

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Zak Covar, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 12, 2014

Attn: Docket ID No. EPA-HQ-OAR-2011-0151
U.S Environmental Protection Agency
Mail Code 6102T
1200 Pennsylvania Ave. NW.
Washington, DC 20460

Re: Title 40 Code of Federal Regulations (CFR) Part 49
General Permits and Permits by Rule for the Federal Minor New Source Review
Program in Indian Country; Proposed Rule.

Dear Sir or Madam:

The Texas Commission on Environmental Quality (TCEQ) appreciates the opportunity to respond to the U.S. Environmental Protection Agency's notice published in the January 14, 2014, issue of the *Federal Register* entitled: "General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country; Proposed Rule."

Enclosed please find the TCEQ's detailed comments relating to the referenced rulemaking. If you have any questions concerning these comments, please contact Mr. Michael Wilson, P.E., Director, Air Permits Division, Office of Air, (512) 239-1922, or at mike.wilson@tceq.texas.gov.

Sincerely,

A handwritten signature in black ink that reads "R. A. Hyde".

Richard A. Hyde, P.E.
Executive Director

Enclosure

Texas Commission on Environmental Quality (TCEQ) Comments on General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country; Proposed Rule

Docket ID Number EPA–HQ–OAR–2011–0151

Background

On January 14, 2014, the U.S. Environmental Protection Agency (EPA) proposed general permits for use in Indian country pursuant to the Indian Country Minor New Source Review (NSR) rule for new or modified minor sources (79 *Federal Register* 2546). EPA proposed general permits for five source categories. As an alternative, EPA also proposed permits by rule (PBRs) in three of these source categories. EPA also proposed certain changes to the Indian Country Minor NSR rule, which include extending the deadline by when true minor sources in the oil and gas sector must receive minor source NSR permits, and allowing general permits and PBRs for specific categories to create synthetic minor sources. TCEQ provides the following comments on EPA's proposed rule.

General Comments and Overview

This rulemaking does not directly affect the Texas minor NSR program. Nevertheless, TCEQ appreciates the opportunity to comment.

TCEQ agrees with EPA's proposed change in policy and regulatory framework to allow general permits and PBRs in Indian country. These authorizations, as proposed, are written to protect air quality and streamline the permitting process.

TCEQ has more than three decades of experience with PBRs^{1, 2} and more than two decades of experience with general permits,³ which are referred to by TCEQ as "standard permits."⁴ Based on TCEQ's extensive experience with these types of minor NSR permits, we expect EPA's proposed streamlining initiative will be successful and can help attain and maintain air quality as required by the Federal Clean Air Act (FCAA).

EPA has stated that the minor NSR programs within each state's implementation plan are "designed to ensure that the construction or modification of any stationary source does not interfere with the attainment of the NAAQS."⁵ The State of Texas has

¹ The use of the term "permits by rule" in this document is intended to be generally the same as defined by EPA.

² TCEQ's 108 PBRs are found in 30 Tex. Admin. Code (TAC) Chapter 106. Subchapter A in Chapter 106, which includes the general PBR requirements, is part of the approved Texas NSR permitting state implementation plan (SIP).

³ The use of the term "general permits" in this document is intended to be generally the same as defined by EPA.

⁴ TCEQ's SIP-approved program for standard permits is found in 30 TAC Chapter 116, Subchapter F, which includes two permits in these rules. The remainder of the standard permits are not in these rules; a list can be found at <http://www.tceq.state.tx.us/permitting/air/nav/standard.html>.

⁵ 74 Fed. Reg. at 51,421 (October 6, 2009).

consistently supported the position, to which EPA agrees, that states have great flexibility to create their own minor NSR permitting programs.⁶

TCEQ is not providing comments on the specific proposed terms and conditions of the general permits in Section VI or the PBRs in Section VII of this notice, leaving the specifics to the permitting authority, in this case, EPA. TCEQ expects EPA will allow the states the same flexibility when the states develop their own general permits and PBRs. This should include flexibility with respect to minor NSR public participation requirements, so that states can specify requirements for notice and comment which are appropriate for the type of authorization, the nature of the source being authorized, and other factors which may vary from state to state.

Comments on “Similar Sources” Concept

The proposed general permits, as EPA describes them, are for “similar” types of emissions units or minor sources. TCEQ does not agree with EPA that this FCAA interpretation is a limitation on the ability to issue general permits as discussed in the proposal,⁷ at least not in the areas that are subject to the jurisdiction of the United States Court of Appeals for the Fifth Circuit, which includes Texas. On March 26, 2012, the Fifth Circuit found that EPA’s imposition of a “similar source” requirement applied by EPA to TCEQ’s Pollution Control Project Standard Permit (PCP SP)⁸ was neither necessary to safeguard the national ambient air quality standards nor warranted by any applicable provision of the FCAA (particularly with regard to minor NSR), and therefore concluded that EPA’s disapproval of the PCP SP was arbitrary and capricious, and in excess of EPA’s statutory authority.⁹

Summary and Conclusion

TCEQ supports EPA’s proposed use of general permits and PBRs as a strategy to provide a streamlined method of authorization for minor NSR purposes. TCEQ has used PBRs and general permits for many years as a key component of a minor NSR program. However, EPA’s implementation of general permits and PBRs must not interfere with states’ flexibility to manage their own minor NSR programs.

⁶ See 75 Fed. Reg. 19,468, 19,485 (April 14, 2010).

⁷ 79 Fed. Reg. 2545, 2556 (January 14, 2014).

⁸ 30 Tex. Admin. Code § 116.617.

⁹ *Luminant Generation Co., L.L.C. v. U.S. E.P.A.*, 675 F.3d 917, 921 (5th Cir. 2012).