

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**  
For Revision 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. 2016-0308-SIP.** Consideration for publication of, and hearing on, a proposed revision to the State Implementation Plan (SIP) for removal of 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, Sections 116.120 - 116.123, 116.125, and 116.126 from the SIP. Sections 116.120 - 116.123, 116.125, and 116.126 were repealed on August 7, 2002. (Becky Southard, Janis Hudson) (Project No. 2016-028-SIP-NR)

Steve Hagle, P.E.  
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**Deputy Director**

Michael Wilson, P.E.  
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**Division Director**

Derek Baxter  
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**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, P.E., Deputy Director  
Office of Air

**Docket No.:** 2016-0308-SIP

**Subject:** State Implementation Plan (SIP) Revision to Remove Repealed Compliance History Rules  
Project No. 2016-028-SIP-NR

### **Background and reason(s) for the SIP revision:**

As part of Senate Bill 2 (72nd Texas Legislature, 1st Called Session, 1991), which combined the Texas Air Control Board (TACB) and the Texas Water Commission to form the Texas Natural Resource Conservation Commission in 1993, Texas Health and Safety Code (THSC), §382.0518(c) was added to the (Texas Clean Air Act (TCAA)). THSC, §382.0518(c) added authority for the TACB to consider an applicant's compliance history when considering the issuance, amendment or renewal of an air quality permit. To implement the statutory change, the TACB adopted rule 31 TAC §116.14 on October 16, 1992, which specified what must be included in the compliance history and the responsibilities for applicants and agency staff for review of permit applications. On August 16, 1993, as part of a rulemaking project that rearranged and re-numbered the air quality permit program rules, the TACB repealed §116.14 and replaced it with adopted 31 TAC §§116.120 - 116.126. These new rules were submitted to the United States Environmental Protection Agency (EPA) as revisions to the State Implementation Plan (SIP). EPA did not take any action on the 1993 submittal. On June 17, 1998, numerous sections in 30 TAC Chapter 116, including these rules, were repealed and readopted as part of a "regulatory reform" rules review. At that time, the compliance history rules were submitted again to EPA as SIP revisions. Section 116.124 was repealed in 1999 as part of the commission's HB 801 rulemaking and was withdrawn from EPA's consideration.

Although proposed for approval in 2001, EPA's approval of 30 TAC §§116.120 - 116.123, 116.125 and 116.126 was not final until September 18, 2002. EPA provided no discussion in either its proposal or adoption notices regarding its basis for SIP approval.

During this same time period, House Bill 2912 (77th<sup>h</sup> Texas Legislature, 2001) added Texas Water Code (TWC), Chapter 5, Subchapter Q, regarding performance-based regulation. Among other sections, new TWC, §5.753 and §5.754 (in Subchapter Q) directed TCEQ to develop standards for a compliance history program that, among other things, would be used agency-wide when issuing, amending or renewing permits. On August 7, 2002, the commission adopted new 30 TAC Chapter 60 and repealed the compliance history rules for air quality permitting in §§116.120 - 116.123, 116.125 and 116.126 to implement these new statutes. However, this rulemaking did not include proposing or adopting changes to the SIP for rules in Chapter 60 or Chapter 116.

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The purpose of submitting rules as revisions to the SIP is to meet the requirements of the Federal Clean Air Act (FCAA). EPA is required to approve all rules submitted as SIP revisions, unless there is a reason for EPA to disapprove the rules. Beginning with the SIP revisions adopted by the TACB in the 1970s, it was not uncommon for rules adopted to meet state statutory requirements to be submitted to EPA as SIP revisions, even when there was no federal requirement counterpart, such as these rules for compliance history standards. EPA often approved such rules without any analysis as to its reason for SIP approval. Currently, EPA's approval notices of such rules often explain that the rules are approved to "strengthen the SIP." In recent years, TCEQ rules adopted for air quality permitting to implement state law only have generally not been submitted to EPA as SIP revisions.

This proposal would request EPA to remove 30 TAC §§116.120 - 116.123, 116.125 and 116.126 from the SIP to ensure the SIP accurately reflects the necessary federally enforceable components of the Texas' air quality permitting program.

**Scope of the SIP revision:**

Staff is requesting the commission's approval to request the removal of §§116.120 - 116.123, 116.125 and 116.126 from the SIP.

**A.) Summary of what the SIP revision will do:**

If the SIP revision is approved by the commission, these sections will be submitted to EPA for consideration for removal from the Texas SIP. EPA's approval of the SIP revision will ensure that the SIP does not contain this component of TCEQ's air quality permitting program.

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

There are no required federal regulations regarding compliance history or state statutes which require that compliance history be part of the approved SIP. Because §§116.120 - 116.123, 116.125, and 116.126 have been approved by the EPA as part of the SIP, a public hearing is required for the proposed SIP revision.

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

There are no additional staff recommendations.

**Statutory authority:**

This request 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 is also proposed under Texas Health and Safety Code (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; and the

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SIP requirements in Title I of the FCAA, 42 United States Code, §7410 and 40 Code of Federal Regulations Part 51, Subpart F.

**Effect on the:**

**A.) Regulated community:**

None. Compliance history consideration as part of the TCEQ's air permitting program will continue under the rules in 30 TAC Chapter 60.

**B.) Public:**

None.

**C.) Agency programs:**

None.

**Stakeholder meetings:**

None were held. A public hearing will be held during the comment period in Austin.

**Potential controversial concerns and legislative interest:**

None identified or expected.

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

No.

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

Leaving the compliance history requirements in the SIP may be confusing because these rules were repealed in 2002.

**Key points in the proposal rulemaking schedule:**

**Anticipated proposal date:** June 22, 2016

**Anticipated *Texas Register* publication date:** July 8, 2016

**Anticipated public hearing date:** August 2, 2016

**Anticipated public comment period:** July 8, 2016-August 8, 2016

**Anticipated adoption date:** November 2, 2016

**Agency contacts:**

Becky Southard, Rule Project Manager, Air Permits Division, (512) 239-1638

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

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

**Attachments**

None.

cc: Chief Clerk, 2 copies

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Re: Docket No. 2016-0308-SIP

Executive Director's Office

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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*

## **NOTICE OF PUBLIC HEARING ON PROPOSED REVISIONS TO THE STATE IMPLEMENTATION PLAN**

The Texas Commission on Environmental Quality (TCEQ or commission) will conduct a public hearing to receive testimony regarding proposed revisions to the state implementation plan (SIP) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency (EPA) concerning SIPs.

The TCEQ is proposing to revise the SIP by removing compliance history rules in 30 TAC §§116.120 - 116.123, 116.125, and 116.126. Sections 116.120 - 116.123, 116.125, and 116.126 were requirements regarding the standards for and use of compliance history in air quality permitting. The rules were submitted to EPA in 1998 and approved by EPA as revisions to the SIP in September, 2002. However, the TCEQ repealed these rules on August 7, 2002.

Compliance history reviews for air quality permit applications are not required by the federal Clean Air Act and thus are not requirements for the Texas SIP. The TCEQ will continue to conduct compliance history reviews as part of its New Source Review (NSR) permit program under its rules in 30 TAC Chapter 60.

The commission will hold a public hearing on this proposal in Austin on August 2, 2016, at 2:30 pm in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. 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 1:30 p.m. to 2:00 p.m. prior to the hearing.

Written comments may be submitted to Derek Baxter, 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://www1.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 2016-028-SIP-NR. The comment period closes August 8, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at [http://www.tceq.texas.gov/rules/propose\\_adopt.html](http://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Becky Southard, Air Permits Division, (512) 239-1638.

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 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.