis and sampling be conducted. Specifically, evidence shows that the OCE Deputy, in communication with the Executive Director, directed that the canister samples from the Fort Worth monitoring trip be analyzed using a more sensitive laboratory technique.

Evidence shows that the results for the samples analyzed using a more sensitive laboratory analysis were released to Monitoring Operations Management and subsequently to the OCE Deputy on January 22, 2010. The laboratory analysis report shows that four samples measured benzene exceeding Long-Term ESL. The Executive Director confirmed that he was informed of the results of the laboratory analysis.

The OCE Deputy reported to us that he was not confident in accuracy of the results from the field and laboratory analysis. Evidence shows that the OCE Deputy, in communication with executive management, directed the Dallas-Fort Worth Regional Director to collect additional samples at sites where the laboratory analysis identified benzene. These additional samples were collected on February 5, 2010. Those results were not available when this project concluded on February 22, 2010. At that time, neither Fort Worth officials nor the media have been alerted. The OCE Deputy indicated that a comprehensive report from the Fort Worth Project will be produced once the final samples have been received and reviewed.
Methodology
To answer the objectives, we took the following actions during the period of February 3-22, 2010:

☐ Obtained, reviewed, and analyzed the complaint, plus various agency documents, including monitoring data, Microsoft power point and video presentations, and email documentation,

☐ Interviewed the following agency personnel in person or by telephone:
  o Matt Baker P.E., Assistant Director, Field Operations Support Division
  o David Bower P.G., Director, Field Operations Support Division
  o Zsik Covar, Deputy Executive Director
  o Tim Doty, Team Leader, Mobile Monitoring Team, Mobile Monitoring & Deployment Section
  o David Manis, Technical Specialist, Laboratory & Quality Assurance Section
  o Daphne McMurrer, Special Assistant, Field Operations Support Division
  o John Sadler, OCE Deputy Director
  o Mark Vickery, Executive Director
Mr. Sadlier,

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Steve
Texas Commission on Environmental Quality
INTEROFFICE MEMORANDUM

To: John Sadlier, Deputy Director, OCE
From: Steve Goodson, Chief Auditor
Subject: Monitoring Operations Data Inquiry

Date: March 25, 2010

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  o John Sadlier, OCE Deputy Director
  o Mark Vickery, Executive Director
ASDWA 2010 Members Meeting

General Themes on What to Expect Out of EPA/Washington
Expect EPA to be more aggressive in enforcing CWA and SDWA. Expect EPA to more expeditiously address the 6 year review of standards and the Contaminant Candidate List (CCL). The administration has a focus on children, both in setting regulations and in implementation.

DWSRF Reauthorization
A DWSRF reauthorization bill has been reported out of the Senate committee. The House Energy and Commerce Committee has started drafting a similar bill. There is a lot of interest in Congress on SRF “sustainability.” Are we funding projects that will be sustainable over time? With the SRF be sustainable over time?

Chemical Security Legislation
The House passed a bill last session on chemical security. The driver is that gaseous chlorine is considered by some to be a security risk. The idea is to get water and wastewater systems to move to liquid chlorine because it is an “inherently safer technology.” Some speakers were speculating that the bill could show up again later this year.

ECOS
ECOS will be supporting the president’s budget for FY11, except they will be asking for more funds to support states’ Public Drinking Water programs. ECOS wants an increase something like CWA programs got with the additional $45 million for 106 funding.

ARRA and Next Round in SRF
Auditing of ARRA funding has started in earnest. Some states, such as Ohio, have multiple teams of EPA IG, as well as the GAO, and the US Census, looking at ARRA spending. The latter has sent out forms to recipients asking for quarterly reports on progress and spending. Cynthia Dougherty says that Congress has a keen interest in updates on the actual draw down on funds.

The 20% Green Reserve requirement and at least 30% subsidy requirement are now in the EPA’s appropriations bill for FY 2010. EPA is working on a guidance document for these new requirements in the SRF. Internally EPA has moved off the position that the green business case must be complete at the time of the IUP.

Enforcement Response Policy
The EPA and states are in a “shakedown” period in FY 2010 regarding the new enforcement response policy (ERP). Till October 1, 2010, EPA will be generating both the old SNC list and the list generated by the enforcement targeting tool (ETT). During this time, EPA Regions will be using the new ERP/ETT list to meet their Regional work plans for enforcement. Starting in FY 2011, October 1, 2010, EPA will use the new ERP/ETT exclusively. Expect the new ERP/ETT process to work similar to the old SNC process. EPA will be releasing the ETT list on a quarterly basis.
EPA is developing training for the Regions and States. Mid-April EPA will announce webinar dates. In May they will start the webinars. Their idea is to have a webinar specifically for 2-3 states so that the number of participants is manageable for interaction. The webinars will also be an opportunity for the states to bring up issues and problems with the ERP/ETT. EPA wants feedback on what is not working. They are open to things like, the scoring might need other factors, or the #11 cut-off point is not right.

There was much discussion of what the options were for states when a system was on the list. EPA wants the systems to at least be “on the path to compliance.” A compliance agreement with specific tasks and associated deadlines that will bring the system into full compliance is acceptable. A compliance agreement without deadlines, or without full compliance as an endpoint is not acceptable. There is a checkbox in SDWIS that allows a state to identify systems that have acceptable compliance agreements.

EPA first used the ETT when Congress started asking about schools that were also public water systems and how many were not meeting drinking water standards. This effort by EPA is now called the School and Child Care Initiative. OECA said that they learned that ETT was generating what they considered to be false positives. Schools got on the list but that states had already taken some enforcement action against them. OECA also got the point that their data is not real time. At best it is a quarter out of date.

Six Year Review
Changes to the 6 year review are under management review and should be out “any day now.”

Perchlorate
Cynthia Dougherty say, “Very soon” EPA will be announcing a decision on how they will regulate perchlorate in drinking water. Staff says they are dealing with 32,000 comment letters and no decision has been made. Cynthia Dougherty says they will start a regulatory process mid-year and complete by 2010.

Geological [CO₂] Sequestration
A rule was proposed in July 2008 and in August 2009. They have been working on it since then. The latest iteration is to have a new class of injection wells for geologic sequestration. The schedule has the final rule in later 2010 or early 2011.

Fracking
EPA has their study underway. EPA is taking their proposed scope and research questions to their Science Advisory Committee.

Total Coliform rule
A revised rule is undergoing OMB review right now. It maybe out of review sometime in April. The current schedule is to have the rule proposed in 2010 and a final rule in 2012. EPA is planning a stakeholder meeting May 11-12, 2010 in Washington D.C.
Issues on the table are analytical methods and assessment/corrective action. EPA is also working on a guidance document in parallel with the rule development.

**Lead Copper rule**
EPA, with some state input, has started looking at the next round of revisions to the lead copper rule. Issues for consideration include: sample site selection, partial service line replacement; tap sampling issues; consecutive systems; and particulate lead. The schedule of the moment is for a proposed rule in the spring of 2012.

**UCMR3**
Propose January 2011, final January 2012.

**Arsenic**
EPA is going back to their Science Advisory Board on Arsenic. Their SAC will take up Arsenic at its April 6-7 public meeting. They have a draft risk assessment that incorporates NAS comments, but EPA also have concerns of the cost and benefit especially to small systems. It is too early to predict the agency’s ultimate outcome.

**Fluoride**
The EPA is updating its risk assessment, particularly for non-cancerous effects.

**Atrazine**
The Office of Pesticides is heading up a review and reassessment of the risk assessment. They expect that the new risk assessment will be complete by next year. This could be part of the 6 year review, or sooner, if necessary.

**Groundwater Rule**
Further revisions to SDWIS are roughly estimated to be completed May of next year. This could be moved up or back depending on what EPA management wants to slide. A couple of tools are on the web: [www.asdwa.org/gwtool/](http://www.asdwa.org/gwtool/) and a CT calculator at [www.epa.gov/safewater/disinfection/gwr/compliance/](http://www.epa.gov/safewater/disinfection/gwr/compliance/) EPA is developing other information, most of which is “under review”: CCR guidance; GWR articles; GWR placards; computer based training; public notification/CCR matrix GWR flyers; and a Treatment Workbook.

**Climate Change**
The catch phrase is “Getting utilities climate ready.” Expect recommendations in the fall. EPA is developing Fact Sheets and a pocket guide for utilities. The Water Sense program to identify water conservation products is part of EPA’s response. They are considering a combined CWA and SDWA awards and recognition program.

**Security**
Deter, protect, response and recover. Both terrorist and natural disasters.
Data Management
The Feds have a period process where their information systems undergo a sunset like process under the auspices of OMD. SDWIS is now in that process. This is really an analysis of where to go next with SDWIS.

Buzz Words and Phrases of the Week.

Sustainability, Transparency, "Climate Ready" "Return to Compliance," "Roadmap to Resiliency,"
From: JA Lazarus <jalazarus>
To: "J. A. Lazarus" <jalazarus>
Date: 3/26/2010 2:45 PM
Subject: TWCA Groundwater Committee
Attachments: Management and Planning for GCDs-Texas Statutes.doc; Part.002

FYI
> The attachment, summarizing current statutory requirements, was
> prepared by Billy Howe to facilitate discussions of what
> consideration should be given in establishing DFCs.
>
JA Lazarus, Ph.D.
Governmental & Legislative Services
512-731-3338
jalazarus.com
>
>
### Texas Statutes: Groundwater Management & Plans

<table>
<thead>
<tr>
<th>36.0015- Purpose</th>
<th>36.1071(a)-Management Goals</th>
<th>36.1071(e)-Manage Plan “Shall”</th>
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<tr>
<td>- Conservation</td>
<td>- Efficient Use of Groundwater</td>
<td>1- Include estimates of the following:</td>
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<td>- Preservation</td>
<td>- Control &amp; Prevent Waste</td>
<td>- Managed available groundwater in the district</td>
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<td>- Protection</td>
<td>- Control &amp; Prevent Subsidence</td>
<td>- amount of groundwater being used within the district on an annual basis</td>
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<td>- Recharging</td>
<td>- Address Conjunctive</td>
<td>- annual amount of recharge from precipitation, if any, to the groundwater resources within the district</td>
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<td>Management</td>
<td>- for each aquifer, the annual volume of water that discharges from the aquifer to springs and any surface water bodies</td>
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<td>- Address Natural</td>
<td>- annual volume of flow into and out of the district within each</td>
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<td>Resource Issues</td>
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<td>2- Consider the water supply needs and water management strategies included in the adopted state water plan</td>
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<td>- projected total demand</td>
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<td>for water in the district</td>
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Regional Water Plans

- Orderly development, management, and conservation of water resources
- Preparation for and response to drought conditions in order that sufficient water will be available at a reasonable cost to ensure public health, safety, and welfare
- Further economic development
- Protect the agricultural and natural resources of that particular region
Mark,

Here's a draft agenda for you to review. Please let me know if you'd like to add or subtract items, or change the suggested times per item. If you could let me know by mid-morning tomorrow, that would be great.

Thanks.

Larry

---

Hey Larry,

Mark Vickery
to:
Lawrence Starfield
03/29/2010 11:34 AM

can you send me the meeting "topics"?
TCEQ and EPA – SIP/Permitting Issues  
April 1, 2010 – Austin, Texas

Agenda [draft: 3/29/10]

10 am (20 minutes): **Opening remarks (Chairman/Commissioner, RA Armendariz)**

10:20 am (30 minutes)

1. **Rulemakings, Part 1**
   a. Public Participation: Action item: Discuss/resolve concerns.
   b. PSD/BACT Patch

2. **Rulemakings, Part 2**
   a. QF rule
   b. FP rule
   c. NSR Reform

3. **Rulemakings, Part 3**
   a. Future topics (e.g., PBR issues)

10:50 am (1.5 hour):

4. **Permits - Revising Flex permits to add unit-specific controls**
   a. Jointly develop a prioritization list (requested by TCEQ)
   b. Jointly develop methodology in an MOU (requested by TCEQ)
   c. Agree on how many permits to address or reopen each month.
   d. Discuss use of a 3rd Party Audit Program

12:20 pm: **LUNCH BREAK (or working lunch, as needed)**

12:50 pm (1 hr 25 minutes):

5. **Permits - Addressing those with Title V objections**
   a. Legal obligation for EPA to issue permits 90 days after objection unless State takes action.
   b. Develop a list of voluntary steps that industry could include in permit applications that would eliminate the need for EPA objection.

6. **Title V Permit Revisions in the near term (ongoing construction)**
   a. Work with companies that wish to voluntarily make changes in the near term.
   b. Discuss pending permit requests by **Total and Motiva**

7. **New PSD/NSR Permits**

2:15 pm (15 minutes): **BREAK**

2:30 pm (1 hour)

8. **Legal questions:**
   a. Reinstatement of conditions from NSR/PSD permits issued under the 1992-approved SIP
   b. Grandfathered sources/State-only requirements

3:30 pm (30 minutes)

9. **Wrap-Up**

10. **Ongoing Meetings with TCEQ & EPA**
4 pm: Adjourn
March 25, 2010
We have a lot to cover so let's get right to it...WHAT'S GOING ON—WATER QUALITY STANDARDS

Last week the Austin American Statesman published an opinion editorial on TCEQ's current water quality standards proposal. I found the author's suggestion that we might want to designate upstream of Lake Travis a "ship channel" to be somewhat insulting. Clearly the agency is not suggesting that should be the case.

We are proposing revisions to the recreational uses and associated criteria in an effort to establish a more effective water quality management program in Texas. These revisions include expanding the categories for recreational uses and criteria and defining more specific protocols to assign recreational uses. Several of these proposed revisions to the recreational criteria are intended to address inappropriate water quality standards for water bodies that are considered to be impaired or possibly labeled inaccurately.

Texas currently has two types of recreational uses—contact and noncontact recreation. In an effort to better characterize the different levels of water recreation activities that can occur in Texas, we are proposing to expand the recreational uses into four categories (primary contact, secondary contact recreation 1 and 2, and noncontact recreation). These additional uses will provide our staff the ability to better assign appropriate recreational use on water bodies. Several other states, including Colorado and Louisiana, have additional subcategories of recreational uses in their water quality standards.

In the 1980's and 1990's, a contact recreation use was broadly presumed for all surface waters in Texas, with the exception of eight water bodies such as ship channels. As a result of these broad optimistic presumptions, there may be numerous water bodies with inappropriate recreational uses.

The current contact recreation geometric mean criterion is 126 E. coli per 100 milliliters. This criterion reflects federal guidance that was established in 1986, when EPA conducted epidemiological studies to relate concentrations of indicator bacteria to potential illness.

More recently, EPA has indicated that E. coli concentrations of up to 206 per 100 milliliters can be considered as protective of contact recreation. The TCEQ is proposing to change the criterion for the primary contact recreation category from 126 to 206 colonies per 100 milliliters for E. coli. Other states, such as Utah and Colorado, also utilize the 206 E. coli per 100 ml to apply to primary contact recreation for some water bodies.

Primary contact recreation is not appropriate for all water bodies in Texas and the EPA in their draft guidance document, Implementation Guidance for Ambient Water Quality Criteria for Bacteria (Draft November 2003), indicates that states may adopt a secondary contact recreation use and less stringent criterion (such as five times the primary contact criterion). 274 of 925 water bodies assessed are listed as impaired for bacteria on the 2008 303(d) List of Impaired Waters. If the proposed change to 206 E. coli per 100 ml is adopted, then 62 listed water bodies are projected to be removed from the 2008 List of Impaired Water Bodies. These 62 water bodies would no longer require a Use Attainment Analysis (UAA) to define recreational uses or a Total Maximum Daily Load or Watershed Protection Plan. In order to assign a use less than primary contact recreation, a Recreational Use-Attainability Analysis has been and will still be required.

After months of coordinating with an advisory group, TCEQ proposed these changes to recreational standards as well as a large number of additional revisions. A public hearing was convened on March 11, 2010, and written comments were accepted through March 17th.

So while I appreciate the editorial comments on the proposed standards, we are a long way from adoption and I do not think anyone should be jumping to conclusions. I look forward to reading through the comments and seeing the final recommendation from staff.

EPA OZONE COMMENTS

In an effort to keep you informed of what the agency is saying and doing, we recently submitted our comments on the EPA's newly proposed National Ambient Air Quality Standards for Ozone. Take a look at them in our National Comments Log (http://www.tceq.state.tx.us/comm_exec/ar/nc/Air_Issues.html).

Additionally, TCEQ's Chief Toxicologist Dr. Michael Honeycutt delivered comments to the EPA at their public meeting in Houston on February 2, 2010. Check out his comments (http://www.tceq.state.tx.us/comm_exec/communication/media/02-10HoneycuttEPA2-2) as well.SPEAKING OF TOXICOLOGY—TCEQ HOSTS INTERNATIONAL TOXICOLOGY WORKSHOP

Toxicologists, epidemiologists, and mathematical modelers from around the globe attended a prestigious workshop hosted by the TCEQ, March 16-18 in Austin. A broad coalition of scientists discussed how safe levels of chemicals are determined in order to prevent harmful health effects. The event, which will continue throughout the year, will apply the latest recommendations by the National Academy of Sciences, released at the end of 2008, to actual case studies.

"By analyzing how recommendations can be applied in the real world we move from the ivory tower to the street," says Dr. Michael Honeycutt, chief toxicologist for the TCEQ. "I am pleased that the TCEQ hosted this event dedicated to practical application of the latest science to protect the health of people in Texas and beyond."

This is the first of three workshops coordinated by the Alliance for Risk Assessment to be held this year. This series of sessions is designed to build consensus among scientists in government, industry and the non-profit sector, on how to put science into practice.
in the field. The sessions were also webcast. FORT WORTH RECEIVES GRANT

EPA has awarded $400,000 to the City of Fort Worth. The funds will be used by the city to identify and inventory Brownfields properties, conduct environmental site assessments and conduct outreach activities to inform citizens and communities about its community wide Brownfields Program. Brownfields are vacant, abandoned or under-used properties with redevelopment potential that suffer from known or perceived environmental contamination. Addressing the nation’s brownfields is an ongoing challenge for communities of every size. By focusing on redevelopment, properties are put back into productive use for communities while helping to keep undeveloped lands in a natural state.

The City of Fort Worth will receive $200,000 to conduct petroleum assessment activities. Additionally, the City will receive $200,000 to conduct hazardous substances assessment activities. The funds will also assist the city in obtaining information and tools it needs in connection with assessment and cleanup of Brownfields properties and return them to reuse or redevelopment. (EPA) AIR QUALITY IN PLACES NOT CALLED HOUSTON OR DFW

Many times you hear me talking about the status of the air quality in Dallas, Fort Worth or Houston. And while we continue to make improvements in those great cities I wanted to talk about a couple of other places where we have made great strides.

El Paso, Texas.
Photo @iStockphoto.com/David Liu.

El Paso was once the only city in Texas having to deal with nonattainment for three different pollutants; however, efforts to reduce carbon monoxide (CO), ozone for the 1-hour standard, and coarse particulate matter (PM10) have definitely paid off with cleaner air. The area has been in attainment of the 1997 8-hour ozone standard since 2004 and was redesignated to attainment of the CO standard in 2008. The El Paso area remains designated nonattainment only for PM10.

Because analysis of monitoring data shows that El Paso would be in attainment of the PM10 standard if not for such natural events as dust storms, the TCEQ has adopted a natural events action plan to flag exceedance days that occur due to natural events. Flagging allows the EPA to discard those days when determining the area’s compliance with the standard, placing the state in a better position to seek El Paso’s redesignation to attainment for PM10.

The heavily industrialized Beaumont—Port Arthur (BPA) area, which includes Jefferson, Hardin, and Orange counties, is home to a large concentration of petrochemical facilities. The TCEQ has worked closely with industry and community groups to reduce benzene, 1,3-butadiene, and ozone levels in this area.

The BPA area is currently designated as nonattainment for the 1997 8-hour ozone standard. Because BPA monitored attainment with a 2005-through-2007 8-hour ozone design value of 83 parts per billion (ppb), in 2008 the commission asked the EPA to redesignate the area to attainment for the 1997 8-hour ozone standard. As a result of the efforts of TCEQ regional staff and industry, annual average benzene concentrations from 2000 to 2009 remained below the air monitoring comparison value of 1.4 ppbv (parts per billion by volume) for all but one of the monitoring sites. For the one site with elevated benzene levels, regional staff met with representatives from possible sources to address the problem, and subsequent reports have shown a decrease in this pollutant.

In 1996, concentrations of 1,3-butadiene monitored at one location in Port Neches exceeded the air monitoring comparison value in place at the time (5 ppbv), resulting in its addition to the Air Pollutant Watch List (APWL). Annual average 1,3-butadiene concentrations at this site decreased by 81 percent from 1996 to 2007, partially due to cooperative agreements between the TCEQ and local industry. Ambient concentrations of 1,3-butadiene continue to remain below the current air monitoring comparison value of 9.1 ppbv. As a result, it has been removed from the APWL. At all other monitoring sites in the BPA area, the annual average concentrations have remained below the air monitoring comparison value of 9.1 ppbv from 2000 to the first quarter of 2009.

8-Hour Ozone Flex Program

Two areas of the state are taking a collaborative, voluntary approach to reducing ozone-generating emissions with the 1997 8-Hour Ozone Flex Program.

The program—implemented through an intergovernmental Memorandum of Agreement (MOA) between the TCEQ, the EPA, and local communities—includes action plans developed by local governments that will reduce emissions of ozone precursors. Voluntary initiatives allow communities or regions to address ozone challenges proactively rather than wait to be required to address them through the federal nonattainment process.

Corpus Christi, Texas.
Photo @iStockphoto.com/Philip Lange.

The Corpus Christi area of Nueces and San Patricio counties was approved for the program in 2007. Their voluntary measures include the use of less volatile gasoline from May through September; the installation of vapor recovery and control systems at marine fuel transfer and loading facilities; the rescheduling of uncontrolled loading activities on ozone action days until evening or until another day; a pollution-prevention program that targets both small and large businesses; promotion of alternative fuels through the Clean Cities Program of the U.S. Department of Energy; and the promotion of reformulated gasoline for use in large fleets by a local refiner.

In 2008, an MOA for the Austin–Round Rock area was approved. (This area includes Bastrop, Caldwell, Hays, Travis, and Williamson counties and the cities of Austin, Bastrop, Elgin, Lockhart, Luling, Round Rock, and San Marcos.) Their voluntary emission-reduction measures include area-wide programs such as Commute Solutions, Clean Cities, and Clean School Bus; a regional rideshare program; a watch and warning ozone-alert system; TERP grant applications; and road paving projects. TELL US HOW WE ARE DOING

Did you know you can give the TCEQ feedback on the job we are doing? Well, you can and we want to hear from you.
The TCEQ Customer Satisfaction Survey gives you the opportunity to let us know about your experience working with us-anonymously if you prefer. Topics range from overall satisfaction with the TCEQ to the courteousness and responsiveness of our staff. The survey also lets you tell us about our facilities, and it seeks your comments and suggestions on how we can serve you better. And, if you would like a response, we will get you one.

The TCEQ is committed to providing the highest quality customer service. We value your opinion on how we are doing and how we can improve. Go online here (http://www4.tceq.state.tx.us/comm_exec/customersurvey/) and fill one out today! LASTLY

Last week my wife Meredith and I took our sons Clark and Reid to visit our nation's capitol for Spring Break. Clark particularly enjoyed the Smithsonian Institute's Air and Space Museum and learning about the history of the United States. Reid seemed to appreciate mass transit (Metro) as well as visiting the White House and Congress. We even paid a visit to the EPA.

Any opinions expressed herein are those of Commissioner Garcia and are not intended to be reflected as opinions of the Commission or another Commissioner.

If you do not wish to receive Modern Stewardship, simply reply to this e-mail with the word UNSUBSCRIBE in the subject line. If you have received this message and would like to be added to my distribution list, please send an e-mail to bgarcia@tceq.state.tx.us with the word SUBSCRIBE in the subject line.
It is a 1994 report. I did not see a report number on the report. It titled: Freshwater Inflows to Texas Bays and Estuaries: Ecological Relationships and Methods for Determination of Needs; edited by William L. Longley; published by the TWDB; printed by TPWD; funded by general revenue and the Research and Planning Fund managed by the Texas Water Development Board. The forward carries the signatures of the Executive directors of the three agencies: Craig Pederson, Andrew Samsom, and Anthony C. Grigsby. Robin did find the other relevant report. It would also be helpful to see if the TWDB will also continue to stand behind that report. It is: Freshwater Inflow Recommendation for the Guadalupe Estuary of Texas, 1999. The main body of the report is by TPWD, but the TWDB authored an appendix and the seal of the TWDB is on the cover of the report.

Thx Mark
Mark Vickery - Meeting Summary

From: L'oreal Stepney  
To: Covar, Zak; Vickery, Mark  
Date: 3/31/2010 4:36 PM  
Subject: Meeting Summary  
CC: Anderson, Ricky; Burnett, Pattie

Mark and Zak, Here's a quick summary of a few mtgs that I've had recently with stakeholders, and others:

**Texas Water Days** in D.C., Todd and I met with TWCA and TWBD folks along with TX Congressional members and staff (including Senators Cornyn and Hutchison staff). Mainly covered concerns with the Clean Water Restoration Act which would expand federal oversight for some water bodies. TWCA and TWBD discussed other federal issues and funding.

**Joe B. Allen:** Items on his agenda - ensuring timely processing of bond applications, sufficient staff, quality of review, and their willingness to pay more in fees if necessary. He said these are just items that are always on his list but no complaints right now. I told him to call me or Linda if he has concerns on a project or anything else. I also talked about the reorganization and how we keep a monthly eye on the permit time frames. I mentioned that we have to make internal staffing decisions from time to time to ensure success. He said that he is very comfortable with our technical review process and wants us to do a thorough review, because they use the quality of our review to justify high bond ratings for financing. Overall it was a good meeting.

**Carole Baker:** She was complementary of the Agency's participation in the Alliance for Water Efficiency. She mentioned that Mark you were instrumental in our participation.

**Texas Alliance of Groundwater Districts:** Gave a presentation on PGMAs and the Carrizo-Wilcox Study.
Can you plz swing by to talk about WQ stds.
good afternoon! Please see below.

Thanks
REX

----- Original Message ----- 
Subject: Fw: Odor Control Plan and Letter 
Date: Fri, 2 Apr 2010 22:01:38 +0000
From: Rex Isom <risom@tsswcb.state.tx.us>
Reply-To: risom@tsswcb.state.tx.us
To: 

Good afternoon! We need to visit on this to make sure we are on the same page. Our understanding is that Rep. Cook is going to bring up poultry during our Sunset hearing Tuesday am.
806 438 0577
Thanks
Rex

Thanks, 
Rex.

----- Original Message ----- 
From: John Foster <jfoster@tsswcb.state.tx.us>
Date: Fri, 02 Apr 2010 16:48:24
To: Charles Maguire <CMaguire@tceq.state.tx.us>
Subject: Odor Control Plan and Letter

Charles,

Please see attached letter. Original will be mailed on Monday. I believe Rex will be contacting Mark Vickery to make sure this is resolved prior to Tuesday, April 6 (our Sunset hearing).

Thanks!
John

John Foster
Statewide Programs Officer
Texas State Soil & Water Conservation Board
4311 South 31st Street, Suite 125, Temple TX 76502
P. O. Box 653, Temple, Texas 76503
Office: (254) 773-2250, ext. 235
Fax: (254) 773-3311
Mobile: (254) 231-2112
http://www.tsswcb.state.tx.us
(pc)
April 1, 2010

Mr. Charles Maguire, MC 145
Director Water Quality Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711

Dear Mr. Maguire:

Texas Senate Bill 1693 (2009 Texas Legislature) requires certain poultry operations under some circumstances to submit an odor control plan to TCEQ for approval before TSSWCB can certify or re-certify the Water Quality Management Plan for the operation. Staffs of Texas A&M University Poultry Science Department, TSSWCB, and TCEQ have developed the attached example Odor Control Plan for Poultry Operations in Texas. We believe the example plan incorporates the best technology and practices available for reducing and/or controlling odors on dry-litter poultry farms. We believe the intent of the attached plan is those poultry growers required to have an odor control plan will use this as guidance for controlling off-farm odors and, to the greatest extent possible, preventing odor related complaints against the farm.

It is the understanding of the TSSWCB that TCEQ also views this document as guidance and that it is not intended to be used as the basis for regulation, issuance of notices of violation, or enforcement of any odor nuisance laws. At your earliest convenience, please provide us with confirmation of TCEQ's intentions on use of this odor control plan.

Sincerely,

Rex Isom
Executive Director

Attachment: Example Odor Control Plan
Example
Odor Control Plan

This plan is only for dry litter poultry growers who are required by law under §382.068(d) Health & Safety Code or §26.301 (b-3) Water Code to implement an odor control plan. The intent of this plan is to reduce or eliminate nuisance odor sources on the poultry farm and hopefully prevent odor related complaints against the farm.

A. Litter management
   1. Maintain an average litter depth of at least 3 inches
   2. Target litter moisture content during the flock should be between 20-30%; not powdery dry, but not so moist it will clump.
   3. Management procedures include:
      a. Maintain proper drinker height.
      b. Maintain proper drinker water pressure.
      c. Repair all drinker system leaks upon discovery.
      d. Repair all evaporative cooling system leaks that will directly deposit water onto litter upon discovery.
      e. Allow for proper litter drying between flocks. Caked litter must be removed, unless incorporated into in-house windrows for pasteurization of litter. In solid sidewall housing, a minimum amount of ventilation should be used between flocks to remove excessive litter moisture. Target litter moisture content prior to flock placement should be about 20-25% or slightly dryer than during flock grow-out.

B. Mortality management
   1. Mortalities must be collected a minimum of once per day or more frequently as needed to prevent or reduce odors.
   2. Upon collection, all mortalities must be immediately placed into an incinerator or freezer, incorporated into a compost pile, or placed into a sealed container to await final disposal. Carcasses must be placed in freezer or other final disposal method the same day as collection. Do not leave mortality carcasses in the open air to await final disposal.
   3. Incinerator operations shall be conducted between locally established sunrise and sunset, unless an exception is requested and approved by the controlling regulatory authority. Carcasses in the incinerator that are burning must be completely incinerated prior to nightfall to prevent smoke emissions after dark.
   4. Operate and maintain incinerators in accordance with all applicable air regulations and according to the manufacturer's specifications to achieve maximum destruction efficiency. These include but are not limited to: load capacity, burn rate, operating temperature and/or burner operation.
   5. Clean ash from incinerators at least weekly or more frequently as needed to maintain efficient incinerator operations.
   6. If composting mortality carcasses, all carcass parts must be covered with a minimum of 2 inches of litter, bulking agent material (sawdust, wood chips or shavings, rice hulls), or mature compost the same day as collection. Unroofed compost piles, if used on rare occasions, will to the extent
possible be placed out of sight from neighboring residences or public roads and at least 150 feet from the nearest property line. Follow moisture and temperature guidance included in WQMP.

7. Clean all equipment and temporary storage containers used to handle mortalities at least once per week or more frequently as needed to prevent or reduce odors.

C. Catch-out/Clean-out procedures

1. Keep all doors on poultry houses closed at all times unless equipment access to a particular house is necessary (birds are being loaded/unloaded or litter clean-out/maintenance activities are occurring).
2. Clean up any litter spilled from equipment or dropped from tires during loading outside the houses within 24 hours after completing bird catch-out or litter clean-out.
3. Clean-up any spilled feed inside or outside houses within 24 hours of discovery.

D. Litter storage

1. The storage of litter on-site is strongly discouraged.
2. If litter must be stored on-site, rainwater shall not be allowed to reach stockpiles. Litter must be stored under a roof (litter shed) or completely covered with a tarp or other impermeable material.

E. Land application

1. If applying litter to land associated with the poultry houses (on-farm application), the following considerations are to be taken into account:
   a. Do not apply litter within 100 feet of public roads.
   b. Do not apply litter within 500 feet of any residence, school, park, place of worship or other facility used by the public.
   c. Application of litter during morning hours is preferable. Do not apply litter after 5:00 pm.
   d. Do not apply litter on weekends or federal holidays that occur Monday-Friday if any residence, school, park, place of worship or other facility used by the public is located within 1,500 feet of the nearest edge of the application area.
   e. Do not apply litter while the wind direction is from any point of application toward a residence, school, park, place of worship or other facility used by the public within 1,500 feet of the nearest edge of the application area.
   f. Do not apply litter during any rainfall event or if rain is imminent.
   g. Cover all loads of litter if being transported on public roads.
   h. Only apply litter at the agronomic rate specified by the Water Quality Management Plan.

F. Facility Management

1. Dust.
   a. Control vehicle speed to under 15 mph around facility.
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G. Site specific guidelines following a Notice of Violation for nuisance odors could be required to address odor sources identified in the NOV by (but not limited to) the following:

1. Additional management procedures
a. Evaporative cooling system management
b. Litter amendment application*
c. Frequency of whole house litter clean-out*
2. Additional setbacks and land application restrictions
3. Odor mitigation techniques
   a. Shelterbelts (Vegetative Environmental Buffers)
   b. Biocurtains or other dust/odor filtration systems*
   c. Exhaust air diveters*
   d. Other odor control devices*
4. House density limitations*
5. Other control actions and management measures as necessary*

* Items with an asterisk are not under the total control of the farm owner and may require integrator consent and cooperation, therefore would require TCEQ to discuss these items with the integrator company prior to requiring them.

H. Attachments
1. Maps
   a. Vicinity Map
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From: John Foster <jfoster@tsswcb.state.tx.us>
To: Charles Maguire <CMaguire@tceq.state.tx.us>
Date: 4/2/2010 4:49 PM
Subject: Odor Control Plan and Letter
Attachments: Odor Control Plan and Letter.pdf

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John

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John Foster
Statewide Programs Officer
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Office: (254) 773-2250, ext. 235
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[Signature]

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From: Richard Hyde
To: Covar, Zak
Date: 3/24/2010 1:17 PM
Subject: This Friday and next

U ok if I leave early this Friday (about 2:30 or so) and take good Friday off. Its turkey season and trying to get some hunting done. If you need me to stick around just let me know.

Richard
FYI
> The attachment, summarizing current statutory requirements, was
> prepared by Billy Howe to facilitate discussions of what
> consideration should be given in establishing DFCs.
>
JA Lazarus, Ph.D.
Governmental & Legislative Services
512-731-3338
### Texas Statutes: Groundwater Management & Plans

**36.0015 - Purpose**
- Conservation
- Preservation
- Protection
- Recharging
- Prevention of Waste
- Control Subsidence

**36.1071(a) - Management Goals**
- Efficient Use of Groundwater
- Control & Prevent Waste
- Control & Prevent Subsidence
- Address Conjunctive Management
- Address Natural Resource Issues
- Address Drought Conditions
- Address Conservation, Recharge Enhancement, Rainwater Harvesting, Precipitation Enhancement, or Brush Control
- Address DFCs

**36.1071(e) - Manage Plan “Shall”**
1- Include estimates of the following:
   - Managed available groundwater in the district
   - Amount of groundwater being used within the district on an annual basis
   - Annual amount of recharge from precipitation, if any, to the groundwater resources within the district
   - For each aquifer, the annual volume of water that discharges from the aquifer to springs and

   - Any surface water bodies
   - Annual volume of flow into and out of the district within each aquifer and between aquifers in the district
   - The projected surface water supply in the district
   - Projected total demand for water in the district

2- Consider the water supply needs and water management strategies included in the adopted state water plan
16.053-
Regional Water Plans

- Orderly development, management, and conservation of water resources
- Preparation for and response to drought conditions in order that sufficient water will be available at a reasonable cost to ensure public health, safety, and welfare
- Further economic development
- Protect the agricultural and natural resources of that particular region
From: Tangela Niemann
To: Conn EA's; Deputies; Exec
CC: Deputies Assistants; Deputies EA's; IGR
Date: 3/8/2010 3:51 PM
Subject: IGR Calendar
Attachments: Mar 9 - Mar 24.doc

Attached is the IGR calendar for March 9 thru March 24.

Thank you,
Tangela
IGR
x3786
Upcoming IGR Meetings & Hearings
March 9 thru March 24

March 9, 2010
- 9:00 - Senate Committee on International Relations & Trade Hearing (TCEQ staff attending: Steve Niemeyer and Jim Harrison)
- 2:00 – House Natural Resources Interim Hearing in San Antonio - Charge 3 (TCEQ staff attending: Commissioner Rubinstein, Kellye Rila, Todd Chenoweth, Isaac Jackson and Ashley Morgan)

March 10, 2010
- 9:00 - Mtg w/ the Office of the Attorney General, meet & greet w/ Public Affairs Specialists (TCEQ staff attending: Jim Harrison)

March 11, 2010
- Meeting Re: Tour OSSF and Wetlands in Clay County w/ Sen. Estes (TCEQ attending: James McCaule and Isaac Jackson)
- 9:00 - Colonias rules/legislation Task Force (TCEQ staff attending: Desiree Ledet for Steve Niemeyer)
- Commissioner Rubinstein meeting w/ Sen. West (Meet and Greet)
- Ballard Pitts Tour w/ Sen. Hinojosa in Corpus Christi (TCEQ staff attending: Diane Mazuca and Omar Valdez)

March 12, 2010
- Mark Vickery has a meeting w/ Rep Turner re: Highland Village in Houston (TCEQ staff also attending: Brent Wade)
- 9:00 – SB99 - Tracking Progress in Colonia (TCEQ staff attending: Desiree Ledet for Steve Niemeyer)
- 1:30 – Briefing w/ Governor’s office re: HRVOC, SIP GAP and Barnett Shale (TCEQ staff attending: Susana Hildebrand, Richard Hyde, Steve Hagle, Michael Honeycutt, Keith Sheedy, Cory Chisum, Stephanie Bergeron and Jim Harrison)

March 17, 2010
- State of Texas Alliance for Recycling (TCEQ staff attending: Jennifer Ahrens and Mike Lindner)

March 18, 2010
- 10:30 – Mtg w/ Shera Eichler w/ Rep. Bonnen’s office (TCEQ staff attending: Diane Mazuca and Mike Hoke)

March 24, 2010
- 11:00 - Mtg w/ Leadership Round Rock per Rep. Gattis request (TCEQ staff attending: Jennifer Ahrens and Kim Herndon)
Dear Zak,

I am writing to provide you with additional comments on behalf of Clean Energy Fuels to the revisions to the TERP Guidelines, which will be considered at next week’s Agenda. Clean Energy submitted comments to the TERP Guidelines, and our suggestions were ultimately not incorporated into the final Guidelines. Attached is a document with Clean Energy’s responses to the TCEQ comments and providing additional arguments in favor of Clean Energy’s positions. In addition, Clean Energy is planning to attend next week’s Agenda to provide additional comments.

Please call me if you have any questions or would like to discuss this matter further. Please also feel free to contact my associate, Travis Wussow.

Regards,

Gary

Gary D. Compton
Jackson Walker L.L.P.
100 Congress Avenue, Suite 1100
Austin, Texas 78701
Clean Energy Fuels
Comments to TCEQ's Proposed Revisions to the Texas Emissions Reduction Plan (TERP) Guidelines
Gary Compton, Jackson Walker L.L.P.
March 25, 2010

Executive Summary

Background on Clean Energy: Clean Energy Fuels (Clean Energy) is the leading provider of natural gas (compressed natural gas (CNG) and liquefied natural gas (LNG)) for transportation in North America. The company has a broad customer base in the refuse, transit, ports, shuttle, taxi, trucking, airport, and municipal fleet markets, fueling more than 17,200 vehicles daily at over 190 strategic locations across the United States and Canada.

Proposed revisions to the TERP Guidelines: The Texas Emissions Reduction Plan (TERP) is a grant program that provides funding to reduce emissions in Texas from vehicles and equipment. On March 30, 2010, the TCEQ will consider revisions to the TERP Guidelines, which govern the implementation of the program. Clean Energy provided comments during the comment period for this rulemaking; the TCEQ did not accept Clean Energy’s proposed revisions.

1. **Clean Energy recommends that the minimum useful life requirement be revised to allow funding for high-utilization vehicles that, due to significant use, have a useful life of less than five years.** The current TERP Guidelines do not allow funding for vehicles with a useful life of less than five years. This policy, which is not required by statute, prevents a number of privately held, Texas-based companies from accessing this funding to assist with the purchase of clean-burning alternative fuel vehicles. These companies can operate their trucks for an average of 500,000 miles and airport shuttles for an average of 200,000 miles in a three to four year period.

2. **Providing TERP funding for high-utilization vehicles is good policy for Texas because these vehicles achieve the same emission reductions faster than average vehicles.** Without TERP funding, these vehicles will likely not be upgraded.

3. **The TERP Guidelines should include an alternative useful life provision based on minimum annual usage or minimum total usage.** Expanding TERP would enable high-utilization vehicle operators to access funding and enable Texas to achieve its emissions goals faster.

4. **The TERP programs are unnecessarily onerous and should be streamlined.** Many details required by the full application are not needed to evaluate the project for grant eligibility; this information is only required for compliance purposes. Information needed to assure compliance could be secured at a later time if the application is selected for a grant.

5. **Clean Energy recommends that the TCEQ, Commissioners grant the Executive Director the discretion to adopt alternative means of complying with the performance standards and criteria in the Guidelines.** Additional flexibility is needed because emissions reduction technology for mobile emissions sources is rapidly developing. The HEB example is just one of a number of examples that are sure to arise in the future.
Detailed Comments

1. Clean Energy recommends that the minimum activity life requirement be revised to allow funding for projects involving high-utilization vehicles that, due to significant use, have a project life of five years or less.

   a. The five- or seven-year minimum activity life for a TERP-eligible project is not mandated by statute. Currently, the TERP Guidelines require that, in order for a project to be eligible for a TERP grant, it must have a minimum activity life of seven or five years, depending on whether the project is a replacement project or a fleet expansion project. This requirement is not imposed by statute.  

   b. Examples: HEB & airport shuttles are both on a three to four year replacement schedule for trucks and shuttles. For example, several privately held Texas based companies, typically operate their trucks between 80,000 and 100,000 miles per year before selling the trucks into the secondary market, where they may be used for many years. Airport shuttle operations, which run for 24 hours, 7 days per week, can incur over 100,000 miles per year.

   For example, vehicles that travel 40,000 miles a year for 7 years accumulate a total of 280,000 miles over the project life. Funding a vehicle that travels 75,000 annual miles over 4 years provides emission reductions for 300,000 miles. Therefore, high-utilization projects are able to achieve emission reductions of 20,000 miles three years earlier than average projects. However, because these vehicles do not meet the minimum activity life under TERP, they are not eligible for TERP funding. The State is missing an opportunity to realize the emission reductions from high-mileage fleets that will continue to operate older model diesel vehicles.

   c. Providing TERP funding for high-utilization, on-road vehicles would be good policy because these vehicles achieve TERP’s goals faster than average-mileage vehicles. By authorizing TERP grants for high-utilization vehicles, the emissions reductions are achieved at a faster pace as compared to a vehicle with average annual usage. Therefore, TERP grants for high-utilization vehicles would achieve higher annual emissions reductions. We have included the emission reductions for a 3-year period for a vehicle that travels 100,000 annual miles. As a comparison, we included a 5-year and 7-year period of time to demonstrate the reductions that could be possible for the secondary market for the vehicles.

   d. An alternative compliance method for high-utilization vehicles should be provided, such as minimum total vehicle mileage, minimum annual mileage, or minimum fuel usage. This standard would accomplish the same objective as the minimum activity life requirement, only it would ensure that emissions reductions are accomplished faster. Adding the highlighted language below would allow funding for these emissions-reducing projects.

   activity life The period used to determine the emissions reductions and cost-effectiveness of the activity. The minimum activity life for most projects is five years, although a longer minimum activity life may be established by the TCEQ for a particular grant application period. The minimum activity life may also be less than five years for projects involving vehicles with a useful life of less than five years. The TCEQ will establish a start date for each type of activity. For replacement and repower projects the start of the activity life will usually be once the TCEQ verifies that proper disposal of the vehicle, equipment, and/or engine has occurred. [Definitions section]
For all activities, the activity life must be a minimum of five years, 400,000 miles (for heavy-duty vehicles), or the useful life of the vehicle, as determined by the Altoona Bus Research and Testing Center of the Pennsylvania Transportation Institute (for transportation buses), whichever occurs earlier. The TCEQ may establish longer activity life requirements for each grant period. Not less than 75 percent of the annual usage of the vehicle must take place in one or more of the eligible counties and designated roadways throughout the life of the project. Leases must be for the length of the activity life, and 75 of the annual usage over the lease period must take place in one or more of the eligible counties and designated highways or roadways. At the Executive Director’s discretion the TCEQ may establish a minimum percentage requirement for use of the vehicle in the eligible counties with each grant application period. [Appendix 1, page 44]

2. The TCEQ’s response to Clean Energy’s comments is based on several incorrect assumptions about the usage of high-utilization vehicles in Texas.

a. The Executive Director’s response to Clean Energy’s comments incorrectly assumes that high-utilization vehicles will be upgraded without TERP funding. There are substantial differences in emissions between conventionally fueled vehicles and alternative fuel vehicles, such as compressed natural gas or liquefied natural gas. However, upgrades to these vehicles will not occur without grant assistance. Therefore, the high turnover rate of high-utilization vehicles does not mean that these vehicles will be upgraded with low-emission vehicles.

b. The Executive Director’s response to Clean Energy’s comments incorrectly assumes that high-utilization vehicles are no longer used in the secondary market. The ED rejects Clean Energy’s proposal on the basis that high-utilization vehicles already achieve emissions reductions because of high turnover rates. However, this argument assumes that these vehicles are retired and no longer utilized. Our prior example shows that once vehicles reach a certain mileage, the fleet sells these vehicles into the secondary market, where they may remain in service for several years. By providing TERP funding for alternative-fuel vehicles, the TCEQ will ensure that the vehicle being replaced is disabled and retired.

c. Awarding grants to high-utilization vehicle fleets would be good policy because these grants would prevent high-mileage vehicles with potential maintenance and emissions issues from being used in the secondary market. When TERP funding is provided under the vehicle replacement program, the replaced vehicle must be disabled or rendered unusable. However, after sold in the secondary market, these high-mileage vehicles remain on the road, often for significant periods of time because there is no incentive to help the fleet owner replace the vehicle. Because these vehicles have wear and maintenance issues, the ED should not assume that these high-mileage vehicles have the same emissions profile as low-utilization vehicles with the same model year.

3. Clean Energy recommends that TCEQ consider developing a streamlined pre-review process for projects that would involve a significant number of applications.

a. Many details required by the full application are not needed to evaluate the project for grant eligibility, because these details are required for compliance purposes. For example,
photographs of VIN numbers on engineers, tires, registration, and inspection stickers are required as a part of the TERP grant application. This information is very difficult and time consuming for a vehicle fleet manager to obtain and is not needed to evaluate the cost-effectiveness of the application. Information needed to assure compliance could be secured at a later time if the application is selected for a grant.

b. **Clean Energy recommends that a streamlined pre-review process be developed for projects that would involve a significant number of vehicles.** This process would decrease the substantial time and expense required to prepare applications for large vehicle fleets.

4. **Clean Energy recommends that the TCEQ Commissioners grant the Executive Director the discretion to adopt alternative means of complying with the performance standards and criteria in the Guidelines.**

   a. The inflexibility in the current Guidelines emphasizes form over function, since projects that functionally comply with the Guidelines’ criteria but that do not meet the formal terms are excluded from receiving TERP funding. Additional flexibility is needed because emissions reduction technology for mobile emissions sources is rapidly developing. The HEB example is just one of a number of examples that are sure to arise in the future.

   b. **Alternative language:** Clean Energy suggests that the following language be included in Chapter 1 of the Guidelines:

   > **At the Executive Director’s discretion, the TCEQ may accept alternative means of complying with the performance standards and criteria set out in these Guidelines.** At the Executive Director’s discretion, the TCEQ may coordinate with the U.S. Environmental Protection Agency to ensure that no emissions reduction credits would be lost as a result of accepting alternative means of compliance.

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2. **See Tex. Health & Safety Code § 386.104 ("For a proposed project as described by Section 386.102(b), other than a project involving a marine vessel or engine, not less than 75 percent of vehicle miles traveled or hours of operation projected for the five years immediately following the award of a grant must be projected to take place in a nonattainment area or affected county of this state."), see also 30 Tex. Admin. Code § 114.622(b).**
### TERP Emission Reduction Eligible Funding

#### by Annual Mileage (100,000 miles)

**NOx Only Standard vs. 2010 NG ISL-G 0.2 g/bhp-hr**

#### 7 Year Project Life

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<th>Year of Manufacture</th>
<th>Nox Only Standard</th>
<th>Percent Reduced</th>
<th>Emission Reduced annually (tons)</th>
<th>Emissions Reduced 7-years</th>
<th>Maximum Eligible Funding</th>
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#### 5 Year Project Life

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<th>Emission Reduced annually</th>
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<th>Emission Reduced annually</th>
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<th>Maximum Eligible Funding</th>
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<td>0.3111</td>
<td>0.9334</td>
<td>$ 9,000</td>
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Emissions calculations performed utilizing the Current TERP On-Road Calculator.  Assumed a new natural gas heavy-duty vehicle cost of $150,000.
RESPONSES OF TCEQ TO CLEAN ENERGY FUELS’ COMMENTS

Clean Energy recommended that the minimum activity life requirements be revised to allow funding for projects involving high-mileage on-road heavy-duty vehicles that, due to significant use, have a useful life of less than five years.

The commission did not make any changes based on these comments. The purpose of this program is to encourage the replacement or upgrade of vehicles that would not otherwise be replaced or upgraded if the grant were not awarded. As a result of reductions in the federal vehicle emission standards, the overall emissions from vehicles with a short average useful life will trend lower through regular turnover much faster than the overall emissions from vehicles with a longer average useful life. Therefore, it is important that the limited funding available for this program be targeted at the vehicles that would otherwise continue to operate for a much longer period of time before normal turnover would occur.

In addition, the TCEQ may only count the emissions reductions for the state implementation plan (SIP) over the activity life during which the grant recipient is committed to using the vehicle or equipment. With expected changes to the federal standards for ground-level ozone, the deadline dates for strategies in the SIP to result in reductions in ozone levels are expected to be extended, making it important that the emissions reductions achieved under the TERP occur over a longer period of time.

Clean Energy recommended that the TCEQ consider developing a streamlined application process for projects that would involve a significant number of new vehicles or projects. Clean Energy also recommended that only information needed to evaluate the proposal be required in the initial application and that information needed to assure compliance should be secured at a later time if the application is selected for an award.

The commission did not make any changes based on these comments. The information that must be included in the application forms is needed to ensure the eligibility of the project. The detailed information about each vehicle and engine is necessary to confirm the eligibility of the project under the guidelines and to perform the emissions reduction calculations. The TCEQ works with applicants to the extent time allows to obtain all necessary information and to correct errors in the application.

Clean Energy recommended that the TCEQ consider developing a streamlined pre-review process for projects that would involve a significant number of applications.

The commission did not make changes as a result of this comment. The TCEQ may receive over 1,500 applications during each grant application period and must review those applications within a very short period of time in order to award the grant funding before the deadline for obligating appropriated state funds. The volume of applications that must be processed and reviewed makes it infeasible to consider an additional application pre-review process.

Clean Energy recommended that the guidelines be revised to make it clear that grant funding may be used for labor to install emissions-reducing equipment.
The commission did not make any changes in response to this comment. The guidelines prohibit administrative costs, including in-house labor costs, from reimbursement under a grant. Installation costs billed by a contractor or vendor are allowed in the guidelines. The restrictions on administrative costs and in-house labor were established to ensure that grant recipients did not receive a direct financial benefit from the grant. In addition, tracking and reporting on in-house salaries, benefits, and indirect costs adds a significant administrative burden on the grant recipient and the TCEQ. Also, the installation of engines or retrofit devices must be in accordance with manufacturer requirements and meet all warranty provisions, making in-house installation of engines or retrofit devices infeasible in many cases.

Clean Energy recommended that projects involving fleets that travel between nonattainment areas and near-nonattainment areas be given the same competitive consideration as projects that operate only within the nonattainment areas.

The commission did not make any changes in response to this comment. Texas Health and Safety Code, §386.105(d) requires that only the emissions reductions achieved in the nonattainment counties and other affected counties may be used to determine the cost effectiveness of a project. In addition, only emissions reductions that are achieved in the nonattainment areas may be applied to the SIP.

Clean Energy recommended that the commissioners delegate the authority to revise the guidelines to the executive director and grant the executive director the discretion to accept alternative means of complying with the performance standards and criteria in the guidelines.

The commission did not make any changes in response to this comment. Where appropriate, the guidelines provide the executive director with authority to consider alternative approaches and deviations from standard requirements. However, Texas Health and Safety Code, §386.053(a) requires the commission to adopt revisions to the guidelines, after receiving input and public comment on the proposed changes. The statute does not provide for delegation of the adoption authority.
TCEQ and EPA – SIP/Permitting Issues
April 1, 2010 – Austin, Texas

Agenda

10 am (20 minutes): Opening remarks (TCEQ Commissioner, EPA Regional Administrator)

10:20 am (30 minutes)

1. Rulemakings, Part 1
   a. Public Participation: Action item: Discuss/resolve concerns.
   b. PSD/BACT Patch

2. Rulemakings, Part 2
   a. QF rule
   b. FP rule
   c. NSR Reform

3. Rulemakings, Part 3
   a. Future topics (e.g., PBR issues)

10:50 am (1.5 hour):

4. Permits - Revising Flex permits to add unit-specific controls
   a. Jointly develop a prioritization list (requested by TCEQ)
   b. Jointly develop methodology in an MOU (requested by TCEQ)
   c. Agree on how many permits to address or reopen each month.
   d. Discuss use of a 3rd Party Audit Program

12:20 pm: LUNCH BREAK (or working lunch, as needed)

12:50 pm (1 hr 25 minutes):

5. Permits - Addressing those with Title V objections
   a. Legal obligation for EPA to issue permits 90 days after objection unless State takes action.
   b. Develop a list of voluntary steps that industry could include in permit applications that would eliminate the need for EPA objection.

6. Title V Permit Revisions in the near term (ongoing construction)
   a. Work with companies that wish to voluntarily make changes in the near term.
   b. Discuss pending permit requests by Total and Motiva

7. New PSD/NSR Permits

2:15 pm (15 minutes): BREAK

2:30 pm (1 hour)

8. Legal questions:
   a. Reinstatement of conditions from NSR/PSD permits issued under the 1992-approved SIP
   b. Grandfathered sources/State-only requirements

3:30 pm (30 minutes)

9. Wrap-Up
10. Ongoing Meetings with TCEQ & EPA

4 pm: Adjourn
Steve - attached is our analysis of the mercury numbers in the report. As you know, TRI doesn't require tests or measurements but when you acquire new information you use it. Our increases have in most cases been mathematical in nature as we gain a better understanding of how to measure these small amounts of mercury in our flue gas. Please call with any questions. My direct number is:

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Luminant Mercury Emission Reports

Luminant has been actively engaged in cutting-edge mercury research for over ten years. This research includes emissions characterization, control technology evaluation and continuous monitoring system development. Some lessons learned in this process are:

- Mercury in coal, although trace, is highly variable and so, emissions are also variable;
- Because of the small amount of mercury in the flue gas and mercury's characteristics, it is difficult to measure accurately and monitor continuously;
- Mercury control technologies do not have the same control efficiencies for all coal types.

Luminant is voluntarily installing sorbent injection systems on all our coal-fueled power plant units. Systems have already been installed on 10 units. Two more installations will soon be completed when one of our new units starts operation on coal and the other unit returns to operation following the installation of selective catalytic reduction technology. The company is committed to reducing mercury emissions and will continue to meet all state and federal laws and rules regarding mercury and other emissions.

The activated carbon injection (ACI) injection systems will offset 100% of all mercury emissions from three new coal-fired electric generating units and reduce our mercury emissions to below 2005 levels. In 2008, Luminant signed a multi-million dollar, six-year contract with ADA environmental Services for the activated carbon utilized in these systems.

Electric generation companies began reporting mercury emissions (as well as other emissions) on the EPA Toxic Release Inventory (TRI) for the year 2000. From 2000 through 2003, Luminant used average industry factors for calculating its mercury air releases. In 2004, Luminant used mercury emission test data from 5 of its units that represented each plant site and unit configuration to develop emission factors for each unit based on the typical blend of lignite/subbituminous coal. This emissions factor was multiplied by the total annual heat input from the coal to obtain the annual emissions for the TRI reports for 2004 through 2007. Based upon more recent unit testing, some of these unit emission factors were updated for the 2008 TRI report resulting in a mathematical emissions increase at some plants and a mathematical emissions decrease at others.

While TRI does not require anyone to test or measure, it does require that those reporting update their emission estimates based on new data. Luminant has done this over the years. A look at our reported mercury air releases since 2000 shows an upward trend in emissions, while over this same period, Luminant has increased its use of lower mercury content Western coal. Unit operations have remained relatively level over this time frame, so one would expect that the mercury emissions would be going down, as did SO₂ and NOₓ (see table below).
Luminant Coal-Fired Unit Emissions

<table>
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<th>Year/Emission</th>
<th>SO₂</th>
<th>NOₓ*</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>251,940</td>
<td>73,510</td>
</tr>
<tr>
<td>2008</td>
<td>229,913</td>
<td>39,107</td>
</tr>
</tbody>
</table>

* Also reduced by installation of control equipment (LNB).

With the variability in coal mercury content and blend ratios, an emission factor based on one test may not, and probably will not, be representative of the annual emissions.

In 2009, Luminant began utilizing ACI systems to offset the emissions of the new units. For the 2009 TRI report, Luminant will take into account the type of coal combusted, its mercury content and apply a reduction curve developed from several stack tests. This curve takes into account the removal of mercury by the units existing control equipment (ESP, Baghouse, FGD), as well as the ACI removal at various feed rates. Early indications are that overall system emission estimates will be lower for 2009.

In summary, the reported mercury releases to air have changed over the years because of updated information developed by Luminant, not necessarily increased mercury emissions. Particularly, in 2008, the emissions factor for Big Brown increased by almost 33%, the emissions factor for Martin Lake increased by about 6 percent and the emissions factor for two units at Monticello decreased by nearly 20% due to better information.
Looks like Colorado is figuring out how to play the SIP game. The more you delay the less emission controls the State needs to come up with in their SIP (because cars and trucks keep getting cleaner and most of your ozone pollution is coming from outside the State which will need to be addressed by non-local controls). Keep delaying Colorado. Yes it's a waste of public/private resources and yes it doesn't improve the environment, but until responsibility and authority are aligned that's how you play the SIP game and avoid pushing more costly and less effective local control strategies on your citizens. Congratulations on figuring out how to play the game!

For more information on the SIP transformation effort, see www.sipreform.com.

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Senators seeking support against implementation of air quality plan

BY KEVIN LUNDBERG, AND SCOTT RENFROE. March 18, 2010

Most of Larimer and Weld counties will soon be forced into the burdensome and time-consuming enhanced testing program for automobile emissions.

We are deeply concerned with the high costs this will impose on the people of Weld and Larimer counties and oppose the plan. Joining us in opposition are the commissioners of both counties.

Everyone wants clean air, and it is important to be good stewards of the environment. However, this enhanced testing program wastes citizens' hard-earned money when compliance with the standards is already being met and in fact improving every year.

Beginning with the Clean Air Act of 1970, the Environmental Protection Agency developed a regulatory program to manage vehicle emissions. The EPA monitors air quality across the country and "non-attainment" areas with ozone pollution exceeding the EPA's established limits.
Meanwhile, the past five years have seen substantial decreases in ozone readings from the Larimer and Weld tower sites. This trend has many factors that will continue into the future regardless of any other regulations. Vehicles, fleets and fuels are all getting newer and cleaner.

The oil and gas industry in Weld County also retrofitted their wells to improve emissions.

Moving forward, our future three-year averages will meet the standard without any new regulations. We should not play environmental politics and we should stand up against these restrictive new program boundaries.

In 2009, Gov. Bill Ritter signed into law Senate Bill 3, which mandated automobile emissions testing for large parts of Weld and Larimer counties that were previously not subject to such tests. All Republicans voted against the measure and believed it was vital to aggregate one more year of data before an informed decision could be made.

Well it is a year later, and it turns out that additional year of data showed great improvements in air quality. This year, there was a proposal to repeal SB 3 based on the new data, but facts and clean air data didn't mean much to the Democrat-controlled Senate State Affairs Committee.

The effort to repeal SB 3 was killed.

As a result, we are now urging the Air Quality Commission to delay the program. The Colorado Department of Public Health and Environment stated in their draft implementation plan that "sources outside of Colorado" are predominantly responsible for transporting pollutants into our ozone.

That means that Colorado residents are getting dinged for air pollution they didn't create.

Why force Weld and Larimer counties into this enhanced emissions program when compliance with the strict standards is happening without the mandate and most ozone pollution is from out of state?

We will join the commissioners of both counties in speaking against the implementation plan March 18 at 9 a.m. at Island Grove Regional Park, 501 N. 14th Ave., Greeley, when the Colorado Air Quality Control Commission will hold a rulemaking hearing. Join us in fighting this heavy mandate and respectfully ask the Air Quality Commission to delay implementation.
From: Carlos Rubinstein
To: Vickery, Mark
Date: 4/2/2010 6:18 AM
Subject: Re: EPA Press Release

Same one as a day ago, right?

Sent on the Sprint® Now Network from my BlackBerry®
-----Original Message-----
From: Mark Vickery
To: Rubinstein, Carlos <CRubinst@tceq.state.tx.us>

Sent: 3/31/2010 11:49:50 AM
Subject: Fw: EPA Press Release
From: Zak Covar
To: Seaton, Curtis, Rubenstein, Carlos, Vickery, Mark
Date: 3/24/2010 8:00 AM
Subject: Re: Dr. Al is here

She is my brother
-----Original Message-----
From: Curtis Seaton
To: Rubenstein, Carlos <CRubinst@tceq.state.tx.us>
To: Covar, Zak <ZCovar@tceq.state.tx.us>
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>
Sent: 3/24/2010 7:53:42 AM
Subject: Re: Dr. Al is here

Gosh, that is all gina said yesterday. You must love her!
-----Original Message-----
From: Zak Covar
To: Rubenstein, Carlos <CRubinst@tceq.state.tx.us>
To: Seaton, Curtis <CSEATON@tceq.state.tx.us>
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>
Sent: 3/24/2010 7:37:21 AM
Subject: Re: Dr. Al is here

A focus on science, common sense and the law would be helpful. Keep leading blindly and we see him and lisa in court
-----Original Message-----
From: Seaton, Curtis(Curtis Seaton)
To: Rubenstein, Carlos <CRubinst@tceq.state.tx.us>
To: Covar, Zak <ZCovar@tceq.state.tx.us>
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>
Sent: 3/24/2010 7:33:41 AM
Subject: Dr. Al is here

What does he need to hear from tx (aside from wine is good here)? Yes, headache this morning...
From: Zak Covar
To: Seaton, Curtis, Rubinstein, Carlos, Vickery, Mark
Date: 3/24/2010 7:37 AM
Subject: Re: Dr. Al is here

A focus on science, common sense and the law would be helpful. Keep leading blindly and we see him and Lisa in court

-----Original Message-----
From: Seaton, Curtis (Curtis Seaton)
To: Rubinstein, Carlos <CRubinst@tceq.state.tx.us>
To: Covar, Zak <ZCovar@tceq.state.tx.us>
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>
Sent: 3/24/2010 7:33:41 AM
Subject: Dr. Al is here

What does he need to hear from tx (aside from wine is good here)? Yes, headache this morning...
From: Seaton, Curtis (Curtis Seaton)
To: Vickery, Mark, Covar, Zak, Rubinstein, Carlos
Date: 3/24/2019 7:33 AM
Subject: Dr. Al is here

What does he need to hear from tx (aside from wine is good here)? Yes, headache this morning...
From: Hyde, Richard (Richard Hyde)
To: Vickery, Mark
Date: 3/25/2010 9:09 AM
Subject: Gas Processors Association Conference

Is the name of the group that Steve met with. It was the usual suspects.
Mark Vickery - Can you call me?

From: <matthew.kuryla@bakerbotts.com>
To: <mvickery@tceq.state.tx.us>
Date: 4/2/2010 8:03 AM
Subject: Can you call me?

713 504 0313.
Early afternoon should work -- 1:30.

Thanks - SBP

>>> <matthew.kuryla@bakerbatts.com> 03/19/10 5:33 PM >>>
Can you sit down over lunch or in the early afternoon (say, 1:30 or 2) on Weds 3/24? I’ll be in Austin, and am taking the 5:30 return.
Hi John,

Received your message from earlier today. Am ok with waiting until you hear back re: job interview (approx. 4/15).

Thanks for keeping me in the loop.

SBP
Plz handle this request. thanks

>>> John Ramon 3/18/2010 2:46 PM >>>

Mr. Covar,

It seems that effective slogans are a way to sway a community to accomplish an objective. 'Don't Mess with Texas' comes to mind, along with 'Click It or Ticket'.

I envision a similar campaign to reduce excessive idling. I propose the following copyrighted slogan as a way to get the message out about excessive automotive idling:

Texas Cares About The Air You Breath
Turn It Off Until You Leave

I look forward to hearing your thoughts on this slogan and the use of this slogan.

Sincerely,
John Ramon

Thought y'all might appreciate these remarks
Susana M. Hildebrand, P. E.
Chief Engineer, TCEQ
Dr. McClellan is a toxicology god. He headed up CASAC a few iterations ago...

>>> < 3/25/2010 7:01 AM >>>

Neeraja:

Attached are four items that you may find of interest. The first is a copy of my personal submission to the EPA Ozone Docket on the EPA's Proposed "Reconsideration" Rule for Ozone. As are aware, Administrator Jackson proposes to "reconsider" the primary NAAQS which was set at 0.075 ppm (highest 8-hour average) by then Administrator Johnson in March 2008 to a level between 0.060 to 0.070 ppm. In my view, this is the most blatant political move ever attempted with regard to revision of a NAAQS. Read my submission to understand my position.

I also include our "Critical Issues - Ozone" paper published in Inhalation Toxicology as an Appendix to my comments. In that paper, one of the issues raised was "policy relevant background." It was right on target as is apparent from the paper of Wang et al.

I have attached the Wang et al. paper. They have used the GEOS-CHEM model that was used earlier to estimate background of 0.015 to 0.035 ppm, daily average over a month, for a coarse grid with call size equal to about one-half the Commonwealth of Pennsylvania. Wang et al. now uses a finer grid and the 8-hour highest average which is more relevant to setting an 8-hour NAAQS. The fourth paragraph at the end of the paper states the key conclusion - "We thus find that eliminating US anthropogenic emissions would maintain surface ozone concentrations in the US below 60 ppb at all times." Welcome to de-industrialized USA.

I also attach a paper by Steenland et al. that reports on a REAL risk factor-socioeconomic status. Take a look at the relative risk ratios and you can see how the analyses of air pollution effects can go astray if SES is not adequately taken account of in the analyses.

I am also attaching a related paper by Koop et al. that deserves your attention.
It makes the point I have made above.

I am increasingly concerned that well-intentioned enthusiasm for lower and lower standards, while ignoring real risk factors of substantial magnitude, can have serious consequences for the future of the USA. In short, my concern these days is for the economy and JOBS.

Regards,

Roger

--
Advisor, Toxicology and Human Health Risk Analysis
13701 Quaking Aspen Place NE
Albuquerque, NM 87111
Tel: 505-235-0883
Fax: 505-235-9257
roger@healthriskanalysis.com
This is being sent as R6 All Employee Memo - Please do not reply to this mass mailing
This memo and all Region 6 "All Employee Memos" may be viewed on the Region 6 Intranet

******************************************************************************
NO HARD COPY TO FOLLOW
March 23, 2010

MEMORANDUM

SUBJECT: Layla Mansuri

FROM: Al Armendariz
Regional Administrator

TO: All EPA Region 6 Employees

I am pleased to announce the appointment by EPA Administrator Lisa Jackson of Layla Mansuri of Austin to be Associate Regional Administrator for the Region 6 office.

I am grateful that Layla has agreed to join us. She will make a fantastic addition to our leadership team. Her experience in environmental law, environmental justice, air quality, and climate change will be assets as we move forward to tackle the environmental challenges in the region.

Ms. Mansuri is a native of San Antonio, a member of the Texas Bar, and a graduate of Texas A&M University in College Station and the University of Texas - School of Law in Austin. She most recently worked as an attorney with the Environmental Integrity Project, in their Austin office, where she represented citizens and natural resource conservation groups.

Layla has worked for other prominent environmental organizations including Public Citizen, Environmental Defense Fund as well as working with EPA’s Office of Environmental Justice in 2002.

Her experience includes representing Sierra Club in multiple matters, including the Asarco smelter in El Paso and the proposed White Stallion coal-fired power plant just outside of Houston. She has also worked on air pollution issues in both Oklahoma and Arkansas.

Layla’s first day at the office will be on March 29, 2010. Thank you all for your help in welcoming Layla to EPA.
FYI, here's her background:

Layla Mansuri joined EIP in 2008, after practicing environmental and administrative law with the Austin, Texas firm Lowerre & Frederick, where she represented landowners and conservation groups. In addition, Ms. Mansuri clerked for the U.S. Environmental Protection Agency's Office of Environmental Justice, Public Citizen of Texas, Inc., and the Environmental Defense Fund. Layla Mansuri earned her JD from the University of Texas School of Law and graduated summa cum laude from Texas A&M University with a BS in Bioenvironmental Science.

>>> Stephanie Bergeron 3/24/2010 1:08 PM >>>

This is being sent as R6 All Employee Memo - Please do not reply to this mass mailing
This memo and all Region 6 "All Employee Memos" may be viewed on the Region 6 Intranet
******************************************************************************
NO HARD COPY TO FOLLOW
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Regional Administrator

TO: All EPA Region 6 Employees

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Her experience includes representing Siena Club in multiple matters, including the Asarco smelter in El Paso and the proposed White Stallion coal-fired power plant just outside of Houston. She has also worked on air pollution issues in both Oklahoma and Arkansas.

Layla’s first day at the office will be on March 29, 2010. Thank you all for your help in welcoming Layla to EPA.

US EPA Region 6 • armendariz.al@epa.gov • 214-655-2100
has accepted another position and not will be transferring to LD.

SBP
Hi friends - attached are the comments submitted to EPA today re: the new ozone proposal. The comments were submitted on behalf of TCC, TAM and TxCQA.

If you have any questions, please don't hesitate to contact us. Thanks!

Christina T. Wisdom
Vice President & General Counsel
Texas Chemical Council
1402 Nueces Street
Austin, Texas 78701
From: Mark Vickery
To: Starfield.Lawrence@epamail.epa.gov
Date: 3/30/2010 2:33 PM
Subject: Re: Meeting

sure, but we need a certification attesting to who is on the line :)

>>> <Starfield.Lawrence@epamail.epa.gov> 3/30/2010 1:13 PM >>>
Checking...

On a related matter, will you have a speakerphone available for our meeting, in case staff from DC want to listen in?

Larry

Meeting

Mark Vickery
to:
Lawrence Starfield
03/30/2010 11:10 AM

With Buddy. Larry, I am assuming it will just be you and Al?
Attached are the two stories from the clips today, and here is the url for what is apparently the source of the stories:


let us know if there's anything else we can do to help....

Terry

>>> Mark Vickery 3/18/2010 8:50 AM >>>
Can you all plz give me some information regarding the news clip and mercury emission increases. thx
Mercury emissions climb at many large coal-fired power plants, report says

Posted Thursday, Mar. 18, 2010

By RENEE SCHOOF
McClatchy Newspapers

Fort Worth Star-Telegram

WASHINGTON -- Mercury emissions increased at more than half of the country's 50 largest mercury-emitting power plants, many of which lack widely available pollution controls for the highly toxic metal, according to a report released Wednesday.

Five of the 10 plants with the most mercury emitted are in East and Central Texas, according to the nonpartisan Environmental Integrity Project. Plants in Georgia, Missouri, Alabama, Pennsylvania and Michigan are also in the top 10.

<table>
<thead>
<tr>
<th>Owner</th>
<th>Location</th>
<th>Percent change in mercury emissions, 2007 to 2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Luminant</td>
<td>near Henderson in Rusk County</td>
<td>+4.56</td>
</tr>
<tr>
<td>2 Luminant</td>
<td>near Fairfield in Freestone County</td>
<td>+32.89</td>
</tr>
<tr>
<td>5 Luminant</td>
<td>near Mount Pleasant in Timp County</td>
<td>-14.45</td>
</tr>
<tr>
<td>6 NRG</td>
<td>near Groesbeck in Limestone County</td>
<td>+4.55</td>
</tr>
<tr>
<td>9 American Electric Power</td>
<td>near Marshall in Harrison County</td>
<td>-3.80</td>
</tr>
<tr>
<td>15 NRG</td>
<td>near Richmond in Fort Bend County</td>
<td>-7.75</td>
</tr>
<tr>
<td>42 San Miguel Electric Cooperative</td>
<td>near Jourdanton in Atascosa County</td>
<td>+3.81</td>
</tr>
</tbody>
</table>

The report, which used the most recent data available from the Environmental Protection Agency, found that mercury emissions increased at 27 of the top 50 plants from 2007 to 2008. Overall, power plant emissions of mercury decreased 4.7 percent in that period, but that amount was far less than what would be possible with available emission controls, the report said.

"Even though the technology exists today to dramatically reduce the mercury pollution, the U.S. power industry has delayed cleanup and barely made a dent in the power plant emissions," said Ilan Levin, an attorney with the Environmental Integrity Project.

"Delay by both the EPA and the electric power industry is what has caused this."

The Environmental Integrity Project is a nonprofit organization that promotes stronger enforcement of anti-pollution laws.
The two plants with the highest mercury emissions are owned by Luminant, a subsidiary of Energy Future Holdings of Dallas, formerly TXU.

Both plants -- the Martin Lake plant near Henderson in Rusk County and the Big Brown plant near Fairfield in Freestone County -- saw emissions grow, including a nearly 33 percent increase at the Big Brown plant. A Luminant plant near Mount Pleasant in Titus County ranked fifth but showed nearly a 15 percent reduction in emissions.

Luminant spokeswoman Ashley Monts said new technology is being installed on all coal-fueled power plant units that will offset all mercury emissions from three new coal-fired power plants and reduce mercury emissions to below 2005 levels.

Installation of the technology is complete at 10 units, and the remaining two should be finished this year, she said.

"Luminant is currently doing more than any other company in the nation to voluntarily cut mercury emissions from our coal-fueled power plants," Monts wrote in a statement. "The company is committed to reducing mercury emissions and will continue to meet all state and federal laws and rules regarding mercury and other emissions."

What it means

Coal-fired power plants are the largest source of mercury pollution, generating more than 40 percent of U.S. emissions. Mercury released into the air settles in rivers and lakes, where it moves through the food chain to fish that people eat.

Mercury exposure in fetuses can result in children born with learning disabilities. Each year, more than 300,000 babies may have an increased risk of such exposure, the report said.

Since 1990, the EPA has been required under the Clean Air Act to impose controls on many forms of air pollution, including mercury. To date, however, no national regulation limits mercury pollution.

The EPA is working on a mercury reduction rule and has agreed in a court settlement to complete it by November 2011. The agency adopted a cap-and-trade system of tradable mercury emission allowances in 2005, but a federal court ruled that it didn't comply with the clean-air law and threw it out in 2008.

U.S. power plants emitted 44.7 tons of mercury in 2008.
Texas claims 5 of the top 10 mercury-emitting coal plants

Elizabeth Souder/Reporter

Dallas Morning News blog, 3:26 PM Wed, Mar 17, 2010

Texas claims five of the top 10 mercury-emitting coal-fired power plants in the country.

The Environmental Integrity Project, a nonprofit environmental group, analyzed mercury emissions data from 2008. The group found that Texas has the country's largest mercury-emitting coal plant: Martin Lake in East Texas, owned by Energy Future Holdings' Luminant.

In fact, East Texas is home to three of the top five mercury-emitting coal plants in the country in terms of total emissions, according to the report. The other plants, Big Brown and Monticello, are also owned by Dallas-based Luminant.

In an emailed statement, Luminant said it is adding sorbent injection systems to its coal plants to cut mercury emissions. The equipment will help the company meet potential new mercury emissions rules, and allow the company to meet its promise to entirely offset the emissions of the three new coal-fired plants it is building.

"The company is committed to reducing mercury emissions and will continue to meet all state and federal laws and rules regarding mercury and other emissions," Luminant said in the statement.

Other Texas coal plants that made the top-ten are NRG Energy's Limestone and AEP's H W Pirkey.
From: Zak Covar
To: Vickery, Mark
Date: 4/1/2010 7:44 AM
Subject: Fw:

I say we wait til they get here to cancel
Good afternoon Mr. Vickery,

It was nice meeting you during the contest. I look forward to meeting you again.

Thanks

Bernard
From: Zak Covar
To: Saenz, Andy
Date: 4/2/2010 12:11 PM
Subject: Re: (alleged) Investigative report

Didn't have to...he wrote it

-----Original Message-----
From: Andy Saenz
To: Covar, Zak <ZCovar@tceq.state.tx.us>

Sent: 4/2/2010 11:54:08 AM
Subject: Re: (alleged) Investigative report

kind of surprised they didn't interview Ashley Waddick's favorite commissioner....

Have a Happy Easter!

>>> Zak Covar 4/2/2010 11:48 AM >>>
If any of the people interviewed in the story said we were doing a great job, we would be failing at our job.

-----Original Message-----
From: Andy Saenz
To: Seaton, Curtis <CSEATON@tceq.state.tx.us>
To: Womack, Daniel <DWomack@tceq.state.tx.us>
To: Patteson, Kevin <KPatteson@tceq.state.tx.us>
Cc: Clawson, Terry <TClawson@tceq.state.tx.us>
To: Covar, Zak <ZCovar@tceq.state.tx.us>
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>
To: Burnett, Patti <PBURNETT@tceq.state.tx.us>

Sent: 4/2/2010 11:35:33 AM
Subject: (alleged) Investigative report

At least they practice recycling.....recycling old, inaccurate rumors.

Who Protects the Texas Environment?

Hint: It Isn't the State Agency That's Supposed To

Investigative Report
by Greg M. Schwartz

The Texas Commission on Environmental Quality's mission statement says the agency "strives to protect our state's human and natural resources consistent with sustainable economic development. Our goal is clean air, clean water, and the safe management of waste." But the agency's numerous critics charge that the environmental protection of Texas is repeatedly trumped by politically motivated management decisions concerned only with the economic development part of the equation.

Neil Carman"There is so much dirt on the agency and most of it has never been investigated," says Neil Carman, clean air director for the Sierra Club's Lone Star Chapter, based in Austin. From 1980 to 1992, Carman worked as an investigator and inspector for the Texas Air Control Board, a predecessor agency that was merged into what is now the TCEQ. Carman says he has a list of criminal cases against the TCEQ that have never been pursued, compiled from trading war stories with other investigators around the state. One of the primary areas of malfeasance Carman cites is the TCEQ's air permitting system.

"TCEQ issued more than 150 state flexible air permits from 1995-2009 to major industrial plants by using an illegal permitting program that circumvented the Clean Air Act," Carman says. These plants include many large industrial sources of toxic air pollutants, particulate matter, ozone-forming compounds, acid rain-producing gases, and haze-forming chemicals. The U.S. EPA Region 6 headquarters listed 142 plants in Texas in a September 25, 2007, letter that was sent to companies. The letter indicated the need for grandfathered, industrial plants that hold so-called "Flexible Permits" to reduce pollution and comply with the Clean Air Act.

Carman authored a 1999 report on behalf of the Sierra Club and the Galveston-Houston Association for Smog Prevention. The report identified about 1,070 Texas plants partly or totally grandfathered under the state law known as the Texas Clean Air Act.

"We have a permitting system that creates enforcement nightmares," Carman says. He said the TCEQ has issued somewhere around 86,000 permits for industrial plants and facilities since 1971, and only denied about 15. Eighty-six thousand permits over 40 years averages out to 2,150 a year-more than eight every single day. Carman says the incredulous number comes directly from the
From: Mark Vickery
To: Patteson, Kevin
Date: 3/29/2010 9:42 AM
Subject: Re: fyi

I know that. It will probably free my schedule up tomorrow :). Does not hurt my feelings.

-----Original Message-----
From: Kevin Patteson
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>

Subject: Re: fyi

He can't decide who joins the mtg for our side

-----Original Message-----
From: Mark Vickery
To: Patteson, Kevin <KPatteso@tceq.state.tx.us>

Subject: Re: fyi

Soward said "no". ;) 

-----Original Message-----
From: Kevin Patteson
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>

Subject: Re: fyi

Do we know who from DC? Can bryan join the soward mtg?

-----Original Message-----
From: Mark Vickery
To: Patteson, Kevin <KPatteso@tceq.state.tx.us>

Sent: 3/29/2010 8:39:36 AM
Subject: fyi

1. we have a whooping crane teleconference call at 9 this morn with the AG
2. EPA is bring the "full meal deal" to the meeting on Thursday. 3 or 4 folks from DC
3. I am attending a meeting with Commissioner Rubinstein and the Mayor of Houston on Wed. We are traveling to see her.
4. I have a teleconf. tomorrow with Commissioner Soward to talk about enforcement issues.
5. Dallas Morning News wants to interview me today regarding BS.
6. Oil and Gas stakeholder meeting on PBR is scheduled April 8th.
7. Next week is my Spring Break and I will out next week, available by phone or can come in.

Mark
From: Kevin Patteson
To: Vickery, Mark
Date: 3/29/2010 9:39 AM
Subject: Re: fyl

He can't decide who joins the mtg for our side
-----Original Message-----
From: Mark Vickery
To: Patteson, Kevin <KPatteso@tceq.state.tx.us>
Subject: Re: fyl

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Mark
Ladies and gents: Attached is an advance copy of our news release to be issued tomorrow morning (Thursday, March 25) announcing the submittal of our Early Site Permit application to the NRC for the Victoria site. This triggers a 3-4 year review process, and, if issued by the NRC, allows us to preserve the site for up to 20 years for the potential development of a nuclear power plant. The ESP application focuses on three primary areas: emergency preparedness, site safety and environmental impact. Please call me on my cell phone if you have any questions. Thanks.

William A. Scott
Director, Government Affairs
Exelon
1005 Congress Ave., Ste. 880
Austin, Texas 78701
(512) 391-1952
(512) 479-4031 - fax
(512) 415-8510 - mobile

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********************************************************************
FOR IMMEDIATE RELEASE

Exelon Files Early Site Permit Application for Texas Site

KENNETT SQUARE, Pa. (March 25, 2010) – Exelon Nuclear Texas Holdings LLC, a wholly owned subsidiary of Exelon Generation, today filed an “early site permit” application with the Nuclear Regulatory Commission for an 11,500-acre site in Victoria County, Texas. At the same time, Exelon formally withdrew its application for a combined construction and operating license for the same site.

If approved, the early site permit would effectively reserve the property for new nuclear construction for up to 20 years with the possibility of renewal for another 20. Unlike a combined construction and operating license, an early site permit, or ESP, does not authorize construction of a new plant.

If a decision to build is eventually made, Exelon would be required to re-apply for a combined construction and operating license at that time.

The proposed site is 13 miles south of the City of Victoria. NRC review of the ESP application could take three to four years.

“A decision whether to build in Victoria County will be made years in the future,” said Marilyn Kray, Exelon’s vice president for nuclear project development. “The ESP allows us to establish the suitability of the site, which lessens the amount of work to do should we later decide to pursue a license.”

The ESP application accommodates a variety of possible future plant designs, allowing for flexibility in selecting a reactor technology later as part of a full license application.

Much of the data gathering and analysis contained in the ESP application had been performed for the combined construction and operating license application filed in 2008. Work on that application was suspended last year at Exelon’s request because of uncertainties in the domestic economy, lowered expectations of future electricity demand and related economic considerations.

Under the ESP process, the NRC evaluates site safety, environmental impact and emergency planning regarding a proposed nuclear plant. By issuing an ESP for a specific site, the NRC is certifying that the site satisfies federal criteria in those evaluation areas. If the company later chooses to pursue construction, the ESP becomes part of the combined construction and operating license application, which requires a separate review, public input and approval by the NRC.

- more -
The Victoria County application is Exelon's second ESP submittal. In 2007, the company received an early site permit for property beside the Clinton Power Station in DeWitt County, Ill., one of Exelon's 10 operating nuclear power stations.

###

*Exelon Corporation is one of the nation's largest electric utilities with approximately $17 billion in annual revenues. The company has one of the industry's largest portfolios of electricity generation capacity, with a nationwide reach and strong positions in the Midwest and Mid-Atlantic. Exelon distributes electricity to approximately 5.4 million customers in Illinois and Pennsylvania and natural gas to approximately 485,000 customers in southeastern Pennsylvania. Exelon is headquartered in Chicago and trades on the NYSE under the ticker EXC.*
Thank you for your participation in last Wednesday's Conference Call.

As a result of the discussions, please find attached additional information:

1. Revised draft: 07-4 CWA NPDES Management Framework

2. Revised draft: Proposed Resolution on Comprehensive Mercury Monitoring

3. Link to CWA enforcement action plan "Teams" website (accessible by participants only) http://www.epa-otsis.gov/otsis/cwa_actionplans/ 
   <http://www.epa-otsis.gov/otsis/cwa_actionplans/> . "To know about upcoming meetings you must be part of the group that is meeting. There are seven groups." There is a contact name on the site.

We look forward to seeing you at the ECOS Spring meeting in California last this month.

Lee Garrigan

P Reduce your environmental footprint. Think before printing this email.
CLEAN WATER ACT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) MANAGEMENT FRAMEWORK

WHEREAS, the Clean Water Act (CWA), a landmark environmental statute, has been central to the important progress we have made as a Nation in improving the health of our waters, wetlands and watersheds; and

WHEREAS, it is the policy of Congress, as expressed in the CWA, to recognize that States have the authority to manage and implement the National Pollutant Discharge Elimination System (NPDES) permit program with oversight from EPA; and

WHEREAS, the States are fully committed to protecting the Nation’s waters, enhancing pollution abatement and control programs, implementing the NPDES program; and

WHEREAS, the scope of water quality programs has grown tremendously since the CWA was first enacted in 1972 to address literally hundreds of thousands of pollution sources; and

WHEREAS, the CWA established as national policy “...that to the maximum extent possible the procedures utilized for implementing this Act shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government.”; and

WHEREAS, the US EPA, to develop methods to implement the CWA Enforcement Implementation Plan, has created an EPA-State Steering Committee and six (6) teams including Citizens Suit, Electronic Reporting Compliance Improvement, Improving Public Access, New Approach, NPDES Data Analysis, and Short Term Oversight; and

WHEREAS, the deliverables of the teams and Steering Committee, by design, are likely to fundamentally alter the management framework established in existing State authorization agreements governing NPDES programs; and

WHEREAS, many States are concerned about the duplication and increased State work load that would result from the implementation of new priorities and approaches to wastewater enforcement in conjunction with the increased burden of maintaining approved State NPDES programs with substantially decreased state resources; and
WHEREAS, the deliverables of the six teams and Steering Committee are likely to significantly increase or change data collection, reporting requirements, and facility universe to track not only traditional facilities but additional types of facilities and programs for wet weather—such as those for Biosolids, Concentrated Animal Feeding Operations (CAFO), Combined Sewer Overflows (CSO), Stormwater, Pretreatment, and Sanitary Sewer Overflows (SSO); and

WHEREAS, many States are concerned that ICIS-NPDES reporting requirements may be mandated in a new rule and, currently, are inappropriately driven by program implementation rather than national program oversight.

NOW, THEREFORE, BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF THE STATES:

Maintains that in order for the States to effectively implement NPDES policies, consultation with the States and the resulting policies should:

1. Provide due deference to a State’s approved continuous planning process and program for the prevention, reduction, and elimination of pollution in accordance with the purposes and provisions of the CWA;

2. Remove any barriers to full state programmatic flexibility and operations that are not expressly established in the Act;

3. Establish a budget neutral approach that would govern NPDES program operations and the federal-state partnership as additional pollution sources are brought into the NPDES program;

4. Minimize the duplication of effort, redundancy and burden to the maximum extent practicable for states that effectively leverage the investment of public funds;

5. Make full use of alternative oversight techniques and information technologies that provide operational savings, efficiencies and generally minimize the burden of maintaining approved State NPDES programs and assure broad programmatic accountability; and

6. Maintain a State’s prerogative to design and implement a management information system that best meets the challenges for the prevention, reduction and elimination of pollution within its jurisdiction while still providing a core set of information for US EPA oversight.

Supports ECOS and the States working with EPA through the established teams and the Steering Committee to:

1. Identify and address emerging issues and concerns regarding activities associated with the implementation of the NPDES Program; and

2. Develop and maintain transition strategies for program and information management needs as resources may decline or increase through operational savings or supplemental funding.
COMPREHENSIVE NATIONAL MERCURY MONITORING

WHEREAS, methyl mercury levels in fish and other living organisms routinely exceed thresholds considered potentially harmful to people and fish-eating wildlife throughout much of the United States; and

WHEREAS, exposure to toxic levels of mercury largely occurs through consumption of organisms with elevated methyl mercury and adverse effects on growth, reproduction and neurological function have been observed in organisms with elevated methyl mercury levels; and

WHEREAS, high levels of mercury measured in fish have triggered fish consumption advisories throughout the United States, including significant coastal advisories; and

WHEREAS, better data on mercury cycling in the environment would improve scientific understanding and ability to predict and quantify linkages between mercury emissions and environmental response; and

WHEREAS, improved mercury monitoring information will help to optimize mercury policy development and implementation and is needed to track progress; and

WHEREAS, a comprehensive long-term mercury monitoring program focused on ambient concentration, mercury deposition, watershed cycling and levels in key biota would allow scientists and resource managers to accurately assess mercury in the environment and link changes in emissions and deposition with ecosystem effects and response; and

WHEREAS, the comprehensive data gathered would provide useful information to evaluate trends in mercury levels in the environment and biota and inform the development of future mercury reduction policies; and

WHEREAS, many states have developed and implemented mercury monitoring efforts and have developed substantial expertise in this area, and are now, due current state budget issues, facing difficulties in sustaining these efforts,

NOW, THEREFORE, BE IT RESOLVED THAT

ECOS urges the President of the United States and Congress to expand federal and state capacity for mercury-related action, including but not limited to environmental monitoring, fate and transport science, pollution prevention programs, and health advisory efforts. New resources, in particular to the states, are needed to ensure that state
and federal progress is sustained; and

ECOS supports congressional action that would fund a comprehensive, long-term mercury monitoring program that meets national monitoring needs, and,

ECOS requests that the Federal Government engage and work with the States in the design and implementation of these efforts to ensure that they address and meet state concerns and data needs and effectively support and coordinate with state mercury monitoring programs.

07-1 ECOS Resolution on Creating a Partnership for a National Vision for Mercury
From: "Garrigan, Lee" <lgarrigan@sso.org>
To: "Garrigan, Lee" <lgarrigan@sso.org>
Date: 3/1/2010 10:40 AM
Subject: ECOS Water Committee - new drafts of Resolutions & other followup
Attachments: NPDES Resolution Draft v.4 (2-26-10).doc

TO: ECOS Water Committee

Thank you for your participation in last Wednesday's Conference Call.

As a result of the discussions, please find attached additional information:

1. Revised draft: 07-4 CWA NPDES Management Framework

2. Revised draft: Proposed Resolution on Comprehensive Mercury Monitoring

3. Link to CWA enforcement action plan "Teams" website (accessible by participants only) http://www.epa-otis.gov/otis/cwa_actionplans/<http://www.epa-otis.gov/otis/cwa_actionplans/> . "To know about upcoming meetings you must be part of the group that is meeting. There are seven groups." There is a contact name on the site.

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Lee Garrigan
(202) 624-3502
The Environmental Council of the States
444 N. Capitol St., NW
Washington, DC 20001

P Reduce your environmental footprint. Think before printing this email.
Resolution Number 07-4
Approved March 21, 2007
Alexandria, Virginia

Revised and Renewed
March 24, 2010
Sausalito, California

As certified by
R. Steven Brown
Executive Director

CLEAN WATER ACT NATIONAL POLLUTANT DISCHARGE ELIMINATION
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From: "Garrigan, Lee" <garrigan@sso.org>
To: "Garrigan, Lee" <garrigan@sso.org>
Date: 3/1/2010 10:19 AM
Subject: EPA CWA Action Plan Presentation and member list
Attachments: CWA Action Plan Presentation 3 1 10.ppt; CWA action plan members.xls

The latest update on the EPA CWA Enforcement Action Plan.
(apologies if you already have received this)
Lee Garrigan
ECOS

> From: Nicholas, David
> Sent: Monday, March 01, 2010 10:49 AM
> Subject: CWA Action Plan Presentation and member list

> Greetings all,
>
> Attached is a presentation on the current status of the CWA action plan. It should bring everyone up to date quickly and can be shared widely so please pass it along to others who you think should be informed. This is an ideal way to refresh on it in time for the ECOS Spring meeting since it will be a focal point on our agenda.
>
> Also, during the Water Committee call last week, we discussed the role of the state leads for each of the subgroups in the CWA action plan. To clarify our understanding of the state lead role, it may be helpful to review the language in this excerpt of the original charge to each subgroup which was approved by the Steering Committee:
>
> III. Composition of the Team, Team Leads and Quorum
>
> A. The Team will have four lead members, one each from the EPA Regions, OECA, OW and the States. There will be other members from the Regions, OECA, OW and the States also participating in the work of this Team.

> B. The presence of the four team leads will be used to determine a quorum for each meeting, and for approving team products. (Any designated alternate for a lead Team member will count toward the quorum requirement.)

> C. The active and consistent participation of each team lead is critical as the participation of other team members may be more fluid.

> D. Team leads are not expected to and should not be representing the views of their entire group (e.g., the state lead for a particular team is only representing that state, and not representing all state views). Team leaders should encourage other members of their group to participate so that multiple views are heard.

> E. The Team members are set forth separately in the CWA Enforcement Action Plan Implementation Team and Members table.

> IV. Decision Making and Approval of Team Products

> A. The Team is not a formal decision making body. Rather, the Team will be developing, researching and evaluating options for the U.S. EPA Assistant Administrators for Enforcement and Water to decide upon. Where there are differing views among the members of the Team on an issue, all such views will be presented to the Steering Committee and the Assistant Administrators. State representatives on the Team are representing only their states on an individual basis, and will not present consensus advice or recommendations on behalf of other states or any state organization.

> Attached here is a list with contact information for each member, including the state lead contact where one has been established. If you have particular questions about the activities of a given workgroup, please contact that state lead or myself. When key deliverables are available, we will share them with the understanding that review loops will likely be very short given to overall accelerated schedule for this effort.
Clean Water Act
Action Plan

New Approaches to Address
CWA NPDES Program
Implementation Challenges

Presentation by: Kate Anderson and David Hindin
U.S. EPA OECA

ASIWPCA National Meeting
March 2, 2010
CWA Action Plan Overview

- October 2009 – Action Plan finalized and House T&I Committee hearing held.
  - US EPA Administrator committed to taking bold actions to implement improvements in NPDES program performance.

- Three Key Improvements Needed
  - Develop and implement a new approach for ensuring appropriate responses to water quality problems and related violations of NPDES regulated facilities.
  - Set clear expectations for acceptable program performance to protect water quality and measure performance consistently.
  - Implement electronic reporting and take appropriate steps to improve information management and transparency.
CWA Action Plan
Implementation: Structure

- State/EPA Steering Committee guides development of proposals for solutions to key challenges.
- Six EPA/State Teams identify and analyze possible proposals to address implementation challenges.
  - Proposals should include long-term changes, as well ideas that can be tested (piloted) and/or implemented quickly.
- Possible proposals will be reviewed and decided on by the EPA Assistant Administrators for Enforcement and Compliance Assurance, and Water.
CWA Action Implementation Teams

- Data Analysis
- New Approaches to identify and address serious violations impacting water quality
- Short-term Improvements to NPDES Oversight
- Improving Public Access
- Electronic Reporting Compliance Improvement Team
- Citizen Suits

Note: this presentation only addresses New Approach and Electronic Reporting teams.
Important Caveats

- Implementation of the CWA Action Plan is a work-in-progress.
  - The teams are in the early stages of identifying and analyzing proposals.
- The specific draft preliminary proposals for changes presented here do not reflect the official views of EPA or any state.
- EPA welcomes the opportunity to talk with ASIWPCA later this year to get their input.
New Approach Team Charge:

- Long-term - develop new approaches to improve the appropriate identification and responses to water quality problems and related violations across the full universe of NPDES regulated facilities.

- Short-term – Take appropriate state and federal civil and criminal enforcement where serious violations identified.
New Approach Challenges

- Enormous and heterogeneous regulated universe and limited resources.
- Nation data gaps and inconsistencies.
  - Limited information for facilities and programs not subject to DMRs.
  - Inconsistent national information for non-major DMR facilities.
  - Lack information on specific pollutants/loads from most sources—wet weather-- (unless TMDL exists).
  - Limited data on compliance status and state actions to address noncompliance outside of NPDES "majors".
  - Incomplete and inconsistent water quality data.
- Out-dated policies and regulations.
- Permits: BMPs and General permits.
- Non-filers: Storm water construction and CAFOs.
- Variety of state enforcement authorities and approaches.
- Non point sources
DRAFT PRELIMINARY STRAW Proposals for New Approaches to Addressing and Identifying Serious Violations

- Creating Enforcement Efficiencies
  - Are there ways to more quickly remedy SNC reporting violations and/or remove them from our national tracking?
  - Implementing more efficient responses (enforcement and other?) to industrial DMR violations
  - Improving municipal sewer overflows enforcement.
- “NPDES Majors” Structure
  - Should we make substantial changes to regulations and policies that address permitting, monitoring, violation classification (SNC), timely and appropriate enforcement responses, data reporting, and public access?
    - For example, should the government treat a facility that discharges X pollutant at Y% over a limit into an impaired river for Z months differently based on whether it was classified as a “major” many years ago?
DRAFT PRELIMINARY STRAW Proposals for New Approaches to Addressing and Identifying Serious Violations – continued 1

- Watershed/Pollutant-based Strategies
  - Deploy all CWA programs to focus certain percentage of enforcement resources to address specific pollution problems in key watersheds.
  - Integrate NPDES enforcement into a rotating basin ambient monitoring and assessment process.
  - Divide EPA and State NPDES work such that EPA focuses on watershed-based enforcement and overall State program evaluation.
DRAFT PRELIMINARY STRAW Proposals for New Approaches to Addressing and Identifying Serious Violations – continued 2

• Improvements to General Permits
  • Issue national general permits for specific industries to provide nationally consistent standards.
  • Evaluate the effectiveness of general permits in protecting water quality and institute changes identified to strengthen their ability to ensure water quality improvements.

• EPA/State Work-share Agreements
  • Set clearly defined annual expectations for EPA and authorized states compliance and enforcement programs across all NPDES universes to address serious water quality problems identified in each state.
  • Develop a new conceptual model for EPA-State relationship.
Electronic Reporting Compliance Improvement Team Charge:

- Increase electronic submission of all data from regulated facilities and between EPA and states.
- Explore other reporting from facilities and authorized states to fill critical data gaps and improve transparency.
- Explore electronic periodic compliance certification options for regulated community.
Electronic Reporting Ideas Being Discussed

- EPA's eDMR/NetDMR goal is to encourage all states and territories to adopt electronic DMR reporting.
  - Move from encouragement to requirement
- EPA's eNOI goal is to encourage all states to allow NPDES permittees to apply electronically for certain types of permits, or waivers from those permits, and to submit a variety of reports.
- EPA's e-Application goal is to require entities needing NPDES permits to apply for them online. The tool would only gather the basic application information that is common across all users and permitting authorities.
Opportunities for Enforcement, Permitting, and Water Quality Standards Programs to Solve Problems

- Information collection/sharing/integration
- Promoting electronic reporting approaches
- Identifying how permits can help realize compliance monitoring and enforcement efficiencies
- Joint planning, priority setting and measurement
- Identify best strategic approach, e.g., watershed-specific, pollutant-specific, sector-specific
- Communicating results to stakeholders
Questions for discussion

- What are critical elements of a new approach for identifying serious violations most critical to improving water quality?
  - What are the tools we need to do this work?
- What can we do in FY10 that moves us in the right direction?
  - Developing State-EPA agreements for FY11 with key Action Plan principles discussed.
  - Federal CAFO enforcement initiative.
  - Sorting out less significant SNC paperwork violations.
  - More efficient ways to address DMR-related noncompliance.
  - Setting new initiatives for FY11-13.
  - Providing better information to stakeholders.
  - Other?
NPDES Universes: This chart does not include Industrial Users subject to National Categorical Pretreatment Standards, vessels and pesticide applicators. Also, for the groups shown there is some overlap. For example, a POTW is often a major, may have an approved pretreatment program, may have a CSS or SSS, and may have a biosolids facility.
Chair
Member
OECA Lead
OW Lead
Region Lead
State Lead
Backup
Staff Support
Liaison
<table>
<thead>
<tr>
<th>TEAM NAME</th>
<th>MEMBER NAME</th>
<th>ORG / STATE</th>
<th>Title at EPA or State</th>
<th>Role on Team or Steering Committee</th>
<th>EMAIL</th>
<th>TELEPHONE</th>
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<tr>
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## CWA Enforcement Action Plan Implementation Teams

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Mark R. Vickery, P.G.
Executive Director
Texas Commission on Environmental Quality
Post Office Box 13087
Austin, TX 78711-3087

Dear Mr. Vickery:

Thank you for your letter of January 26, 2010, responding to our concerns regarding implementation of whole effluent toxicity (WET) requirements in wastewater permits issued by your agency under the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES). As noted in our December 22, 2009, letter to you, EPA believes that the WET implementation procedures (IP) recently proposed by the Texas Commission on Environmental Quality (TCEQ) for public comment are inadequate for issuing permits in compliance with the Texas water quality standards and federal regulations.

While the proposed IP revisions may address facilities demonstrating the most egregious levels of toxicity, we believe they do not constitute an appropriate approach to determining reasonable potential (RP) for all discharges that have demonstrated toxicity. As we have consistently stated since 2005, the requirement to appropriately assess RP for WET and incorporate WET limits in permits where RP is indicated is based on 40 CFR 122.44, which Texas adopted by reference at 30 TAC 305.531. Over the past two years we have raised objections to several Texas Pollutant Discharge Elimination System (TPDES) permits that did not include appropriate WET requirements. We are concerned that objections to TPDES permits will continue as a result of the proposed revisions to TCEQ’s implementation procedures, which calls into question TCEQ’s ability to administer the TPDES program consistent with the CWA requirements and the Memorandum of Agreement between our agencies.

You wrote that it would not be appropriate to use EPA’s 2004 draft WET guidance as a basis for WET reasonable potential. Both EPA Region 6 and EPA Headquarters have repeatedly stated to TCEQ that EPA’s draft WET guidance in no way supersedes or revises the reasonable potential method presented in EPA’s 1991 “Technical Support Document (TSD) for Water Quality-Based Toxics Control”. We have also stated that TCEQ need not strictly follow the 1991 TSD, but may develop an alternative method that ensures that there will be no exceedance of water quality standards for aquatic life. To date, TCEQ has not submitted an acceptable alternate procedure.

With respect to the permits listed in our letter of December 18, 2009, EPA conditioned its decision not to object on TCEQ’s making recommended changes to the draft permits. TCEQ did not propose a revised permit or fact sheet for any of the affected facilities based on EPA’s
recommendations. EPA continues to believe that federal and state regulations implementing the NPDES program require that the toxicity demonstrated in WET tests for these facilities be controlled through limits for WET in the facilities’ NPDES permits.

EPA does not believe that making the required permitting implementation revisions will result in an undue burden on TPDES permittees or TCEQ. As we have noted on several occasions to your staff and management, EPA has reviewed over 200 TCEQ draft permits and only 10 percent to 15 percent of those permits required WET limits using the Region 6 approach. While the proposed revisions may address the higher levels of toxicity in TPDES permits, we have not been able to agree on the basic procedures for determining reasonable potential for WET. Contrary to what is stated in your letter, EPA’s position has not changed in this regard. Therefore, EPA will continue to object to permits where the Agency believes, based on WET test results, reasonable potential exists to exceed water quality standards for aquatic toxicity.

EPA remains committed to working with TCEQ to arrive at a mutually acceptable resolution to these issues. Should you have any questions regarding the issues presented herein, please contact Mr. Miguel Flores, Director, Water Quality Protection Division, at (214) 665-2100.

Sincerely,

[Signature]

Al Armendariz
Regional Administrator

cc: L’Oreal Stepney,
Deputy Director, Office of Water, TCEQ

Charles Maguire
Assistant Director, Water Quality Planning, TCEQ
Attached is an updated report summarizing Federal activities. Please let us know if you have any questions.

Have a great weekend!!

Tangela
IGR
x3786
EPA and Federal Agencies
Texas Doubts On EPA Ozone Science May Hint At Suit Over Strict NAAQS
Inside EPA 3/24/10

Texas may be laying the groundwork for a lawsuit challenging EPA's proposed tightening of the agency's ozone national ambient air quality standard (NAAQS) if EPA issues a final standard within the range of the proposal, observers say, based on Texas environmental officials' recent criticisms of the science underlying the agency's plan.

At a Feb. 25 hearing of Texas' House Committee on Environmental Regulation, officials from the Texas Commission on Environmental Quality (TCEQ) argued that some studies cited by EPA in its proposed stricter ozone standard do not show significant health effects, and may even suggest that ozone is "health-protective." A TCEQ spokesperson declined to respond to a request for comment on a potential lawsuit.

A state GOP source largely backs TCEQ's criticism of the science behind EPA's proposal, raising concerns about the economic cost that EPA's proposed tightening of the NAAQS could have on the state.

Texas Gov. Rick Perry (R) is already one of several parties that have filed a lawsuit in the U.S. Court of Appeals for the District of Columbia Circuit challenging EPA's greenhouse gas (GHG) endangerment finding, due in part to Perry's concern about the cost of GHG regulations that the scientific finding will trigger. On the ozone proposal a Perry spokesperson says, "It is too early to comment on what we might do until the new standard is finalized."

But the recent state legislature hearing may offer early indications of Texas' arguments in a future lawsuit over EPA's upcoming NAAQS revision. The agency proposed on Jan. 7 to tighten the existing 2008 ozone standard of 0.075 parts per million (ppm) issued by the Bush administration down to a range between 0.060 parts per million (ppm) and 0.070 ppm.

EPA's proposal is within the range recommended by agency staff and its Clean Air Scientific Advisory Committee, but TCEQ said at the hearing that science behind the proposal is questionable. States, industry and environmentalists filed suit over the 2008 ozone standard, but that case is in abeyance pending EPA's reconsideration of the NAAQS. The agency has said it intends to issue its final standard by a non-binding Aug. 31 deadline.

At the hearing, EPA Region VI Administrator Al Armendariz gave a presentation citing significant public health and economic benefits of lowering the standard, including reduced incidence of chronic bronchitis, nonfatal heart attacks, and missed work days.

But TCEQ toxicology official Michael Honeycutt in a separate presentation at the hearing questioned the studies on which EPA relied to determine the level of ozone exposure at which such adverse effects occur, saying that most epidemiological studies used by EPA and scientific
advisers do not show significant health effects. "Some studies can be interpreted to show ozone is actually health-protective," according to Honeycutt's presentation.

One environmentalist familiar with the state legislature hearing says the TCEQ presentation seems like an early attempt to establish a scientific basis for a lawsuit over the final ozone NAAQS, because the presentation focused on opposition to the federal plan, rather than suggestions for how to improve air quality in the state.

"That's really the only halfway valid reason for spending so much time from an extraordinarily strained [TCEQ] staff arguing the science, except to lay the ground for a future suit, and that's really a poor use of taxpayer money," says the source, adding that TCEQ's objections were already considered by EPA's advisers years ago when the state brought them up during the scientific review for the 2008 standard.

EPA Staff Push Stricter PM2.5 NAAQS Amid Debate Over Annual Measure
Inside EPA 3/24/10

EPA air office staff are advocating for a significant tightening of the agency's fine particulate matter (PM2.5) national ambient air quality standard (NAAQS), though the agency and its science advisers continue to wrangle over whether they should focus their efforts on a stricter annual exposure standard or 24-hour standard.

Staff from EPA's Office of Air Quality Planning & Standards (OAQPS) earlier this month released the first external review draft of their policy assessment for an ongoing review of the PM2.5 NAAQS. The paper -- which does "not necessarily reflect the views of the EPA," according to the draft -- is being circulated to EPA's Clean Air Scientific Advisory Committee (CASAC) and the public for comment as part of the broader review process.

In the paper, the staff outline a number of options that would represent a significant tightening of the Bush EPA's 2006 PM2.5 NAAQS revisions, which tightened the standard for short-term 24-hour exposure from 65 to 35 micrograms per cubic meter (ug/m3) but left the annual exposure limit unchanged at 15 ug/m3. The Bush administration's decision contradicted CASAC, which advocated a stricter annual standard of 13-14 ug/m3.

In the draft paper, staff from OAQPS -- part of the Office of Air & Radiation -- weigh annual standards in a range of 10 to 13 ug/m3, and setting a 24-hour standard in a 30 to 35 ug/m3 range. According to the paper, these ranges would protect public health by cutting PM levels to below the limit that data have found to be harmful.

Staff also propose a stricter range for the annual PM2.5 standard tightened to between 10 and 11 ug/m3, combined with a more stringent 24-hour standard in the range of 25 to 30 ug/m3, which the paper says would be a "precautionary approach."
EPA Delay Of GHG Permits To 2011 Prolongs Uncertainty For New Plants
Inside EPA 3/24/10

EPA's decision to delay until 2011 its mandate for first-time greenhouse gas (GHG) permitting requirements at stationary sources is prolonging uncertainty for new coal-fired plants aiming to win final permits before the requirements take effect, because industry fears EPA will aggressively stall issuance of final permits until next year.

Still, industry officials are in part welcoming the delay -- announced by EPA Administrator Lisa Jackson in a recent letter to Democratic senators -- because it allows them to go forward with planned modifications at existing facilities this year without worrying about triggering GHG limits. Jackson said existing plants could trigger GHG requirements if they make changes in 2011 or beyond that would trigger permit requirements for other regulated pollutants.

Jackson also said in the Feb. 22 letter that EPA would delay until 2011 the effective date of its proposed "tailoring" rule to exempt sources emitting less than 25,000 tons per year (tpy) of GHGs from Clean Air Act permitting requirements, and that EPA could in the first few years raise the threshold up to 75,000 tpy to focus on only the largest sources.

EPA Plan May Fill Gap In Activists' Bid To Regulate CO2 Under Water Act
Inside EPA 3/24/10

EPA is considering whether to issue guidance to states on how to determine whether to list ocean waters as impaired by acidification due to increased carbon dioxide (CO2) emissions and other factors, and how to limit those emissions -- a move that could fill a key gap in activists' effort to regulate the greenhouse gas (GHG) under the Clean Water Act.

EPA and the Center for Biological Diversity (CBD) March 10 signed a legal settlement that the agency subsequently published in the March 22 Federal Register seeking comment on how to address ocean acidification under section 303(d) of the water law -- which requires states to develop biennial lists of waters that are impaired and then requires them to craft pollution control plans, known as total maximum daily loads (TMDLs), for cleaning up the waters.

To Speed CCS, EPA Weighs Hazardous Waste Law Exemption For CO2
Inside EPA 3/24/10

Responding to widespread industry concerns, EPA is launching a rulemaking that could "conditionally" exempt carbon dioxide (CO2) from liability under federal hazardous waste law requirements, a move the agency hopes will speed the use of CO2 sequestration -- the favored method for complying with pending greenhouse gas (GHG) rules.

EPA is "considering a proposed rule under [the Resource, Conservation & Recovery Act (RCRA)] to explore options such as a conditional exemption from the RCRA requirements for hazardous CO2 streams in order to facilitate implementation of [geologic sequestration of CO2] while protecting human health and the environment," EPA says in its just-released Action Initiation List (AIL) for February 2010. The monthly document describes newly launched rules that have not yet appeared in the agency's regulatory agenda.

Since the Supreme Court ruled that CO2 is a "pollutant" under the Clean Air Act, many industry officials have raised concerns that they could face massive remediation liability under RCRA
and other environmental laws, in the event the gas that is pumped into underground carbon, capture and sequestration (CCS) wells contaminates drinking water or harms human health.

**Department of Energy Grant Award**

OSFR News

On March 9, the Department of Energy awarded a $154 million matching grant to NRG Energy Inc. to build a carbon sequestration project in Texas. NRG will construct a 60-megawatt demonstration facility at its coal-fired power plant in Thompsons, Texas. The project will capture carbon dioxide emissions, compress them and inject them into nearby oilfields, sequestering the greenhouse gases while enhancing petroleum recovery from the oilfields.

The project was selected under the third round of the Clean Coal Power Initiative, a federal project to stimulate advanced coal technologies for commercial deployment.

**Congress**

*Obama aides meet with Senate Dems to map April strategy*

E&E News (03/25/2010)

President Obama's top aides met with Senate Majority Leader Harry Reid and Democratic committee leaders to map out a strategy for getting 60 votes on a comprehensive energy and climate change bill once lawmakers return next month from their spring break.

The hour-long meeting in Reid's office included White House legislative affairs director Phil Schiliro and Obama's energy and climate adviser, Carol Browner. According to a Senate Democratic leadership aide, the Obama officials pledged to work with the committee leaders once Sens. John Kerry (D-Mass.), Lindsey Graham (R-S.C.) and Joe Lieberman (I-Conn.) release their bill next month.

Aides to Kerry, Graham and Lieberman plan to write their bill over the two-week recess that starts tomorrow, with U.S. EPA also soon to start a six-to-eight week analysis. Their bill is expected to set a first-ever price for the industrial releases of greenhouse gas emissions and expand domestic production of oil, gas and nuclear power.

Tom Donohue, the president of the U.S. Chamber of Commerce, told reporters during a visit to the Capitol yesterday that he is pleased with the work to date in trying to write an industry-friendly energy and climate proposal.

Jumping ahead several steps in the process, Donohue raised the question of how a Senate-passed climate bill would be reconciled with the House-passed global warming legislation authored by Energy and Commerce Chairman Henry Waxman (D-Calif.). That bill, H.R. 2454, sets roughly the same cap on greenhouse gas emissions but creates a much different structure for doing it.

**Bipartisan group of House members float plan to block closure**

E&E News (03/24/2010)

A group of House Democrats and Republicans introduced a resolution yesterday to stop the Obama administration from ending the nuclear waste repository program at Yucca Mountain, Nev., and to save important project data.
The resolution of disapproval aims to stop the Energy Department from using appropriated funds to end the project and to preserve "all scientific and site specific file and data related to Yucca Mountain," said a statement from Rep. Doc Hastings' (R-Wash.) office.

Joining Hastings on the measure are Reps. Jay Inslee (D-Wash.), James Clyburn (D-S.C.), Norm Dicks (D-Wash), John Spratt Jr. (D-S.C.), Fred Upton (R-Mich.) and Gresham Barrett (R-S.C.), all of whom represent districts and states that currently store spent commercial or defense nuclear waste.

BP, others push against federal regulation of fracturing
E&E News (03/23/2010)

BP America Inc. and two other oil and gas companies are lobbying for the new Senate climate and energy bill to recommend against federal regulation of hydraulic fracturing.

And their efforts may be successful. The latest draft of the climate and energy bill being written by Sens. John Kerry (D-Mass.), Lindsey Graham (R-S.C.) and Joe Lieberman (I-Conn.) reportedly includes language saying U.S. EPA would not regulate the oil and gas drilling technique.
<table>
<thead>
<tr>
<th>Subject</th>
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<th>Activity Dates</th>
<th>Register Notice Hypothesis</th>
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<tr>
<td>Agency Information Collection Activities: Proposed Collection; Comment Request; NOX Budget Trading Program To Reduce the Regional Transport of Ozone; USEPA</td>
<td>March 25, 2010 Volume 75, Number 57 Notices Page 14438-14440</td>
<td>May 24, 2010 (comments)</td>
<td>Htm</td>
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<td>Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur; USEPA</td>
<td>March 12, 2010 Volume 75, Number 48 Notices Page 11877-11878</td>
<td>April 29, 2010 (comments)</td>
<td>Htm</td>
<td>Staff recommend no comments.</td>
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</table>
## Federal Notices and TCEQ Regulatory Initiatives

### Air Programs

<table>
<thead>
<tr>
<th>Subject</th>
<th>Activity Dates</th>
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<th>TCEQ Activity &amp; Status</th>
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<tr>
<td>Approval and Promulgation of Implementation Plans; Texas; Revisions to Chapter 116 Which Relate to the Permit Renewal Application and Permit Renewal Submittal; USEPA</td>
<td>April 12, 2010 (comments)</td>
<td>March 11, 2010 Volume 75, Number 47 Proposed Rules Page 11503-11504</td>
<td>Htm</td>
<td>Staff recommend no comments.</td>
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<td>Science Advisory Board Staff Office; Notification of a Clean Air Scientific Advisory Committee (CASAC) NOX &amp; SOX Secondary NAAQS Review Panel Meeting and CASAC Teleconference; USEPA</td>
<td>Panel Meeting April 1, 2010 7:30am - 4 pm April 2, 2010 7:30 am - 1 pm CASAC Teleconference May 3, 2010 9 am – 12 noon</td>
<td>March 8, 2010 Volume 75, Number 44 Notices Page 10479-10481</td>
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<td>Information only.</td>
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<td>Approval and Promulgation of Implementation Plans; Texas; Revisions to Chapter 116 Which Relate to the Application Review Schedule; USEPA</td>
<td>April 7, 2010 (comments)</td>
<td>March 8, 2010 Volume 75, Number 44 Proposed Rules Page 10449-10450</td>
<td>Htm</td>
<td>Staff recommend no comments.</td>
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<td>Release of Draft Documents Related to the Review of the National Ambient Air Quality Standards for Carbon Monoxide; USEPA</td>
<td>April 2, 2010 (comments)</td>
<td>March 5, 2010 Volume 75, Number 43 Notices Page 10252-10253</td>
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## Federal Notices and TCEQ Regulatory Initiatives

### Air Programs

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<td>Agency Information Collection Activities: Proposed Collection; Comment Request; Compliance Assurance Monitoring Program; USEPA</td>
<td>April 26, 2010 (comments)</td>
<td>February 24, 2010 Volume 75, Number 36 Notices Page 8333-8335</td>
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**Federal Notices and TCEQ Regulatory Initiatives**

## Waste Programs

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<tr>
<td>Draft Toxicological Review of Inorganic Arsenic: In Support of the Summary Information on the Integrated Risk Information System (IRIS); USEPA</td>
<td>March 26, 2010 (comments)</td>
<td>February 19, 2010&lt;br&gt;Volume 75, Number 33&lt;br&gt;Notices&lt;br&gt;Page 7477-7479</td>
<td>Html</td>
<td>Staff recommend comments. Executive Review package being developed.</td>
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## Federal Notices and TCEQ Regulatory Initiatives

### Water Programs

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<td>April 8, 2010</td>
<td>March 9, 2010 Volume 75, Number 45 Notices Page 10791-10793</td>
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<td>Submission to OMB for Review and Approval; Comment Request;</td>
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<td>Questionnaire for Steam Electric Power Generating Effluent Guidelines</td>
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<td>(New); USEPA</td>
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<td>Draft Report to Congress: Study of Discharges Incidental to Normal</td>
<td>April 7, 2010</td>
<td>March 8, 2010 Volume 75, Number 44 Notices Page 10477-10479</td>
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<td>Operation of Commercial Fishing Vessels and Other Non-Recreational</td>
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<td>Vessels Less Than 79 Feet; USEPA</td>
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<td>Environmental Impact Statement and Habitat: Conservation Plan for the</td>
<td>June 3, 2010</td>
<td>March 5, 2010 Volume 75, Number 43 Notices Page 10305-10307</td>
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<td>Incidental Take of Seven Federally Listed Species by the Edwards</td>
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<td>Aquifer Recovery Implementation Program; Edwards Aquifer Recovery</td>
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<td>Implementation Program; FISH AND WILDLIFE SERVICE</td>
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<td>February 25, 2010 Volume 75, Number 37 Notices Page 8694-8696</td>
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<td>Proposed Collection; Comment Request; Animal Sectors; USEPA</td>
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## Water Programs

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<td>February 23, 2010 Volume 75, Number 35 Notices Page 8055-8056</td>
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<td>USEPA</td>
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<td>Including Discharges From New Development and Redevelopment; USEPA</td>
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# Federal Notices and TCEQ Regulatory Initiatives

## Final Rule Adoption

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<td>Transportation Conformity Rule PM2.5 and PM10 Amendments; USEPA</td>
<td>April 23, 2010</td>
<td>March 24, 2010 Volume 75, Number 56 Rules and Regulations Page 14259-14285</td>
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<td>the General Provisions; USEPA</td>
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<td>National Emission Standards for Hazardous Air Pollutants for Area</td>
<td>April 19, 2010</td>
<td>March 18, 2010 Volume 75, Number 52 Rules and Regulations Page 12988-12989</td>
<td>Html</td>
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<td>Sources; Asphalt Processing and Asphalt Roofing Manufacturing; Technical Correction; USEPA</td>
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<td>Hazardous Waste Management System; Identification and Listing of</td>
<td>March 10, 2010</td>
<td>March 10, 2010 Volume 75, Number 46 Rules and Regulations Page 11002-11005</td>
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<td>National Emission Standards for Hazardous Air Pollutants: Area</td>
<td>March 5, 2010</td>
<td>March 5, 2010 Volume 75, Number 43 Rules and Regulations Page 10184-10186</td>
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<td>Source Standards for Paints and Allied Products Manufacturing---</td>
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<td>Technical Amendment; USEPA</td>
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## Federal Notices and TCEQ Regulatory Initiatives

### Final Rule Adoption

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| Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program | July 1, 2010    | March 26, 2010  
Volume 75, Number 58  
Rules and Regulations  
Page 14669-14904                                                | Html           |
|                                                                        |                |                                                                                               | Pdf                        |
Volume 75, Number 41  
Rules and Regulations  
Page 9647-9690                                                    | Html           |
|                                                                        |                |                                                                                               | Pdf                        |
| Primary National Ambient Air Quality Standards for Nitrogen Dioxide; USEPA | April 12, 2010  | February 9, 2010  
Volume 75, Number 26  
Rules and Regulations  
Page 6473-6537                                                   | Html           |
|                                                                        |                |                                                                                               | Pdf                        |
| Ozone National Ambient Air Quality Standards; Final Rule and Proposed Rule; USEPA | March 12, 2011  | January 19, 2010  
Volume 75, Number 11  
Rules and Regulations  
Page 2935-2937                                                   | Html           |
|                                                                        |                |                                                                                               | Pdf                        |
TCEQ National Comments
Summaries of significant correspondence and other documents that formally present official statements of the TCEQ's position regarding national policies and activities.

DATE SUBMITTED: 02/26/2010

SHORT TITLE: Draft Recommended Interim Preliminary Remediation Goals for Dioxin in Soil at CERCLA and RCRA Sites

SUBMITTED TO: U.S. Environmental Protection Agency (EPA)

DIVISION PREPARING: Office of Compliance and Enforcement

STAFF CONTACT: Greg Tipple, P.G.

SUMMARY OF COMMENTS:
A series of toxicologically-based comments conclude that EPA should not adopt revised PRGs for dioxins in soils at Federal Superfund and RCRA sites until such time as it completes the reassessment of dioxin toxicity. The reassessment, when concluded, will be based on a formal peer review of all dioxin toxicity studies and other data that are presently available. The PRGs that EPA is proposing are not scientifically defensible since they are not based upon the best information regarding dioxin toxicity that is available. EPA is proposing to substantially reduce the PRGs for dioxin in soils based on old toxicity studies, rather than waiting until it can formally adopt new, peer-reviewed toxicity values. Specifically, the carcinogenic oral slope factor (SFo) and the non-carcinogenic chronic minimum risk level (MRL) toxicity factors used in the calculations for the proposed interim PRGs are 25 and 12 years old, respectively. The TCEQ comments identify more current documents pertaining to dioxin toxicity which EPA should have considered. EPA provided only a 50-day comment period on this complex topic. A TCEQ comment requests that EPA extend the comment period by at least 60 days.

A series of implementation-based comments also conclude that EPA should not issue revised PRGs for dioxin in soils until such time as it completes the final reassessment of dioxin toxicity. However, if EPA decides to issue the interim PRGs, then it should, previously or concurrently, release additional guidance that more specifically discusses how the interim PRGs are to be applied to active and closed dioxin sites. Also, in such guidance, EPA should clarify that it does not intend to use revised PRGs, prior to its completion of the final dioxin reassessment, to conclude that any site, appropriately evaluated and/or remediated in response to its 1998 dioxin PRGs, requires additional response to be protective of human health.

DATE SUBMITTED: 02/26/10

SHORT TITLE: Stakeholder Input; Stormwater Management Including Discharges From New Development and Redevelopment

SUBMITTED TO: EPA

DIVISION PREPARING: Office of Water

STAFF CONTACT: Jaya Zyman-Ponebshek

SUMMARY OF COMMENTS:
The TCEQ regulates storm water runoff through the Texas Pollutant Discharge Elimination System (TPDES)
program. In general, post construction storm water is regulated as a component of the municipal separate storm sewer system (MS4) permitting program. TPDES permits for small, medium, and large MS4s require a comprehensive storm water management program (SWMP), part of which must address discharges into the MS4 from new development and redevelopment sites. Consistent with the federal rules regulating MS4s, the TPDES MS4 program requires permits for all medium and large MS4s in Texas and for portions of small MS4s that are located within an urbanized area.

The TCEQ has the ability to require permit coverage for any small MS4 not automatically regulated if discharges from the small MS4 cause, or have the potential to cause, an adverse impact to surface water in the state. In addition, TCEQ has the flexibility within its existing TPDES permits to require additional controls as may be needed to control discharges from regulated MS4s.

The TCEQ believes that additional regulations are not needed at this time to address discharges not otherwise regulated under the existing National Pollutant Discharge Elimination System (NPDES) program. The TCEQ also believes that additional regulations would place an unnecessary burden on permitting authorities and respectfully request that the U.S. EPA not expand the existing regulations to require additional permitting for post construction site runoff beyond the existing requirements.

DATE SUBMITTED: 03/15/10

SHORT TITLE: New Source Review (NSR) Program for PM2.5; Rulemaking to Repeal Grandfathering Provision and End the PM10 Surrogate Policy

SUBMITTED TO: U.S. Environmental Protection Agency (EPA)

DIVISION PREPARING: Office of Permitting and Registration

STAFF CONTACT: Michael Wilhoit

SUMMARY OF COMMENTS:

The TCEQ does not support EPA’s proposal to repeal the grandfathering provision for PM2.5 and end the use of the PM10 surrogate program. The use of the PM10 surrogate program has ensured consistency and has allowed TCEQ to meet its obligations under the Texas and Federal Clean Air Acts. Texas has no nonattainment areas for PM2.5. The TCEQ believes that there are still substantial technical difficulties and regulatory uncertainties associated with the implementation of PM2.5 in PSD and minor NSR. The TCEQ does not have the technical tools to implement the PM2.5 major and minor NSR programs. SIP-approved states such as Texas should be allowed to continue using the PM10 NSR surrogate program until the EPA can fully implement and integrate PM2.5 into the NSR program.

DATE SUBMITTED: 03/22/10

SHORT TITLE: National Ambient Air Quality Standards for Ozone

SUBMITTED TO: U.S. Environmental Protection Agency (EPA)

DIVISION PREPARING: Chief Engineer's Office

STAFF CONTACT: Brian Foster
SUMMARY OF COMMENTS:

The Texas Commission on Environmental Quality (TCEQ) is in disagreement with the U.S. Environmental Protection Agency’s (EPA) proposal to revise the eight-hour standard to a level within the range of 0.060 to 0.070 parts per million (ppm) because of uncertainties relating ambient ozone concentrations to personal exposures and limitations of the epidemiological and clinical studies used as the basis of the revisions. Because of the considerable implications of these revisions, it is extremely important that this policy decision incorporate all of the relevant scientific data and that the data be analyzed using appropriate statistics.

The TCEQ does not agree with the proposal to establish a distinct secondary ozone standard, different from the primary standard, because the proposed secondary standard is arbitrary in form; the selected level is indistinguishable from background; does not yield appreciable benefits; is based on studies that may be inappropriate for identifying empirical vegetation effects; and may inadequately overestimate damages. The TCEQ is opposed to the EPA's proposal to require that all decimal digits supported by the calculation software must be retained for actual calculations of eight-hour averages and three-year average ozone values.

The TCEQ does not support the EPA’s proposed broad and unfettered general discretion to use incomplete data and any other data known to EPA but not a part of the federal or state monitoring network to calculate design values for comparison to the National Ambient air Quality Standards (NAAQS) for purposes of determining attainment or nonattainment.

The TCEQ does not support the EPA’s proposed broad and unfettered general discretion to consider data collected from non-federal reference method monitors that has not been submitted to EPA’s Air Quality System.

The TCEQ is opposed to the accelerated designation schedule. This schedule, combined with the reconsidered standard proposed as a range rather than at a specific level, does not allow for meaningful public input, nor does it provide adequate time for states to conduct technical analysis in support of designation recommendations. The EPA should extend the time for states to submit designation recommendations.

The EPA’s statement that the proposed ozone standard reduction would have no significant impact on small business is disingenuous. Changes to the NAAQS do directly impact requirements for emissions of all sources, both large and small. The proposed range of the primary ozone NAAQS will drastically increase the number of distant emission sources that can contribute policy-relevant quantities of ozone to cities.
From: Zak Covar
To: Linda Flores
CC: Diane Mazuca; Elizabeth Sifuentez; Pattie Burnett; Tonya Baer
Date: 3/22/2010 11:08 AM
Subject: Re: PHS, CWQ

Thanks. Do we have an estimated cost per connection comparison as well?

>>> Linda Flores 3/22/2010 11:04 AM >>>
Information of City of Houston fees compared to State Average Increases. The Percent Increase for PHS is significant for reference purposes, the City of Dallas also had a 1332% increase in the PHS fee.

City of Houston

FY 09
FY 10
Difference% Increase State Average
% Increase
CWQ 1,175,230 1,320,929
145,699
12.40%

26%
PHS
126,935 2,407,207
2,280,272
1796.00%

66%
WUF
NA
NA
NA

Total
1,302,165
3,728,136
2,425,971
Linda,

Plz send me info on how the City of Houston was affected as compared to the rest of the state with our increase in water fees.

Thanks,
Zak
I've attached a spreadsheet with the previous data and the PHS cost per connection. The CWQ doesn't lend itself to a comparison due to the multiple factors affecting a permit. I'll be happy to review the data if something is unclear.

>>> Zak Covar 3/22/2010 11:08 AM >>>
Thanks. Do we have an estimated cost per connection comparison as well?

>>> Linda Flores 3/22/2010 11:04 AM >>>
Information of City of Houston fees compared to State Average Increases. The Percent Increase for PHS is significant...for reference purposes, the City of Dallas also had a 1332% increase in the PHS fee.

City of Houston

FY 09  
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126,935  
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2,280,272  
1796.00%  
66%  
WUF  
NA  
NA  
NA  

Total  
1,302,165
3,728,136
2,425,971

>>> Zak Covar 3/22/2010 9:13 AM >>>
Linda,

Plz send me info on how the City of Houston was affected as compared to the rest of the state with our increase in water fees.

Thanks,
Zak
### Water Fee Increases

**City of Houston**

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<td>1,175,230</td>
<td>1,320,929</td>
<td>145,699</td>
<td>12.40%</td>
<td>26%</td>
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<tr>
<td>PHS</td>
<td>128,935</td>
<td>2,407,207</td>
<td>2,288,272</td>
<td>1796.00%[1]</td>
<td>66%</td>
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<tr>
<td>WUF</td>
<td>NA</td>
<td>NA</td>
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<td><strong>Total</strong></td>
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<td><strong>3,728,138</strong></td>
<td><strong>2,425,971</strong></td>
<td><strong>1854.50%[1]</strong></td>
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**City of Houston**

**PHS Cost Per Connection**

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|          | 2.04    | 1854.50%[1] |

**Notes:**

1. Percentages not equal due to Tier I, II, and III variables

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<td>TIER I</td>
<td>$75.00</td>
<td>$100.00</td>
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<tr>
<td>TIER II</td>
<td>$150.00</td>
<td>$175.00</td>
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<tr>
<td>Tier III</td>
<td>C(0.70) x $7.4</td>
<td>$2.15</td>
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</table>

2. CWQ has 18 variables which affect fees such as Multiplier, Aquaculture, Active/inactive, Toxicity, etc and it does not lend itself to a cost per permit comparison.
From: Linda Flores
To: Zak Covar
CC: Diane Mazuca; Elizabeth Sifuentes; Pattie Burnett; Tonya Baer
Date: 3/22/2010 11:04 AM
Subject: Re: PHS, CWQ

Information of City of Houston fees compared to State Average Increases. The Percent Increase for PHS is significant...for reference purposes, the City of Dallas also had a 1332% increase in the PHS fee.

**City of Houston**

<table>
<thead>
<tr>
<th>FY 09</th>
<th>FY 10</th>
<th>Difference% Increase</th>
<th>State Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>CWQ</td>
<td>1,175,230</td>
<td>1,320,929</td>
<td>145,699</td>
</tr>
<tr>
<td></td>
<td>26%</td>
<td>PHS</td>
<td></td>
</tr>
<tr>
<td></td>
<td>126,935</td>
<td>2,407,207</td>
<td>2,280,272</td>
</tr>
<tr>
<td></td>
<td>66%</td>
<td>WUF</td>
<td></td>
</tr>
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<td></td>
<td>NA</td>
<td>NA</td>
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<td>NA</td>
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<td></td>
</tr>
</tbody>
</table>

**Total**

|       | 1,302,165 | 3,728,136 | 2,425,971 |
>>> Zak Covar 3/22/2010 9:13 AM >>>
Linda,

Please send me info on how the City of Houston was affected as compared to the rest of the state with our increase in water fees.

Thanks,
Zak
From: Carlos Rubinstein
To: Curtis Seaton, Daniel Womack, Steve Niemeyer
CC: Jim Harrison, Zak Covar
Date: 3/23/2010 9:45 PM
Subject: Re: The latest version

Steve,

1. On the spreadsheet add a column for the regions where we have watermaster staff and add those.

2. On the CCN document, aside from the comments that Curtis made, add a paragraph about adverse taking over of a CCN area. How are area disputes settled.

Carlos

>>> Steve Niemeyer 03/23/10 5:19 PM >>>
Commissioner, I’ve updated the information to list what you committed to providing, and this is now what I’m proposing to send out to Dan Esparza at Senate IRT.

I went ahead and left the air investigators in the first table but can take them out.

By separate e-mail, I’ll forward what I propose to send to Senator Davis’ office (Dan Buda).

Steve

****************************
Dan, attached please find information requested by committee members of Commissioners Garcia and Rubinstein at the March 9 Senate International Relations and Trade Committee hearing.

We’re providing the following requested information:
The number of TCEQ investigators, including permitting and enforcement—this is attached in an Excel file, “TCEQ Investigators_inc_Permitting and Enforcement.” The table is broken out by regional offices, and has two separate columns, one including air investigators, and one with only water and wastewater investigators. TCEQ has 638 water and wastewater investigators.


TCEQ’s enforcement policy and enforcement options. The attachment containing our enforcement penalty policy may also be found on-line at www.tceq.state.tx.us/comm_exec/forms_pubs/pubs/rg/rg-253/penpol_pdfs/penpol_pdf.html/at_download/file. When violations are serious enough to warrant an enforcement action, the TCEQ is authorized to enforce correction of the violations and to seek penalties to deter future noncompliance. The TCEQ is allowed to pursue penalties through two types of civil enforcement actions:

1) administrative orders that are issued by the TCEQ commissioners assessing administrative penalties and/or requiring corrective actions; or

2) referral of the case to the Office of the Attorney General for enforcement through the state district courts requesting civil penalties and injunctive relief.

In addition, the TCEQ has an Environmental Crimes Unit (ECU) which works with the Texas Environmental Enforcement Task Force, a group composed of local, state, and federal agencies. The ECU can pursue criminal fines and imprisonment through a local District Attorney, the Travis County District Attorney or the U.S. Department of Justice. If the ECU receives a referral or a complaint it keeps its actions confidential.

The cost to repair old and dilapidated water systems in Texas. There are two documents we are providing, one a 2007 estimate by TWDB for water and wastewater needs in Texas of $136 billion (by 2060), and the other a list of water and wastewater projects submitted by applicants for funding through the Border Environment Cooperation Commission/North American Development Bank process in the 100 kilometer (62.1 mile) border area in Texas, for the FY 09-10 funding cycle. This list and the figure of $569 million was developed by the Border Environment Cooperation Commission.

Finally, a list of some of the actions the agency takes to provide assistance to water systems, including rural water systems. In all, six files are attached: two spreadsheets, one PDF, and three Word documents. Please let me know if you have any questions.

Steve
From: Zak Covar
To: Elizabeth Sifuentes; Linda Flores
CC: Diane Mazuca; Pattie Burnett; Tonya Baer
Date: 3/22/2010 9:13 AM
Subject: PHS, CWQ

Linda,

Plz send me info on how the City of Houston was affected as compared to the rest of the state with our increase in water fees.

Thanks,
Zak
From: Mark Vickery
To: Anderson, Ricky; Harrison, Jim
Date: 3/19/2010 9:29 AM
Subject: Rep. Giddings

Ricky, can you please send me the name and number of the staff person that complained about our responsiveness.

thx
Here's Kelly's summary of the Dickinson Bayou meeting last night that Ms. Long attended.
Zak Covar - Dickinson Meeting

From: Kelly Keel
To: L'oreal Stepney
Date: 3/26/2010 8:02 AM
Subject: Dickinson Meeting
CC: Kim Wilson

L'oreal,
Last night's meeting went well. Ron Stein, Roger Miranda, and Charles did a great job of fielding questions related to issuing permits and the safety of swimming in the bayou. Tara with OPA also managed the meeting well and I talked a little about the standards revisions. Ms. Long expressed concerns about people swimming in the water causing sores on skin. Mr. Meinecke expressed concerned about TCEQ saying whether it was safe to swim in these bayou. We also had some folks who supported the TMDL and watershed protection plan efforts. Dickinson Mayor Julie Masters and Terry Goodman with Rep. Larry Taylor's office were also in attendance.

There was no media coverage of the meeting. Please let me know if you have questions.

Thank you,
Kelly
From: Zak Covar
To: Connie Lucas; L'oreal Stepney; Ricky Anderson
Date: 3/22/2010 9:14 AM
Subject: Re: Travel Request: Dickinson Bayou TMDL Meeting, 5+ Travelers

approved

>>> L'oreal Stepney 3/18/2010 10:06 AM >>>
OW requests your approval for the following individuals to attend the Dickinson Bayou TMDL meeting on March 25, 2010.
Kelly Keel - representing upper management (note: local stakeholders have expressed a desire to speak with the commissioners).
Charles Maguire - representing upper management
Ron Stein (TMDL team leader), will engage stakeholders at the informal Q&A session
Roger Miranda (Dickinson Bayou project manager), will engage stakeholders at the informal Q&A session
Earlene Lambeth (public outreach coordinator). Earlene is responsible for ensuring that the meeting is properly recorded so meeting notes can be developed. She also ensures that meeting participants sign in and that appropriate materials are distributed.
DED approval is required for these 5 individuals to travel. Please let me know if you have any questions.
Hello Mark and Richard:

We continue to pursue our waste water recycling project at our Deer Park Incineration Facility. We have received commitments from DOW Chemical to participate in this water conserving project. We understand that our request is unique but we continue to believe that this project presents positive water conservation attributes and is a great demonstration project to show other Houston Ship Channel Industries that water conservation and recycling can be accomplished, at reasonable costs.

When we met with both of you, in December 2009, we were optimistic that we could move forward. We continue to be optimistic but need to get the project underway. Charles Maguire met with us in February to discuss the project proposal, in greater detail, and we appreciate his assistant and support. We do know that ultimately you will need to grant us permission through an enforceable mechanism to allow us the time needed to conduct our water recycling study. We are completely supportive of that approach.

I will be in Houston this week and can attend a meeting with you, in Austin, if a meeting to discuss our commitments would be helpful.

Thank you!

Phillip G. Retallick
Senior Vice President
Regulatory Affairs
Clean Harbors Environmental Services, Incorporated
400 Arbor Lake Drive, Suite B-900
Columbia, SC 29223
Kelly Holligan tried to call and left a message.

We are working with Environmental Law but so far have found no acceptable way to extend the compliance period. Some sort of enforcement discretion might be an alternative but that decision will need executive briefings. I do not have those scheduled yet. I will discuss with L'Oreal this week if possible.

Thanks
Charles

-----Original Message-----
From: RETALLICK, PHILLIP G
To: rhyde@tceq.state.TX.us <rhyde@tceq.state.TX.us>
Cc: KUHN, JOHN SCOTT <kuhn.john@cleanharbors.com>
To: Maguire, Charles <CMaguire@tceq.state.tx.us>

Sent: 3/22/2010 9:25:41 AM
Subject: Re: Clean Harbors Deer Park waste water recycling project

Good morning Charles and hope you are doing well. We are anxious to move forward on our waste water recycling project. Can we please get an update?

Thank you

Phil
Phil Retallick
Senior Vice President, Regulatory Affairs
Clean Harbors Environmental Services, Incorporated
400 Arbor Lake Drive, Suite B-900
Columbia, SC 29223
----- Original Message -----  
From: RETALLICK, PHILLIP G  
To: 'cmaguire@tceq.state.tx.us' <cmaguire@tceq.state.tx.us>  
Cc: KUHN, JOHN SCOTT; Honohan, Kevin D  
Sent: Thu Feb 25 16:09:09 2010  
Subject: Clean Harbors Deer Park wastewater recycling project  

Hello Charles and thanks for allowing us to present our proposal to you last week. We appreciate your willingness to consider our request to conduct the recycle/reclamation study.

Would you be in a position to give us some feedback on our proposal?

Regards

Phil
Phil Retallick
Senior Vice President, Regulatory Affairs
Clean Harbors Environmental Services, Incorporated
400 Arbor Lake Drive, Suite B-900,
Columbia, SC 29223

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and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact Clean Harbors Environmental Services at _______ and delete the material from any computer.
From: Isaac Jackson
To: Zak Covar
CC: Jim Harrison; Pattie Burnett; Ricky Anderson
Date: 4/1/2010 11:01 AM
Subject: TWCA Groundwater Committee
Attachments: TWCA GW Comm Meeting Attendess 033110.pdf; TWCA GW Comm 033110.pdf

Zak,

The TCEQ staff (Kelly Mills) attended the TWCA Groundwater Committee meeting on March 31, 2010. The list of attendees and issues are attached. Some of the participants met with Chairman Ritter on March 30, 2010 and suggested he was interested in the ownership of groundwater. Ms. Carmen Cernosek, Lt. Governor's Office, Ms. Liz Fazio, Chairman Ritter's HNRC and Mr. Jerry Needham, Senator Uresti's Office attended the meeting. There was discussion on the potential of SOAH hearings for GCD contested cases and Bryan Sledge and Doug Caroom will draft language for the Committee's consideration. Bryan Sledge wants to clean up Water Code 36.117(b)(1) regarding D & L exemptions. There was concern oil and gas (Barnett and Eagle Ford Shale) wells are not reporting water pumpage. The Committee suggested adding the issue of exempt wells being exempt from the MAG. Doug Caroom will provide language on the issue of mitigation cited in issue 7 in the attachment. There was a strong discussion of mandatory factors for the DFC and GCD moratorium on permitting. Participants were invited to the HNRC hearing on groundwater on April 15, 2010 and Liz solicited input. The Committee agreed to delay consideration on issues 1, 3 and 4 until 6 is done. The Committee may develop a white paper on groundwater ownership and implications for surface water. The Committee wanted a definition of MAG. The TWDB briefly discussed the MAG and total groundwater. The TCEQ has been invited back for the next meeting scheduled for April 27, 2010 at 10:30.

Please let me know if you have questions.

Isaac
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<td>Doug Caroom</td>
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<td>Jason Skaggs</td>
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<td>Russ Johnson</td>
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<td>Liz Fazio</td>
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<td>Carmen Cernosek</td>
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<td>AJ Lazarus</td>
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<td>Harvey Everhart</td>
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<td>Brian Sledge</td>
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<td>Bill Loven</td>
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<td>Leonard Olson</td>
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</tbody>
</table>
STEFAN SCHUSTER
Hope Wells
JERRY CHAPMAN
Launa Buckner
Dean Robbins
CE Williams
Ed McCarthy
Greg Jackson
Kitty Mills
Jerry Needham
Ken Peterson
Bill Hitchman
Robert Macé
Leona Godwin
Non-exclusive and non-comprehensive list of issues for the TWCA Groundwater Committee’s consideration:

1. **Stakeholders should be involved in determining Desired Future Conditions.** A pattern analogous to that used for regional water planning should be utilized to determine Desired Future Conditions. Eliminating stakeholders other than the groundwater conservation districts from the process simply results in a biased determination and litigation, such as we are now beginning to see.

2. **Permits for production of water for export should also have a minimum 30 year term.** Although Texas Water Code § 36.122 contemplates that permits for export should have a minimum 30 year term, many districts apply this only to an export permit and not to a production or operating permit. If a public entity is going to issue bonds to finance an export project, both the export permit and the production permit need to be of a 30 year duration to support the bond issuance.

3. **Texas Water Code § 36.1132 should be clarified.** It currently states that districts “shall issue permits up to the point that the total volume of groundwater permitted equals the managed available groundwater.” Some read this as a cap for permits; others read it as a minimum amount that must be considered available for permitting.

4. **Texas Water Code § 36.1132 should be based on use, not permitting.** The volume of water permitted has no impact on an aquifer; it is the volume of water pumped that impacts the aquifer. In many cases far more water is permitted than is normally produced. Applying § 36.1132 to permitted water, particularly if it is applied as a cap, operates to insure that less than the total amount of managed available groundwater will be produced.

5. **Texas Water Code § 36.066(g) should be modified.** This provision allows for attorneys fees for groundwater conservation districts in suits in which they prevail. While it makes good sense for small districts up against better funded applicants or property owners (e.g., Boone Pickens), it can work a major hardship in cases such as *EAA v. Day*, where the district’s financial capabilities far exceed an individual property owner or applicant.

In the vein of more objectivity and balance, other potential modifications to Chapter 36 relating to process and judicial review should also be discussed, such as requiring groundwater districts to use State Office of Administrative Hearing judges to conduct contested case hearings or altering the standard of judicial review.

6. **Identification of factors to consider in determining Desired Future Condition.** Although many GMAs do a good job of considering all stakeholder interests and appropriate factors in developing DFCs, no statutory or regulatory guidance is provided to identify all such factors or
specify them for TWDB as a standard for reviewing DFCs and petitions. Providing a list of factors to be considered in establishing the DFC, much like factors specified for consideration in the Regional Water Planning process, may be appropriate.

7. **Authority to require mitigation.** In some instances, the existence of shallow wells that would become unproductive if aquifer levels were lowered is a major consideration in decisions not to allow production that would lower existing aquifer levels. This impact could be mitigated by requiring parties responsible for lowering the aquifer level to contribute to a mitigation fund that would assist owners of shallow wells to deepen those wells. Whether groundwater conservation districts have such authority is questioned by some. Consideration should be given to providing express authority for groundwater conservation districts to require mitigation.

8. **Adequacy of the Current Appellate Process for DFCs.** There is little detail in the statutes with respect to the process of appealing DFCs. Although the TWDB rules do provide guidance, the Committee should explore the possibility of statutory changes that would enhance the process or provide for more meaningful review by TWDB.
Darn. I was looking forward to the lively discussion.

-----Original Message-----
From: Mark Vickery
To: Patteson, Kevin <KPatteson@tceq.state.tx.us>
Subject: Re: fyi

I know that. It will probably free my schedule up tomorrow :). Does not hurt my feelings.

-----Original Message-----
From: Kevin Patteson
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>
Subject: Re: fyi

He can't decide who joins the mtg for our side

-----Original Message-----
From: Mark Vickery
To: Patteson, Kevin <KPatteson@tceq.state.tx.us>
Subject: Re: fyi

Soward said "no". :)

-----Original Message-----
From: Kevin Patteson
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>
Subject: Re: fyi

Do we know who from DC? Can bryan join the soward mtg?

-----Original Message-----
From: Mark Vickery
To: Patteson, Kevin <KPatteson@tceq.state.tx.us>
Sent: 3/29/2010 8:39:36 AM
Subject: fyi

1. we have a whooping crane teleconference call at 9 this morn with the AG
2. EPA is bring the "full meal deal" to the meeting on Thursday. 3 or 4 folks from DC
3. I am attending a meeting with Commissioner Rubinstein and the Mayor of Houston on Wed. We are traveling to see her.
4. I have a teleconf. tomorrow with Commissioner Soward to talk about enforcement issues.
5. Dallas Morning News wants to interview me today regarding BS.
6. Oil and Gas stakeholder meeting on PBR is scheduled April 8th.
7. Next week is my Spring Break and I will out next week, available by phone or can come in.

Mark
From: Zak Covar
To: Rubinstein, Carlos, Vickery, Mark
Date: 3/23/2010 2:49 PM
Subject: Re: Do you know...

And under this administration, they don't understand other agencies
-----Original Message-----
From: Carlos Rubinstein
To: Covar, Zak <ZCovar@tceq.state.tx.us>
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>

Subject: Re: Do you know...

Thx. EPA seems to be looking for any reason to now start acting on this, cause "under the previous administration" they were not allowed to "talk to other agencies"...

Sent on the Sprint® Now Network from my BlackBerry®
-----Original Message-----
From: Zak Covar
To: Rubinstein, Carlos <CRubinst@tceq.state.tx.us>
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>

Sent: 3/23/2010 2:37:29 PM
Subject: Re: Do you know...

Checkin...
-----Original Message-----
From: Rubinstein, Carlos(Carlos Rubinstein)
Cc: Covar, Zak <ZCovar@tceq.state.tx.us>
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>

Subject: Do you know...

If we ever commented on the June 13, 2008 FR notice from EPA re water transfers and NPDES applicability?

Sent on the Sprint® Now Network from my BlackBerry®
From: Mark Vickery
To: Rubinstein, Carlos
Date: 3/23/2010 2:55 PM
Subject: Re: Do you know...

Funny! Just left Senator Whitmire's office. Met with staff. All good

-----Original Message-----
From: Carlos Rubinstein
To: Covar, Zak <ZCovar@tceq.state.tx.us>
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>

Subject: Re: Do you know...

But, remember, YES WE CAN...

Sent on the Sprint® Now Network from my BlackBerry®
-----Original Message-----
From: Zak Covar
To: Rubinstein, Carlos <CRubinst@tceq.state.tx.us>
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>

Subject: Re: Do you know...

And under this administration, they don't understand other agencies

-----Original Message-----
From: Carlos Rubinstein
To: Covar, Zak <ZCovar@tceq.state.tx.us>
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>

Subject: Re: Do you know...

Thx. EPA seems to be looking for any reason to now start acting on this, cause "under the previous administration" they were not allowed to "talk to other agencies"...

Sent on the Sprint® Now Network from my BlackBerry®
-----Original Message-----
From: Zak Covar
To: Rubinstein, Carlos <CRubinst@tceq.state.tx.us>
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>

Sent: 3/23/2010 2:37:29 PM
Subject: Re: Do you know...

Checkin...
-----Original Message-----
From: Rubinstein, Carlos(Carlos Rubinstein)
Cc: Covar, Zak <ZCovar@tceq.state.tx.us>
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>

Subject: Do you know...

If we ever commented on the June 13, 2008 FR notice from EPA re water transfers and NPDES applicability?

Sent on the Sprint® Now Network from my BlackBerry®
From: Carol McGarah
To: "Zak Covar" <zcovar@tceq.state.tx.us>
Date: 3/30/2010 3:28 PM
Subject: Letter is in hand!!!

Thanks!!

Sent from my iPhone
You will see some humor injected.
From: Larry Soward <lsward@tceq.state.tx.us>
To: Mark Vickery <MVICKERY@tceq.state.tx.us>
Date: 3/29/2010 9:28 AM
Subject: Re: Request

On 3/29/2010 9:19 AM, Mark Vickery wrote:
> Hey the Chairman wants to sit in. That ok?
> ---Original Message---
> From: Larry Soward<lsward@tceq.state.tx.us>
> To: Vickery, Mark<MVICKERY@tceq.state.tx.us>
> >
> > Subject: Re: Request
> >
> > Tuesday at 1:30 works for us. What number(s) you want us to call? Have a
> > great weekend!
> >
> > On 3/26/2010 1:46 PM, Mark Vickery wrote:
> >>
> >> John claims to have an enforcement action pending against GHASP, but agreed to meet anyway. Would 1:30 on Tuesday
> >> work for you and Matthew?
> >>
> >>
> >>>>> Larry Soward<lsward@tceq.state.tx.us> 3/24/2010 10:04 AM>>>>
> >>>>>
> >>>>>
> >>>>>
> >>>> Mark, here are some possible dates for us to call you and John. Let me
> >> know which day works best and what times are best and then we can
> >> finalize a date/time. Thanks
> >>
> >>
> >> Friday, March 26
> >> Monday March 29
> >> Tuesday March 30
> >> or any day April 5 - 9
> >>
> >>
> >> On 3/23/2010 3:54 PM, Mark Vickery wrote:
> >>
> >>
> >>>> Roger that!
> >>>
> >>>
> >>>
> >>>>
> >>>> >>>>> Larry Soward<lsward@tceq.state.tx.us> 3/23/2010 3:46 PM>>>>
> >>>>>
> >>>>>
> >>>>>
> >>>>> Let me visit with Matthew and we will offer several dates, times that
> >>>> you can look at to see what fits both of your schedules best. Thanks!
> >>>
> >>> On 3/23/2010 3:28 PM, Mark Vickery wrote:
> >>>
> >>>
> >>>>
> >>>> Larry, I think a phone call is fine. I would like to sit in as well. Do you have a time/date preference?
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> >>>> 3/23/2010 3:02 PM>
Mark, Matthew Tejada and I would like to talk to John Sadlier about several enforcement issues that GHASP presently intends to pursue in the Sunset review process. We mainly seek information and, if available, thoughts on how these issues might be addressed from TCEQ's perspective. If this discussion can be readily accomplished by telephone, that is the preference, but if John needs/wants the discussion to be in person, we will certainly accommodate that at a mutually agreed date, time, place. Accordingly, your approval to talk to John is therefore requested.

If you would like to talk to or meet with us before-hand, please let me know. We would certainly be happy for that opportunity.
From: Jablonski, Susan (Susan Jablonski)
To: Vickery, Mark
CC: Burnett, Pattie
Date: 3/22/2010 3:34 PM
Subject: Thank you

Mark,

Thank you so much for taking the time this morning to open the LLW Forum meeting. I sincerely appreciate your ongoing support of our rad material program!

Respectfully,
Susan
From: Susan Jablonski
To: Vickery, Mark
CC: Burnett, Pattle
Date: 3/18/2010 3:32 PM
Subject: Re: Do I want to go to this deal on Monday?
Attachments: LLW Forum Opening Remarks.doc

Mark,

Please find attached some suggestions for introductory remarks. I really appreciate your and Pattle’s effort to support us with the LLW Forum.

Respectfully,
Susan

>>> Mark Vickery 3/18/2010 10:23 AM >>>
Susan, would you please have someone craft Pattle’s opening remarks. thx!

>>> Susan Jablonski 3/17/2010 11:44 AM >>>
Mark,

Of course Pattle would be great. I really didn’t expect you, or Pattle, to stay for the meeting. It’s my job to keep up with this stuff. It is customary, as this meeting moves state to state, to have a morning welcome to kick off the meeting from a someone more important than me. You and Pattle would both fit the bill. Please just let me know what you would like to do.

Respectfully,
Susan

-----Original Message-----
From: Mark Vickery
Cc: Burnett, Pattle <PBURNETT@tceq.state.tx.us>
To: Jablonski, Susan <SJABLONS@tceq.state.tx.us>

Sent: 3/17/2010 10:07:50 AM
Subject: Do I want to go to this deal on Monday?

Shouldn't Pattle go instead?
Suggested Remarks to Opening
the Low-Level Radioactive Waste Forum Spring Meeting

Welcome to the Great State of Texas!

In 1981, the Texas Legislature passed legislation requiring the state to develop a site to manage and dispose of low-level radioactive waste generated within its borders.

Fast-forward 28 years.

On September 10, 2009, TCEQ signed and issued a license that authorizes the disposal of low-level radioactive waste moving Texas closer to fulfilling our obligation under federal law, with our partner in the Texas Compact, Vermont.

It is an exciting time, as construction authorization is current under review by TCEQ and amendments are being processed for final design approval.

Twenty-eight years – it seems like an unreasonable amount of time to some people to still be working on this goal. As a geologist, I say it was barely a blink of an eye.

Our job at TCEQ is to safely and effectively regulate radioactive materials. Our legislature has entrusted us with safe management and disposal of radioactive waste within our borders, with an understanding of the need for viable permanent solutions.

Just like many of you, we are called on by the state and professionally trained to protect the public, workers and the environment from unnecessary radiation exposure and contamination of our natural resources.

I think we can all agree that it’s not very often that we get an invitation to join an informative and insightful discussion about low-level radioactive waste. It’s not the kind of thing that makes you a highly sought-after dinner speaker.

So welcome – to Texas and welcome to conversations here at this LLW Forum meeting with people who want to hear what you have to say.

I especially want to recognize Mr. Todd D. Lovinger for his hard work on this meeting as well as the years of effort and leadership he has put into pulling the LLW Forum together to provide a meaningful platform for information and dialogue and bringing the Forum to the respected organization that it is today.
From: Mark Vickery
To: Patteson, Kevin; Seaton, Curtis; Womack, Daniel
Date: 3/19/2010 1:45 PM
Subject: Explosion at Devon natural gas well

Devon official, Mr. O'Connel, said this site has several wells that had undergone green completion. The condensate had been stored in frac tanks on the property. The condensate had been removed from the frac tanks and put into the newly built condensate tanks. The facility was still under construction. The contractors were welding on a separator which caused the fumes from the condensate to ignite. The wells on the property are shut in and are unaffected by the explosion and fire. Two contractors were injured, 1 was taken by ambulance to a local hospital and the other was care flighted.

Wise County emergency personnel are responding to an explosion at either a gas or oil well just west of Decatur, a emergency dispatcher confirmed.

The explosion occurred at about 11:30 a.m. at a well near Hlavek Road, west of Decatur.

Two workers suffered first degree burns.

They were transported by air to a Fort Worth Hospital, according to the Wise County Messenger, which is providing updates via Twitter.

Television aerial footage showed a tank battery badly damaged by the blast. A tank battery is a group of tanks that are connected in order to receive crude oil from a well.

Read more: http://www.star-telegram.com/2010/03/19/2052447/wise-county-gas-well-explosion.html#ixzz0ieJyWG9r
From: Mark Vickery
To: Sadlier, John
Date: 3/19/2010 3:12 PM
Subject: Re: Devon pics

roger wilco

>>> John Sadlier 3/19/2010 3:10 PM >>>
I don't believe so - the fire is out. We spoke to EPA - they contemplated sending the START unit out but ended up doing nothing (which is what I prefer). John

>>> Mark Vickery 3/19/2010 3:06 PM >>>
was there a need for us to do air monitoring?

>>> John Sadlier 3/19/2010 2:46 PM >>>

From: Mark Vickery
To: Sadlier, John
Date: 3/19/2010 3:06 PM
Subject: Re: Devon pics

was there a need for us to do air monitoring?

>>> John Sadlier 3/19/2010 2:46 PM >>>

From: Mark Vickery
To: Harrison, Jim
Date: 3/19/2010 1:18 PM
Subject: Re: Fwd: Reported Oil and Gas facility explosion - Devon

Thx

---Original Message-----
From: Jim Harrison
To: Anderson, Ricky <RANDERSO@tceq.state.tx.us>
To: Covar, Zak <ZCovar@tceq.state.tx.us>
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>
To: Burnett, Pat tie <PBURNETT@tceq.state.tx.us>

Sent: 3/19/2010 1:16:46 PM
Subject: Fwd: Reported Oil and Gas facility explosion - Devon


>>> John Sadler 3/19/2010 12:26 PM >>>
R-4 has received reports of an explosion at a Devon Site near Decatur in Wise County. We have ER staff en route. More info to follow but the early report (which is often errad), indicates that they were injuries which would make one believe this to be a well site. John
very good!


Mark,

Both Agencies would perform an investigation in this case - RRC related to discharges of materials (liquids) and TCEQ for air emissions (including off-site impacts from smoke). As you know, TCEQ responded to the incident and did not note any off-site impacts. I've attached a document which lays out our respective jurisdictions. The pertinent sections have been excerpted below. Please contact me if additional information would be helpful. John

Jurisdictional Issues -
Spills - Classification of a spill determines which agency has jurisdiction over the spill. Spills are generally classified by (1) the type of substance; (2) the source of the spill; (3) the geographic location of the spill; and (4) the size of an oil spill in coastal waters or along coastal shorelines. TCEQ has jurisdiction over spills of hazardous substances and refined petroleum products. RRC has jurisdiction over crude oil spills resulting from exploration, development, or production of oil or gas. RRC also has jurisdiction over minor spills of crude oil (240 barrels or less) resulting from exploration, development, or production of oil or gas in coastal areas. The GLO has jurisdiction over oil spills in coastal areas. See State of Texas Oil and Hazardous Substances Spill Contingency Plan (TNRCC, RG-290, November 1997).

Texas Natural Resources Code, § 40.004(a) - The General Land Office is the state's lead agency for response to actual or threatened unauthorized discharges of oil and for cleanup of pollution from unauthorized discharges of oil into coastal areas. The GLO has jurisdiction for oil spills from an oil tanker or an offshore oil rig (Oil Spill Prevention and Response Act of 1991). The GLO has jurisdiction over and will respond to any actual or threatened discharge that enters or threatens to enter coastal waters (31 TAC § 19.31).

30 TAC § 327.1 - The Texas Commission on Environmental Quality has jurisdiction over discharges or spills that result in a release to the environment within the territorial limits of the State of Texas, including the coastal waters of the state, except discharges or spills of oil that enter or threaten to enter coastal waters of the State; discharges and spills from activities subject to the jurisdiction of the Railroad Commission of Texas under the Texas Water Code, §26.131; discharges or spills of 240 barrels or less of oil into coastal areas as a result of activities associated with the exploration, development or production of oil or gas which are under the jurisdiction of the RRC; discharges or spills occurring during the normal course of rail transportation; etc.

MOA - TCEQ/USCG8th District - The Coast Guard has regulatory authority throughout the navigable waters of the United States, the high seas, and other waters over which the U.S. has jurisdiction. The TCEQ has statutory authority for the protection of the environment of the State under the Hazardous Substances Spill Prevention and Control Act (HSSPCA). Pursuant to the HSSPCA, TCEQ promulgated the "State of Texas Oil and Hazardous Substances Spill Contingency Plan." The GLO has statutory authority for the protection of coastal waters of the State from spills of oil under the Oil Spills Prevention and Response Act. The Coast Guard shall serve as the lead agency for "leaking" abandoned unknown containerized substance. The TCEQ shall serve as the lead agency for "not leaking" abandoned unknown containerized substance.
From: John Sadler
To: Saenz, Andy; Vickery, Mark
CC: Ahrens, Jennifer; Ammons, Randy; Clawson, Terry; Harrison, Jim; Shee...
Date: 3/19/2010 12:26 PM
Subject: Reported Oil and Gas facility explosion - Devon

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>>> John Sadler 3/19/2010 2:46 PM >>>

This is the final wrap-up as the situation is now under control. Regional staff are onsite at this time. The fire is out and Devon is starting the cleanup process. Devon Energy is the responsible party in this incident. They are also investigating which tanks actually had condensate/produced water in them. All runoff from the property is contained and there appears to be no impacts to surrounding properties. No evacuations occurred. EPA and OSHA are also onsite. OSHA is investigating the injuries to the contractors.

Clarification was provided concerning 1 of the injured workers; they were taken to the hospital by someone onsite rather than by ambulance. The contractor who was driven to the hospital is back home now and the one who was care flighted is expected to recover.

Alicia McMaster is the Devon media contact who has or will be contacting TCEQ Media Relations. Mike Cook is the Devon representative onsite.
From: John Sadlier.
To: Vickery, Mark
Date: 3/23/2010 1:22 PM
Subject: Re: Fw: Devon fire investigation

Thank you Sr. We aim to please.

>>> Mark Vickery 3/23/2010 1:21 PM >>>

very good!


Mark,
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**Jurisdictional Issues – TCEQ, RRC, GLO**

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<table>
<thead>
<tr>
<th>Texas Commission on Environmental Quality</th>
<th>Texas Railroad Commission</th>
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<tbody>
<tr>
<td>General Jurisdiction</td>
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</table>
TCEQ has jurisdiction over solid waste under the Texas Health and Safety Code, §§361.001-361.754. The jurisdiction encompasses both hazardous and nonhazardous, industrial and municipal, solid wastes. 16 TAC § 3.30(b)(1) – MOU.

Solid waste does not include "material which results from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas pursuant to Section 91.101, Natural Resources Code..." §361.003(34). 3.30(b)(1).

The Railroad Commission of Texas is solely responsible for the control and disposition of waste and the abatement and prevention of pollution of surface and subsurface water resulting from activities associated with the exploration, development, and production of oil or gas or geothermal resources. TWC, 26.131(a).

The RRC has jurisdiction over hazardous and nonhazardous wastes resulting from activities associated with the exploration, development, or production of oil or gas or geothermal resources, including transportation of crude oil or natural gas by pipeline, and other activities regulated by the RRC. These wastes are termed "oil and gas wastes." 16 TAC § 3.30(b)(2). A list of activities that generate wastes that are subject to the jurisdiction of the RRC is found at 16 TAC §3.8(a)(30) and 30 TAC § 335.1(5). See Texas Natural Resources Code, Title 3, and Texas Water Code, Chapter 26.

Solid waste includes the following until EPA delegates its authority under RCRA to the RRC: "waste, substance or material that results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repurposing plants and is a hazardous waste as defined by the administrator of the EPA..." THSC, §361.003(34). 16 TAC § 3.30(b).

Hazardous wastes generated at natural gas or natural gas liquids processing plants or reservoir pressure maintenance or repurposing plants are subject to the jurisdiction of the TCEQ until the RRC is authorized by EPA to administer RCRA. 16 TAC § 3.30(b)(2).

After delegation of RCRA authority to the RRC, the definition of solid waste (which defines TCEQ's jurisdiction) will not include hazardous wastes generated at natural gas or natural gas liquids processing plants or reservoir pressure maintenance or repurposing plants. MOU-16 TAC § 3.30(b).

When the RRC is authorized by EPA to administer RCRA, jurisdiction over hazardous wastes generated at natural gas or natural gas liquids processing plants or reservoir pressure maintenance or repurposing plants will transfer from the TCEQ to the RRC. 16 TAC §3.30(b)(3).

<table>
<thead>
<tr>
<th>Jurisdiction Over Specific Disposal Activities</th>
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<tr>
<td>Discharges into Water in the State</td>
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Under Chapter 26, TWC the TCEQ has jurisdiction over discharges of waste into or adjacent to water in the state, other than discharges regulated by the RRC. 16 TAC § 3.30(d)(1)

Solution mining activities conducted for the purpose of creating caverns in naturally-occurring salt formations for the storage of wastes are regulated by the TCEQ. 16 TAC § 3.30(d)(1).

Under the Texas Natural Resources Code, Title 3, and TWC, Chapter 26, the RRC regulates discharges of waste from activities associated with the exploration, development, or production of oil, gas, or geothermal resources, including transportation of crude oil and natural gas by pipeline, and from solution brine mining activities. 16 TAC § 3.30(d)(1).

Discharges of waste regulated by the RRC into water in the state shall not cause a violation of the water quality standards. The RRC has the responsibility for enforcing any violations of such standards. 16 TAC § 3.30(d)(1).
<table>
<thead>
<tr>
<th>Disposal Wells – Chapter 27 TWC</th>
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<tbody>
<tr>
<td>TCEQ has jurisdiction under TWC, Chapter 27, over injection wells used to dispose waste other than oil and gas waste. 16 TAC § 3.30(d)(2).</td>
<td>The RRC has jurisdiction under TWC, Chapter 27, over injection wells used to dispose of oil and gas waste. TWC, Chapter 27, defines &quot;oil and gas waste&quot; as &quot;waste arising out of or incidental to drilling for or producing of oil, gas, or geothermal resources, waste arising out of or incidental to the underground storage of hydrocarbons other than storage in artificial tanks or containers, or waste arising out of or incidental to the operation of gasolene plants, natural gas processing plants, or pressure maintenance or repressurizing plants. The term includes but is not limited to salt water, brine, sludge, drilling mud, and other liquid or semi-liquid waste material.&quot; The term &quot;waste arising out of or incidental to drilling for or producing of oil, gas, or geothermal resources&quot; includes waste associated with transportation of crude oil or natural gas by pipeline pursuant to Texas Natural Resources Code, §91.101. 16 TAC § 3.30(d)(2).</td>
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<tr>
<td>Disposal of Naturally Occurring Radioactive Material – NORM</td>
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<tr>
<td>TCEQ has jurisdiction over the disposal of NORM which is not oil and gas NORM waste. Texas Health and Safety Code, §401.412 and 16 TAC § 3.30(d)(3)</td>
<td>The RRC has jurisdiction over the disposal of NORM that constitutes, is contained in, or has contaminated oil and gas waste. This waste material is called &quot;oil and gas NORM waste.&quot; Oil and gas NORM waste may be generated in connection with the exploration, development, or production of oil or gas. Oil and gas NORM waste may also be generated in connection with geothermal resource exploration, development, or production activities or solution brine mining activities. THSCM01.415 &amp; 16TAC§3.30(d)(3)(A).</td>
</tr>
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<td>Waste from Specific Oil &amp; Gas Activities</td>
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<td>RRC has jurisdiction over waste from drilling, operation, and plugging of wells associated with exploration, development or production of oil and gas. The waste materials include drilling fluids, cuttings, produced water, produced sand, waste hydrocarbons (including used oil), fracturing fluids, spent acid, workover fluids, treating chemicals, waste cement, filters, domestic sewage (including waterborne human waste and waste from activities such as bathing and food preparation), and trash (including insect waste, barrels, dope cans, oily rags, mud sacks, and garbage). Generally, those wastes, whether disposed of by discharge, landfill, landform, evaporation, or injection, are subject to the jurisdiction of the RRC.</td>
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<td>Storage of Oil and Storm Water Runoff</td>
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Waste resulting from storage of crude oil at refineries is subject to the jurisdiction of the TCEQ. 16 TAC § 3.30(e)(3)(A).

Stormwater runoff from terminal facilities where both refined products intended for use offsite and crude oil are stored in aboveground tanks is under the jurisdiction of the TCEQ. 3.30(e)(3)(A).

Wastes generated from storage tanks which are part of the refinery and wastes resulting from the wholesale and retail marketing of refined products are subject to the jurisdiction of the TCEQ. 83.30(e)(3)(B).

Tank bottoms, stormwater runoff, and other wastes from the storage of crude oil (whether foreign or domestic) before it enters the refinery are under the jurisdiction of the RRC. 3.30(e)(3)(A).

Stormwater runoff from a terminal facility where crude oil is stored prior to refining and at which refined products are stored solely for use at the facility is under the jurisdiction of the RRC. 3.30(e)(3)(A).

Underground hydrocarbon storage. The disposal of wastes, including saltwater, resulting from the construction, creation, operation, maintenance, closure, or abandonment of an "underground hydrocarbon storage facility" is subject to the jurisdiction of the RRC, provided that the terms "hydrocarbons" and "underground hydrocarbon storage facility" have the meanings set out in Texas Natural Resources Code, §91.201. 3.30(e)(4).

Underground natural gas storage. The disposal of wastes resulting from the construction, operation, or abandonment of an "underground natural gas storage facility" is subject to the jurisdiction of the RRC, provided that the terms "natural gas" and "storage facility" have the meanings set out in Texas Natural Resources Code, §91.173. 3.30(e)(5).

Transportation of Crude Oil and Natural Gas

<p>| TCEQ has jurisdiction over waste from transportation of refined products by pipeline. 6 TAC § 3.30(e)(6)(B). | The RRC has jurisdiction over waste from the transportation of crude oil by pipeline, regardless of the crude oil source (foreign or domestic) prior to arrival at a refinery. 16 TAC § 3.30(e)(6)(A). |
| TCEQ has jurisdiction over wastes associated with transportation of crude oil and natural gas, including natural gas liquids, by railcar, tank truck, barge, or tanker. | The RRC has jurisdiction over waste from the transportation by pipeline of natural gas, including natural gas liquids, prior to the use of the natural gas in any manufacturing process or as a residential or industrial fuel. 16 TAC § 3.30(e)(6)(A). |
| The transportation wastes subject to the Jurisdiction of the RRC include wastes from pipeline compressor or pressure stations and wastes from pipeline hydrostatic pressure tests and other pipeline operations; waste hydrocarbons (including used oil), treating and cleaning chemicals, filters (including used oil filters), scraper trap sludge, trash, domestic sewage, wastes contaminated with polychlorinated biphenyls (PCBs) (including transformers, capacitors, ballasts, and soils), soils contaminated with mercury from leaking mercury meters, asbestos insulation, transite pipe, and hydrostatic test waters. 16 TAC § 3.30(e)(6)(A). |</p>
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<td>Waste management activities of reclamation plants for wastes other than those associated with the exploration, development, or production of oil and gas are subject to the jurisdiction of the TCEQ. 16 TAC § 3.30(e)(7)(A).</td>
<td>The RRC has jurisdiction over wastes from reclamation plants that process wastes from activities associated with the exploration, development, or production of oil, gas, or geothermal resources, such as lease tank bottoms. 16 TAC § 3.30(e)(7)(A).</td>
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<td>In addition to waste management jurisdiction, the RRC has jurisdiction over the conservation and prevention of waste of crude oil and therefore must approve all movements of crude oil-containing materials to reclamation plants. 16 TAC § 3.30(e)(7)(B).</td>
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<tr>
<td>The management of wastes resulting from oil refining operations, including spent caustics, spent catalysts, still bottoms or tars, and API separator sludges, are subject to the jurisdiction of the TCEQ. The term &quot;refining&quot; does not include the processing of natural gas or natural gas liquids. 16 TAC § 3.30(e)(8)(A).</td>
<td>The RRC has jurisdiction over refining activities for the conservation and the prevention of waste of crude oil. The RRC requires that all crude oil streams into or out of a refinery be reported for accounting purposes. In addition, the RRC requires that materials recycled and used as a fuel, such as still bottoms or waste crude oil, be reported. 16 TAC § 3.30(e)(8)(B).</td>
</tr>
<tr>
<td>Until delegation of authority under RCRA to the RRC, the TCEQ shall have jurisdiction over wastes resulting from activities associated with natural gas or natural gas liquids processing plants that are not exempt from federal hazardous waste regulation under RCRA and that are considered hazardous under applicable federal rules. 16 TAC § 3.30(e)(9).</td>
<td>Wastes resulting from activities associated with natural gas or natural gas liquid processing plants, including produced water, cooling tower water, sulfur bed, sulfides, spent caustics, sweetening agents, spent catalyst, waste hydrocarbons (including used oil), asbestos insulation, wastes contaminated with PCBs (including transformers, capacitors, ballasts, and soils), treating and cleaning chemicals, filters, trash, domestic sewage, and dehydration materials are subject to the jurisdiction of the RRC under Texas Natural Resources Code, § 91.101.</td>
</tr>
<tr>
<td>Disposal of waste from activities associated with natural gas or natural gas liquids processing plants (including gas fractionation facilities), and pressure maintenance or repressurizing plants by injection is subject to the jurisdiction of the RRC under Texas Water Code, Chapter 27. 16 TAC § 3.30(e)(9).</td>
<td></td>
</tr>
</tbody>
</table>

| **Manufacturing Process** | **Manufacturing Process** |
Wastes that result from the use of natural gas, natural gas liquids, or products refined from crude oil in any manufacturing process, such as the production of petrochemicals or plastics, or from the manufacture of carbon black, are industrial wastes subject to the jurisdiction of the TCEQ. The term “manufacturing process” does not include the processing of natural gas or natural gas liquids at natural gas or natural gas liquids processing plants. 16 TAC § 3.30(e)(10)(A).

The RRC has jurisdiction under Texas Natural Resources Code, Chapter 87, to regulate the use of natural gas in the production of carbon black. 16 TAC § 3.30(e)(10)(B).

<table>
<thead>
<tr>
<th>Commercial Service Company Facilities/Training Facilities</th>
<th>Commercial Service Company Facilities/Training Facilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>The TCEQ has jurisdiction over wastes generated at facilities other than actual exploration, development, or production sites (field sites), where oil and gas industry workers are trained. 16 TAC § 3.30(e)(11)(A).</td>
<td>Wastes generated from tests of materials, processes, and equipment at field sites are under the jurisdiction of the RRC. 16 TAC § 3.30(e)(11)(A).</td>
</tr>
<tr>
<td>The TCEQ has jurisdiction over wastes generated at facilities where materials, processes, and equipment associated with oil and gas industry operations are researched, developed, designed, and manufactured. 16 TAC § 3.30(e)(11)(A).</td>
<td>The RRC has jurisdiction over disposal of oil and gas wastes, such as waste drilling fluids and NORM-contaminated pipe scale that are managed at commercial service company facilities. 16 TAC § 3.30(e)(11)(D).</td>
</tr>
<tr>
<td>The TCEQ also has jurisdiction over waste generated at commercial service company facilities operated by persons providing equipment, materials, or services (such as drilling and work over rig rental and tank rental; equipment repair; drilling fluid supply; and acidizing, fracturing, and cementing services) to the oil and gas industry. These wastes include the following wastes when they are generated at commercial service company facilities: empty sacks, containers, and drums; drum, tank, and truck rinsate; sandblast media; painting wastes; spent solvents; spilled chemicals; waste motor oil; and unused fracturing and oxidizing fluids. 16 TAC § 3.30(e)(11)(B).</td>
<td>The RRC has jurisdiction over wastes such as vacuum truck rinsate and tank rinsate generated at facilities operated by oil and gas waste haulers permitted by the RRC pursuant to §3.8(f) of this title (relating to water protection).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Spill Response</th>
<th>Spill Response</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The TCEQ is the lead agency in spill response for certain inland oil spills, all hazardous substances spills, spills of other substances which may cause pollution as well as any releases of substances which may adversely impact air quality. State of Texas Oil and Hazardous Substances Spill Contingency Plan, TNRCC (RG-290 November 1997, May 1999 revision). TCEQ is responsible for spills of hazardous substances and refined petroleum products. Id. TCEQ has jurisdiction over coastal spill of hazardous substances or other pollutants. Id.

16 TAC § 3.8(d) - No person conducting activities subject to regulation by the RRC may cause or allow pollution of surface or subsurface water in the state.

16 TAC § 3.8(d)(1) - Except for those disposal methods authorized for certain wastes . . . no person may dispose of any oil and gas wastes by any method without obtaining a permit to dispose of such wastes. The disposal methods prohibited by this paragraph include, but are not limited to, the unpermitted discharge of oil field brines, geothermal resource waters, or other mineralized waters, or drilling fluids into any watercourse or drainageway, including any drainage ditch, dry creek, flowing creek, river, or any other body of surface water.

16 TAC § 3.8(d)(1)(C) - Each vehicle must be operated and maintained in such a manner as to prevent spillage, leakage, or other escape of oil and gas waste during transportation.
31 TAC § 19.33(a) - When the GLO receives notice of an actual or threatened unauthorized discharge, the GLO will determine whether state response action is required. If state response action is required, the GLO will assess the discharge and determine whether further response actions should be initiated or required. If assessments of the discharge indicate it involves predominantly a hazardous substance, the GLO shall coordinate all response actions until the Texas Commission on Environmental Quality can assume responsibility over the hazardous substance discharge response operations. A substance is predominantly a hazardous substance when analytical testing of a representative sample indicates the presence of more than 50% of a substance that is not oil as defined by OSPRA, and that is a hazardous substance as defined by the Texas Commission on Environmental Quality or its successor agency. Pending results of analytical tests of the substance, the determination of its predominant characteristics shall be made by investigating the source of the discharge, its physical properties, and its behavior in the environment. The GLO will notify the trustees of the actual or threatened unauthorized discharge.
From: Alyssa Taylor  
To: Ammons, Randy; Morrow, Andrea; Sadlier, John; Seaton, Beth; Sheedy, ...  
Date: 3/19/2010 1:13 PM  
Subject: NOW Info about Devon Explosion

Steve O'Connell, Devon Region EHS Manager, called with information about the explosion. He said that this is not the statement they intend for release to the media, they are only trying to get information to TCEQ. He said Devon's media relations will contact our media relations with an official statement that can be provided outside the agency.

Mr. O'Connell said this site has several wells that had undergone green completion. The condensate had been stored in frac tanks on the property. The condensate had been removed from the frac tanks and put into the newly built condensate tanks. The facility was still under construction. The contractors were welding on a separator which caused the fumes from the condensate to ignite. The wells on the property are shut in and are unaffected by the explosion and fire. Two contractors were injured, 1 was taken by ambulance to a local hospital and the other was care flighted.
From: John Sadlier  
To: Vickery, Mark  
CC: Baker, Matt; Seaton, Beth  
Date: 3/22/2010 5:27 PM  
Subject: Devon

Mark,
The nearest receptor to the Devon site is a residence about 600 feet away. Tony reports that they were not impacted during the event.

Regarding the MOPs data issue. Matt is setting up a mtg with all affected staff and will send me an email when done (prior to the end of the week). The email will describe what he discusses with staff. Matt will be discussing our expectations with regard to data quality and our process for distributing the data to Agency management as well as outside parties. I'll forward that email to you when received. John
From: Jim Harrison
To: Mark Vickery; Pattie Burnett; Ricky Anderson; Zak Covar
Date: 3/19/2010 1:16 PM
Subject: Fwd: Reported Oil and Gas facility explosion - Devon


>>> John Sadler 3/19/2010 12:26 PM >>>
R-4 has received reports of an explosion at a Devon Site near Decatur in Wise County. We have ER staff en route. More info to follow but the early report (which is often errred), indicates that they were injuries which would make one believe this to be a well site. John
From: Craig Adair <Craig.Adair@house.state.tx.us>
To: Mark Vickery <MVICKERY@tceq.state.tx.us>
CC: Lon Burnam <Lon.Burnam@house.state.tx.us>
Date: 3/19/2010 4:11 PM
Subject: RE: fyi on Devon fire in Wise County

Thanks, Mark.

Craig Adair
Legislative Director
Office of State Representative Lon Burnam
(512) 463-0740
craig.adair@house.state.tx.us

-----Original Message-----
From: Mark Vickery [mailto:MVICKERY@tceq.state.tx.us]
Sent: Friday, March 19, 2010 3:23 PM
To: Craig Adair
Subject: fyi on Devon fire in Wise County

From our DFW investigators:

This is the final wrap-up as the situation is now under control. Regional staff are onsite at this time. The fire is out and Devon is starting the cleanup process. Devon Energy is the responsible party in this incident. They are also investigating which tanks actually had condensate/produced water in them. All runoff from the property is contained and there appears to be no impacts to surrounding properties. No evacuations occurred. EPA and OSHA are also onsite. OSHA is investigating the injuries to the contractors.

Mark
From: Jim Harrison
To: Mark Vickery; Pattie Burnett; Ricky Anderson; Zak Covar
Date: 3/19/2010 10:42 AM
Subject: Oil and Gas Legislative Briefing

Fyi. Update on Monday's Oil and Gas Legislative Briefing activities.

>>> Mike Hoke 3/19/2010 10:19 AM >>>
Here's an update on preparations for Monday's briefing:

Invitation sent to Rep. Cook's office to go to all members and staff via the Capitol email system.
Phone calls to all Senate offices.
Phone calls to all Members of House Committees on Energy and Environmental Regulation.
Phone calls to all members in the Barnett Shale

I have gotten positive feedback from all the staff I have talked to. I have stressed that they may be getting calls from businesses and constituents on this issue so it would be useful for them to attend.

Lore Wilson is working on Hyde and Hagle's presentation. We will have copies to hand out to the attendees.

The room is booked and confirmed.

Mike Hoke
Legislative Liaison
Texas Commission on Environmental Quality
(512) 239-4899
Good Morning,

I am forwarding the list of reductions to you for Tonya. I am available if you have questions today, otherwise Tonya will be available on Monday.

The attached spreadsheet details the reductions resulting from the 78th Legislative Session.

Thanks,

>>> Tim Thetford <Tim.Thetford@senate.state.tx.us> 3/12/2010 4:13 PM >>>

Tonya:

Mike Brow ask me to contact you with a request that I am passing on from Senator West.

As a member of Senate Finance he wants to begin preparing for the budget discussions in the upcoming Session, especially given the likelihood of a budget squeeze.

I have been given fairly specific direction in making this request.

"Please provide a concise review of any significant cuts made to programs of TCEQ as a result of 78th (2003) Legislature.
  The amount of the cuts (if any),
  Have these funds since been restored,
  Names of the Programs)
  dollar amounts
  
  FTEs,
  Practical consequences of the cuts (e.g., higher caseloads, fewer people served, etc.)."

Please let me know if you have any questions about this request. The Senator has asked each of his policy staff to make similar requests of major state agencies.

Thanks You,
Tim Thetford, Legislative Aide
Senator Royce West
Dallas - District 23
<table>
<thead>
<tr>
<th>Program</th>
<th>Biennial Reduction</th>
<th>FTE</th>
<th>Restored</th>
<th>Description of Consequences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Waste Management</td>
<td>(3,800,000)</td>
<td>(12)</td>
<td></td>
<td>Reduction of 12 FTEs in Field Operations and Permitting programs. The impact to agency operations was absorbed through attrition.</td>
</tr>
<tr>
<td>Petroleum Storage Tank Reimbursement Program</td>
<td>(63,700,000)</td>
<td></td>
<td></td>
<td>Since the number of Petroleum Storage Tank Reimbursement claims submitted for payment were not as large as anticipated due to changes in Sunset dates for the Reimbursement Program, the impact was minimal.</td>
</tr>
<tr>
<td>Superfund</td>
<td>(6,800,000)</td>
<td></td>
<td></td>
<td>A minimal slow down occurred in assessment and cleanup of Superfund sites. Agency requested additional funding through an exceptional Item Request of $8 million in 2010-2011. Received $2 million in HB 4386, 81st Legislature in FY 2009 and $6 million was approved in SB 1, 81st Legislature 2010-2011.</td>
</tr>
</tbody>
</table>

**LAR Policy Letter Reductions - General Revenue**

<table>
<thead>
<tr>
<th>Program</th>
<th>Biennial Reduction</th>
<th>FTE</th>
<th>Restored</th>
<th>Description of Consequences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air Modeling</td>
<td>(2,500,000)</td>
<td></td>
<td></td>
<td>The program prioritized projects to work within the available funding with limited impact on model development.</td>
</tr>
<tr>
<td>Total Maximum Daily Loads - Analysis of the amount of pollutants that can enter a stream, lake, or river without violating the water quality standards for that particular water body.</td>
<td>(2,500,000)</td>
<td></td>
<td></td>
<td>TCEQ was able to secure one-time federal funds which partially offset the decrease in TMDL funding.</td>
</tr>
<tr>
<td>Water Monitoring Maintenance</td>
<td>(500,000)</td>
<td></td>
<td></td>
<td>Monitoring equipment replacement schedules were extended.</td>
</tr>
<tr>
<td>Continuous Water Monitoring</td>
<td>(1,100,000)</td>
<td></td>
<td></td>
<td>The project was an Exceptional Item Request not approved. Planned activities were partially supported through federal funding sources, while deployment of others were delayed.</td>
</tr>
<tr>
<td>Dam Safety</td>
<td>(400,000)</td>
<td></td>
<td></td>
<td>This was an Exceptional Item Request not approved. TCEQ was able to secure approximately 90% of the $400k to support the biennial requirement for Dam Safety Investigations from Homeland Security. In addition, the number of critical infrastructure dams requiring inspection decreased.</td>
</tr>
<tr>
<td>Performance Based Regulatory System</td>
<td>(536,000)</td>
<td></td>
<td></td>
<td>This was an Exceptional Item Request not approved. The agency prioritized activities within available funding.</td>
</tr>
<tr>
<td>Program</td>
<td>Biennial Reduction</td>
<td>FTE</td>
<td>Restored</td>
<td>Description of Consequences</td>
</tr>
<tr>
<td>------------------------------</td>
<td>--------------------</td>
<td>-----</td>
<td>----------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td>Agency Administration</td>
<td>(2,500,000)</td>
<td></td>
<td></td>
<td>Reductions occurred in Capital items such as PCs, Printers, Servers and Vehicles. Agency extended replacement cycles and extended maintenance and repairs on agency vehicles. Agency received additional appropriations in the amount of $1.2 million for vehicles in 78th Legislature.</td>
</tr>
<tr>
<td>House Bill 7 Reductions (2003 only)</td>
<td></td>
<td></td>
<td></td>
<td>A minimal slow down occurred in assessment and cleanup of Superfund sites. Agency requested additional funding through an exceptional item request of $6 million in 2010-2011. Received $2 million in HB 4586, 81st Legislature in FY 2009 and $6 million was approved in SB 1, 81st Legislature 2010-2011.</td>
</tr>
<tr>
<td>Superfund</td>
<td>(3,732,454)</td>
<td></td>
<td></td>
<td>In FY 2002-2003, TCEQ experienced lapsed funds as a result of lower demands in the number of reimbursement claims. This was attributed to changes in Sunset dates for the Reimbursement Program.</td>
</tr>
<tr>
<td>Petroleum Storage Tank Program</td>
<td>(30,000,000)</td>
<td></td>
<td></td>
<td>Reductions occurred in travel, supplies as well as Capital items such as PCs, Printers, Servers and Vehicles. Agency extended replacement cycles and extended maintenance and repairs on agency vehicles. Agency received additional appropriations in the amount of $1.2 million for vehicles in 78th Legislature.</td>
</tr>
</tbody>
</table>

Notes:
1. Legislative Reductions reflect difference between TCEQ Legislative Appropriations Request and Approved Appropriations.
2. Most of the programs listed above are funded with General Revenue Dedicated Accounts. These program reductions resulted in those funds being returned to their respected General Revenue Dedicated Accounts which became available for future legislative appropriations.
From: Ricky Anderson
To: Baker, Toby
CC: Covar, Zak; Vickery, Mark
Date: 3/19/2010 1:04 PM
Subject: Re: ASAP
Attachments: 031910_Hg_response_1.doc

Toby,

Here's our response.

>>> Toby Baker <toby.baker@governor.state.tx.us> 3/19/2010 11:32 AM >>>

• Texas coal consumption for electricity generation has remained relatively constant from 2000 to 2008 (the years covered in the EIP report), whereas total electricity sales and customers in Texas have increased by 9 percent and 18 percent, respectively.

• Although mercury emissions have increased by about 21% over the period 2000-2008, since 2005 they have remained relatively constant.

• Electric generation companies began reporting mercury emissions (as well as other emissions) on the EPA Toxic Release Inventory (TRI) for the year 2000. While TRI does not require specific testing or monitoring, it does require reporters to update their emissions estimates based on the use of the most recent data. Historically, average industry emission factors have been used for calculating these emissions. However, as new mercury data becomes available for these plants, the reported mercury emissions are updated to reflect these new emission factors, sometimes resulting in mathematical emissions increases.
  o Due to the small amount of mercury in the exhaust gas and mercury’s characteristics, it is difficult to measure accurately and monitor continuously.
  o Overall increases in mercury emissions are of relatively small magnitude, in some cases less than a tenth of a ton.

<table>
<thead>
<tr>
<th>RANK</th>
<th>SITE</th>
<th>COUNTY</th>
<th>MERCURY EMISSIONS CHANGE FROM 2007 TO 2008 IN TONS</th>
<th>PERCENT CHANGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>MARTIN LAKE ELECTRICAL STATION</td>
<td>RUSK</td>
<td>0.041</td>
<td>5%</td>
</tr>
<tr>
<td>2</td>
<td>BIG BROWN STEAM ELECTRIC STATION</td>
<td>FREESTONE</td>
<td>0.199</td>
<td>33%</td>
</tr>
<tr>
<td>6</td>
<td>RELIANT ENERGY LIMESTONE</td>
<td>LIMESTONE</td>
<td>0.025</td>
<td>4%</td>
</tr>
</tbody>
</table>

• TCEQ reviewed the TRI air releases that formed the basis of EIP's report, and found no major discrepancies.

• While true that mercury may increase the risk of child development issues, it should be noted that the emissions from these plants may not be directly responsible for mercury deposition in Texas due to long-range transport of mercury emissions.

• Analysis of reported mercury emissions versus other criteria pollutant emissions and coal consumption indicates the increase in mercury emissions is most likely due to fluctuations in the mercury content of the coal. The three power plants in the top ten mercury emitters that reported mercury increases (Luminant Big Brown and Martin Lake, NRG Limestone) all combusted less lignite and more western coal in 2008 than 2007. This explanation is supported by concurrent lead and particulate emissions increases at these three sites, whereas all other criteria pollutant emissions decreased.
  o Mercury in coal, although trace, is highly variable and so, emissions are also variable.
<table>
<thead>
<tr>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>MARTIN LAKE ELECTRICAL STATION</td>
<td>RUSK</td>
<td>INCREASE</td>
<td>INCREASE</td>
<td>DECREASE</td>
<td>DECREASE</td>
<td>INCREASE</td>
<td>DECREASE</td>
</tr>
<tr>
<td>BIG BROWN STEAM ELECTRIC STATION</td>
<td>FREESTONE</td>
<td>INCREASE</td>
<td>INCREASE</td>
<td>DECREASE</td>
<td>DECREASE</td>
<td>INCREASE</td>
<td>CONSTANT</td>
</tr>
<tr>
<td>MONTICELLO STEAM ELECTRIC STATION</td>
<td>TITUS</td>
<td>DECREASE</td>
<td>INCREASE</td>
<td>DECREASE</td>
<td>DECREASE</td>
<td>INCREASE</td>
<td>DECREASE</td>
</tr>
<tr>
<td>RELIANT ENERGY LIMESTONE</td>
<td>LIMESTONE</td>
<td>INCREASE</td>
<td>INCREASE</td>
<td>INCREASE</td>
<td>DECREASE</td>
<td>INCREASE</td>
<td>INCREASE</td>
</tr>
<tr>
<td>AEP PIRKEY POWER PLANT</td>
<td>HARRISON</td>
<td>DECREASE</td>
<td>DECREASE</td>
<td>DECREASE</td>
<td>DECREASE</td>
<td>N/A; NOT FIRED</td>
<td>DECREASE</td>
</tr>
</tbody>
</table>
MERCURY EMISSIONS VERSUS COAL CONSUMPTION AND GENERATION

STATEWIDE MERCURY EMISSIONS 1  
COAL GENERATION (Megawatthours) 2  
COAL CONSUMPTION (SHORT TONS) 4
COAL CONSUMPTION VERSUS SALES

MEGAWATT-HOURS

SHORT TONS OR NUMBER OF CUSTOMERS

YEAR


Total Sales (Megawatt-hours)
Coal Consumption (Short Tons)
Total Number of Customers

Legend:
From: Zak Covar
To: L'oreal Stepney
CC: Ricky Anderson
Date: 3/31/2010 2:28 PM
Subject: Re: Asst Director

absolutely...thanks

>>> L'oreal Stepney 3/31/2010 2:26 PM >>>
Ricky and I just spoke about the Asst. Director for Water Supply. I'll take a look to see if there is another funding source besides agency wide. The memo ask to extend the sweep date to May 1st for transition. Are you ok with approving the extension while we work out the funding source?
Zak
Here's what I sent to Soil Bd as an example Odor Control Plan. Randy made some minor corrections to what I showed you and is good to go with this one. I think the Soil Bd will be too.
Thanks
Charles
Speed typing injury - sorry...
Charles

>>> Zak Covar 3/25/2010 8:06 AM >>>
No attachment...

>>> Charles Maguire 3/25/2010 6:24 AM >>>
Zak
Here's what I sent to Soil Bd as an example Odor Control Plan. Randy made some minor corrections to what I showed you and is good to go with this one. I think the Soil Bd will be too.
Thanks
Charles
Example
Odor Control Plan
for Dry Litter Poultry Operations in Texas

DRAFT as of 3/24/2010

This plan is only for dry litter poultry growers who are required by law under §382.068(d) Health & Safety Code or §26.301 (b-3) Water Code to implement an odor control plan. The intent of this plan is to reduce or eliminate nuisance odor sources on the poultry farm and hopefully prevent odor related complaints against the farm.

A. Litter management

Maintain an average litter depth of at least 3 inches.

1. Target litter moisture content during the flock should be between 20-30%; not powdery dry, but not so moist it will clump.

2. Management procedures include:
   a. Maintain proper drinker height.
   b. Maintain proper drinker water pressure.
   c. Repair all drinker system leaks upon discovery.
   d. Repair all evaporative cooling system leaks that will directly deposit water onto litter upon discovery.
   e. Allow for proper litter drying between flocks. Caked litter must be removed, unless incorporated into in-house windrows for pasteurization of litter. In solid sidewall housing, a minimum amount of ventilation should be used between flocks to remove excessive litter moisture. Target litter moisture content prior to flock placement should be about 20-25% or slightly dryer than during flock grow-out.

B. Mortality management

1. Mortalities must be collected a minimum of once per day or more frequently as needed to prevent or reduce odors.

2. Upon collection, all mortalities must be immediately placed into an incinerator or freezer, incorporated into a compost pile, or placed into a sealed container to await final disposal. Carcasses must be placed in freezer or other final disposal method the same day as collection. Do not leave mortality carcasses in the open air to await final disposal.

3. Incinerator operations shall be conducted between locally established sunrise and sunset, unless an exception is requested and approved by the controlling regulatory authority. Carcasses in the incinerator that are burning must be completely incinerated prior to nightfall to prevent smoke emissions after dark.

4. Operate and maintain incinerators in accordance with all applicable air regulations and according to the manufacturer's specifications to achieve maximum destruction efficiency. These include but are not limited to: load capacity, burn rate, operating temperature and/or burner operation.

5. Clean ash from incinerators at least weekly or more frequently as needed to maintain efficient incinerator operations.
6. If composting mortality carcases, all carcass parts must be covered with a minimum of 2 inches of litter, bulking agent material (sawdust, wood chips or shavings, rice hulls), or mature compost the same day as collection. Unroofed compost piles, if used on rare occasions, will to the extent possible be placed out of sight from neighboring residences or public roads and at least 150 feet from the nearest property line. Follow moisture and temperature guidance included in WQMP.

7. Clean all equipment and temporary storage containers used to handle mortalities at least once per week or more frequently as needed to prevent or reduce odors.

C. Catch-out/Clean-out procedures

1. Keep all doors on poultry houses closed at all times unless equipment access to a particular house is necessary (birds are being loaded/unloaded or litter clean-out/maintenance activities are occurring).

2. Clean up any litter spilled from equipment or dropped from tires during loading outside the houses within 24 hours after completing bird catch-out or litter clean-out.

3. Clean-up any spilled feed inside or outside houses within 24 hours of discovery.

D. Litter storage

1. The storage of litter on-site is strongly discouraged.

2. If litter must be stored on-site, rainwater shall not be allowed to reach stockpiles. Litter must be stored under a roof (litter shed) or completely covered with a tarp or other impermeable material.

E. Land application

1. If applying litter to land associated with the poultry houses (on-farm application), the following considerations are to be taken into account:
   a. Do not apply litter within 100 feet of public roads.
   b. Do not apply litter within 500 feet of any residence, school, park, place of worship or other facility used by the public.
   c. Application of litter during morning hours is preferable. Do not apply litter after 5:00 pm.
   d. Do not apply litter on weekends or federal holidays that occur Monday-Friday if any residence, school, park, place of worship or other facility used by the public is located within 1,500 feet of the nearest edge of the application area.
   e. Do not apply litter while the wind direction is from any point of application toward a residence, school, park, place of worship or other facility used by the public within 1,500 feet of the nearest edge of the application area.
   f. Do not apply litter during any rainfall event or if rain is imminent.
   g. Cover all loads of litter if being transported on public roads.
   h. Only apply litter at the agronomic rate specified by the Water Quality Management Plan.

F. Facility Management

1. Dust.
   a. Control vehicle speed to under 15 mph around facility.
   b. Facility exhaust/ventilation fans should be properly maintained and kept cleaned and free of debris for proper operation.
G. Site specific guidelines following a Notice of Violation for nuisance odors could be required to address odor sources identified in the NOV by (but not limited to) the following:

1. Additional management procedures
   a. Evaporative cooling system management
   b. Litter amendment application*
   c. Frequency of whole house litter clean-out*

2. Additional setbacks and land application restrictions

3. Odor mitigation techniques
   a. Shelterbelts (Vegetative Environmental Buffers)
   b. Biocurtains or other dust/odor filtration systems*
   c. Exhaust air diverters*
   d. Other odor control devices*

4. House density limitations*

5. Other control actions and management measures as necessary*

* Items with an asterisk are not under the total control of the farm owner and may require integrator consent and cooperation, therefore would require TCEQ to discuss these items with the integrator company prior to requiring them.

H. Attachments

1. Maps
   a. Vicinity Map
   b. Site Map. Show location of poultry houses, permanent odor sources, and distances and direction to any occupied residence or business structure, school (including associated recreational areas), structure containing a place of worship, or public park within half-mile radius of the permanent odor sources at the facility. The map shall include the north arrow, scale of map, buffer distances, and date that the map was generated and the date that the distances were verified.
Will do.
thanks
Charles

>>> Zak Covar 3/22/2010 6:02 PM >>>
No prob....didn't want to interrupt. Let's talk chickens in am. Thanks

-----Original Message-----
From: Charles Maguire
To: Covar, Zak <ZCovar@itceo.state.tx.us>

Sent: 3/22/2010 6:01:00 PM
Subject: phone call

Zak
Sorry I missed your call.... they are supposed to come and interrupt me when you call. I'll make sure that is understood..... I think the fact Diane was involved related to Sunset made them think I could not break away..... I could have ... sorry.

I'll call tomorrow morning... or if you need me this evening my Blackberry is 512-739-7469.
Thanks
Charles
From: Zak Covar
To: Vickery, Mark
Date: 3/22/2010 3:20 PM
Subject: Re: Chickens

10-4

-----Original Message-----
From: Mark Vickery
To: Covar, Zak <ZCovar@tceq.state.tx.us>

Sent: 3/22/2010 3:19:49 PM
Subject: Chickens

Zak, would you pls touch base with Randy and Charles. Chairman Cook's concern seemed to lie with the Dirt Board. 
No prob... didn't want to interrupt. Let's talk chickens in am. Thanks

-----Original Message-----
From: Charles Maguire
To: Covar, Zak <ZCovar@tceq.state.tx.us>
Sent: 3/22/2010 6:01:00 PM
Subject: phone call

Zak
Sorry I missed your call.... they are supposed to come and interrupt me when you call. I'll make sure that is understood..... I think the fact Diane was involved related to Sunset made them think I could not break away..... I could have ... sorry.

I'll call tomorrow morning... or if you need me this evening my Blackberry is 512-739-7469.

Thanks
Charles
From: Charles Maguire
To: Covar, Zak
CC: Stapney, L'Oreal
Date: 4/2/2010 8:04 PM
Subject: Fw: Odor Control Plan and Letter
Attachments: Odor Control Plan and Letter

Zak
L'Oreal asked that I forward this to you since Rex might be calling Mark on Monday morning. We can probably provide comfort but should be careful not to make folks downtown mad.

Thanks

Charles
Zak Covar - Re: Equipment Purchase

From:  "Tom Lambert" <Tom.Lambert@lbb.state.tx.us>
To:    "Elizabeth Sifuentes" <ESIFUENT@tceq.state.tx.us>
Date:  3/31/2010 6:01 PM
Subject: Re: Equipment Purchase
CC:    "Zelma Smith" <Zelma.Smith@lbb.state.tx.us>, "Diane Mazuca" <DMAZUCA@tceq.state.tx.us>

Assuming the costs you're talking about are in the $30,000 range as we discussed, I don't think we'd have a problem with it.

>>> "Elizabeth Sifuentes" <ESIFUENT@tceq.state.tx.us> 3/31/2010 3:22 PM >>>
Tom,

Below are details relating to the equipment purchase, we discussed.
Requesting your approval to transfer $30K from the contingency appropriation (CAFO - SB 876) to the Capital project (Water Monitoring Equipment) for equipment purchases.

Let me know if you need more specifics.

Thanks.

Details -
SB 876, 81st Legislative Session, requires TCEQ to conduct annual soil sampling at concentrated animal feeding operations in a major sole source impairment zone such as the Bosque Watershed. In order to implement the bill, the agency needs to purchase pneumatic sampling equipment.

TCEQ was appropriated funding to implement the bill (appropriation 21996), however, the equipment identified in the agency's fiscal note was not included in the approved Rider 2 - Capital Budget of the General Appropriations Act, 81st Legislative Session.

The agency submitted a request to the Appropriation Control Officer (ACO) at the Comptrollers Office to transfer funds from the appropriation received for soil sampling (appropriation 21996) to the capital budget project - Water Quality Monitoring Equipment (appropriation 51014) utilizing the 25% transferability granted by Article IX-Section 14.03, General Appropriations Act, 81st Legislative Session. The ACO requested approval by our LBB analyst before proceeding.
Zak Covar - Re: Funding cuts going back to 2003.

From: Elizabeth Sifuentes
To: Tom Lambert
Date: 3/29/2010 4:53 PM
Subject: Re: Funding cuts going back to 2003.
CC: Diane Mazuca; Linda Flores; Pattie Burnett; Ricky Anderson; Tonya Baer; Zak Covar
Attachments: LBB Request_Reductions.xls

Tom,

Attached is the requested information regarding legislative reductions. Please let me know if you have questions or would like to discuss.

Thanks,

>>> "Tom Lambert" <Tom.Lambert@lbb.state.tx.us> 3/22/2010 3:37 PM >>>
I'm trying to figure what programs were cut by the 78th Legislature and which such programs might have been later restored by a subsequent legislature and which ones remain at or below pre-2003 levels.

It would also be helpful to know which programs may have been cut by the legislature subsequent to the 78th session (whether it was something the leg chose to do or you as an agency offered up), and whether these programs ever got restored or remain at reduced funding levels.

I'm sorry to not be able to give you a whole lot of lead time on this, but if you can get back to me on this within one week (end of the day on March 29), that would be much appreciated.
### Texas Commission on Environmental Quality
#### 78th - 81st Legislative Reductions

<table>
<thead>
<tr>
<th>Notes</th>
<th>Program</th>
<th>Reduction</th>
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<td><strong>LAR Policy Letter Reductions - 12.5% GR only</strong></td>
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<td><strong>House Bill 7 Reductions (2003 only)</strong></td>
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<td>Operating Permit Fees</td>
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<td>Texas Emission Reduction Plan</td>
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<td>Petroleum Storage Tank</td>
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<td>(81)</td>
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<td>Texas Emission Reduction Plan</td>
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<td>Petroleum Storage Tank</td>
<td>(20,000,000)</td>
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</tbody>
</table>
From: Elizabeth Sifuentes
To: Tom.Lambert@tb.state.tx.us
CC: Flores, Linda <LFlores@tceq.state.tx.us>
CC: Mazuca, Diane <DMazuca@tceq.state.tx.us>
CC: Anderson, Ricky <RANDERSO@tceq.state.tx.us>
CC: Baer, Tonya <TBaer@tceq.state.tx.us>
CC: Covar, Zak <ZCovar@tceq.state.tx.us>
CC: Burnett, Pattie <PBURNETT@tceq.state.tx.us>

Date: 3/29/2010 7:19 PM
Subject: Re: List of Programs
Attachments: Strategy_Programs Allocated.xls; Re: List of Programs

Tom,

The attached spreadsheets allocates indirect administration and capital to the programs by strategy and MOF.

Please let me know if you would like to discuss.

Thanks.

-----Original Message-----
From: Elizabeth Sifuentes
To: Lambert, Tom <Tom.Lambert@bb.state.tx.us>
CC: Flores, Linda <LFlores@tceq.state.tx.us>
CC: Mazuca, Diane <DMazuca@tceq.state.tx.us>
CC: Anderson, Ricky <RANDERSO@tceq.state.tx.us>
CC: Baer, Tonya <TBaer@tceq.state.tx.us>
CC: Covar, Zak <ZCovar@tceq.state.tx.us>
CC: Burnett, Pattie <PBURNETT@tceq.state.tx.us>

Sent: 3/18/2010 4:23:04 PM
Subject: Re: List of Programs

We can apply that methodology but with MOF?

Attached is a breakdown by MOF Type, excluding indirect administration.

>>> "Tom Lambert" < Tom.Lambert@bb.state.tx.us > 3/18/2010 3:38 PM >>>
Is there an easy way we can assign indirect costs to each program? I'm wondering if just looking at the percentage each program is of the overall budget (with indirect excluded) and applying that percentage of indirect to each program would work?

>>> "Elizabeth Sifuentes" < ESIFUENT@tceq.state.tx.us > 3/18/2010 2:56 PM >>>
Indirect Administration was not included.

>>> "Tom Lambert" < Tom.Lambert@bb.state.tx.us > 3/18/2010 2:53 PM >>>
Is administration left out or did you roll in each program's portion of admin costs into the program cost?

>>> "Elizabeth Sifuentes" < ESIFUENT@tceq.state.tx.us > 3/18/2010 2:35 PM >>>
Wonderful... Glad it met your needs. Do you need the MOF breakdown by Fund or by State vs Federal?

The capital items that support specific programs could be rolled up. Items such as Data Center, Data Network, and PCs support all programs. These items could be allocated based on a percentage.

>>> "Tom Lambert" < Tom.Lambert@bb.state.tx.us > 3/18/2010 2:22 PM >>>
Thanks. This is great. I will probably need MOF breakdowns.

I'm wondering though if the capital items couldn't be rolled into the programs they support?

>>> "Elizabeth Sifuentes" < ESIFUENT@tceq.state.tx.us > 3/18/2010 2:17 PM >>>
Hi Tom,

Attached is a list of programs by strategy. The strategy amounts are based on the 2010 Operating Budget and include changes resulting from increases/decreases of federal funds.

Please let me know if you need additional information.
Thanks,
Elizabeth
### 10101 AIR QUALITY ASSESSMENT AND PLANNING

**Total** 266,431,582

**General Revenue**
- 605,552 Air Quality Assessment and Planning

**General Revenue Dedicated**
- 555,033,637 TERP
- 50,072,008 LIRAP
- 2,537,614 Eight Hour Ozone
- 3,073,632 Rider 5 - Local Air Pollution Grants
- 4,537,500 Rider 8 - Air Quality Planning
- 2,373,259 Rider 18 - Automobile Emission Inspections
- 1,000,000 Rider 35 - Mickey Leland Toxics
- 1,500,000 Rider 14 - Refinement and Enhancement of Modeling

**Air Monitoring**
- 9,195,337 Air Monitoring
- 11,766,173 Air Quality Planning
- 250,000 HB 1796 - Greenhouse Gas Registry
- 8,392,926 Air Quality Assessment and Planning

**Federal Funds**
- 13,165,683 ARRA - TERP Rebate Program
- 1,730,000 ARRA - Clean Diesel School Bus

**Air Quality Planning**
- 1,499,538 Air Quality Planning
- 2,937,742 Air Monitoring
- 2,659,751 Biowatch Monitoring
- 926,746 Section 103 PM 2.5 Air Monitoring
- 254,878 Air Quality Assessment and Planning

**Other**
- 30,901 Air Quality Assessment and Planning
- (7,111,295) Allocation of Administrative Support
### 10102 WATER ASSESSMENT AND PLANNING

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**General Revenue**

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<td>2,528,410</td>
<td>Total Maximum Daily Load</td>
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<td>2,039,903</td>
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<td>1,320,293</td>
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<td>330,000</td>
<td>On-site Wastewater Treatment Council</td>
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<td>1,069,823</td>
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<td>500,000</td>
<td>Rider 36 - Carrizo/Wilco Aquifer</td>
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**General Revenue Dedicated**

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<td>Section 319 Non Point Source</td>
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<tr>
<td>949,691</td>
<td>Section 106 Water Pollution Control - State</td>
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<tr>
<td>166,583</td>
<td>Article IX Section 17.96 - SB 876 Soil Test for CAFO</td>
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<td>12,345,333</td>
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**Federal Funds**

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<td>3,597,830</td>
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**Other**

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(4,402,230) Allocation of Administrative Support

### 10103 WASTE ASSESSMENT AND PLANNING

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**General Revenue**

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**General Revenue Dedicated**

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**Federal Funds**

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**Other**

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(580,514) Allocation of Administrative Support
### 10201 AIR QUALITY PERMITTING

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### 10202 WATER RESOURCE PERMITTING

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### 10203 WASTE MANAGEMENT AND PERMITTING

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### 10204 OCCUPATIONAL LICENSING

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### 10301 LOW-LEVEL RADIOACTIVE WASTE ASSESSMENT

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<tr>
<td>Total</td>
<td>4,031,669</td>
</tr>
<tr>
<td>General Revenue</td>
<td>995,255</td>
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<tr>
<td>Radioactive Materials</td>
<td></td>
</tr>
<tr>
<td>General Revenue Dedicated</td>
<td>1,103,222</td>
</tr>
<tr>
<td>Radioactive Materials</td>
<td></td>
</tr>
<tr>
<td>Federal Funds</td>
<td>2,654,063</td>
</tr>
<tr>
<td>Low Level Radioactive Waste</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>3,153</td>
</tr>
<tr>
<td>Low Level Radioactive Waste</td>
<td></td>
</tr>
<tr>
<td>(725,642) Allocation of Administrative Support</td>
<td></td>
</tr>
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### 20101 SAFE DRINKING WATER

<table>
<thead>
<tr>
<th>Description</th>
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<tbody>
<tr>
<td>Total</td>
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<tr>
<td>General Revenue</td>
<td>158,526</td>
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<td>Public Drinking Water</td>
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<tr>
<td>General Revenue Dedicated</td>
<td>3,998,356</td>
</tr>
<tr>
<td>Public Drinking Water</td>
<td></td>
</tr>
<tr>
<td>Federal Funds</td>
<td>3,565,090</td>
</tr>
<tr>
<td>Public Drinking Water</td>
<td></td>
</tr>
<tr>
<td>472,104 Counter Terrorism</td>
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<tr>
<td>Other</td>
<td>3,367,097</td>
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<tr>
<td>State Revolving Fund (SRF)</td>
<td></td>
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<tr>
<td>(1,306,156) Allocation of Administrative Support</td>
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### 20102 WATER UTILITIES OVERSIGHT

<table>
<thead>
<tr>
<th>Total</th>
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<tbody>
<tr>
<td>General Revenue</td>
<td>83,047 Utilities and Districts</td>
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<tr>
<td>General Revenue Dedicated</td>
<td>3,670,423 Utilities and Districts</td>
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<tr>
<td>Federal Funds</td>
<td>2,856 Utilities and Districts</td>
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<td>Other</td>
<td>1,344,585 State Revolving Fund (SRF)</td>
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<td>(1,161,028) Allocation of Administrative Support</td>
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### 30101 FIELD INSPECTIONS & COMPLAINTS

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<tr>
<th>Total</th>
<th>43,105,749</th>
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<tbody>
<tr>
<td>General Revenue</td>
<td>375,419 Concentrated Animal Feeding Operations</td>
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<td>General Revenue Dedicated</td>
<td>2,141,902 Field Operations</td>
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<tr>
<td>Federal Funds</td>
<td>7,424,751 Field Operations</td>
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<td>Other</td>
<td>1,892,711 State Revolving Fund</td>
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<td>(11,465,148) Allocation of Administrative Support</td>
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### 30102 ENFORCEMENT & COMPLIANCE SUPPORT

<table>
<thead>
<tr>
<th>Total</th>
<th>12,528,504</th>
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<tbody>
<tr>
<td>General Revenue</td>
<td>589,624 Enforcement</td>
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<td>General Revenue Dedicated</td>
<td>456,835 Lab Accreditation</td>
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<tr>
<td>Federal Funds</td>
<td>1,331,870 Enforcement</td>
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<tr>
<td>Other</td>
<td>126,174 State Revolving Fund</td>
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<tr>
<td></td>
<td>(3,628,212) Allocation of Administrative Support</td>
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### 30103 POLLUTION PREVENTION & RECYCLING

<table>
<thead>
<tr>
<th>Total</th>
<th>6,232,221</th>
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</thead>
<tbody>
<tr>
<td>General Revenue</td>
<td>221,000 Rider 6 - Air Pollution Control Equipment</td>
</tr>
<tr>
<td>General Revenue Dedicated</td>
<td>72,666 Pollution Prevention</td>
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<tr>
<td>Federal Funds</td>
<td>247,318 Pollution Prevention</td>
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<tr>
<td>Other</td>
<td>935,134 Seminar Account</td>
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<tr>
<td></td>
<td>(1,015,899) Allocation of Administrative Support</td>
</tr>
</tbody>
</table>
**LIST OF PROGRAMS BY STRATEGY**  
**2010 OPERATING BUDGET**  
SOURCE - SUNSET TABLE, AE_10_SUNSET.DB

### 40101 STORAGE TANK ADMINISTRATION & CLEANUP

<table>
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<tr>
<th>Total</th>
<th>37,846,949</th>
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<td>General Revenue</td>
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<tr>
<td></td>
<td>100,348 Petroleum Storage Tank</td>
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<tr>
<td>General Revenue Dedicated</td>
<td></td>
</tr>
<tr>
<td></td>
<td>26,920,573 Petroleum Storage Tank</td>
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<tr>
<td>Federal Funds</td>
<td></td>
</tr>
<tr>
<td></td>
<td>15,443,440 Petroleum Storage Tank</td>
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<tr>
<td></td>
<td>10,779,000 ARRA - LUST</td>
</tr>
<tr>
<td>Other</td>
<td></td>
</tr>
<tr>
<td></td>
<td>16,096 Petroleum Storage Tank</td>
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<tr>
<td></td>
<td>(1,402,908) Allocation of Administrative Support</td>
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### 40102 HAZARDOUS MATERIALS CLEANUP

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<thead>
<tr>
<th>Total</th>
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<td></td>
</tr>
<tr>
<td></td>
<td>259,521 Hazardous Materials Cleanup</td>
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<tr>
<td>General Revenue Dedicated</td>
<td></td>
</tr>
<tr>
<td></td>
<td>26,906,670 Superfund Remediation</td>
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<tr>
<td></td>
<td>7,448,333 Dry Cleaning</td>
</tr>
<tr>
<td>Federal Funds</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2,484,315 Superfund - Federal</td>
</tr>
<tr>
<td></td>
<td>7,988 Hazardous Materials Cleanup</td>
</tr>
<tr>
<td>Other</td>
<td></td>
</tr>
<tr>
<td></td>
<td>15,766 Hazardous Materials Cleanup</td>
</tr>
<tr>
<td></td>
<td>(3,628,212) Allocation of Administrative Support</td>
</tr>
</tbody>
</table>

### RIVER COMPACTS

<table>
<thead>
<tr>
<th>Code</th>
<th>Amount</th>
<th>Description</th>
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<tbody>
<tr>
<td>50101</td>
<td>19,622</td>
<td>Canadian River Compact</td>
</tr>
<tr>
<td>50102</td>
<td>132,205</td>
<td>Pecos River Compact</td>
</tr>
<tr>
<td>50103</td>
<td>31,167</td>
<td>Red River Compact</td>
</tr>
<tr>
<td>50104</td>
<td>146,901</td>
<td>Río Grande River Compact</td>
</tr>
<tr>
<td>50105</td>
<td>62,247</td>
<td>Sabine River Compact</td>
</tr>
</tbody>
</table>
Dear Workshop Participants,

I am writing to provide an update on developments for the workshop in Austin (June 1-3). You will find the current list of participants attached, and, as you can see, the group is quite impressive as well as diverse. This mix should generate stimulating discussions. A group of faculty at the university is preparing a briefing book that will present an overview to the topics and an introduction to each participant. If you have not done so already, please forward a short biography and picture. The briefing book will be supplied to you about a month in advance of the workshop.

Our university is on spring break next week but on our return, we will begin working with each of you in arranging your individual itinerary to the event. Please remember that we will be staying at the Stephen F. Austin Hotel (<http://austin.intercontinental.com/> http://austin.intercontinental.com/) which is part of the Intercontinental Hotel chain. We have blocked a set of rooms for the entire group. The hotel is only a few blocks from the state capitol building where our sessions shall be conducted. An official welcome to the group will be delivered by two state senators. Additionally, all meal arrangements will be made for you, including a formal dinner.

In closing, I would like to thank the sponsors of the workshop: IHS, Inc., Frost Bank, and Central Market. Their generous support is making the event a reality. Within the next month, I will write more directly about the intended outcomes of the workshop to ensure that everyone has a clear picture of the goals we seek to accomplish. The opportunity represented by the workshop should not be a wasted exercise.

In the meantime, please do not hesitate to contact me for any reason. I look forward to meeting each of you in Austin.

Warm regards,

Brian

Brian M. Murphy
Dean, College of Liberal & Applied Arts
Stephen F. Austin State University

Phone: 936-468-2803
Fax: 936-468-2190
College of Liberal & Applied Arts

Center for a Livable World

Workshop Participants

Advisory Board
Casey Cofman
Rahn Holding LLC

Geoffrey Comics
ConocoPhillips

Dallas Goforth
MASTERPLAN

Massachusetts
Hart Energy Publishing

Eric Peterson
Ahlstrom Engineering

Kenneth Janus
Le摊o per Management

Tony Long
GAP Energy

Melissa Nunniong
HIS Inc.

Martha Martin
Frost Bank

Tom Nute
Hines Interests

Liza Pond
Marketing Professional

Jennifer Baugh Jones
Senior Counsel, L.L.C.

Gina Wosnita
Jones, Day, Reavis & Tunnell

Limor Alouf
Sustainability Strategist

John Blount
Director, Architecture & Engineering Division, Harris County

Libby Cheney
Head of Safety, Environment & Sustainable Development, Shell Oil

Glen Garland
President, CLEAResult Consulting

Alex Garvin
President and CEO, Alex Garvin & Associates, Inc.

Henrik Harjula
Principal Administrator, Environment, Health and Safety Division (ECD)

Lauren Heine
Senior Science Advisor, Clean Production Action

Mary Lyn Johnson
Director, Environmental Initiatives & Sustainability, IHS

Jill Jordan
Assistant City Manager, City of Dallas

Richard MacLean
Executive Director, The Center for Environmental Innovation

Ester Matthews
Director, Austin Climate Protection Plan

Thomas Mote
Senior Project Manager, Hines Interests

Ed Quevedo
Senior Counsel, Paladin Law Group

Ron Rod
Vice President and Strategy Officer, The Tagos Group

Robin Schneider
Executive Director, Texas Campaign for the Environment

Mark Vickery
Executive Director, Texas Commission on Environmental Quality

John Warner
Director, Warner Babcock Institute for Green Chemistry

Mark Wysong
Vice President of Environment, IHS

Center for a Livable World
P.O. Box 13053 • Stephen F. Austin State University • Nacogdoches, Texas 75962-5033 • (940) 448-2083 • (950) 448-2100 (F)
From: Stephanie Bergeron  
To: McCalla, Kevin  
Date: 3/24/2010 1:16 PM  
Subject: Re: Thank you

Thanks, Kevin. Am diligently reviewing packets and interview material!

SBP

>>> On 3/24/2010 at 10:45, Kmcallamut wrote:

Dear Stephanie,

Thank you again for your time and attention during last weeks interview. I believe my 27 years of experience as a state employee serving in the roles of a Hearing Examiner, Senior Attorney for Water Quality, Director and Assistant Director of the Legal Division, two stints as Acting Deputy Director for OLS, as well as the Director of the General Law Division uniquely qualify me for this position. Additionally, I am anxious and ready to begin this position and assist you and the staff of the OLS in successfully responding to the plethora of challenges continually presented. I look forward to hearing from you.

Sincerely,

Kevin McCalla
Thank you, Mark. I appreciate you sending along this info.

Susan Nold
463-0114

Susan, here is a short summary on the rule that the Commission adopted today. EPA will likely formally disapprove the old rule tomorrow.

Feel free to call if you have any questions.

Mark
Zak Covar - Re: List of Programs

From: Elizabeth Sifuentes
To: Tom Lambert
Date: 4/1/2010 2:47 PM
Subject: Re: List of Programs
CC: Diane Mazuca; Linda Flores; Pattie Burnett; Ricky Anderson; Tonya Baer; Zak Covar

We can break out the PST program by the State Lead, Reimbursement, and Regulatory as well as look at other strategies that could be broken down a bit further. We’ll review and get back with you.

Thanks,

>>> "Tom Lambert" <Tom.Lambert@lbb.state.tx.us> 4/1/2010 2:29 PM >>>
I’m wondering if the list of programs y’all came up with is extensive enough. For instance, you have all of PST lumped into the same program, but from what I’ve understood to this point, there are at least 3 programs within that strategy: State Lead, Reimbursement, and Regulatory. I think they’re all pretty distinct programs. I’m wondering if we may still have several programs combined in other strategies. Another one that caught my attention was Safe Drinking Water. I’m thinking there is probably more than one major function happening within that strategy. Possibly in Water Utilities Oversight as well. Let me know what you think.

>>> "Elizabeth Sifuentes" <ESIFUENT@tceq.state.tx.us> 3/29/2010 7:18 PM >>>
Tom,

The attached spreadsheets allocates indirect administration and capital to the programs by strategy and MOF.

Please let me know if you would like to discuss.

Thanks.

-----Original Message-----
From: Elizabeth Sifuentes
To: Lambert, Tom <Tom.Lambert@lbb.state.tx.us>
Cc: Flores, Linda <LFlores@tceq.state.tx.us>
Cc: Mazuca, Diane <DMAZUCA@tceq.state.tx.us>
Cc: Anderson, Ricky <RANDERSO@tceq.state.tx.us>
Cc: Baer, Tonya <TBAER@tceq.state.tx.us>
Cc: Covar, Zak <ZCovar@tceq.state.tx.us>
Cc: Burnett, Pattie <PBBURNETT@tceq.state.tx.us>

Sent: 3/18/2010 4:23:04 PM
Subject: Re: List of Programs

We can apply that methodology but with MOF?

Attached is a breakdown by MOF Type, excluding indirect administration.

>>> "Tom Lambert" < Tom.Lambert@lbb.state.tx.us > 3/18/2010 3:38 PM >>>
Is there an easy way we can assign indirect costs to each program? I’m wondering if just looking at the percentage each program is of the overall budget (with indirect excluded) and applying that percentage of indirect to each program would work?
Indirect Administration was not included.

Is administration left out or did you roll in each program's portion of admin costs into the program cost?

Wonderful... Glad it met your needs. Do you need the MOF breakdown by Fund or by State vs Federal?

The capital items that support specific programs could be rolled up. Items such as Data Center, Data Network, and PCs support all programs. These items could be allocated based on a percentage.

Thanks. This is great. I will probably need MOF breakdowns.

I'm wondering though if the capital items couldn't be rolled into the programs they support?

Attached is a list of programs by strategy. The strategy amounts are based on the 2010 Operating Budget and include changes resulting from increase/decreases of federal funds.

Please let me know if you need additional information.

Thanks,

Elizabeth
From: Tangela Niemann
To: Zak Covar
CC: Jim Harrison
Date: 3/23/2010 3:25 PM
Subject: National Pollutant Discharge Elimination System (NPDES) Water Transfers Rule
Attachments: Water Transfers CntLttr.pdf

Per our conversation, attached are the comments we submitted August 7, 2006. Please let me know if you need anything further.

Thanks,
Tangie

>>> Zak Covar 3/23/2010 3:04 PM >>>
Tangie,

I am looking for comments regarding the June 13, 2008 FR notice from EPA re water transfers and NPDES applicability.

Thanks

>>> Tangela Niemann 3/23/2010 2:59 PM >>>
Hi Zak,

The attached comments were submitted April 8, 2008. Please let me know if this isn't what you are looking for or if you need any additional information.

Thanks,
Tangie
August 7, 2006

Water Docket
Environmental Protection Agency
Mailstop: 4203M
1200 Pennsylvania Avenue, NW.
Washington, DC 20460

Re: Docket No. 114A-HQ-06-0666 Proposed Rule on the National Pollutant Discharge Elimination System (NPDES) Water Transfer

Dear Sirs,

The Texas Commission on Environmental Quality (TCEQ) appreciates the opportunity to comment on the U.S. Environmental Protection Agency's National Pollutant Discharge Elimination System Water Transfers Proposed Rule, as published in the June 7, 2006, edition of the Federal Register.

The TCEQ supports the proposed rule as drafted. Texas is a state of such climate diversity that areas with a vast amount of streamflow do not necessarily have large populations. The TCEQ has a longstanding practice of utilizing water transfers to meet the needs of water-impoverty areas. Approximately 65 of the 186 plus permitted water transfers in Texas were permitted before the passage of the Clean Water Act of 1972. Under sections 104(g) and 516 of the Clean Water Act, permitting decisions regarding these water transfers should be left to the states. State law compels the TCEQ to consider and, where necessary, mitigate effects on water quality and the environment when permitting water transfers. Therefore, the TCEQ concludes that there is no need for federal regulation of water transfers.

I thank you for the opportunity to provide comments on this proposal. If you have comments or questions about the information herein, please contact Todd Chenoweth, Water Supply Division, at (512) 279-4483.

Sincerely,

Glenn Shoals
Executive Director
Per our conversation, attached are the comments we submitted August 7, 2006. Please let me know if you need anything further.

Thanks,
Tangle

>>> Zak Covar 3/23/2010 3:04 PM >>>
Tangle,

I am looking for comments regarding the June 13, 2008 FR notice from EPA re water transfers and NPDES applicability.

Thanks

>>> Tangela Niemann 3/23/2010 2:59 PM >>>
Hi Zak,

The attached comments were submitted April 8, 2008. Please let me know if this isn't what you are looking for or if you need any additional information.

Thanks,
Tangle
Texas Commission on Environmental Quality
Protecting Texas by Reducing and Preventing Pollution

August 7, 2006

Water Docket
Environmental Protection Agency
Mailstop: CSWQ
1200 Pennsylvania Avenue, NW.
Washington, DC 20460


Dear Sirs:

The Texas Commission on Environmental Quality (TCEQ) appreciates the opportunity to comment on the U.S. Environmental Protection Agency's National Pollutant Discharge Elimination System Water Transfers Proposed Rule, as published in the June 7, 2006, edition of the Federal Register.

The TCEQ supports the proposed rule as drafted. Texas is a state of such climatic diversity that areas with a vast amount of streamflow do not necessarily have large populations. The TCEQ has a longstanding practice of utilizing water transfers to meet the needs of water-impoornished areas. Approximately 63 of the 150-plus permitted water transfers in Texas were permitted before the passage of the Clean Water Act of 1972. Under sections 101(g) and 510 of the Clean Water Act, permitting decisions regarding these water transfers should be left to the states. State law compels the TCEQ to consider, and where necessary, mitigate effects on water quality and the environment when permitting water transfers. Therefore, the TCEQ concludes that there is no need for federal regulation of water transfers.

Thank you for the opportunity to provide comments on this proposal. If you have comments or questions about the information herein, please contact Todd Chenoweth, Water Supply Division, at (512) 239-4483.

Sincerely,

Cherie Shackelford
Executive Director
From: Rubinstein, Carlos (Carlos Rubinstein)
To: Vickery, Mark
CC: Covar, Zak
Date: 3/23/2010 2:31 PM
Subject: Do you know...

If we ever commented on the June 13, 2008 FR notice from EPA re water transfers and NPDES applicability?

Sent on the Sprint® Now Network from my BlackBerry®
Hi Zak,

The attached comments were submitted April 8, 2008. Please let me know if this isn’t what you are looking for or if you need any additional information.

Thanks,
Tangle
Buddy Garcia, Chairman
Larry R. Soward, Commissioner
Bryan W. Shaw, Ph.D., Commissioner
Clint Shankle, Executive Director

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution
April 8, 2008

Water Docket, Environmental Protection Agency (EPA)
Mail Code 2822T, 1200 Pennsylvania Ave., NW.
Washington, DC 20460

Re: Docket ID Number EPA-HQ-OW-2005-0037 - Proposed Revisions to CAFO NPDES Rule

Dear Sir or Madam:

Thank you for the opportunity to comment on the proposed revisions to the Concentrated Animal Feeding Operation (CAFO) National Pollutant Discharge Elimination System (NPDES) rule as published in the March 7, 2008 Federal Register with a comment period ending April 7, 2008. As the agency with jurisdiction over Texas water quality programs, the Texas Commission on Environmental Quality (TCEQ) offers the following comments.

The general permit process, authorized by the Texas Legislature, is an expedited approach to issue permits to protect state water resources to dischargers of similar waste and type of operations using limited state resources. TCEQ adopted the CAFO general permit in 2004 for Texas Pollutant Discharge Elimination System (TPDES) CAFOs to be consistent with the 2003 changes in federal CAFO regulations. Subsequent to the adoption of the 2004 CAFO General Permit, TCEQ issued over 750 authorizations under the general permit to the majority of the CAFOs in the state.

In its Supplemental Notice of Proposed Rulemaking (SNPRM), EPA proposes three different approaches for Nutrient Management Plan (NMPs) but did not provide rule language that would be adopted to implement these approaches. Without the ability to review specific rule language, the TCEQ cannot adequately consider how CAFO permitting in Texas would ultimately be affected by the proposal. In addition, it is unclear from the proposal whether delegated states would have the authority to choose which approach is the most appropriate method for their regulatory program.

In addition, in the SNPRM, EPA asserts that the permitting authorities "have known for several years generally what will be required under the final rule . . . ." Therefore, EPA is proposing to give the states only six to eight months to incorporate the changes into their regulatory programs. This SNPRM is the first time EPA has proposed three different approaches to NMPs and has provided no rule language that may be adopted to implement the approach EPA finally elects to adopt. Six to eight months is not sufficient time to address the magnitude of the changes EPA is now proposing. The TCEQ will need to initiate amendments to the Subchapter B CAFO regulations to incorporate changes adopted by the EPA in this action. EPA should allow states a minimum of one year to adopt changes and two years if a statutory change is needed as is currently allowed under the Memorandum of Agreement between EPA and the TCEQ. We urge EPA to reconsider its deadlines in light of the changes it is now proposing.

The permitting process changes described in the proposed revisions to the CAFO rule would require CAFO applicants, under both general and individual permits, to submit an NMP for agency review and approval with an opportunity for public comment and public participation on the terms of the NMP. The proposed revisions, if adopted, would require a modification to the current TCEQ general permit process and more TCEQ staff resources to implement the proposed review, notice, comment, and public participation process for over 750 CAFOs in Texas.

F.O. Box 13087 • Austin, Texas 78711-3087 • 512-339-1000 • Internet address: www.tceq.state.tx.us
printed on request paper using non-lead ink
TCEQ needs flexibility to develop a process for determining when subsequent revisions of NMPs will require review, and of those reviewed, what will require public notice. TCEQ encourages EPA to consider providing latitude to delegated states to work within the processes they have already established. Depending on the federal CAFO amendments adopted, the NMPs for all Texas CAFOs may need to be revised annually when the soil test is received and waste/wastewater application rates or cropping patterns change. Due to limited state resources it would be nearly impossible to review these annually. TCEQ's primary concern is that repeated and frequent public notice for all NMPs will unnecessarily tax state resources that could be focused on more pressing environmental concerns.

TCEQ recommends allowing the terms of the NMP to be publicly noticed when the TCEQ proposes revisions to the CAFO general permit. Each individual CAFO should provide site specific information regarding its facility with the Notice of Intent application for coverage under the general permit to comply with the approach specified in the general permit. Substantial changes to a CAFO's NMP would include those changes related to substantial increases in environmental risk instead of simple inputs for rate calculations. For example, the process could focus on the CAFOs where nutrient management changes need to be made. The required annual reporting provides the agency with a way to monitor the success of the NMPs statewide because of the soil test analysis being reported. If the CAFO is failing to hold soil test phosphorus levels below the 200 ppm threshold, then changes in nutrient management would be required based on the TCEQ approved NUP, and the public could be provided with notice and the opportunity for comment. For other existing CAFOs that have NMPs that are producing satisfactory results relative to environmental indicators, they would be monitored through the annual reporting, which is part of the public record. There would be no need to use agency resources to review and then provide notice for public review and comment on the less substantial changes in those NMPs. TCEQ recommends this option be allowed by the final rule or sufficient flexibility provided to develop a workable approach which allows states the flexibility in defining which substantial changes require notice.

TCEQ accepts the National Resource Conservation Service (NRCS) 590 practice standard to meet CAFO rule requirements. TCEQ needs the latitude to continue to use the NMP content guidelines it has previously developed, specifically the acceptance of the NRCS 590 practice standard as a complete NMP. The Effluent Limitation Guidelines items EPA includes in their NMP template are already included in the Texas CAFOs pollution prevention plan and should not need to be duplicated in the NMP.

Thank you for the opportunity to comment on the proposed rules. If you have questions regarding these comments please contact Ms. L'Oreal Stepney at 512-239-1321, email at lstepney@tceq.state.tx.us.

Sincerely,

Glenn Stanke, Executive Director
Texas Commission on Environmental Quality
Checkin...

--------Original Message--------
From: Rubinstein, Carlos (Carlos Rubinstein)
Cc: Covar, Zak <ZCovar@tceq.state.tx.us>
To: Vickery, Mark <MVICKERY@tceq.state.tx.us>

Subject: Do you know...

If we ever commented on the June 13, 2008 FR notice from EPA re water transfers and NPDES applicability?

Sent on the Sprint® Now Network from my BlackBerry®
From: Zak Covar
To: Tangela Niemann
CC: Jim Harrison
Date: 3/23/2010 3:04 PM
Subject: Re: Comments on NPDES Regulations for CAFOs

Tangie,

I am looking for comments regarding the June 13, 2008 FR notice from EPA re water transfers and NPDES applicability.

Thanks

>>> Tangela Niemann 3/23/2010 2:59 PM >>>>
Hi Zek,

The attached comments were submitted April 8, 2008. Please let me know if this isn't what you are looking for or if you need any additional information.

Thanks,
Tangie
Here you go...
From: Zak Covar  
To: Kellye Rife  
CC: Ricky Anderson  
Date: 3/22/2010 10:53 AM  
Subject: Fwd: FW: Re: Fw: Gulf Coast Water Authority  

follow-up questions....thanks

>>> Shera Eichler <Shera.Eichler@house.state.tx.us> 3/22/2010 10:50 AM >>>

Zak --
Thanks for the information last week. I passed along TCEQ's response to Mr. Garrett and informed him of the interbasin transfer amendments that would be necessary to transfer contracted water to the canals in question.
He has followed up with a couple of questions regarding the length of the amendment application process (email below). Would it take up to 90 days to process the applications in question (similar to the pending Chocolate Bayou app?) Also, are there any options/benefits to filing the application ahead of time in case the need arises to process it in a much shorter time frame?
I have included previous correspondence for your reference -- please give me a shout if you need additional info.
Thanks again!

Shera Eichler  
Chief of Staff  
Office of State Rep. Dennis Bonnen  
512-463-0564

From: Jack Garrett [mailto:garrett]  
Sent: Saturday, March 20, 2010 11:36 AM  
To: Shera Eichler  
Cc: John Nielsen; Doug Markle; Jerry Locke; Larry Haugen; David Sauer; MRowe@brazoria-county.com  
Subject: RE: Re: Fw: Gulf Coast Water Authority

Thank you for the update Shera. In the event that water would need to be purchased under a contract, does Dennis have any idea how much time the process would take to get approval of the application for an "exempt interbasin transfer amendment" for the contract water? Time is of essence when such a need occurs. Is it possible to have an application on record ahead of time to expedite the process once the need occurs? As we saw this past year just getting the released water to our pumps takes about 10 days. Crops can suffer greatly from lack of water in 10 days. The ability to implement the process must be immediate when the water is needed.
Once again, thank you very much for your help on this issue.

From: Shera Eichler [mailto: Shera.Eichler@house.state.tx.us]  
Sent: Wednesday, March 17, 2010 10:57 AM  
To: Joanne Hooks  
Cc: John Nielsen  
Subject: FW: Re: Fw: Gulf Coast Water Authority

Mr. Garrett --

Dennis asked me to share this information with you...

To summarize TCEQ's response to our question about Gulf Coast's water transfer authorities to the various canals, Gulf Coast does have authorization to provide their own permitted water from the coastal basin to the American Canal, but if they purchase water under a contract from the Brazos River, they must submit an additional application for an "exempt interbasin transfer amendment" in order to transfer the contract water.

Additionally, Gulf Coast does have authorization to provide their own permitted water from the Brazos River to the Briscoe canal. But if they purchase water under a contract from the Brazos River to transfer to the Briscoe canal, they must submit an additional application for an "exempt interbasin transfer amendment" for the contract water.

The email below from TCEQ explains Gulf Coast's three existing certificates and interbasin transfer amendment options in greater detail.

Also, the amendment to add the exempt interbasin transfer for contract water purchased from the Brazos River to Chocolate Bayou has been drafted and sent to Gulf Coast for review. As soon as they approve it, the amendment will be forwarded for signature.

Sincerely,
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512-463-0564

EMAIL FROM TCEQ:

Certificate No. 12-5169
Gulf Coast has the authorization to use their permitted water in the coastal basin and this water can currently be provided to the American canal. They do not have Brazos River water under this certificate. All of this water comes from the coastal basin. Should they purchase water under a contract from the Brazos River to back up this certificate, an amendment for an exempt interbasin transfer for the contract water similar to the application we are currently processing.

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Status update:

Amendment to add the exempt interbasin transfer for water purchased from the Brazos River - a proposed draft amendment has been sent to the applicant for review. As soon as applicant approves, the amendment will be forwarded for signature.

From: Dennis Bonnen  
Sent: Friday, March 12, 2010 2:49 PM  
To: Shera Eichler; Carson Hooks  
Subject: Fwd: Gulf Coast Water Authority

Find out the answer and see what the progress is on Chocolate Bayou

--------------- Forwarded message ---------------
From: Jacko Garrett  
Date: Fri, Mar 12, 2010 at 2:01 PM  
Subject: RE: Gulf Coast Water Authority  
To: Dennis Bonnen  
Cc: John Nelsen; Jerry Locke; Larry Haugen  

Dennis, I would appreciate your checking with TCEQ to determine if Gulf Coast does need to submit an inter basin transfer for agriculture water use on the Brisco and American canals? Farmers are beginning to put rice in the ground. If these inter basin transfers are needed, we need to encourage Gulf Coast to move forward on the process.

From: Dennis Bonnen  
Sent: Friday, March 12, 2010 9:49 AM  
To: Jacko Garrett  
Cc: John Nelsen; Jerry Locke; Larry Haugen
Subject: Re: Gulf Coast Water Authority

Jacko let me know if they are need and I will do what I can. I know that the Chocolate Bayou application is moving along.

Dennis

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I visited with David Sauer yesterday. He said that he is not aware if the inter basin transfers have been submitted for the Brisco and Amaranian canals. The application for the inter basin transfer for the Chocolate Bayou Canal System was submitted over three weeks ago. David thought that the process would take 4-6 weeks with the state to have the transfer approved. I also saw Dennis Bonnen this past week, and we visited about the status of the applications. Dennis assured me that he will stay on top of the issue concerning our water.

David was not for sure if an inter basin transfers for the Brisco and American canal systems was necessary. Those two canals may not need the inter basin transfer for the use of agriculture water. I will keep you informed when David gets back to me. I am sure that Dennis can check with the state to be sure Gulf Coast does not drop the ball on the Brisco and American canal system in the event an inter basin transfers is in fact necessary for those two canals.
From: Connie Lucas
To: Zak Covar
Date: 3/17/2010 10:19 AM
Subject: Re: Fw: Fw: Gulf Coast Water Authority

aye, aye, Captain.....

>>> Zak Covar 3/17/2010 10:14 AM >>>
Ritz forward to shera and carson. Thanks! BlackBerry almost dead!
From: Zak Covar
To: Lucas, Connie
Date: 3/17/2010 10:14 AM
Subject: Fw: Fw: Gulf Coast Water Authority
Attachments: Re: Fw: Gulf Coast Water Authority

Plz forward to shera and carson. Thanks! BlackBerry almost dead!
From: Kellye Rila
To: Cavar, Zak
CC: Anderson, Ricky; Brookins, Linda; Ramirez, Kathleen; Stepney, L'oreal...
Date: 3/15/2010 10:45 AM
Subject: Re: Fw: Gulf Coast Water Authority

Zak:

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>>> Shera Eichler <Shera.Eichler@house.state.tx.us> 3/12/2010 2:59 PM >>>

Zak --

Are you able to shed some light on this? This is an expansion of the Gulf Coast Water Authority interbasin transfer amendment issue... Our rice farmers are now wondering if Gulf Coast is needing to apply for an interbasin transfer amendment for agriculture water use on the Brisco and American canals, in addition to the existing amendment application for Chocolate Bayou. If you happen to get the answer to this question by Monday, please be sure to include Carson in your response since I will be out of the office.

Thanks!
Shera

From: Dennis Bonnen <mailto:dbonnen>
Sent: Friday, March 12, 2010 2:49 PM
To: Shera Eichler; Carson Hooks
Subject: Fwd: Gulf Coast Water Authority

Find out the answer and see what the progress is on Chocolate Bayou

---------- Forwarded message ----------
From: Jacko Garrett <jgarrett@garrettfarms.com>
Date: Fri, Mar 12, 2010 at 2:01 PM
Subject: RE: Gulf Coast Water Authority
To: Dennis Bonnen
Cc: John Nielsen <jnielsen@riceter.com>, Jerry Locke <jlocke@riceter.com>, Larry Haugen <lhaugen@riceter.com>, Doug Merklie <dmerklie@riceter.com>, Jim Walker <jwalker@riceter.com>
Dennis, I would appreciate your checking with TCEQ to determine if Gulf Coast does need to submit an inter basin transfer for agriculture water use on the Brisco and American canals. Farmers are beginning to put rice in the ground. If these inter basin transfers are needed, we need to encourage Gulf Coast to move forward on the process.

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Sent: Friday, March 12, 2010 9:49 AM  
To: Jacko Garrett  
Cc: John Nelsen; Jerry Locke; Larry Haugen 
Subject: Re: Gulf Coast Water Authority

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From: Zak Covar
to: Kellye Rila
cc: Ricky Anderson
date: 3/22/2010 10:53 AM
subject: Fwd: FW: Re: Fw: Gulf Coast Water Authority

follow-up questions...thanks

>>> Shera Eichler <Shera.Eichler@house.state.tx.us> 3/22/2010 10:50 AM >>>

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Thanks again!

Shera Eichler
Chief of Staff
Office of State Rep. Dennis Bonnen
512-463-0564

From: Jack Garrett <mailto:jgarrett@garrettfarms.com>
sent: Saturday, March 20, 2010 11:56 AM
to: Shera Eichler
cc: John Nelsen; Doug Merkle; Jerry Locke; Larry Haugen; David Sauer; MIRuth@brazoria-county.com
subject: RE: Re: Fw: Gulf Coast Water Authority

Thank you for the update Shera. In the event that water would need to be purchased under a contract, does Dennis have any idea how much time the process would take to get approval of the application for an “exempt interbasin transfer amendment” for the contract water? Time is of essence when such a need occurs. Is it possible to have an application on record ahead of time to expedite the process once the need occurs? As we saw this past year just getting the released water to our pumps takes about 10 days. Crops can suffer greatly from lack of water in 10 days. The ability to implement the process must be immediate when the water is needed.
Once again, thank you very much for your help on this issue.

From: Shera Eichler <mailto:Shera.Eichler@house.state.tx.us>
sent: Wednesday, March 17, 2010 10:57 AM
to: jgarrett@garrettfarms.com
cc: dboone; Carson Hooks
subject: Fw: Re: Fw: Gulf Coast Water Authority

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Cc: John Nelsen; Jerry Locke; Larry Haugen
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From: Zak Covar
To: Shera Eichler
Date: 3/23/2010 4:18 PM
Subject: FW: Re: FW: Gulf Coast Water Authority

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>>> Shera Eichler <Shera.Eichler@house.state.tx.us> 3/22/2010 10:50 AM >>>

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Chief of Staff
Office of State Rep. Dennis Bonnen
512-463-0564

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Sent: Saturday, March 20, 2010 11:56 AM
To: Shera Eichler
Cc: John Nielsen; Doug Merkle; Jerry Locke; Larry Haugen; David Sauer; M Ruth@brazoria-county.com
Subject: RE: Re: FW: Gulf Coast Water Authority

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From: Shera Eichler [mailto:Shera.Eichler@house.state.tx.us]
Sent: Wednesday, March 17, 2010 10:57 AM
To: jarrett@garrettfarms.com
Cc: dbonnen, Carson Hooks
Subject: FW: Re: FW: Gulf Coast Water Authority

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Certificate No. 12-5171

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- There is a diversion point in the certificate on the Brazos River near Jones Creek, but no authorization to use the bed and banks of Jones and Oyster creeks to deliver water to the American canal under this particular certificate. An amendment to add the bed and banks authorization to this certificate would be subject to notice to downstream water right holders with the opportunity for a contested case hearing.

Certificate No. 12-5168

- Gulf Coast already has the authorization to use their water permitted under Certificate No. 12-5168 from the Brazos River to the Briscoe canal. Should they wish to convey water they purchase under a contract from the Brazos River to the canal, they would need an amendment for an exempt interbasin transfer for the contract water similar to the application we are currently processing.
- Transferring contract water to the American canal under this certificate would have the same issues as Certificate No 12-5171, above.

Status update:

Amendment to add the exempt interbasin transfer for water purchased from the Brazos River - a proposed draft amendment has been sent to the applicant for review. As soon as applicant approves, the amendment will be forwarded for signature.

From: Dennis Bonnen [mailto:dbonnen,
Sent: Friday, March 12, 2010 2:49 PM
To: Shera Eichler; Carson Hooks
Subject: Fwd: Gulf Coast Water Authority

Find out the answer and see what the progress is on Chocolate Bayou

---------- Forwarded message ----------
From: Jacke Garrett <jgarrett@garrettfarms.com>
Date: Fri, Mar 12, 2010 at 2:01 PM
Subject: RE: Gulf Coast Water Authority
To: Dennis Bonnen <dbonnen@
Cc: John Nelsen <jnelsen@ricetec.com>, Jerry Locke <jlocke@ricetec.com>, Larry Haugen <lhaugen@ricetec.com>, Doug Merkle <dmerkle@ricetec.com>, Jim Walker <jwalker@ricetec.com>

Dennis, I would appreciate your checking with TCEQ to determine if Gulf Coast does need to submit an inter basin transfer for agriculture water use on the Brisco and American canals? Farmers are beginning to put rice in the ground. If these inter basin transfers are needed, we need to encourage Gulf Coast to move forward on the process.

From: Dennis Bonnen [mailto:dbonnen]  
Sent: Friday, March 12, 2010 9:49 AM  
To: Jacko Garrett  
Cc: John Nelsen; Jerry Locke; Larry Haugen  
Subject: Re: Gulf Coast Water Authority

Jacko let me know if they are need and I will do what I can. I know that the Chocolate Bayou application is moving along.
Dennis

On Fri, Mar 12, 2010 at 9:23 AM, Jacko Garrett <jgarrett@garrettfarms.com> wrote:

I visited with David Sauer yesterday. He said that he is not aware if the inter basin transfers have been submitted for the Brisco and Amaracian canals. The application for the inter basin transfer for the Chocolate Bayou Canal System was submitted over three weeks ago. David thought that the process would take 4-5 weeks with the state to have the transfer approved. I also saw Dennis Bonnen this past week, and we visited about the status of the applications. Dennis assured me that he will stay on top of the issue concerning our water.

David was not for sure if an inter basin transfers for the Brisco and American canal systems was necessary. Those two canals may not need the inter basin transfer for the use of agriculture water. I will keep you informed when David gets back to me. I am sure that Dennis can check with the state to be sure Gulf Coast does not drop the ball on the Brisco and American canal system in the event an inter basin transfers is in fact necessary for those two canals.
From: Mark Vickery
To: Wilson, Kim
Date: 3/23/2010 3:55 PM
Subject: Re: Carrizo-Wilco Update

thanks Kim!

Mark-

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On-Line Survey
The on-line survey is in process and the contractor has been working to respond to questions about both the submission process and questions/comments submitted by stakeholders through the survey.

Data
The contractor has contacted USGS to obtain additional information on recharge to the aquifer based on recent studies age dating groundwater in the southern part of the aquifer. Regional recharge estimates based on groundwater chloride data are being evaluated.

Kimberly Wilson, Special Assistant Umc or water
Phone: 512-239-4644

Please consider whether it is necessary to print this e-mail
From: Kim Wilson
To: Vickery, Mark
CC: Stepney, L'oreal
Date: 3/23/2010 3:50 PM
Subject: Carrico-Wilcox Update

On-Line Survey
The on-line survey is in process and the contractor has been working to respond to questions about both the submission process and questions/comments submitted by stakeholders through the survey.

Data
The contractor has contacted USGS to obtain additional information on recharge to the aquifer based on recent studies age dating groundwater in the southern part of the aquifer. Regional recharge estimates based on groundwater chloride data are being evaluated.

Kimberly Wilson, Special Assistant Office of Water
Phone: 512-239-4644

Please consider whether it is necessary to print this e-mail.
March 10, 2010

Mr. Larry R. Soward
7550 Kirby Drive, No. 1042
Houston, Texas 77030-4375

RE: Letter Received March 1, 2010

Dear Mr. Soward:

This letter is in response to your letter that we received on March 1, 2010. According to your letter, you state that you are a former member of the Texas Commission on Environmental Quality (TCEQ) and that you "have been engaged by the Galveston-Houston Association for Smog Prevention (GHASP) as a consultant to assist that organization in the Sunset Review process relating to the TCEQ." You also state that GHASP is a non-profit, tax-exempt organization. Furthermore, you refer to section 572.002 of the Government Code and Ethics Advisory Opinion No. 232 and ask whether certain activity is prohibited by section 572.054(a) of the Government Code. Your letter also states, in part:

Accordingly, I respectfully request your review of these facts in light of the applicable statutory provisions and related Advisory Opinions, and confirmation that under the facts applicable to me, I am not prohibited from appearing before or communicating with current commissioners or employees of the TCEQ on behalf of GHASP in connection with any matter on which GHASP seeks official agency action, even with the intent to influence agency action.

In Ethics Advisory Opinion No. 232, the Texas Ethics Commission addressed whether a former executive head of a regulatory agency may appear before or communicate with the agency on behalf of another unit of government or a nonprofit association for compensation immediately after leaving employment with the agency. Ethics Advisory Opinion No. 232 (1994). The commission stated that the prohibition applies to efforts "on behalf of any person" and that the applicable definition of "person" under sections 572.002(2) and 572.002(7) does not include a nonprofit entity or a governmental body. Id. Thus, the commission concluded that the prohibition under section 572.054(a) does not prohibit a former executive head of a regulatory agency from appearing before or communicating with the agency on behalf of a nonprofit entity or a governmental body. Id. The commission also determined in Ethics Advisory Opinion No. 220 that a nonprofit organization is not a "person" for purposes of the revolving door prohibition of section 572.054, Government Code. Ethics Advisory Opinion No. 200 (1994). Based on those opinions, section 572.054(a) of the Government Code would not prohibit a former member of a regulatory agency from appearing before or communicating with the agency on behalf of a nonprofit entity or a governmental body.
Mr. Larry R. Soward  
March 10, 2010  
Page 2 of 2

Regarding your specific situation, if you, as a former member of the governing body of a regulatory agency, are communicating with or appearing before an officer or employee of the agency to influence official action on behalf of a nonprofit association or nonprofit organization in connection with a matter on which the association or organization seeks official action, and you are not making the communication or appearance on behalf of a business entity, then the activity would not be prohibited by the revolving door prohibition under section 572.054(a), Government Code, in accordance with Ethics Advisory Opinion Nos. 232 and 220.

We hope that this letter addresses your concerns. If you have any questions or wish to discuss this matter further, please feel free to contact us.

Sincerely,

[Signature]

Natalia Luna Ashley  
General Counsel

Ref: ID# 28052

NLA:my
March 12, 2010

Les Trobman, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087, MC-101
Austin, Texas 78711-3087

Re: In Re: TPDES Permit No. WQ0013847001.

AGREED MOTION TO CONTINUE AGENDA MEETING AND
FOR OTHER PROCEDURAL RELIEF

General Counsel Trobman:

This firm represents the North Texas District Council of the Assemblies of God (the "District"), the applicant in the above-referenced matter. Pursuant to 30 TAC § 10.4, the applicant District requests that consideration of this matter, currently scheduled for the Commission’s March 30, 2010 Agenda Meeting, be continued to the Commission's May 19, 2010 Agenda Meeting to allow for continued efforts of the District and hearing requester Dr. Frederick Sklar for mediation. A mediation was held on February 26, 2010, and the parties are engaging in various forms of due diligence towards amicable resolution and request this extension of time to further those conciliatory efforts.

Tied to the applicant and hearing requester's agreement for the above-referenced continuance, and pursuant to 30 TAC § 1.10(h), the applicant District respectfully requests that the Commission or General Counsel waive the requirement that by January 29, 2010, the District file its response to Dr. Sklar's Request for Contested Case Hearing and Request for Reconsideration, and that the District be permitted to file a response to applicant Dr. Sklar's Request for Contested Case Hearing and Request for Reconsideration on or before 5:00 p.m. on April 16, 2010. This firm was engaged by the District after the original response deadline, and since that time we have been diligent in trying to investigate and resolve the matter in conjunction with Dr. Sklar and his attorney.

These requests are not for delay, but are to provide time necessary for potential amicable resolution of this matter.
Les Trohman, General Counsel, TCEQ
Re: In Re: TPDES Permit No. WQ0013847001
Date March 12, 2010
Page 2 of 4

I have confirmed with Patrick Larkin, counsel for Dr. Sklar, that these requests are agreed upon, and they are tied to one another insofar as the agreement of the parties is concerned. TCEQ ADR representative, Kyle Lucas; Executive Director representative, Stefanie Skogen; and OPIC representative, Eli Martinez, have no objection to the relief requested.

Thank you for your attention to this matter. Should you have any questions, please contact me at 817-795-5046.

Sincerely,

[Signature]

Cory Haliburton
For the firm

c: Mailing List
Les Trobman, General Counsel, TCEQ  
Re: In Re: TPDES Permit No. WQ0013847001  
Date March 12, 2010  
Page 3 of 4

Mailing List  
North Texas District Council Assemblies of God  
TCEQ Docket no. 2010-0024-MWD

**Texas Commission on Environmental Quality**  
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Environmental Law Division  
P.O. Box 13087, MC173  
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**North Texas District Council Assemblies of God**  
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North Texas District Council Assemblies of God  
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**Representing Frederick Sklar, M.D.**  
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Strasburger and Price, LLP  
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**Alternative Dispute Resolution**  
Kyle Lucas,  
Texas Commission on Environmental Quality  
Alternative Dispute Resolution, MC-222  
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Austin, Texas 78711-3087

**Representing the office of Public Interest Counsel**  
Blas J. Coy, Jr.  
Texas Commission on Environmental Quality  
Office of Public Interest Counsel, MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087

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(214) 651-4330 – facsimile & email

(512) 239-4007 – facsimile

(512) 239-4015 – facsimile & email

(512) 239-6377 – facsimile
Les Trobman, General Counsel, TCEQ
Re: In Re: TPDES Permit No. WQ0013847001
Date March 12, 2010
Page 4 of 4

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