

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** January 22, 2010
Thru: LaDonna Castañuela, Chief Clerk
Mark R. Vickery, P.G., Executive Director
From: *File* Susana M. Hildebrand, P.E., Chief Engineer
Docket No.: 2009-0845-RUL
Subject: Commission Approval for the Repeal of the Clean Air Mercury Rule (CAMR) State Plan Project No. 2007-052-SIP-NR

Background and reason(s) for the state plan repeal:

On May 18, 2005, the United States Environmental Protection Agency (EPA) finalized the CAMR to permanently cap and reduce mercury emissions from new and existing coal-fired electric generating units (EGU) nationwide. The 79th Legislature, 2005, enacted House Bill (HB) 2481 amending Texas Health and Safety Code (THSC), Chapter 382 by adding §382.0173, that requires Texas to participate in the EPA-administered CAMR program through the incorporation by reference of Title 40 Code of Federal Regulations (CFR) Part 60, Subpart HHHH.

On February 8, 2008, the United States Court of Appeals District of Columbia Circuit vacated CAMR finding that the EPA did not follow the procedure set forth to remove EGUs from the requirements of the Federal Clean Air Act (FCAA), §112. Therefore, the emissions from EGUs could not be regulated under §111 and a cap and trade system could not be implemented for controlling mercury emissions from oil-fired and coal-fired EGUs. On October 17, 2008, the EPA requested the United States Supreme Court to review the case. However, on February 6, 2009, the Department of Justice, on behalf of the EPA, filed a motion to dismiss the EPA's request to review the case, stating that the EPA has decided “. . . to develop appropriate standards to regulate power-plant emissions under Section 7412,” Hazardous Air Pollutants. The United States Supreme Court decided not to hear the case on February 23, 2009. This officially vacated CAMR at the federal level; therefore, the CAMR state rule, incorporated by reference, and associated state plan are no longer applicable or necessary.

Scope of the adopted action:

A) Summary of what the action will do: The CAMR State Plan Repeal would request that the EPA not review or take any action on the plan that was submitted in 2006.

B) Scope required by federal regulations or state statutes: THSC, §382.0173(d) states that “This section applies only while the federal rules cited in this section are enforceable.” The vacatur of CAMR renders it unenforceable; therefore, the requirement to implement CAMR as stated in §382.0173 is no longer applicable; the rules implementing CAMR need to be removed, and the state plan withdrawn.

C) Additional staff recommendations that are not required by federal rule or state statute: None.

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Statutory authority:

Texas Texas Water Code,

- §5.103, Rules; and
- §5.105, General Policy.

Texas Health and Safety Code,

- §382.002, Policy and Purpose;
- §382.011, General Powers and Duties;
- §382.012, State Air Control Plan;
- §382.017, Rules;
- §382.0173, Adoption of Rules Regarding Certain SIP Requirements and Standards of Performance for Certain Sources; and
- FCAA, 42 United States Code §§7401 *et seq.*

Effect on the:

A) Regulated community: The vacatur of the federal CAMR rule voided all requirements of the Texas CAMR rule. However, some air permits have been issued with CAMR requirements and the owners or operators of these coal-fired EGU facilities would have the option of initiating a permit action to remove these requirements or waiting for the next permit action, such as renewal, to remove these requirements.

B) Public: The public will benefit from reduced confusion from the removal of the unnecessary rule.

C) Agency programs: The Office of Permitting and Registration will remove CAMR requirements from the applicable Title V permits.

Stakeholder meetings:

No stakeholder meetings were held.

Public comment:

The public comment period opened on September 25, 2009, and closed on October 26, 2009. No oral or written comments were received.

Significant changes from proposal:

None.

Potential controversial concerns and legislative interest remaining after proposal and public comment:

None.

Does this state plan repeal affect any current policies or require development of new policies?

This state plan repeal does not affect current policies or require development of new policies.

What are the consequences if this state plan repeal does not go forward? Are there alternatives?

The CAMR program could remain in place but could not be enforced. This could cause confusion within the regulated community. There are no alternatives, because the Texas Legislature has directed the TCEQ to only have the federal CAMR program in place as long as the federal CAMR rule is in place.

Key points in state plan repeal schedule:

Proposal date: September 9, 2009

Public hearing date: October 20, 2009, Fort Worth; October 21, 2009, Austin; and October 22, 2009, Houston

Public comment period: September 25 – October 26, 2009

Anticipated adoption date: February 10, 2010

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Agency contacts:

Melissa Kuskie, SIP Project Manager, 239-6098, Air Quality Division
Terry Salem, Staff Attorney, 239-0469
Amy Browning, Staff Attorney, 239-0891

cc: Chief Clerk, 5 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Kevin Patteson
Curtis Seaton
Daniel Womack
Office of General Counsel
Melissa Kuskie

