



Published Quarterly for Members of the Texas Lone Star Chapter of SWANA

Texas and EPA Arm-Wrestle Over Clean Air

By Jeffrey Reed

The ongoing dispute between the Environmental Protection Agency (EPA) and the State of Texas over the state's air program has continued to heat up. This article will attempt to update the reader on the rapidly changing status of the dispute. Although this issue is not specific to MSW facilities, the implications of the dispute reach virtually every industry in Texas.

The story actually goes back decades, but we'll start in August, 2008, when the Business Coalition for Clean Air, an industry coalition, and others filed suit against EPA, complaining that EPA had failed to perform its duties by not taking action on several provisions of the State Implementation Plan ("SIP"). A SIP is a plan that each state must file with the EPA explaining how the state will meet EPA's air quality requirements. The EPA can approve or disapprove an entire SIP, but more often, it approves parts, disapproves parts, and as in this case, approve some parts and take no action on other parts. Those parts that it takes no action on can still be used by the states, but at the risk that the EPA will later disapprove them. EPA settled the suit in 2009, agreeing to take action according to a set timeline

on certain parts of the SIP it had neither approved or disapproved.

On April 14, 2010, EPA took final action on the first of these programs, disapproving the state's "Qualified Facilities Program." The Qualified Facilities Program authorizes changes at facilities so long as emissions do not increase above the thresholds that require a federal new source review, and the plant uses best available control technology ("BACT") no more than 10 years old. At that time, EPA also began objecting to certain Title V permit applications approved by TCEQ, culminating in objections to approximately forty applications. EPA then "federalized" three of those applications, issuing letters requiring those facilities to apply to EPA instead of the TCEQ for their Title V permits. In response, the State filed suit in the Fifth Circuit Court of Appeals seeking a review of the EPA's decision. The three "federalized" applicants also began negotiations with EPA regarding efforts to satisfy EPA's objections while allowing TCEQ to issue the permits.

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Message from the President

By Brenda Haney

It is my distinct honor & privilege to serve as President of such a terrific organization. Over the years, TxSWANA has grown not only by the numbers of members but most importantly in its reputation as the premier organization for solid waste professionals in Texas. It is through your membership and participation that this organization grows and prospers.

Recently, we have been working closely with the TCEQ on licensing requirements, types & training options and will continue to monitor the rule-making to ensure that the needs of our industry are satisfied. We are also working closely on rules involving the Public Utility Commission (PUC) that would increase the value of energy or electricity generated from Landfill Gas to Energy (LFGTE) projects. TxSWANA's efforts continue to focus on the value of the LFGTE projects and on the resulting Renewable Energy Credits (RECs) that can then be subsequently sold. Also, the 82nd Legislature is just around the corner. Rest assured, TxSWANA's Board of Directors will be closely monitoring the proposed bills to protect the interests of our membership.



Also, your Board of Directors works hard for you throughout the year whether it be reviewing proposed rules, monitoring the legislature, identifying safety concerns or evaluating new technologies and there are many opportunities for our members to get involved and help better our organization. Please check out our website for committees, the road-e-o, conferences, etc. for opportunities to get involved. We would love to have you!

I would like to take this opportunity to thank our Past President, Ron Smith – City of Dallas, for his tireless efforts over the past two years. Ron has provided great leadership and guidance for our organization and I hope to keep the momentum moving ahead – thank you Ron!

Again, I am truly honored to serve as your president and I look forward to meeting you and working with you all over the upcoming two years!

Thank you for this opportunity!

Brenda Haney

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Then on July 15, 2010, EPA took final action to disapprove Texas' flexible permit program. That program allows facilities to increase the emissions at one part of a facility if those emissions are offset at another portion of the facility. Texas again filed suit in the Fifth Circuit seeking review of this decision. Concurrently, EPA also disapproved the state's Pollution Control Project Standard Permit, claiming that the types of projects potentially falling under the pollution control projects heading are too variable to qualify for a standard permit.

Still remaining to be ruled upon by EPA are: Senate Bill 7 Trading Program and Texas Chapter 116 NSR Rule Revisions (December 31, 2010), System Cap Trading Program (December 31, 2010), Standard Permits (October 31, 2011), Pipeline Facility Reimbursements (December 31, 2013), FutureGen (December 31, 2013), House Bill 3732, Advanced Clean Energy Project Permitting (December 31, 2013), and Senate Bill 1673 Concurrent Review of Permit Renewals and Permit Amendments (December 31, 2013).

These issues foreshadowed another area where Texas and EPA have not found common ground – EPA's efforts to regulate greenhouse gases ("GHGs"). This story's beginning is also hard to pinpoint, so we will begin in December 2009, when EPA issued its "endangerment finding," finding that GHGs cause or contribute to the endangerment of human health and the environment. The endangerment finding provides the basis that would allow EPA to begin regulating GHGs under the Clean Air Act. On June 3, 2010, EPA followed this finding with the "Tailoring Rule," which limits the applicability of GHG regulations to only large sources of GHG emissions initially, and brings in smaller sources over time.

In response, in February 2010, Texas, along with several other states, filed a Petition for Reconsideration of the endangerment finding, and filed a concurrent suit in the District of Columbia Court of Appeals to overturn the endangerment finding. In this case, the states argue that the methodology used by EPA to reach its conclusions is "fundamentally flawed and legally unsupported." Texas has since filed a motion in the suit, requesting that the court stay implementation of the endangerment finding and tailoring rule.

In the meantime, EPA has taken the position that GHG regulation will move forward with or with-

out the State of Texas. On September 2, 2010, EPA proposed a rule that would find that the SIPs of thirteen states, including Texas, are "substantially inadequate to meet Clean Air Act (CAA) requirements because they do not appear to apply PSD requirements to GHG-emitting sources." The rule would impose a "SIP call" that would require the states to revise their SIPs within one year of the final finding of inadequacy. EPA, in a separate rule published on the same day, proposed a Federal Implementation Plan ("FIP") that would apply to any state that does not submit a revised SIP. The FIP would "apply the PSD program to GHG sources in the State."

This action by EPA followed an August 2, 2010 letter from Commissioner Shaw and Attorney General Abbott to the EPA. In that letter, they stated that "Texas has neither the authority nor the intention of interpreting, ignoring, or amending its laws in order to compel the permitting of greenhouse gas emissions."

The disputes over Texas' air program have created a climate of uncertainty in which governmental entities and industries in Texas are having to function. Both EPA and Texas have stated their intention to work through the issues and provide the certainty that these entities need. Hopefully, their intention will come to fruition soon.

Paul Gosselink is the head of the Firm's Air & Waste Practice Group and counsels clients on many issues related to climate change and carbon credits. Jeff Reed is an Associate in the Air & Waste Practice Group. If you have any questions about these programs or what projects might be eligible, you may contact Paul Gosselink at pgosselink@lglawfirm.com or 512-322-5882 and Jeffrey Reed at jreed@lglawfirm.com or 512-322-5885

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Driving Safely



By

Ellen Jensen

October 4–8, 2010 was Drive Safely Work Week sponsored by the Network of Employers for Traffic Safety (NETS). “This year’s campaign is focused on the dangers of distracted driving.” While the National Highway Traffic Safety Administration (NHTSA) reports that motor vehicle fatalities have gone down in recent years because newer cars have better safety features and more drivers and passengers are using seat belts, the number of traffic deaths caused by distracted driving from the increased use of electronic gadgets has gone up.

What is distracted driving? It is any non-driving activity that takes the driver’s attention from the primary task of operating the vehicle and increases the risk of crashing. There are three main types of distraction.

1. **Visual**—taking your eyes off the road
2. **Manual**—taking your hands off the wheel
3. **Cognitive**—taking your mind off your driving

Why It Matters...

- The NHTSA estimates that more than half a million people are injured and nearly 6,000 die annually in crashes involving a distracted driver. Most dangerous of all is texting because it involves all three types of distraction—visual, manual, and cognitive.
- Drivers who send and receive text messages take their eyes off the road for an average of 4.6 seconds out of every 6 seconds while texting.
- At 55 miles per hour, this means that the driver is traveling the length of a football field, including the end zones, without looking at the road.
- Drivers who text are more than 20 times more likely to get into an accident than non-distracted drivers.

Common activities that can distract a driver

- Using a cell phone (delays a driver’s reactions as much as having a blood alcohol concentration at the legal limit of .08 percent)
- Eating, drinking, or grooming
- Talking to passengers
- Reading, including maps
- Using a PDA or GPS
- Watching a DVD
- Changing the radio station, CD, or Mp3 player
- Texting
- Exhaustion and Fatigue



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Avoid distracted driving by following these safety practices

- Pull over to a safe place if a call must be made or received while on the road.
- Consider modifying voice mail greeting to indicate that you are unavailable to answer calls or return messages while driving.
- Get plenty of rest before driving.

**Solid Waste Drivers must focus on driving
for the safety of the residents of the entire city.**

The **Safety Management and Resource Team** is a network of Safety professionals organized to effectively share methods of injury and collision prevention. Contact David Vartian at 214-671-8848 to obtain safety support, exchange safety strategies, or to arrange an onsite audit of your work practices.



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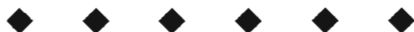
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SWANA International Road-E-O

The 2010 International Road-E-O was hosted by the Arizona SWANA Chapter on Sept. 4, 2010 | University of Phoenix Stadium | Glendale, AZ

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- St. Petersburg Times



Congratulations to all the International Road-E-O Winners!

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2010 TXSWANA INTERNATIONAL ROAD-E-O WINNERS

15 Participants from the 2010 TXWANA State Road-e-o participated in the 2010 SWANA International Road-e-o in Glendale, Arizona.

The following placed within the top 3 of their Category:

Automated Sideloader – 3rd Place, Bradley Robertson, City of Plano

Tractor Trailer – 3rd Place, Daniel Palomo, City of Houston

Track/Dozer – 3rd Place, Gabriel Rodriguez, City of Denton

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