

AIR QUALITY ISSUES FOR LOCAL GOVERNMENTS

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Are you changing?

- Problems (opportunities?) associated with non-attainment
 - conformity requirements
 - transportation
 - other federally funded activities including airports
 - mandatory reductions in emissions
 - automobile inspection and maintenance
 - difficult to attract new or expanded industrial activities.

Local Government Authority

- Local government includes a health district under Chapter 121, a county, or a municipality
- A local government has the same power and is subject to the same restrictions as the TNRCC to inspect the air and enter public or private property

- A municipality may enact or enforce ordinances for the control of air pollution as long as the ordinance is consistent with state requirements and does not make unlawful a condition approved by the TNRCC

- Local governments may bring actions in District Court for violations of state air quality requirements in the same manner as the state
 - the TNRCC is a necessary indispensable party
 - the governing body of the local government must adopt a resolution authorizing the institution of the suit

Restrictions on state/local government authority in attainment areas

- May not mandate use of Stage II vapor recovery systems to control motor vehicle refueling emissions unless required under the federal Clean Air Act, in non-attainment areas if demonstrated to be necessary for attainment, or if it is determined, in consultation with the Texas Department of Health, to be necessary for protection of public health.

- May not adopt vehicle emissions inspection maintenance requirements for counties not subject to a specific federal requirement unless requested to do so by the county and the largest municipality within a county

Lawsuits

- *Browner v. American Trucking Associations* - the U.S. Court of Appeals found that EPA failed to articulate the basis for concluding that the 8-hour standard selected by EPA was necessary to protect public health and remanded the rules to EPA.

- The court also ruled that EPA must enforce a revised primary ozone national ambient air quality standard under the provisions of the 1990 amendments of the federal clean air act and that EPA was correct in determining not to consider economic impacts in the establishment of the ozone national ambient air quality standard

- The United States Supreme Court has granted review on these issues and will probably issue a decision within the next year
- Because of the Court of Appeals' restriction on EPA's ability to enforce the 8-hour standard, EPA has reinstated the 1-hour ozone standard in all areas of the country

- Six lawsuits have been filed against the TNRCC regarding SIP revisions
 - Engine Manufacturing Association has sued regarding rules that affect non-road engines. They claim that the TNRCC standards were preempted by federal law which allows the state to choose only EPA standards or California standards.

- Air Transport Association of America sued regarding restrictions on non-road equipment at airports. They claim preemption, the rules are arbitrary, unreasonable and capricious and that the TNRCC failed to follow proper procedural requirements in adopting rules

- CEMEX USA and Texas Industries filed suit regarding the restrictions on nitrogen oxide emissions for cement kilns asserting that the rules are arbitrary and capricious and that the TNRCC failed to follow proper procedures in adopting the rules

- TXU Electric Company has filed two suits regarding nitrogen oxide limitations on electric utility boilers. They assert that the rules are arbitrary and capricious and that the TNRCC failed to follow proper procedures in adopting the rules.

- A number of solid waste disposal companies and associations filed suit regarding TNRCC restrictions on emissions and the hours of operation for diesel powered construction equipment. They assert preemption and the failure to follow proper procedures in adopting the rules.

Options for Local Governments

- Alternative fuel vehicles for governmental use
- Encourage reduction in motor vehicle use
 - carpooling
 - bus
 - telecommuting

- Monitoring air quality/to demonstrate compliance
- encourage use of electrical equipment instead of internal combustion engines
- minimize traffic congestion