

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Withdrawal of Rules from Consideration as Revisions to the State
Implementation Plan

AGENDA REQUESTED: December 11, 2013

DATE OF REQUEST: November 22, 2013

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Michael Parrish, (512) 239-2548

CAPTION: Docket No. 2013-2092-SIP. Consideration of the withdrawal of the following sections in 30 Texas Administrative Code Chapter 39, Public Notice; Chapter 101, General Air Quality Rules; Chapter 116, Control of Air Pollution by Permits for New Construction or Modification; and Chapter 122, Federal Operating Permits Program; from United States Environmental Protection Agency (EPA) as revisions to the State Implementation Plan (SIP).

Chapter 116, Subchapter L, Sections 116.1400, 116.1402, 116.1404, 116.1406, 116.1408, 116.1410, 116.1414, 116.1416, 116.1418, 116.1420, 116.1422, 116.1424, 116.1426 and 116.1428, adopted by the commission on February 22, 2006 for anticipated FutureGen projects and submitted to EPA on March 9, 2006. Chapter 39, Sections 39.402(a)(10), 39.419(e)(3), and 39.420(h), which are specific public participation requirements for applications for permits for specific designated facilities, adopted by the commission on June 2, 2010 and submitted to EPA on July 2, 2010. These sections to be withdrawn from EPA consideration are those for which no application for the specific designated facility has been received nor is expected to be received.

Chapter 101, Section 101.28, regarding stringency determinations for federal operating permits, adopted by the commission on December 1, 1999 and submitted to EPA on December 17, 1999. Chapter 122, Sections 122.215, and 122.218, regarding minor permit revision procedures for the federal operating permits program, adopted May 9, 2001 and submitted to EPA October 4, 2001; Section 122.216, regarding minor permit revision procedures for the federal operating permits program, amended May 9, 2001, and submitted to EPA October 4, 2001; and Section 122.217, regarding minor permit revision procedures for the federal operating permits program, as amended by the commission on November 20, 2002 and submitted to EPA on August 11, 2003. These sections were originally

submitted to EPA as a SIP revision in support of the Texas Title V Federal Operating Permit Program at the request of EPA. These five sections to be withdrawn from EPA consideration are those for which there is no requirement for inclusion in the SIP under the requirements of the Federal Clean Air Act. (Michael Wilhoit, Janis Hudson, Terry Salem) (Rule Project No. 2014-009-SIP-NR)

Jayne Sadlier for Steve Hagle
Deputy Director

Steven Hagood for Mike Wilson
Division Director

Michael Parrish
Agenda Coordinator

Copy to CCC Secretary? NO X YES

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: November 22, 2013

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

From: Steve Hagle, Deputy Director
Office of Air

Docket No.: Docket No. 2013-2092-SIP

Subject: Commission Withdrawal of State Implementation Plan (SIP) Submittals Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, Subchapter L, §§ 116.1400, 116.1402, 116.1404, 116.1406, 116.1408, 116.1410, 116.1414, 116.1416, 116.1418, 116.1420, 116.1422, 116.1424, 116.1426 and 116.1428; Chapter 39, Public Notice, §§ 39.402(a)(10), 39.419(e)(3), and 39.420(h); Chapter 101, General Air Quality Rules, § 101.28; and Chapter 122, Federal Operating Permits Program, §§ 122.215-122.218.

FutureGen and Federal Operating Permit Program Withdrawals
Project No. 2014-009-SIP-NR

Background and reason(s) for the request:

FutureGen Rules:

The rules for the anticipated FutureGen project (30 Texas Administrative Code (TAC) Chapter 116, Subchapter L, Permits for Specific Designated Facilities, §§ 116.1400, 116.1402, 116.1404, 116.1406, 116.1408, 116.1410, 116.1414, 116.1416, 116.1418, 116.1420, 116.1422, 116.1424, 116.1426 and 116.1428), were adopted by the commission on February 22, 2006 as Rule Project No. 2005-053-091-PR and submitted to the United States Environmental Protection Agency (EPA) on March 9, 2006. In addition, there are certain public notice rules that are unique to the FutureGen program; those are 30 TAC Chapter 39, Public Notice, §§ 39.402(a)(10), 39.419(e)(3), and 39.420(h), which were adopted by the commission on June 2, 2010 as Rule Project No. 2010-004-039-LS and submitted to EPA on July 2, 2010. The rules were submitted as proposed revisions to the SIP because the Federal Clean Air Act (FCAA) requires states to adopt rules for permitting both major and minor sources and have those rules approved as part of the SIP prior to construction of the facilities that would be authorized by the rules.

Specifically, these rules concern applications for, and public notice of, authorization required to construct and operate or modify a component of the FutureGen project, as authorized under Texas Health & Safety Code § 382.0565. This statute was added by the 79th Texas Legislature by House Bill 2201 in 2005 to specifically authorize streamlined permit procedures for an application for a FutureGen project. FutureGen refers to a combination of technologies for carbon sequestration, carbon dioxide enhanced oil

Re: Docket No. 2013-2092-SIP

recovery, electric generation, and hydrogen production. This technology demonstration project was to be a partnership between industry participants and the United States Department of Energy (DOE). Subsequently, the FutureGen project was awarded to Illinois rather than Texas, and DOE decided to not fund that project in 2008. In 2010, DOE developed FutureGen 2.0, which was still planned for construction in Illinois. Therefore, these rules proposed to be withdrawn from EPA review are those for which no application for a component of the FutureGen project has been received nor is expected to be received and as such would not be necessary for SIP approval.

On November 21, 2013, EPA published a proposed direct final approval and proposed approval of all of these rules, and is subject to a consent decree to take final action on the FutureGen rules by December 31, 2013. EPA acknowledged that while the FutureGen project rules are not likely to be used in Texas, it still has an obligation to review these as it would any other permit rules submitted for the SIP. EPA concluded that the rules could be approved into the SIP.

Federal Operating Permit Stringency and Minor Permit Revision Procedures Rules:

The rules recommended for withdrawal are Chapter 101, General Air Quality Rules, § 101.28, adopted on December 1, 1999 as part of Rule Project No. 99017-101-AI and submitted to EPA on December 17, 1999; Chapter 122, Federal Operating Permits Program, §§ 122.215, and 122.218, adopted May 9, 2001 as part of Rule Project No. 2000-043-122-AI and submitted to EPA October 4, 2001; Chapter 122, Federal Operating Permits Program, § 122.216, amended May 9, 2001 as part of Rule Project No. 2000-043-122-AI and submitted to EPA October 4, 2001; and Chapter 122, Federal Operating Permits Program, § 122.217, as amended on November 20, 2002 as part of Rule Project No. 2002-043-122-AI and submitted to EPA on August 11, 2003.

These rules were originally submitted to EPA as SIP revisions in support of the FCAA Title V program, at EPA's request. However, staff has determined that there is no requirement for inclusion of these sections in the SIP under the requirements of the FCAA. EPA proposed to approve these sections as SIP revisions via direct final approval, published in the *Federal Register* on September 10, 2013 (78 *Fed. Reg.* 55221). EPA received comment in opposition to the SIP approval, and withdrew its proposed approval, published in the *Federal Register* on November 6, 2013 (78 *Fed. Reg.* 66648). EPA is subject to a consent decree to take final action on the rules by December 31, 2013.

Scope of the request:

Staff is requesting the commission's approval to request withdrawal from EPA consideration the sections noted above as revisions to the SIP. All sections listed above remain effective for purposes of regulation in the state. The FutureGen statute, which requires rulemaking for implementation, is still in effect, and therefore no repeal of these rules can be proposed and adopted as long as the statute remains in place as written. In

Re: Docket No. 2013-2092-SIP

addition, § 101.28 and §§ 122.215 – 122.218 remain part of the approved Federal Operating Permit Program.

A.) Summary of what the withdrawal will do:

The withdrawal will remove the sections from consideration as revisions to the Texas SIP. EPA will return the submitted sections, and no further action will be taken by EPA regarding the commission's previous request to consider them as revisions to the SIP.

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

N/A

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

There are no additional staff recommendations.

Statutory authority:

This request to withdraw the above noted sections is made under the commission's authority in Texas Water Code (TWC), § 5.102, General Powers, TWC, § 5.103, Rules, and TWC, § 5.105, General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, § 5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory programs. The withdrawals are also adopted under Texas Health & Safety Code (THSC), § 382.002, 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, General Powers and Duties, which authorizes the commission to control the quality of the state's air; and THSC, § 382.012, State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for the control of the state's air.

Effect on the:

A.) Regulated community:

None is anticipated for the regulated community.

B.) Public:

None is anticipated for the public.

C.) Agency programs:

None is anticipated for agency programs.

Stakeholder meetings:

None were held.

Re: Docket No. 2013-2092-SIP

Public comment:

The withdrawal has not been subject to public comment independent of the posting for consideration on the December 11, 2013 TCEQ agenda. There is no requirement for public comment for withdrawal of submittals.

Significant changes from proposal:

There is no proposal action associated with this withdrawal request.

Potential controversial concerns and legislative interest:

None identified or expected.

Does this rulemaking affect any current policies or require development of new policies? No.

What are the consequences if this withdrawal is not adopted? Are there alternatives?

If this withdrawal is not approved by the commission, EPA will be required to take action on the submitted sections, in order to comply with a consent decree requiring EPA to take final action on certain pending SIP submissions by December 31, 2013. TCEQ would have to affirmatively act to request removal from the SIP if the rules are approved as SIP revisions.

Agency contacts:

Michael Wilhoit, Rule Project Manager, (512) 239-1222, Air Permits Division
Janis Hudson, Staff Attorney, (512) 239-0466
Terry Salem, Staff Attorney, (512) 239-0469
Michael Parrish, Texas Register Coordinator, (512) 239-2548

Attachments

N/A

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Tucker Royall
Office of General Counsel
Michael Wilhoit
Michael Parrish
Janis Hudson
Terry Salem