



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

Greenhouse Gases – The Next Chapter

by

Jeffrey Reed and Paul Gosselink

January 2, 2011. It's an odd date for new regulations to take effect -- you'd normally expect a January 1 effective date. But then, greenhouse gas ("GHG") regulations, and the story behind them, are rather odd, so maybe the date makes sense in a Zen-like way. Regardless, the effective date has come and gone, with significantly less fanfare than New Years Eve. But the effects of this odd date on solid waste facilities and the entire economy will be felt far longer than were the New Year's celebratory hangovers.

For many of you, the history of greenhouse gas regulation will be familiar:

how on April 2, 2007, the U.S. Supreme Court issued its decision in *Massachusetts v. EPA*, requiring the EPA to either regulate greenhouse gases under the Clean Air Act ("CAA") or explain why it should not;

how on January 14, 2010, the EPA's "Endangerment Finding," in which it determined that GHGs endanger human health and the environment, became effective;

how on March 29, 2010, EPA reconsidered its "Johnson memorandum," confirming its position that once GHGs from mobile sources are regulated by the CAA, then GHGs from stationary sources become automatically subject to the Prevention of Significant Deterioration ("PSD") and Title V programs of the CAA;

how on May 7, 2010, EPA finalized its "light duty vehicle rule" to begin regulating GHGs from mobile sources on January 2, 2011;

how on June 3, 2010, EPA, realizing that neither it nor the states that implement the CAA have the resources necessary to apply the CAA to the millions of sources of GHGs covered by the CAA's thresholds, published its final "Tailoring Rule" to "tailor" the CAA to phase in regulation of GHGs over time; and

how throughout this entire story, Congress has done what it so often does -- nothing; nothing to take over regulation of GHGs and nothing to stop the EPA's regulatory wheels from turning steadily toward regulation of GHGs.

This article will not dwell on the past; it will focus on where GHG regulation is (or is going) now that the effective date of the rules has come and gone, and in particular, where Texas sources, and particularly solid waste facilities, now stand in relation to these new rules.

(Continued on page 5)

Table of Contents

President's Message	3
EWS Wins Two Green3 Awards and Statewide Recognition	7
Call for Papers	10
New Members / Calendar of Events	12

TxSWANA

Officers & Board of Directors

President:

Brenda A. Haney, P.E.
City of Irving
825 W. Irving Blvd.,
Irving, TX 75060
(972) 721-2349
bhaney@cityofirving.org

Vice President:

Michael G. Rice, P.E.
City of Amarillo
509 E 7th Avenue
Amarillo, TX 79105
(806) 378-9337
michael.rice@amarillo.gov

Treasurer:

Ellen A. Smyth, P.E.
City of El Paso
7968 San Paulo Drive
El Paso, TX 79907
(915) 621-6719
smythea@elpasotexas.gov

Secretary:

David W. McCary
City of San Antonio
4410 W. Piedras Drive
San Antonio, TX 78228
(210) 207-6471
david.mccary@sanantonio.gov

Past President:

Ron Smith
City of Dallas
3112 Canton Street, Suite 200
Dallas, TX 75226
(214) 670-3555
ron.smith@dallascityhall.com

IB Rep:

Vance Kemler
City of Denton
1527 Mayhill Road
Denton, TX 76208
(940) 349-8002
vance.kemler@cityofdenton.com

Director:

David Ivory
City of Brownsville
2731 Sweet Street
Brownsville, TX 78521
(956) 203-7201
divory@rgv.rr.com

Director:

Paul Gosselink
Lloyd , Gosselink,
Rochelle & Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, TX 78701
(512) 322-5806
pgosselink@lglawfirm.com

Director:

Bill R. Hindman P.E.
Chiang, Patel & Yerby, Inc.
1820 Regal Row, Suite 200
Dallas, TX 75235
(214) 638-0500
bhindman@cpyi.com

Director:

Lawrence Mikolajczyk
City of Corpus Christi
P.O. Box 9277
Corpus Christi, TX 78469
(361) 826-1966
lawm@cctexas.com

Director:

Bengy Williams
City of Beaumont
4955 Lafin Road
Beaumont, TX 77704-3827
(409) 842-1483
bwilliams@ci.beaumont.tx.us

Director:

Mary Nix, P.E.
City of Dallas
3112 Canton Street, Suite 200
Dallas, TX 75226
(214) 670-3555
mary.nix@dallascityhall.com

Director:

Robert H. "Holly" Holder, P. E.
Parkhill, Smith & Cooper
4222 85th Street
Lubbock, TX 79423
(806) 473-2200
hholder@team-psc.com

Director:

Pete Caler
City of College Station
P.O. Box 9960
College Station, TX 77842
(979) 764-3808
pcaler@cstx.gov

Director:

Lonnice Banks
City of Garland
1434 Commerce Street
Garland, TX 75040
(972) 205-3424
lbanks@ci.garland.tx.us

Director:

Richard McHale
City of Austin
P.O. Box 1088
Austin, TX 78767
(512) 974-4301
richard.mchale@ci.austin.tx.us

Director:

James Ballowe
University of Houston
4211 Elgin Street, Room 177A
Houston, TX 77204-1006
(713)743-5686
jballowe@central.uh.edu

Director:

Harry Hayes
City of Houston
611 Walker
Houston, TX 77002
(713) 837-9103
harry.hayes@cityofhouston.net

Director:

Hector Chavez
City of Eagle Pass
100 South Monroe Street
Eagle Pass, TX 78852
(830) 773-9408
hchavez@eaglepasstx.us

Visit www.swana.org for a membership application.

Message from the President

By Brenda Haney

Hello TXSWANA Members and Happy New Year!

It's hard to believe that it's already 2011. I know that 2010 was a challenging year for many of us – both professionally and personally but I am excited as we look forward to the year ahead.

First, the 82nd Legislature is in session and TXSWANA is already working to support valuable legislation and sometimes, more importantly, working hard to keep legislation that could be harmful to our industry from moving forward.

The 2011 TXSWANA Conference is fast approaching! We will be in Irving this year April 17-20, 2011 in the brand new Irving Convention Center. The Irving Convention and Visitor's Bureau is anxious to welcome us all into the LEED Certified Convention Center – the first of its kind in Texas! This year's event will look to the future in sustaining our operations, our workforce, our facilities and our fiscal stability. Registration packages will be sent soon – stay tuned for more information!



The 2011 TXSWANA Road-E-O will be in Dallas May 13 & 14. Plan your trip now for some Trash Trucks & Two-Steppin'. The competition will be held at Hensley Field and we will again have the opportunity to have our collection crews compete alongside our landfill crews. It is always so much fun to have the entire group at one location – hope to see you all there!

We may still have some tough times and challenges ahead but I am certain of one thing if there is one group that can get it done – it is a group of solid waste professionals. A group that everyday proves its commitment and spirit by simply finishing the task at hand no matter what the circumstances – trucks are down, partners are absent, it's dreadfully hot or cold or pouring down rain. As we face the challenges of 2011, take it one day at a time and know that this organization is there to help or support in any way we can.

Take care and we will see you all in Irving in 2011!

Brenda Haney

SAVE THE DATE

TXSWANA Annual Conference

April 17-20, 2011

Irving, TX

**This conference will be held in the brand
new, LEED Certified,
Irving Convention Center**

Registration packages will be sent soon –
stay tuned for more information!



(Continued from page 1)

Under the Tailoring Rule, starting on January 2, 2011, and continuing for six months thereafter (Phase 1), the only sources that will be subject to GHG regulations are those sources already subject to the PSD and Title V programs. Those facilities that open their existing PSD permits, or are required to have a new PSD permit for some pollutant other than GHGs, will be required to incorporate Best Available Control Technology (“BACT”) for GHGs into their permits. Following Phase 1 and for the following two years (Phase 2), new facilities that emit 100,000 tons per year of GHGs (measured as CO₂e), and existing facilities that emit 100,000 tons of CO₂e per year, will be required to obtain a PSD permit and to implement BACT for their GHG emissions. What happens in Phase 3 has not been proposed, but an additional rulemaking in 2011 to address GHG emissions for other sources post-2016 is promised.

But Texas, along with several other states and industry groups, has filed suit in federal court in the District of Columbia against the EPA, arguing that the EPA lacks the authority to regulate GHGs in the way it is proposing. Texas asked the court to stay implementation of the proposed GHG regulations, which motion was denied on December 10, 2010. Texas alone has nonetheless refused to implement the GHG regulations pending the outcome of the case. In a letter dated August 2, 2010, Bryan Shaw, Chairman of the TCEQ, and Greg Abbott, the Attorney General of Texas, advised the EPA of Texas’ position 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.”

Since Texas has made clear that it will not impose GHG requirements on PSD permits, the EPA has made it equally clear, in a letter dated December 23, 2010, entitled “Open Letter to Permit Holders and Interested Members of the Public,” that “GHG permitting in Texas will be handled directly by EPA beginning on January 2, 2011.” According to the letter, EPA’s Region 6 office will be “handling the permit application process, including the application reviews, BACT determinations, permit construction, and federal public notice and comment provisions of PSD greenhouse gas permitting for sources in Texas.” The letter further states that “EPA intends to fully enforce the greenhouse gas provisions of the Clean Air Act.”

On January 3, 2011, the Court of Appeals for the District of Columbia issued an order staying EPA’s plan to take over GHG permitting in Texas and giving hope to the State that GHG regulation might be stopped. The stay was issued “to give the court sufficient opportunity to consider the merits of [Texas’] motion for a stay and should not be construed in any way as a ruling on the merits of that motion.” However, on January 12, 2011, the court lifted the emergency stay, allowing the EPA to issue permits for large stationary sources of greenhouse gas emissions in Texas while the court further considers the merits of the case.

On that same day, EPA took a step of particular importance to solid waste facilities that either convert landfill gas to energy or convert waste directly to energy. The EPA announced plans to defer, for three years, GHG permitting requirements for biogenic carbon dioxide (meaning carbon dioxide emissions “generated during the combustion or decomposition of biologically based [as opposed to fossil-fuel based] material”). The deferral is expected to allow sources that emit carbon dioxide from

“GHG permitting in Texas will be handled directly by EPA beginning on January 2, 2011.”

biogenic sources to subtract biogenic carbon dioxide from their calculations when determining whether they fall within the Tailoring Rule. Because a great deal of a landfill, landfill-gas-to-energy, or waste-to-energy, facility’s emissions are

biogenic, this is particularly important for solid waste facilities. During the three year stay, EPA intends to study whether biogenic carbon dioxide should be permanently excluded from GHG regulations. Note, however, that this rule has not yet been formally proposed, and even when proposed, is not expected to affect a facility’s obligations to report under the GHG monitoring rule.

For those that still fall within the Tailoring Rule’s reach, this state of affairs puts those needing PSD permits squarely in the crossfire between the two agencies. Potential permittees can choose to: (1) put off investments in construction and/or modifications that might trigger PSD permitting until the status of GHG regulation is more certain; (2) apply to EPA for an additional permit that does reflect BACT for GHGs; or (3) construct and

Continued on page 6

(Continued from page 5)

operate under a Texas-issued PSD permit that does not reflect BACT for GHGs.

All of these options carry certain risks. For those who put off making investments while awaiting certainty, there is no way to predict how long it will be before that certainty comes. Such certainty would require that: (1) Congress act to preempt the EPA from regulating GHGs; (2) the courts find that the EPA does not have authority to regulate GHGs and all appeals have been exhausted; or (3) the courts find that the EPA does have authority to regulate GHGs, all appeals have been exhausted, and Texas promulgates regulations to cover GHGs. Only the first option could provide certainty in a relatively short period of time.

Those persons who apply to the EPA for permitting of GHGs risk the time and expense of completing two separate applications, and submitting those applications to two separate reviewing authorities that are already at odds, and negotiating a final permit (or set of permits) that harmoniously incorporates the requirements of each. This course of action risks that at some point after significant time and resources have been expended, either Congress or the courts act to remove or modify the EPA's authority to regulate GHGs.

Entities who construct facilities and operate them under a Texas-issued PSD permit that does not reflect BACT for GHGs also accept several risks. The most obvious risks are enforcement by the EPA and legal challenges to permits by protestants. The less obvious risk is getting pulled into the EPA's regulatory scheme even after having survived the risk of enforcement and legal challenges. All PSD permits are required to be reflected in a facility's Title V permit, which must be periodically renewed, and TCEQ rules provide the EPA with an opportunity to review and object to a Title V permit renewal. The EPA has shown that it is willing to object to, and even federalize, Title V permit renewal applications, as it has done recently with respect to flexible Title V permits and to Title V permits that incorporate underlying permits by reference. The EPA is likely to object to any facility's Title V permit where that Title V permit incorporates an underlying

PSD permit that does not include GHG BACT if EPA believes that GHG BACT is required. Although a Title V applicant is protected by the "application shield," allowing it to continue to operate pending approval of its Title V application, EPA could federalize, and then deny, a Title V renewal application that does not contain GHG BACT. Once a renewal application has been denied (as opposed to having been objected to), a facility could not legally continue to operate.

Some members of Congress have indicated their desire to curb EPA's GHG regulatory authority, but are still very early in the process. Republicans in the House have proposed three different bills that would either eliminate, delay, or cut funding for GHG regulation by the EPA. In the Senate, Senator Jay Rockefeller, a Democrat from West Virginia, has stated that he plans to reintroduce his bill from the previous session that would delay GHG regulation. Because new bills cannot be introduced in the Senate yet, this bill would not hit the floor until January 25, 2011 at the earliest.

In the meantime, the EPA has announced that, in response to two separate lawsuits settled in December, it intends to propose new source performance standards ("NSPS") for GHG emissions from both electric generation units and refineries. NSPS standards differ from BACT standards in that, where BACT standards require a case-by-case analysis, NSPS standards set a baseline for emissions common to all facilities of a specific type. Under the settlements, the EPA is required to issue the NSPS standards for electric generation units by July 26, 2011, to finalize those standards by May 26, 2012, to issue the NSPS standards for refineries by December 15, 2011, and to finalize those standards by November 15, 2012. Those rules can be expected to draw further legal challenges.

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

EWS Wins Two Green3 Awards and Statewide Recognition

The City of Garland's Environmental Waste Services Department was recently honored with two first place Green3 Awards from the North Central Texas Recycling Association and three second place awards from the State of Texas Association of Recycling.



GISD representatives Jeanette O'Neal and Charles Alexander and EWS representative Glenna Brown accept the Radical Recycling on Campus Award from Shirlene Sitton, NTCRA Vice President

The NTRCA **Radical Recycling on Campus** award recognized the partnership between EWS and Garland Independent School District (GISD) as they rolled out the single stream recycling initiative, proving that education, cooperation and financial incentives are keys to a successful recycling program. In August, 2009, single stream recycling was introduced to all 80 GISD campuses. GISD and EWS collaborated to create a recycling video, classroom posters and container signage to ensure that all students, faculty and administrative personnel were educated on what to recycle and how to minimize contamination. From August of 2009 through May of 2010, GISD recycled 543.5 tons of materials and saved more than \$120,000 in disposal costs, in addition to making \$6,000 on their rebate program with the recycling processor.

(Continued on page 8)

EWS Wins Two Green3 Awards and Statewide Recognition

The City of Garland's Environmental Waste Services Department was recently honored with two first place Green3 Awards from the North Central Texas Recycling Association and three second place awards from the State of Texas Association of Recycling.

*The NTRCA **Radical Recycling on Campus** award recognized the partnership between EWS and Garland Independent School District (GISD) as they rolled out the single stream recycling initiative, proving that education, cooperation and financial incentives are keys to a successful recycling program. In August, 2009, single stream recycling was introduced to all 80 GISD campuses. GISD and EWS collaborated to create a recycling video, classroom posters and container signage to ensure that all students, faculty and administrative personnel were educated on what to recycle and how to minimize contamination. For August, 2009 through May, 2010, GISD recycled 543.5 tons of materials and saved more than \$120,000 in disposal costs, in addition to making \$6,000 on their rebate program with the recycling processor.*

*The **Completely Looped Recycled Product Award** honored EWS and Elbert Liu, a Garland resident, who first attended one of the EWS backyard composting classes in May, 2009. Elbert's goal in attending the class was to learn about composting, but the "bonus," as he calls it, was the course chapter on worm composting. That introduction to vermicomposting lead Elbert in June, 2009 to start his own worm composting business that has turned into a profitable business venture, while significantly impacting his waste stream. He has also invented products which are attracting more interest in the vermicomposting process because his products, including a sifting system and drying system, all made from reclaimed materials, are easy to use and make harvesting the compost much easier and faster. He is already being recognized for his meticulous research in the worm composting process.*

The state recognition included second place honors for EWS in the Outstanding Recycling Special Event and Outstanding Composting categories and EWS and GISD in the Outstanding Recycling Partnership category.



Garland resident Elbert Liu and Glenna Brown receive the Completely Looped Recycled Product Award from Shirlene Sitton, NTRCA President

Frostbite Factsheet

Exposure

Frostbite occurs when the tissues of the skin freeze. This happens during prolonged exposure to cold weather or even after a few minutes in extremely low temperatures. Fingers, toes, ear lobes, and the tip of the nose are the most vulnerable to frostbite. Workers can be at an increased risk to frostbite because of factors such as exhaustion, hunger, and dehydration, which further lower the body's defenses against cold-related conditions.

Frostbite is divided into three categories:

Frostnip, a person experiences loss of feeling and white or pale appearance in fingers, toes, ear lobes, and tip of the nose.

Superficial frostbite, the outer layer of skin feels hard and frozen and blisters.

Deep frostbite, the underlying tissues of the skin is hard and frozen and the skin appears blotchy and may have blisters.



Prevention

Employers and workers can take steps to reduce the potential dangers of frostbite.

Train workers about cold-related conditions.

Recognize the workplace conditions that lead to potential cold induced illness and injuries.

Watch for symptoms of frostbitten skin.

Be extremely cautious in the wind.

Encourage workers to wear proper clothing for cold, wet, and windy conditions.

Encourage workers to wear a hat, gloves, and a "cold weather mask"

Be sure that workers take frequent short breaks in warm dry shelters.

Avoid exhaustion or fatigue because energy is needed to keep muscles warm.

Use the buddy system – work in pairs so that one worker can recognize danger signs.

Drink plenty of fluids that are warm and sweet, avoid drinks with caffeine or alcohol.

Eat warm, high-calorie foods regularly.

Check your skin frequently for any signs of frost-bite.

Employers and workers should always check local weather forecasts for information on temperature and wind chill to prevent cold-related conditions like frost-bite.

Signs of Hypothermia (abnormally low body temperature)

If a worker shows signs of hypothermia:

- call for emergency help immediately;
- move person to a warm, dry area;
- remove any wet clothing and replace with warm dry clothing;
- take pressure off the affected area;
- don't allow the person to smoke cigarettes, since nicotine constricts the blood vessels;
- don't rub the affected area, as this causes more tissue damage;
- keep any blisters intact; and
- once thawed, wrap affected areas in clean bandages.

This Fact Sheet was produced with information from the Metropolitan Ambulance Service, (Victoria, Australia), Texas Health Department, Occupational Safety and Health Administration, and the Texas Department of Insurance (TDI), Division of Workers' Compensation (DWC).

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 214-671-0229 to obtain safety support, exchange safety strategies, or to arrange an onsite audit of your work practices.



Use S.M.A.R.T.

We're part of the Solution!



**Call for Papers / Presentations
(Emphasis on Sustainability and Sustainable Projects)**

For the

TxSWANA Annual Meeting



**Irving Convention Center
Irving, Texas**

April 18-20, 2011

Technical Sessions 19th & 20th



Please provide abstract to:

Bill Hindman, PE at bhindman@cpvi.com by

February 15, 2011

Toter®
INCORPORATED
A WASTEQUIP COMPANY

EVR® II Series

Universal/Nestable Design

Stack Fully Assembled

Completely Sealed Body

Granite Color Options

Excellent for Refuse, Greenwaste & Recycling



*For further information, contact Donald Siptak at (713) 805-0414
www.toter.com*

SAVE THE DATE

**2011 TXSWANA Road-E-O
May 13-14, 2011
Dallas, TX**

**2011 TXSWANA
Jack C. Carmichael, P.E.
Scholarships**

The Texas Chapter of SWANA will once again in 2011 offer scholarships for college students. This excellent Scholarship Program has awarded over \$62,000 in Scholarships since its inception. To be eligible for the scholarship you must be the son, daughter, stepson, stepdaughter, grandson or granddaughter of a TXSWANA member in good standing at the time of recommendation, the selection, and the award,

-and-

A. A graduating high school senior, or graduate equivalent certified candidate, who has been accepted for enrollment in a junior college, four-year college or university,

-or-

B. A currently enrolled full-time college or university student.

If you are interested in applying, an Application Form is available on line at the TXSWANA web site at www.txswana.org under the "Education" link on the home page.

You may also request a form by mail from:

**Robert H. "Holly" Holder, P.E.
Parkhill, Smith & Cooper, Inc.
4222 85th Street
Lubbock, TX 79423**

In addition, you may call Holly at: (806) 473-3526, or contact him by email at: hholder@team-psc.com

The deadline for submission of the application is Friday, June 10, 2011.

Winners will be announced in August 2011.



MEMBERSHIP

We Welcome the Following New Members (Through January 12, 2011)

Richard Abramowitz—WM Recycle America

Daniel Crociata—Greenstar North America

Jay Dinklage—Dinklage Oil LLC

Christopher Ford—City of College Station

Willie Herrera—City of Brownsfield

Gena McKinley—City of Austin

Charles Plouse—Rush Truck Center

Robert Ramirez—City of Lamesa

Calendar of Events

