

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST

Adoption of Revision to the State Implementation Plan

AGENDA REQUESTED: November 2, 2016

DATE OF REQUEST: October 14, 2016

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

CAPTION: Docket No. 2016-0308-SIP. Consideration of an adopted revision to the State Implementation Plan (SIP) for removal of 30 Texas Administrative Code (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 Sections 116.120 - 116.123, 116.125, and 116.126 were repealed on August 7, 2002. Notice was published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 5109). (Becky Southard, Janis Hudson) (Project No. 2016-028-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:** October 14, 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Subject: Adoption of State Implementation Plan (SIP) Revision to Remove Repealed Compliance History Rules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 Texas Administrative Code (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1993, as part of a rulemaking project that rearranged and re-numbered the air quality permit program rules, the TACB repealed §116.14 and replaced it with adopted 31 TAC §§116.120 - 116.126.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 House Bill (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, HB 2912 (77th 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 Texas Commission Environmental Quality (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 adoption 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 was required to adopt the 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 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 adopted 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 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:

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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.

Public comment:

The commission held a public hearing on August 2, 2016. The comment period closed on August 8, 2016. No public comments were received.

Significant changes from proposal:

There are no changes since proposal.

Potential controversial concerns and legislative interest:

None.

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

None.

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 adoption rulemaking schedule:

Texas Register proposal publication date: July 8, 2016

Anticipated Texas Register adoption publication date: November 18, 2016

Anticipated effective date: November 24, 2016

Six-month Texas Register filing deadline: January 8, 2017

Agency contacts:

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

Janis Hudson, Attorney, (512) 239-0466,

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

Attachments

None.

cc: Chief Clerk, 2 copies
Executive Director's Office

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Re: Docket No. 2016-0308-SIP-NR

Marshall Coover
Erin Chancellor
Stephen Tatum
Jim Rizk
Office of General Counsel
Becky Southard
Derek Baxter

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Project No. 2016-028-SIP-NR**

THE STATE OF TEXAS

COUNTY OF TRAVIS

This is to certify that the attached electronic file is included and that the electronic file is a true and correct copy of documents for a revision to the Texas State Implementation Plan, adopted on November 2, 2016, pursuant to 40 Code of Federal Regulations § 51.104. I am the records administrator for the Air Permits Division of the Texas Commission on Environmental Quality (Commission).



Michael Wilson, P.E.
Director, Air Permits Division
Texas Commission on Environmental Quality

ORDER ADOPTING REVISION TO THE STATE IMPLEMENTATION PLAN

Docket No. 2016-0308-SIP
Project No. 2016-028-SIP-NR

On November 2, 2016, the Texas Commission on Environmental Quality (Commission), during a public meeting, considered adoption of a revision to the State Implementation Plan (SIP). The Commission adopts the request to the United States Environmental Protection Agency to remove from the SIP the Commission's original compliance history rules applicable to air quality permit applications in §§ 116.120 - 116.123, 116.125 and 116.126 of 30 Texas Administrative Code Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, repealed by the Commission on August 7, 2002. Under Tex. Health & Safety Code Ann., §§ 382.011, 382.012, and 382.023 (Vernon 2010), 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. Notice of the proposed SIP revision was published for comment in the July 8, 2016, issue of the *Texas Register* (41 TexReg 5109).

Pursuant to 40 Code of Federal Regulations § 51.102 and after proper notice, the Commission conducted a public hearing to consider the SIP revision. 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 in Austin, Texas on August 2, 2016.

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 SIP revision, either orally or in writing, at the hearing or during the comment period. Prior to the scheduled hearing, copies of the proposed SIP revision were available for public inspection at the Commission's central office and on the Commission's website.

No comments were received regarding the SIP revision.

IT IS THEREFORE ORDERED BY THE COMMISSION that the revision to the SIP incorporated by reference to this Order is hereby adopted. The adopted revision to the SIP is 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 SIP revision, 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.

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.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., P.E., Chairman

Date Signed

DRAFT