



Hazardous Air Pollutants under the Clean Air Act

Prof. Tracy Hester
University of Houston Law Center

Houston, Texas
Oct. 1, 2018



Hazardous Air Pollutants

- What is a hazardous air pollutant?
- HAPs recent special treatment under Clean Air Act
 - Sad history of NESHAPs (National Emission Standards for Hazardous Air Pollutants)
 - Section 112 required an “ample margin of safety to protect the public health”
 - So, 1 in a million? 100 in a million? Does cost matter?



The New Title III

- Congress significantly revised the HAP program in 1990
- Now 189 HAPs specifically listed in the statute
- MACT approach
 - 12 percent baseline set by industrial category
 - Hammers for failure to implement
 - Role for subcategories?



The New Title III

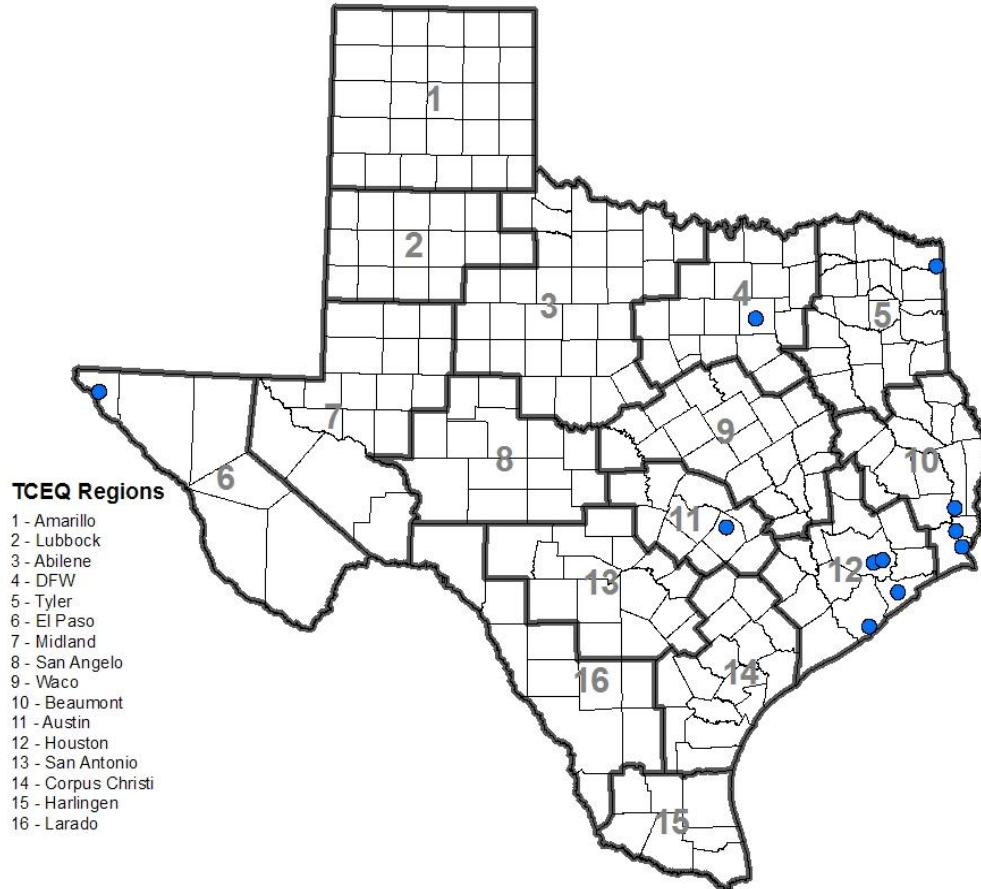
- Major source –
 - 10 tpy of any HAP
 - 25 tpy combined HAP
 - “Once in, always in”
 - Area sources
- Source categories (166 major, 8 area)
- Special rules for power plants – *Michigan v. EPA* (U.S. 2015)



The New Title III

- Residual risk review (section 112(f)(2))
 - How low does EPA have to go?
 - *NRDC v. EPA* (D.C. Cir. 2008)
- State law standards can be more stringent
 - Texas – Air Pollutant Watch Lists
Effects Screening Levels

TCEQ Air Pollutant Watch Lists





Questions?

Professor Tracy Hester
University of Houston Law Center

tdheste2@central.uh.edu
713-743-1152 (office)