

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST

For Withdrawal of Section to the State Implementation Plan

AGENDA REQUESTED: June 22, 2016

DATE OF REQUEST: June 3, 2016

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Derek Baxter, (512) 239-2613

CAPTION: Docket No. 2016-0307-SIP-NR. Consideration of the withdrawal from consideration by the United States Environmental Protection Agency of 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, Subchapter B, Section 116.110(a)(5), concerning de minimis authorization of facilities as a revision to the State Implementation Plan.

(Mandolin Shannon, Janis Hudson) (Project No. 2016-029-SIP-NR)

Steve Hagle, P.E.

Deputy Director

Michael Wilson, P.E.

Division Director

Derek Baxter

Agenda Coordinator

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: June 3, 2016

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: Steve Hagle, Deputy Director
Office of Air

Docket No.: 2016-0307-SIP-NR

Subject: Commission Withdrawal of §116.110(a)(5) from the State Implementation Plan (SIP) Submittal
De Minimis Rule SIP Withdrawal
Project No. 2016-029-SIP-NR

Background and reason(s) for the SIP withdrawal:

The amendment to 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, Subchapter B, §116.110(a)(5), was adopted by the Texas Commission on Environmental Quality (commission) on August 9, 2000, as part of Rule Project No. 1999-029B-116-AI, pursuant to Senate Bill (SB) 766, 76th Legislature, 1999. The amendment was submitted to the United States Environmental Protection Agency (EPA) on September 11, 2000.

Specifically, §116.110(a)(5) provides that one of the options for authorization to construct and operate facilities is to satisfy the criteria for a de minimis facility found in §116.119. The authority for these types of facilities is found in Texas Health and Safety Code (THSC), §382.05101. This statute was added by the 76th Texas Legislature by SB 766 in 1999 to allow the commission to develop by rule the criteria to establish a de minimis level of air contaminants for facilities or groups of facilities below which a permit is not required. The commission implemented THSC, §382.05101 by adopting §116.119, which lists the commission's determination of what types of facilities or sources are de minimis for purposes of construction and operation under the Texas Clean Air Act.

Governor George W. Bush submitted §116.110(a)(5) as a SIP revision to the EPA on September 11, 2000 in support of the Federal Clean Air Act New Source Review program. However, because this section includes a citation to §116.119, a section that has not been proposed or adopted by the commission as a SIP revision, §116.110(a)(5) is not approvable as a SIP revision. To date, EPA has taken no action to propose approval or disapproval of this section as a SIP revision.

Scope of the request:

Staff is requesting the commission's approval to request withdrawal from EPA consideration §116.110(a)(5) as a revision to the SIP. Section 116.110(a)(5) remains effective for purposes of regulation in the state.

A.) Summary of what the SIP withdrawal will do:

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If the withdrawal is approved by the commission, the section will be removed from consideration as a revision to the Texas SIP. EPA will return the submitted section, and no further action will be taken by EPA regarding the commission's previous request to consider it as a revision to the SIP.

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

There are no required federal regulations or state statutes. Because §116.110(a)(5) has not been SIP-approved, no public hearing is necessary for the commission to withdraw it from EPA consideration.

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 §116.110(a)(5) is made under the commission's authority in Texas Water Code (TWC) §5.102, General Powers; TWC, §5.103, Rules; TWC, §5.105, General Policy; TWC, §5.013, General Jurisdiction of Commission. The withdrawal was also adopted under THSC, §382.002, Policy and Purpose; THSC, §382.011, General Powers and Duties; THSC, §382.012, State Air Control Plan; and THSC, §382.017, Rules.

Effect on the:

A.) Regulated community:

None.

B.) Public:

None.

C.) Agency programs:

None.

Stakeholder meetings:

None were held.

Potential controversial concerns and legislative interest:

None identified or expected.

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

No.

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What are the consequences if this SIP withdrawal does not go forward? Are there alternatives?

If the commission does not approve this withdrawal, EPA will take action on the submitted section, in order to comply with EPA's commitment to states to take final action on pending SIP submissions over a four-year period ending December 31, 2017. It is anticipated that EPA would disapprove §116.110(a)(5), because the rule refers to §116.119 (De Minimis Facilities or Sources), which was not submitted as a SIP revision.

Agency contacts:

Mandolin Shannon, Rule Project Manager, (512) 239-6541, Air Permits Division

Janis Hudson, Attorney, (512) 239-0466, Environmental Law Division

Derek Baxter, Texas Register Coordinator, (512) 239-2613

Attachments

None

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Erin Chancellor
Stephen Tatum
Jim Rizk
Office of General Counsel
Mandolin Shannon
Derek Baxter
Janis Hudson

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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

Mr. Ron Curry
Regional Administrator
U.S. Environmental Protection Agency - Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

RE: Commission Withdrawal of § 116.110(a)(5) from the State Implementation Plan (SIP) Submittal

(TCEQ Project No. 2016-029-SIP-NR).

Dear Mr. Curry:

June 22, 2016, the Texas Commission on Environmental Quality (commission) voted to withdraw a rule from consideration by the United States Environmental Protection Agency (EPA) as revision to the Texas State Implementation Plan (SIP).

The revision that the commission is withdrawing from consideration by the EPA is 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, Subchapter B, § 116.110(a)(5) adopted on August 9, 2000 as part of Project No. 1999-029B-116-AI pursuant to Senate Bill 766, 76th Legislature, 1999. Governor George W. Bush submitted this amendment as a SIP revision to EPA on September 11, 2000. To date, EPA has taken no action on this proposed SIP revision.

This withdrawal removes this rule from your consideration at this time.

Enclosed is the Commission's Order that enacts this action.

Sincerely,

Bryan W. Shaw, Ph.D.
Chairman

cc: The Honorable Greg Abbott, Governor of Texas
Mr. Ryan Vise, Office of Budget, Planning and Policy, Office of the Governor
Mr. Richard Hyde, Executive Director, Texas Commission on Environmental Quality

bcc: Mr. Tucker Royall, General Counsel
Mr. Robert Martinez, Director, Environmental Law Division
Ms. Patricia Durón, Office of Legal Services
Mr. Derek Baxter, Office of Legal Services
Steven Hagood, Assistant Division Director, Air Permits Division
Janis Hudson, Attorney, Environmental Law Division
Megan Hamilton, Team Leader, Operational Support Team 2, Air Permits Division

Texas Commission on Environmental Quality



ORDER ADOPTING WITHDRAWAL OF A RULE FROM CONSIDERATION AS A REVISION TO THE STATE IMPLEMENTATION PLAN

Docket No. 2016-0307-SIP
Project No. 2016-029-SIP-NR

On June 22, 2016, the Texas Commission on Environmental Quality (commission) considered the withdrawal of 30 Tex. Admin. Code § 116.110(a)(5), as adopted by the commission on August 9, 2000, from consideration by the United States Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP).

IT IS THEREFORE ORDERED BY THE COMMISSION that 30 Tex. Admin. Code § 116.110(a)(5) is hereby withdrawn from submission to EPA as a revision to the SIP.

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., P.E. Chairman