

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Rulemaking Adoption

AGENDA REQUESTED: January 25, 2012

DATE OF REQUEST: January 6, 2012

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Charlotte Horn, (512) 239-0779

CAPTION: Docket No. 2010-1862-RUL. Consideration of the adoption of an amendment to 30 Texas Administrative Code Chapter 111, Control of Air Pollution from Visible Emissions and Particulate Matter, Subchapter A, Visible Emissions and Particulate Matter, Division 4, Materials Handling, Construction, Roads, Streets, Alleys, and Parking Lots, Section 111.147 and corresponding revisions to the state implementation plan.

The adoption will amend Section 111.147(1)(E) to remove the requirement to pave alleys at the rate of 15 miles per year and replace it with the following requirements: 1) all new alleys must be paved; 2) unpaved alleys may not be used for residential garbage and recycling collection; and 3) the use of reclaimed asphalt pavement may be used as an alternate means of particulate matter control for alleys. The rulemaking will also amend Section 111.147(2) to change the street sweeping frequency requirement from four times per year to three times per year in the city limits, and from six times per week to four times per week in the central business district. The proposed rules were published in the September 2, 2011, issue of the *Texas Register* (36 TexReg 5640). (Peter A. Ogbeide, Terry Salem) (Rule Project No. 2010-046-111-EN)

Susana M. Hildebrand, P.E.

Chief Engineer

David Brymer

Division Director

Charlotte Horn

Agenda Coordinator

Copy to CCC Secretary? NO YES X

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** January 6, 2012

Thru: Bridget Bohac, Chief Clerk
Mark R. Vickery, P.G., Executive Director

From: Susana M. Hildebrand, P.E., Chief Engineer

Docket No.: 2010-1862-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 111, Control of Air Pollution from Visible Emissions and Particulate Matter
Revision of El Paso Particulate Matter of 10 Micrometers and Less (PM₁₀)
Controls for Roads, Streets, and Alleys
Rule Project No. 2010-046-111-EN

Background and reason(s) for the rulemaking:

Under the 1990 Federal Clean Air Act (FCAA) Amendments, the City of El Paso (El Paso area) was designated nonattainment under FCAA, §107(d)(4)(B) for PM₁₀ National Ambient Air Quality Standard (NAAQS) and subsequently classified as a moderate PM₁₀ nonattainment area. In November 1991, the Texas Air Control Board (TACB), a predecessor agency of the Texas Commission on Environmental Quality (TCEQ), submitted the El Paso PM₁₀ Attainment Demonstration State Implementation Plan (SIP) revision. The SIP revision included particulate matter (PM) control measures in 30 Texas Administrative Code (TAC) Chapter 111, Control of Air Pollution from Visible Emissions and Particulate Matter, Subchapter A, Visible Emissions and Particulate Matter, Division 4, Materials Handling, Construction, Roads, Streets, Alleys, and Parking Lots, §111.147. The control measures previously adopted in §111.147 required paving as a method of dust control in the El Paso area for specified roads and added a requirement that alleys be paved at the rate of 15 miles per year. Section 111.147 also set frequencies for street sweeping in designated sections of the El Paso area.

In 1991, a Memorandum of Understanding (MOU) between the City of El Paso (the City) and the TACB was approved to outline the responsibilities and regulatory requirements for both parties. This MOU was replaced with a Memorandum of Agreement (MOA) with the City in 2001, with the same requirements.

On November 21, 2003, the El Paso Metropolitan Planning Organization submitted a letter requesting that the TCEQ develop a PM₁₀ redesignation request and maintenance plan. On December 28, 2009, the TCEQ requested information from the City to ascertain what efforts El Paso has taken to support a request for redesignation. In a response letter dated January 29, 2010, the City indicated the following:

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- the City has programs funded annually in both the City's capital improvement budget and in the Department of Transportation operations budget in an effort to comply with environmental regulations;
- the City has committed to an alley paving program at a level in alignment with its own internal budgetary capacities, but not at the rate of 15 miles per year as required under §111.147;
- the City maintains an inventory of street and alley paving efforts to document the current status and projections for future paving activities; and
- the City's Air Quality Program conducts surveillance and investigations to ensure compliance with, and enforcement of, Chapter 111 rules.

For the site reporting Federal Reference Method PM₁₀ data for all three years from 2007 through 2009 (Socorro AQS ID 481410057), there were no exceedances of the PM₁₀ 24-hour NAAQS. The inventory of unpaved alleys has decreased from 66% in 1991, to 16% in 2010, with approximately 23 miles of unpaved alleys remaining. The City action to reduce airborne PM₁₀ has also reduced the need to sweep streets at the frequencies specified under the current rule. The adopted rulemaking is necessary to provide the City with alternative methods of PM control. The adopted rule would remove specific requirements for the number of miles of alleys to be paved per year and allow the use of reclaimed asphalt pavement (RAP) as an alternate means of PM control for pre-existing unpaved alleys. The adopted rule revisions would also decrease the number of times that soil is to be removed by mechanical sweepers from public thoroughfares from four to three times per year for those previously specified areas within the city limits and from six to four times per week within the central business district.

Scope of the rulemaking:

The adopted rule revision will amend §111.147 to provide the City with additional flexibility in PM control measures.

A.) Summary of what the rulemaking will do:

The adopted rule revision will amend §111.147(1)(E) to remove the requirement to pave alleys at the rate of 15 miles per year and replace it with the following requirements: 1) all new alleys must be paved; 2) unpaved alleys may not be used for residential garbage and recycling collection; and 3) the use of RAP may be used as an alternate means of PM control for alleys. The adopted rule will also amend §111.147(2) to change the sweeping frequency requirement from four times per year to three times per year in the city limits and from six times per week to four times per week in the central business district.

B.) Scope required by federal regulations or state statutes:

None

C.) Additional staff recommendations that are not required by federal rule or state statute:

None

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Statutory authority:

The amendment is adopted under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC. The amendment is also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Power and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.0172, concerning international border areas; and THSC, §382.0173 concerning Adoption of Rules Regarding Certain State Implementation Plan Requirements and Standards of Performance for Certain Sources.

Effect on the:

A.) Regulated community:

The adopted rule revision will update the PM₁₀ controls required to attain and maintain the PM₁₀ NAAQS and provide the City greater flexibility in the implementation of the PM₁₀ control requirements in §111.147.

B.) Public:

Implementation of the revised rule will continue protection of public health through continued control of PM₁₀ in the El Paso area.

C.) Agency programs:

There are no anticipated impacts on agency programs.

Stakeholder meetings:

No stakeholder meetings were held.

Public comment:

The commission held a public hearing on the proposal in El Paso on September 27, 2011. The public hearing was not officially opened because no party indicated a desire to give comment. The comment period opened September 2, 2011, and closed October 3, 2011. Two written comments were received from the City.

The City recommended adding the terms "unpaved" and "residential" to proposed §111.147(1)(E)(ii) because some trash pick-up routes do occur in alleys. In addition, future

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incorporation of Smart Growth Community Development will require trash receptacles to be located in alleys for newly developed residential areas. *The proposal was changed in response to the comment.*

The City also recommended adding the phrase "which are under the jurisdiction of the City of El Paso and which have been designated as public thoroughfares" to §111.147(1)(F). *No change was made in response to this comment.*

Significant changes from proposal:

In response to comments from the City, proposed §111.147(1)(E)(ii) was revised to limit the restriction to unpaved alleys used for residential garbage and recycling collection.

Potential controversial concerns and legislative interest:

A demonstration is required to show that changes to §111.147 will not interfere with attainment of the PM₁₀ NAAQS in order to comply with the United States Environmental Protection Agency anti-backsliding provisions in FCAA, §110(l). It included the substitution of the alley paving and street sweeping measures as stated in §111.147(1)(E) and (2) with alternate control measures currently in place in the El Paso area that have resulted in PM₁₀ emissions reductions equivalent to or greater than what would have been achieved if the City had continued to implement the prior version of §111.147(1)(E) and (2). These control measures include reduced alley traffic, city ordinances requiring developers to pave any new alleys they create, and the use of RAP on existing alleys.

Will this rulemaking affect any current policies or require development of new policies?

No.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

The commission could decide not to adopt the proposed amendment to Chapter 111, and the revised MOA would not be needed. The City would be obligated to comply with existing rules and MOA requirements limiting the City's fiscal and technical flexibility to control PM₁₀ in the El Paso area and comply with the SIP.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: September 2, 2011

Anticipated Texas Register publication date: February 10, 2012

Anticipated effective date: February 16, 2012

Six-month Texas Register filing deadline: March 2, 2012

Agency contacts:

Peter A. Ogbeide, Rule Project Manager, 239-1937, Air Quality Division

Terry Salem, Staff Attorney, 239-0469

Charlotte Horn, Texas Register Coordinator, 239-0779

Commissioners
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Attachments

None

cc: Chief Clerk, 2 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Anne Idsal
Curtis Seaton
Ashley Morgan
Office of General Counsel
Peter A. Ogbeide
Charlotte Horn

The Texas Commission on Environmental Quality (TCEQ or commission) adopts an amendment to §111.147.

Section 111.147 is adopted *with* change to the proposed text as published in the September 2, 2011, issue of the *Texas Register* (36 *TexReg* 5640) and the text will be republished.

The adopted amendment to §111.147 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rule

Under the 1990 Federal Clean Air Act (FCAA) Amendments, the City of El Paso (El Paso area) was designated nonattainment under FCAA, §107(d)(4)(B) for particulate matter (PM) with an aerodynamic diameter less than or equal to a nominal ten micrometers (PM₁₀) National Ambient Air Quality Standard (NAAQS) and subsequently classified as a moderate PM₁₀ nonattainment area. In November 1991, the Texas Air Control Board (TACB), a predecessor agency of the TCEQ, submitted the El Paso PM₁₀ Attainment Demonstration SIP revision. The SIP revision included PM control measures in §111.147. The control measures adopted in §111.147 required paving as a method of dust control in the El Paso area for specified roads and added a requirement that alleys be

paved at the rate of 15 miles per year. Section 111.147 also set frequencies for street sweeping in designated sections of the El Paso area.

In 1991, a Memorandum of Understanding (MOU) between the City of El Paso (the City) and the TACB was approved to outline the responsibilities and regulatory requirements for both parties. This MOU was replaced with a Memorandum of Agreement (MOA) with the City in 2001 with the same requirements.

On November 21, 2003, the El Paso Metropolitan Planning Organization submitted a letter requesting that the TCEQ develop a PM₁₀ redesignation request and maintenance plan. On December 28, 2009, the TCEQ requested information from the City to ascertain what efforts the City has taken to support a request for redesignation. In a response letter dated January 29, 2010, the City indicated the following: the City has programs funded annually in the City's capital improvement budget and in the Street Department operations budget in an effort to comply with environmental regulations; the City has committed to an alley paving program at a level in alignment with its own internal budgetary capacities, not at the rate of 15 miles per year as required under §111.147; the City maintains an inventory of street and alley paving efforts to document the current status and projections for future paving activities; and the City's Air Quality Program conducts surveillance and investigations to ensure compliance with, and enforcement of, the Chapter 111 rules.

For the site reporting Federal Reference Method (FRM) PM₁₀ data for all three years from 2007 through 2009 (Socorro AQS ID 481410057), there were no exceedances of the PM₁₀ 24-hour NAAQS. Subsequent data from the City indicates that from 1991 through 2010, the percentage of unpaved alleys has significantly decreased from 66% to 16% of the total alleys in the El Paso area, with approximately 23 miles of unpaved alleys remaining. Any new alleys must be paved by developers in accordance with a city ordinance. Furthermore, the City discontinued garbage collection in alleys in 1997, so the traffic in alleys has been dramatically reduced, and reclaimed asphalt pavement (RAP) has been used to cover some unpaved alleys, which has proven to be as effective as paving. In addition, the City has also been performing PM control measures that are not required by §111.147 or the MOA. For the site reporting FRM PM₁₀ data for all three years from 2007 through 2009 (Socorro AQS ID 481410057), there were no exceedances of the PM₁₀ 24-hour NAAQS, and with the minimal amount of unpaved alleys remaining in the El Paso area, the paving rate requirement in §111.147 should no longer be considered necessary for attainment of the 1997 PM₁₀ NAAQS. The adopted rulemaking will revise §111.147 to provide the City with alternative methods of PM control consistent with maintenance of the standard. The adopted rulemaking also revises §111.147 to allow the City to sweep streets at reduced frequencies, since the progress made by the City's alley and road paving programs has reduced the overall amount of fugitive dust in the El Paso area. Finally, the City indicated that it will continue to include street and

alley paving and sweeping in its annual budget for maintenance of the standard. Based on these substitute and supplemental actions, compliance with the anti-backsliding provisions in FCAA, §110(l) is demonstrated.

Consistent with the amendments to §111.147 in this adoption package, revisions to the 2001 MOA are proposed for adoption concurrent with this rulemaking adoption.

Demonstrating Noninterference Under FCAA, §110(l)

The commission provides the following information to clarify why the amendment to §111.147(1)(E) and (2) will not negatively impact the status of the state's attainment with the PM₁₀ NAAQS.

The requirement for reasonable notice and public hearing was satisfied through a public hearing held on September 27, 2011. The public comment period began on September 2, 2011, and ended October 3, 2011. According to the EPA draft guidance issued on June 8, 2005, *Demonstrating Noninterference Under Section 110(l) of the Clean Air Act When Revising a State Implementation Plan*, areas have two options available to demonstrate noninterference for affected pollutant(s). This preamble provides details of the identified existing measures that the commission will use to establish compliance with option one of the EPA's draft guidance: substitution of one measure by another with equivalent or greater emissions reduction/air quality benefits.

Background

In accordance with the FCAA and EPA guidance, the TACB was required to demonstrate either attainment of the standard by December 31, 1994, or demonstrate that attainment by that date was impracticable. FCAA, §179B provided that moderate nonattainment areas would not be redesignated as serious if the state could demonstrate that such areas would achieve attainment by the deadline if it were not for air quality impacts caused by another country. In response to the FCAA §179B provision, the TACB demonstrated attainment of the PM₁₀ NAAQS through dispersion modeling of United States emissions alone. Furthermore, the EPA guidance contained in the *PM₁₀ Moderate Area SIP Guidance: Final Staff Work Product*, April 2, 1991, prescribed that SIPs for moderate PM₁₀ nonattainment areas contain quantitative milestones to be achieved every three years, and that the SIP revisions demonstrate reasonable further progress (RFP) towards attainment. However, the TACB submitted information establishing that an RFP demonstration was not strictly applicable. Specifically, based on the international impacts provision in FCAA, §179B, the TACB demonstrated that the El Paso nonattainment area would attain the PM₁₀ NAAQS both at the time of the SIP revision in 1991 and at the time compliance would be required under the SIP in 1994, based on modeling of United States emissions alone. Therefore, there are currently no more requirements for a demonstration of reductions to United States emissions.

However, to help minimize PM₁₀ impacts from El Paso sources, the TACB adopted several new or enhanced control measures in its 1991 SIP revision. These measures included revisions to §§111.111, 111.141, 111.145, and 111.147.

The control measures adopted in §111.147 required paving as a method of dust control in the El Paso area for specified roads and added a requirement that alleys be paved at the rate of 15 miles per year. Section 111.147 also set frequencies for street sweeping in designated sections of the El Paso area. The EPA-approved 1991 El Paso PM₁₀ Attainment Demonstration SIP revision includes the PM control measures in Chapter 111.

Conclusion

The City has decreased the percentage of unpaved alleys from 66% to 16% between 1991 and 2010. Also, for the monitoring site reporting FRM PM₁₀ data for all three years from 2007 through 2009 (Socorro AQS ID 481410057), there were no exceedances of the PM₁₀ 24-hour NAAQS.

The City also put in place provisions that the unpaved alley inventory will not increase because a city ordinance requires developers to pave any new alleys. Furthermore, the City discontinued garbage collection in alleys in 1997, so the traffic in alleys has been dramatically reduced. City action to reduce airborne PM₁₀ has also reduced the need to

sweep streets at the frequencies specified under the current rule, and RAP, which has been proven to be as effective as paving, has been used to cover some unpaved alleys. In addition, the City also continues to include alley paving and maintenance in its annual budget. Because the El Paso area is monitoring attainment of the PM₁₀ NAAQS based on the monitoring site reporting FRM PM₁₀ data for all three years from 2007 through 2009 (Socorro AQS ID 481410057), with the City's current practices in place, revising §111.147 to reflect these current practices would not interfere with the El Paso area's ability to attain and maintain the PM₁₀ NAAQS.

Section Discussion

The adoption amends §111.147(1)(E) to remove the requirement to pave alleys at the rate of 15 miles per year and replace it with the following requirements: 1) all new alleys must be paved; 2) unpaved alleys may not be used for residential garbage and recycling collection; and 3) RAP may be used as an alternate means of PM control for alleys. Based on comments received, the commission revised §111.147(1)(E) by adding the terms "unpaved" and "residential" to clarify that some commercial trash collection routes may still occur in paved alleys, and future growth may require trash receptacles to be located in paved alleys for newly developed residential areas. The adoption also amends §111.147(2) to change the sweeping frequency requirement from four times per year to three times per year in the city limits and from six times per week to four times per week in the central business district.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that this rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a major environmental rule as defined in that statute. A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rulemaking is not a major environmental rule because the revisions to Chapter 111 will allow more flexibility for the City to continue to comply with the 1997 PM₁₀ NAAQS. For the monitoring site reporting FRM PM₁₀ data for all three years from 2007 through 2009 (Socorro AQS ID 481410057), there were no exceedances of the PM₁₀ 24-hour NAAQS. The adopted rule revision will remove specific requirements for the number of miles of alleys to be paved per year, will allow the use of RAP as an alternate means of PM control for preexisting unpaved alleys, and will decrease the number of times that soil is to be removed from public thoroughfares from four to three times per year for those previously specified areas within the city limits, and from six to four times per week within the central business district. The public benefit anticipated from the changes in the adopted rule will be continued attainment with PM₁₀ NAAQS, and

continued protection of public health and safety in El Paso. For the monitoring site reporting FRM PM₁₀ data for all three years from 2007 through 2009 (Socorro AQS ID 481410057), there were no exceedances of the PM₁₀ 24-hour NAAQS.

The adopted revisions will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rule revision will not have a fiscal impact on individuals or large businesses in El Paso since it gives the City more flexibility than current rules and reflects current practices in El Paso for PM₁₀ control on roads, streets, and alleys. The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated this rulemaking action and performed an analysis of whether the adopted rule constitutes a taking under Texas Government Code, Chapter 2007.

The primary purpose of the rulemaking is to provide more flexibility for the City to continue to comply with the 1997 PM₁₀ NAAQS. This rulemaking does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Promulgation and enforcement of this adopted rulemaking is neither a statutory nor a constitutional

taking because it does not affect private real property. Specifically, the subject adopted regulations do not affect a landowner's rights in real property because this rulemaking does not burden (constitutionally); nor restrict or limit the landowner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in absence of the regulations. Therefore, this rule does not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking will not affect any coastal natural resource areas because the rules only affect counties outside the CMP area and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during

the public comment period. No comments were received concerning the Texas CMP.

Effect on Sites Subject to the Federal Operating Permits Program

The commission has reviewed this adopted rulemaking and determined that, although §111.147 is an applicable requirement of 30 TAC Chapter 122, the adopted changes would only affect paving and street sweeping requirements for the City, not individual emission units at sites. Therefore, the adopted changes do not affect sites subject to the Federal Operating Permits Program.

Public Comment

A public hearing was offered on September 27, 2011. The hearing was not officially opened because no party indicated a desire to give comment. The public comment period opened on September 2, 2011, and closed on October 3, 2011. Two written comments were received from the City.

Response to Comments

Comment

The City recommended adding the terms "unpaved" and "residential" to proposed §111.147(1)(E)(ii) because some trash pick-up routes do occur in alleys. In addition, future incorporation of Smart Growth Community Development will require trash

receptacles to be located in alleys for newly developed residential areas.

Response

The commission agrees with the City's addition of language to §111.147(1)(E) and has made the suggested changes. The additional terms clarify the commission's intent that garbage collection be conducted in paved alleys. Furthermore, the terms give the City flexibility to continue to allow for smart growth in residential areas and maintain compliance with the PM₁₀ standard.

Comment

The City also recommended adding the phrase "which are under the jurisdiction of the City of El Paso and which have been designated as public thoroughfares" to §111.147(1)(F).

Response

The City's suggested change to §111.147(1)(F) is beyond the scope of this rulemaking. No change has been made to the rule based on this comment.

SUBCHAPTER A: VISIBLE EMISSIONS AND PARTICULATE MATTER

**DIVISION 4: MATERIALS HANDLING, CONSTRUCTION, ROADS,
STREETS, ALLEYS, AND PARKING LOTS**

§111.147

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC. The amendment is also adopted under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Power and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.0172, concerning international border areas; and THSC, §382.0173 concerning Adoption of Rules Regarding Certain State Implementation Plan Requirements and Standards of Performance for Certain Sources.

The adopted amendment implements THSC, §§382.002, 382.011, 382.012, 382.017, 382.0172, and 382.0173.

§111.147. Roads, Streets, and Alleys.

No person may cause, suffer, allow, or permit any public, industrial, commercial, or private road, street, or alley to be used without taking at least the following precautions to achieve control of dust emissions:

(1) application of asphalt, water, or suitable oil or chemicals on the following unpaved surfaces, except in the City of El Paso and the Fort Bliss Military Reservation, except as noted in §111.141 of this title (relating to Geographic Areas of Application and Date of Compliance), where the use of paving materials is the only acceptable method of dust control, unless otherwise specified:

(A) industrial facility roadways--all major in-plant roads and all truck or other heavy-duty vehicle pathways. Major in-plant roads shall be defined as those which are designed to accommodate two-way traffic and are at least 30 feet wide at at least one point, measuring the distance from the edge of the undisturbed earth on either side of the established roadway. The executive director, with the concurrence of the United States Environmental Protection Agency, may grant a waiver from the

requirement to pave an industrial facility roadway if the owner of the roadway demonstrates that the cost of paving is economically unreasonable compared to other methods of dust control specified in this paragraph;

(B) public thoroughfares--all roads and streets to which the public has general access;

(C) commercial roads--all roads **that** ~~which~~ serve as access for more than 50 employees or as access to more than 10 heavy-duty truck parking spaces;

(D) residential roads--all roads **that** ~~which~~ serve as access for more than 20 residence and/or apartment units;

(E) alleys--in the City of El Paso, alleys must meet the following requirements: [shall be paved at the rate of at least 15 miles per year;]

(i) all new alleys must be paved;

(ii) **unpaved** alleys may not be used for **residential** garbage and recycling collection; and

(iii) reclaimed asphalt pavement (RAP) may be used as an alternate means of particulate matter control for alleys; and

(F) levee roads--in the City of El Paso, all levee roads and access to such roads must [shall] be controlled with the application of asphalt, or suitable oil or chemicals;

(2) removal from public thoroughfares, as necessary, of soil or other materials, except for sand applied for the specific purpose of snow or ice control. In the City of El Paso, removal of soil must [shall] be by mechanical sweepers or their equivalent at the rate of three [four] times per year for all public thoroughfares within the city limits and four [six] times per week or as necessary for public thoroughfares within the central business district. For the purpose of this section, the central business district is [shall be] defined as that area bordered by Loop 375 to the south, Santa Fe Street to the west, Missouri Street to the north, and Kansas Street to the east. The City of El Paso shall spot clean dirty roadways, and shall maintain street sweeping records for two years. Sand applied for the specific purpose of snow or ice control must [shall] be removed as soon as such control is no longer necessary.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



ORDER ADOPTING AMENDED RULES, REVISED MEMORANDUM OF AGREEMENT, AND REVISIONS TO THE STATE IMPLEMENTATION PLAN

Docket Nos. 2010-1862-RUL, 2011-0899-MIS, 2011-0707-SIP

On January 25, 2012, the Texas Commission on Environmental Quality (Commission), during a public meeting, considered adoption of amended § 111.147. The Commission adopts this amended rule in 30 TAC Chapter 111, concerning Control of Air Pollution from Visible Emissions and Particulate Matter, Subchapter A, Division 4, Materials Handling, Construction, Roads, Streets, Alleys, and Parking Lots; a revised Memorandum of Agreement (MOA) between the City of El Paso and the Commission; and corresponding revisions to the state implementation plan (SIP). The adopted rule amendments update the PM₁₀ controls required to attain and maintain the PM₁₀ NAAQS and provide the City greater flexibility in the implementation of the PM₁₀ control requirements in §111.147. The MOA has been revised to reflect the changes to §111.147. Under Tex. Health & Safety Code Ann. §§ 382.011, 382.012, and 382.023 (Vernon 2001), the Commission has the authority to control the quality of the state's air and to issue orders consistent with the policies and purposes of the Texas Clean Air Act, Chapter 382 of the Tex. Health & Safety Code. The proposed rules were published for comment in the September 2, 2011, issue of the Texas Register (36 *TexReg* 5640).

Pursuant to Tex. Health & Safety Code Ann. § 382.017 (Vernon 2001), Tex. Gov't Code Chapter 2001 (Vernon 2008), and 40 Code of Federal Regulations § 51.102, and after proper notice, the Commission conducted a public hearing to consider the amended rules, revised MOA and revisions to the SIP. Proper notice included prominent advertisement in the areas affected at least 30 days prior to the date of the hearing. A public hearing was held on September 27, 2011, at 2:00 p.m. at the El Paso State Office Building in El Paso. The hearing was not officially opened, because no party indicated a desire to give comment.

The Commission circulated hearing notices of its intended action to the public, including interested persons, the Regional Administrator of the EPA, and all applicable local air pollution control agencies. The public was invited to submit data, views, and recommendations on the proposed amended rules, revised MOA, and SIP revisions, either orally or in writing, at the hearing or during the comment period. Prior to the scheduled hearing, copies of the proposed amended rules, revised MOA, and SIP revisions were available for public inspection at the Commission's central office and on the Commission's Web site.

Data, views, and recommendations of interested persons regarding the proposed amended rules, revised MOA, and SIP revisions were submitted to the Commission during the comment period, and were considered by the Commission as reflected in the analysis of testimony incorporated by reference to this Order. The Commission finds that the analysis of testimony includes the names of all interested groups or associations offering comment on

the proposed amended rules, revised MOA, and SIP revisions and their position concerning the same.

IT IS THEREFORE ORDERED BY THE COMMISSION that the amended rules, revised MOA, and revisions to the SIP incorporated by reference to this Order are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The adopted rules and the preamble to the adopted rules, revised MOA, and the revisions to the SIP are incorporated by reference in this Order as if set forth at length verbatim in this Order.

IT IS FURTHER ORDERED BY THE COMMISSION that on behalf of the Commission, the Chairman should transmit a copy of this Order, together with the adopted rules, revised MOA, and revisions to the SIP, to the Regional Administrator of EPA as a proposed revision to the Texas SIP pursuant to the Federal Clean Air Act, codified at 42 U.S. Code Ann. §§ 7401 - 7671q, as amended.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Tex. Gov't Code, § 2001.033 (Vernon 2008).

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

Date issued:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman

(4) [(3)] Total emissions of sulfur compounds, excluding sulfur oxides, from all vents shall not exceed 4.0 pounds per hour (lb/hr) and the height of each vent emitting sulfur compounds shall meet the following requirements, except in no case shall the height be less than 20 feet, where the total emission rate as H₂S, lb/hr, and minimum vent height (feet), and other values may be interpolated:

- (A) 0.27 lb/hr at 20 feet;
- (B) 0.60 lb/hr at 30 feet;
- (C) 1.94 lb/hr at 50 feet;
- (D) 3.00 lb/hr at 60 feet; and
- (E) 4.00 lb/hr at 68 feet.

(5) [(4)] Before operation begins, facilities handling sour gas shall be registered with the commission's Office of Permitting and Registration in Austin using Form PI-7 along with supporting documentation that all requirements of this subsection will be met. For facilities constructed under §106.353 of this title (relating to Temporary Oil and Gas Facilities), the registration is required before operation under this subsection can begin. If the facilities cannot meet this subsection, a permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) is required prior to continuing operation of the facilities.

(m) The following tables shall be used as required in this section.

Figure: 30 TAC §106.352(m)
~~Figure: 30 TAC §106.352(m)~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 19, 2011.
TRD-201103308
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: October 2, 2011
For further information, please call: (512) 239-2548

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CHAPTER 111. CONTROL OF AIR
POLLUTION FROM VISIBLE EMISSIONS AND
PARTICULATE MATTER
SUBCHAPTER A. VISIBLE EMISSIONS AND
PARTICULATE MATTER
DIVISION 4. MATERIALS HANDLING,
CONSTRUCTION, ROADS, STREETS, ALLEYS,
AND PARKING LOTS

30 TAC §111.147

The Texas Commission on Environmental Quality (TCEQ or commission) proposes an amendment to §111.147.

If adopted, the revision would be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rule

Under the 1990 Federal Clean Air Act (CAA) Amendments, the City of El Paso (El Paso area) was designated nonattainment under CAA, §107(d)(4)(B) for particulate matter (PM) with an aerodynamic diameter less than or equal to a nominal ten micrometers (PM₁₀) National Ambient Air Quality Standard (NAAQS) and subsequently classified as a moderate PM₁₀ nonattainment area. In November 1991, the Texas Air Control Board (TACB), a predecessor agency of the TCEQ, submitted the El Paso PM₁₀ Attainment Demonstration SIP revision. The SIP revision included PM control measures in §111.147. The control measures adopted in §111.147 required paving as a method of dust control in the City for specified roads and added a requirement that alleys be paved at the rate of 15 miles per year. Section 111.147 also set frequencies for street sweeping in designated sections of the City.

In 1991, a Memorandum of Understanding (MOU) between the City of El Paso (the City) and the TACB was approved to outline the responsibilities and regulatory requirements for both parties. This MOU was replaced with a Memorandum of Agreement (MOA) with the City in 2001 with the same requirements.

On November 21, 2003, the El Paso Metropolitan Planning Organization submitted a letter requesting that the TCEQ develop a PM₁₀ redesignation request and maintenance plan. On December 28, 2009, the TCEQ requested information from the City to ascertain what efforts El Paso has taken to support a request for redesignation. In a response letter dated January 29, 2010, the City indicated the following: the City has programs funded annually in the City's capital improvement budget and in the Street Department operations budget in an effort to comply with environmental regulations; the City has committed to an alley paving program at a level in alignment with its own internal budgetary capacities, not at the rate of 15 miles per year as required under §111.147; the City maintains an inventory of street and alley paving efforts to document the current status and projections for future paving activities; and the City's Air Quality Program conducts surveillance and investigations to ensure compliance with, and enforcement of, the Chapter 111 rules.

The El Paso area is monitoring attainment with the 1997 PM₁₀ NAAQS. For the site reporting regulatory PM₁₀ data for all three years from 2007 - 2009 (Socorro AQS ID 481410057), there were no exceedances of the PM₁₀ 24-hour NAAQS. Subsequent data from the City indicates that from 1991 - 2010, the percentage of unpaved alleys has significantly decreased from 66% to 16% of the total alleys in the City, with approximately 23 miles of unpaved alleys remaining. Any new alleys must be paved by developers in accordance with a city ordinance. Furthermore, the City discontinued garbage collection in alleys in 1997, so the traffic in alleys has been dramatically reduced, and reclaimed asphalt pavement (RAP) has been used to cover some unpaved alleys, which has proven to be as effective as paving. In addition, the City has also been performing PM control measures that are not required by §111.147 or the MOA. For the site reporting regulatory PM₁₀ data for all three years from 2007 - 2009 (Socorro AQS ID 481410057), there were no exceedances of the PM₁₀ 24-hour NAAQS, and with the minimal amount of unpaved alleys remaining in the El Paso area, the paving rate requirement in §111.147 should no longer be considered necessary for attainment of the 1997 PM₁₀ NAAQS. The proposed rulemaking is necessary to revise §111.147 to provide the City with alternative methods of PM control consistent with maintenance of the stan-

dard. The proposed rulemaking would also revise §111.147 to allow the City to sweep streets at reduced frequencies, since the progress made by the City's alley and road paving programs has reduced the overall amount of fugitive dust in the El Paso area. Finally, the City indicated that it will continue to include street and alley paving and sweeping in its annual budget for maintenance of the standard. Based on these substitute and supplemental actions, compliance with the anti-backsliding provisions in FCAA, §110(l) can be demonstrated.

Although the MOA is not specifically part of this proposed rulemaking project, if adopted, the 2001 MOA with the City will be revised to be consistent with the amendments to §111.147.

Demonstrating Noninterference Under FCAA, §110(l)

The commission provides the following information to clarify why the proposed amendment to §111.147(1)(E) and (2) will not negatively impact the status of the state's attainment with the PM₁₀ NAAQS.

The requirement for reasonable notice and public hearing will be satisfied through a public hearing scheduled for September 27, 2011. The public comment period will begin September 2, 2011, and end October 3, 2011. According to the EPA draft guidance issued on June 8, 2005, *Demonstrating Noninterference Under Section 110(l) of the Clean Air Act When Revising a State Implementation Plan*, areas have two options available to demonstrate noninterference for affected pollutant(s). This preamble provides details of the identified existing measures that the commission will use to establish compliance with option one of the EPA's draft guidance: substitution of one measure by another with equivalent or greater emissions reduction/air quality benefits.

Background

In accordance with the FCAA and EPA guidance, the TACB was required to demonstrate either attainment of the standard by December 31, 1994, or demonstrate that attainment by that date was impracticable. FCAA, §179B provided that moderate nonattainment areas would not be redesignated as serious if the state could demonstrate that such areas would achieve attainment by the deadline if it were not for air quality impacts caused by another country. In response to the §179B provision, the TACB demonstrated attainment of the PM₁₀ NAAQS through dispersion modeling of United States emissions alone. Furthermore, the EPA guidance contained in the PM₁₀ *Moderate Area SIP Guidance: Final Staff Work Product*, April 2, 1991, prescribed that SIPs for moderate PM₁₀ nonattainment areas contain quantitative milestones to be achieved every three years, and that the SIP revisions demonstrate reasonable further progress (RFP) towards attainment. However, the TACB submitted information establishing that an RFP demonstration was not strictly applicable. Specifically, based on the international impacts provision in FCAA, §179B, the TACB demonstrated that the El Paso nonattainment area would attain the PM₁₀ NAAQS both at the time of the SIP revision in 1991 and at the time compliance would be required under the SIP in 1994, based on modeling of United States emissions alone. Therefore, there are currently no more requirements for a demonstration of reductions to United States emissions.

However, to help minimize PM₁₀ impacts from El Paso sources, the TACB adopted several new or enhanced control measures in its 1991 SIP revision. These measures included revisions to §§111.111, 111.141, 111.145, and 111.147.

The control measures adopted in §111.147 required paving as a method of dust control in the El Paso area for specified roads and added a requirement that alleys be paved at the rate of 15 miles per year. Section 111.147 also set frequencies for street sweeping in designated sections of the El Paso area. The EPA-approved 1991 El Paso PM₁₀ Attainment Demonstration SIP revision includes the PM control measures in Chapter 111.

Conclusion

The City has decreased the unpaved alleys from 66% to 16% between 1991 and 2010. Also, for the monitoring site reporting regulatory PM₁₀ data for all three years from 2007 - 2009 (Socorro AQS ID 481410057), there were no exceedances of the PM₁₀ 24-hour NAAQS.

The City also put in place provisions that the unpaved alley inventory will not increase because a city ordinance requires developers to pave any new alleys. Furthermore, the City discontinued garbage collection in alleys in 1997, so the traffic in alleys has been dramatically reduced. City action to reduce airborne PM₁₀ has also reduced the need to sweep streets at the frequencies specified under the current rule, and RAP, which has been proven to be as effective as paving, has been used to cover some unpaved alleys. In addition, the City also continues to include alley paving and maintenance in its annual budget. Because the El Paso area is monitoring attainment of the PM₁₀ NAAQS based on the monitoring site reporting regulatory PM₁₀ data for all three years from 2007 - 2009 (Socorro AQS ID 481410057), with the City's current practices in place, revising §111.147 to reflect these current practices would not interfere with the El Paso area's ability to attain and maintain the PM₁₀ NAAQS.

Section Discussion

The proposed revisions to §111.147, Roads, Streets, and Alleys would amend §111.147(1)(E) to remove the requirement to pave alleys at the rate of 15 miles per year and replace it with the following requirements: 1) all new alleys must be paved; 2) alleys may not be used for garbage and recycling collection; and 3) the use of RAP may be used as an alternate means of PM control for alleys. The proposed revision would also amend §111.147(2) to change the sweeping frequency requirement from four times per year to three times per year in the city limits and from six times per week to four times per week in the central business district.

The commission invites comment on the proposed changes to §111.147 discussed in this Section Discussion portion of this preamble. Additionally, comments on other portions of §111.147 unrelated to the proposed changes will not be considered by the commission, and no changes will be made on such comments.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government as a result of administration or enforcement of the proposed rule.

The proposed rule would amend Chapter 111 to allow more flexibility for the City to continue to comply with the 1997 PM₁₀ NAAQS. The current rules require the City to pave alleys to control dust and specify that 15 miles of alleys per year be paved. The current rules also require the removal of soil by mechanical sweepers or their equivalent on public thoroughfares within the city limits at the rate of four times per year and six times per week for public thoroughfares within the central business district. The City has used a variety of methods to comply with

the required levels for PM₁₀, including alternative methods of control not required by the Chapter 111 rules. However, due to budgetary constraints limiting the paving and sweeping capacity for the City, it is necessary to substitute the alternative control strategies in the rules to provide flexibility for the City and ensure continued compliance with the PM₁₀ NAAQS. For example, the City has eliminated garbage and recycling collection in alleys. This change has decreased traffic in alleys and reduced airborne PM₁₀. The City has also required developers to pave new alleys and has used RAP to cover some existing unpaved alleys. RAP has proved as effective as other paving materials at reducing PM₁₀. As a result of this action, the El Paso area is in compliance for PM₁₀ for the monitoring site reporting regulatory PM₁₀ data for all three years from 2007 - 2009 (Socorro AQS ID 481410057), there were no exceedances of the PM₁₀ 24-hour NAAQS, and the inventory of unpaved alleys has decreased from 66% in 1991, to 16% in 2010, with approximately 23 miles of unpaved alleys remaining. The City action to reduce airborne PM₁₀ has also reduced the need to sweep streets at the frequencies specified under current rules. The proposed rule would remove specific requirements for the number of miles of alleys to be paved per year, will allow the use of RAP as an alternate means of PM control for pre-existing unpaved alleys, and will decrease the number of days for street sweeping public thoroughfares from four to three times per year for those previously specified areas within the city limits, and from six to four times per week within the central business district.

The proposed rule will not have a fiscal impact on other local governments or the City. The proposed rule reflects current practices in El Paso for PM₁₀ control on roads, streets, and alleys.

Public Benefits and Costs

Nina Chamness also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be continued attainment with PM₁₀ NAAQS, and continued protection of public health and safety in El Paso. For the monitoring site reporting regulatory PM₁₀ data for all three years from 2007 - 2009 (Socorro AQS ID 481410057), there were no exceedances of the PM₁₀ 24-hour NAAQS.

The proposed rule will not have a fiscal impact on individuals or large businesses in El Paso since it gives the City more flexibility than current rules and reflects current practices in El Paso for PM₁₀ control on roads, streets, and alleys.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses in El Paso. The proposed rule revision gives the City more flexibility than current rules and reflects current practices in El Paso for PM₁₀ control on roads, streets, and alleys.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required, because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required, because the proposed rule does not adversely affect a

local economy in a material way for the first five years that the proposed rule is in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that this proposal is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a major environmental rule as defined in that statute. A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking is not a major environmental rule because the revisions to Chapter 111 will allow more flexibility for the City to continue to comply with the 1997 PM₁₀ NAAQS. For the monitoring site reporting regulatory PM₁₀ data for all three years from 2007 - 2009 (Socorro AQS ID 481410057), there were no exceedances of the PM₁₀ 24-hour NAAQS. The proposed rule revision will remove specific requirements for the number of miles of alleys to be paved per year, will allow the use of RAP as an alternate means of PM control for pre-existing unpaved alleys, and will decrease the number of times that soil is to be removed from public thoroughfares from four to three times per year for those previously specified areas within the city limits, and from six to four times per week within the central business district. The public benefit anticipated from the changes in the proposed rule will be continued attainment with PM₁₀ NAAQS, and continued protection of public health and safety in El Paso. For the monitoring site reporting regulatory PM₁₀ data for all three years from 2007 - 2009 (Socorro AQS ID 481410057), there were no exceedances of the PM₁₀ 24-hour NAAQS.

The proposed amendment will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rule will not have a fiscal impact on individuals or large businesses in El Paso since it gives the City more flexibility than current rules and reflects current practices in El Paso for PM₁₀ control on roads, streets, and alleys.

In addition, a draft regulatory impact analysis is not required because the rule does not meet any of the four applicability criteria for requiring a regulatory impact analysis of a major environmental rule as defined in the Texas Government Code. Texas Government Code, §2001.0225 applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law. This rulemaking does not exceed an express requirement of state law and is not proposed solely under the general powers of the agency, but is specifically authorized by the provisions cited in the Statutory Authority section of this preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

The commission invites public comment on the draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this rulemaking action and performed an analysis of whether the proposed rule constitutes a taking under Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to allow more flexibility for the City to continue to comply with the 1997 PM₁₀ NAAQS. This rulemaking does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Promulgation and enforcement of this proposed rulemaking is neither a statutory nor a constitutional taking because it does not affect private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in real property because this rulemaking does not burden (constitutionally); nor restrict or limit the landowner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in absence of the regulations. Therefore, this rule does not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking will not affect any coastal natural resource areas because the rules only affect counties outside the CMP area and is, therefore, consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

The commission has reviewed this proposed rulemaking and determined that, although §111.147 is an applicable requirement of 30 TAC Chapter 122, the proposed changes would only affect paving and street sweeping requirements for the City of El Paso, not individual emission units at sites. Therefore, the proposed changes do not affect sites subject to the Federal Operating Permits Program.

Announcement of Hearing

The commission will hold a public hearing on this proposal in El Paso on September 27, 2011, at 2:00 p.m. Mountain Standard Time in the El Paso State Office Building, 401 East Franklin, Room 570, El Paso, Texas 79901. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Charlotte Horn, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2010-046-111-EN. The comment period closes October 3, 2011. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.texas.gov/nav/rules/propose_adopt.html. For further information, please contact Peter Ogbeide, Air Quality Division, (512) 239-1937.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC. The amendment is also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Power and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.0172, concerning international border areas; and THSC, §382.0173 concerning Adoption of Rules Regarding Certain State Implementation Plan Requirements and Standards of Performance for Certain Sources.

The proposed amendment implements THSC, §§382.002, 382.011, 382.012, 382.017, 382.0172, and 382.0173.

§111.147. Roads, Streets, and Alleys.

No person may cause, suffer, allow, or permit any public, industrial, commercial, or private road, street, or alley to be used without taking at least the following precautions to achieve control of dust emissions:

(1) application of asphalt, water, or suitable oil or chemicals on the following unpaved surfaces, except in the City of El Paso and the Fort Bliss Military Reservation, except as noted in §111.141 of this title (relating to Geographic Areas of Application and Date of Compliance), where the use of paving materials is the only acceptable method of dust control, unless otherwise specified:

(A) industrial facility roadways--all major in-plant roads and all truck or other heavy-duty vehicle pathways. Major in-plant roads shall be defined as those which are designed to accommodate two-way traffic and are at least 30 feet wide at [at] least one point, measuring the distance from the edge of the undisturbed earth on either side of the established roadway. The executive director, with the concurrence of the United States Environmental Protection Agency, may grant a waiver from the requirement to pave an industrial

facility roadway if the owner of the roadway demonstrates that the cost of paving is economically unreasonable compared to other methods of dust control specified in this paragraph;

(B) public thoroughfares--all roads and streets to which the public has general access;

(C) commercial roads--all roads which serve as access for more than 50 employees or as access to more than 10 heavy-duty truck parking spaces;

(D) residential roads--all roads which serve as access for more than 20 residence and/or apartment units;

(E) alleys--in the City of El Paso, alleys must meet the following requirements: [~~shall be paved at the rate of at least 15 miles per year;~~]

(i) all new alleys must be paved;

(ii) alleys may not be used for garbage and recycling collection; and

(iii) the use of reclaimed asphalt pavement may be used as an alternate means of particulate matter control for alleys; and

(F) levee roads--in the City of El Paso, all levee roads and access to such roads must [~~shall~~] be controlled with the application of asphalt, or suitable oil or chemicals;

(2) removal from public thoroughfares, as necessary, of soil or other materials, except for sand applied for the specific purpose of snow or ice control. In the City of El Paso, removal of soil must [~~shall~~] be by mechanical sweepers or their equivalent at the rate of three [~~four~~] times per year for all public thoroughfares within the city limits and four [~~six~~] times per week or as necessary for public thoroughfares within the central business district. For the purpose of this section, the central business district is [~~shall be~~] defined as that area bordered by Loop 375 to the south, Santa Fe Street to the west, Missouri Street to the north, and Kansas Street to the east. The City of El Paso shall spot clean dirty roadways, and shall maintain street sweeping records for two years. Sand applied for the specific purpose of snow or ice control must [~~shall~~] be removed as soon as such control is no longer necessary.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 19, 2011.

TRD-201103304
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: October 2, 2011
For further information, please call: (512) 239-0779



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 35. PRIVATE SECURITY SUBCHAPTER C. STANDARDS

37 TAC §35.33

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Public Safety or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Public Safety (the department) proposes the repeal of §35.33, concerning Certificate of Installation. This rule clarified an obligation of alarm installers arising from the Texas Insurance Code. However, the statutory provision giving rise to this rule has been repealed and the rule now serves no purpose.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeal is in effect, there will be no fiscal impact for state and local government or local economies.

Ms. Hudson also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal. There are no anticipated economic costs to individuals who are required to comply with the repeal. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has determined that for each year of the first five-year period the repeal is in effect, the public will benefit from greater coherence and simplicity in the Private Security Board's administrative rules. There should be no economic costs resulting from the repeal of this rule.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on the proposed repeal may be sent to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(b) are affected by this proposal.

§35.33. *Certificate of Installation.*