TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AGENDA ITEM REQUEST

for Rulemaking Adoption

AGENDA REQUESTED: November 2, 2016

DATE OF REQUEST: October 14, 2016

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Sherry Davis, (512) 239-6812

CAPTION: Docket No. 2016-0408-RUL. Consideration of the adoption of the repeal of Sections 116.130 - 116.134, 116.136, and 116.137 of 30 Texas Administrative Code (TAC) Chapter 116, Control of Air Pollution by Permits for New Construction or Modification; and corresponding revisions to the State Implementation Plan.

The adoption would remove from Chapter 116 obsolete notification and comment procedures rules, which have been superseded by portions of 30 TAC Chapter 39, Public Notice, and 30 TAC Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment. The proposed repeal was published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4950) and a Correction of Error was published in the July 22, 2016, issue of the *Texas Register* (41 TexReg 5458). (Tasha Burns, Janis Hudson) (Rule Project No. 2016-026-116-AI)

Steve Hagle, P.E.
Deputy Director

Michael Wilson, P.E.
Division Director

Sherry L. Davis
Agenda Coordinator

Copy to CCC Secretary? NO YES X

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.: 2016-0408-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 116, Control of Air Pollution by Permits for New Construction or Modification
Repeal of Obsolete Notification and Comment Procedures
Rule Project No. 2016-026-116-AI

Background and reason(s) for the rulemaking:
The rules in 30 Texas Administrative Code (TAC) Chapter 116, Subchapter B, Division 3 (Public Notification and Comment Procedures), are obsolete. These rules apply to air quality case-by-case new, amendment, and renewal permit applications that were declared administratively complete before September 1, 1999. House Bill (HB) 801 (Texas Legislature, 1999) and the rules in 30 TAC Chapters 39 and 55 implementing the bill superseded the public participation rules in Chapter 116 for all applications declared administratively complete on and after September 1, 1999. The HB 801 rules were approved as part of the State Implementation Plan (SIP) by the United States Environmental Protection Agency (EPA) effective February 5, 2014. Repealing the obsolete rules in Chapter 116 and requesting a SIP revision for EPA to remove them from the SIP will eliminate any possible confusion as to what public participation requirements are in the Texas SIP.

Scope of the rulemaking:
This adopted rulemaking repeals the obsolete rules in Chapter 116 to reduce confusion for the regulated community and the public. The SIP-approved public notice requirements in Chapter 39 will not be affected, and the public's opportunity to participate in the air permitting process will not change as a result of this repeal.

A.) Summary of what the rulemaking will do:
This rulemaking repeals §§116.130 - 116.134, 116.136, and 116.137 regarding Public Notification and Comment Procedures.

B.) Scope required by federal regulations or state statutes:
Repeal of the obsolete rules and the SIP revision removal of the rules from the SIP is consistent with the Federal Clean Air Act (FCAA) requirements that a state's SIP include a permitting program consistent with Title I and the EPA's regulations promulgated to implement Title I.

C.) Additional staff recommendations that are not required by federal rule or state statute:
None.

Statutory authority:
Texas Water Code, §5.103, Rules; TWC, §5.105, General Policy; Texas Health and Safety Code (THSC), §382.002, Policy and Purpose; THSC, §382.003, Definitions; THSC, §382.011, General Powers and Duties; THSC, §382.012, State Air Control Plan; THSC, §382.017, Rules; THSC, §382.051, Permitting Authority of Commission; Rules; THSC, §382.0511, Permit Consolidation and Amendment; THSC, §382.0518, Preconstruction Permit; THSC, §382.055, Review and Renewal of Preconstruction Permit; THSC, §382.056, Notice of Intent to Obtain Permit or Permit Review; Hearing; THSC, §382.058, Notice of and Hearing on Construction of Concrete Plant Under Permit by Rule, Standard Permit, or Exemption; and 42 United States Code, §§7401, *et seq.*

Effect on the:
No fiscal impact is anticipated from this rulemaking, and it does not create a group of affected persons who were not affected previously.

A.) Regulated community:
Applicants for air permits will have greater clarity regarding the applicable public participation requirements.

B.) Public:
The public will have greater understanding of what the applicable public participation requirements are for air permitting applications.

C.) Agency programs:
There will be no workload increase for the Air Permits Division or other agency programs. Repeal of the rules could result in fewer questions from the public and regulated entities about the obsolete rules.

Stakeholder meetings:
There were no stakeholder meetings held related to this rulemaking; however, a rule public hearing was held during the comment period in Austin.

Public comment:
The public comment period ran from July 8, 2016, through August 8, 2016. A public hearing was held in Austin on August 2, 2016. The commission received no comments.

Significant changes from proposal:
There are no changes from proposal.

Potential controversial concerns and legislative interest:
In order for EPA to approve removal of these rules from the SIP, this rulemaking includes a demonstration that the revision to the SIP will not interfere with any applicable requirement concerning attainment and reasonable further progress. This is commonly known as the anti-backsliding provision (FCAA, §110(l)). This requirement will be met by noting that the Texas SIP currently includes the necessary public participation requirements for minor and major New Source Review permitting.

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On July 16, 1999, the commission proposed repeal of these rules and their removal from the SIP (24 TexReg 5427). The commission did not adopt the repeal, but retained the rules for applications that were administratively complete before September 1, 1999.

Does 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?
Without this rulemaking obsolete rules would remain in the commission's rules, codified in Title 30 of the TAC; and in the Texas SIP, codified in 40 Code of Federal Regulations §52.2270. The impact of retaining the obsolete rules is limited to potential confusion in the regulated community and public regarding which public participation requirements apply to air permit applications.

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:
Tasha Burns, Rule Project Manager, Air Permits Division, (512) 239-5868
Janis Hudson, Staff Attorney, (512) 239-0466
Sherry Davis, Texas Register Rule/Agenda Coordinator, (512) 239-2141

Attachments:
None.

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Erin Chancellor
Stephen Tatum
Jim Rizk
Office of General Counsel
Tasha Burns
Sherry Davis

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §§116.130 - 116.134, 116.136, and 116.137.

The repeal of §116.130 - 116.134, 116.136, and 116.137 is adopted *without changes* to the proposal as published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4950), with a correction on July 22, 2016 (41 TexReg 5458), and will not be republished.

The commission will submit the repeal of §§116.130 - 116.134, 116.136, and 116.137 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 Rules

Sections 116.130 - 116.134, 116.136, and 116.137 were adopted August 27, 1993 (18 TexReg 5746) as public notification and comment procedures for New Source Review air permit applications in a rulemaking action that restructured the existing air quality permit program rules for the Texas Air Control Board. Except for §116.136, these rules were repealed and readopted by the Texas Natural Resource Conservation Commission (TNRCC, predecessor of the TCEQ) on June 17, 1998, and re-submitted to the EPA. With the exception of §116.130(c) (regarding hazardous air pollutants which are not part of the SIP), these rules were approved into the SIP, as published in the September 18, 2002, issue of the *Federal Register* (67 FR 58709).

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting. TCEQ adopted rules to implement HB 801 (and other bills) that consolidated the public participation rules across the agency as published in the September 24, 1999, issue of the *Texas Register* (24 TexReg 8190). That rulemaking included rules in 30 TAC Chapter 39 (Public Notice), Subchapters H (Applicability and General Provisions) and K (Public Notice of Air Quality Permit Applications), that apply to certain air quality permit applications declared administratively complete on or after September 1, 1999. TCEQ submitted portions of the rulemaking to implement HB 801 to the EPA as revisions to the SIP. The public participation rules in Chapter 116 that were superseded by the rules adopted to implement HB 801 were not repealed at that time because the rules applied to pending applications that were declared administratively complete before September 1, 1999.

In 2010, TCEQ conducted a rulemaking, published in the June 18, 2010, issue of the *Texas Register* (35 TexReg 5198), that clarified the public participation requirements for air quality applications. TCEQ's adoption notice included discussions addressing EPA's concerns about TCEQ's SIP submittal of the 1999 rules to implement HB 801, as well as several TCEQ public participation rulemakings for air quality permit applications adopted from 1999 - 2010, and the final set of rules submitted as SIP revisions in 2010. EPA's approvals of the 2010 submittal were published in the January 6, 2014, issue of the *Federal Register* (79 FR 551); the March 30, 2015, issue of the

Federal Register (80 FR 16573); and the October 6, 2015, issue of the *Federal Register* (80 FR 60295). In addition, EPA has approved subsequent changes to public participation rules adopted by the commission in 2014, as published in the November 20, 2014, issue of the *Federal Register* (79 FR 66626). At the time of this adoption, no public participation rules remain pending EPA review. Inclusion in the SIP ensures the public participation requirements are federally enforceable.

No applications for which §§116.130 - 116.134, 116.136, and 116.137 are applicable remain pending with the commission. Repealing the obsolete rules and revising the SIP by removing §§116.130 - 116.134, 116.136, and 116.137 will eliminate any possible confusion as to what the applicable public participation requirements are in the SIP. The public's opportunity to participate in the air permitting process will not change nor be affected in any way as a result of this repeal.

Federal Clean Air Act §110(l)

All revisions to the SIP are subject to EPA's finding that the revision will not interfere with any applicable requirement concerning attainment and reasonable further progress of the National Ambient Air Quality Standards, or any other requirement of the Federal Clean Air Act, 42 United States Code (USC), §7410(l). This statute has been interpreted to be whether the revision will "make air quality worse" *(Kentucky Resources Council, Inc. v. EPA,* 467 F.3d 986 (6th Cir. 2006), cited with approval in *Galveston-Houston Association for Smog Prevention (GHASP) v. U.S. EPA,* 289 Fed. Appx.

745, 2008 WL 3471872 (5th Cir.)). Because procedural rules have no direct nexus with air quality, and because the current applicable public participation rules are approved as part of the Texas SIP, EPA should find that there is no backsliding from the current SIP and that this SIP revision complies with 42 USC, §7410(l).

Section by Section Discussion

The commission adopts the repeal of §116.130 (Applicability); §116.131 (Public Notification Requirements); §116.132 (Public Notice Format); §116.133 (Sign Posting Requirements); §116.134 (Notification of Affected Agencies); §116.136 (Public Comment Procedures); and §116.137 (Notification of Final Action by the Commission), because the rules were superseded and are obsolete. These rules apply to air permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action 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" is 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. The adopted repeal of §§116.130 - 116.134, 116.136, and 116.137 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it 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. Rather, this rulemaking repeals obsolete rules and proposes that EPA remove them from the SIP to ensure there is no confusion regarding the applicable rules for public participation for air quality permit applications.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; 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 adopt a rule solely under the general authority of the commission. The adopted repeal of §§116.130 - 116.134, 116.136, and 116.137 does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the

regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. The commission received no comments.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The repeal of §§116.130 - 116.134, 116.136, and 116.137 is procedural in nature and will not burden private real property. The adopted 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 a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The adopted rulemaking does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the 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 Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP 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. The commission received no comments.

Effect on Sites Subject to the Federal Operating Permits Program

All of the requirements in Chapter 116 are applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits Program). However, the repealed sections are procedural rules applicants must follow to be issued a New Source Review permit for applications administratively complete prior to September 1, 1999, and would not have been directly referenced in Title V permits. Therefore, no effect on sites subject to the Federal Operating Permits program is expected because the commission adopted the repeal of these rules.

Public Comment

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

SUBCHAPTER B: NEW SOURCE REVIEW PERMITS

DIVISION 3: PUBLIC NOTIFICATION AND COMMENT PROCEDURES

§§116.130 - 116.134, 116.136, 116.137

Statutory Authority

The repeal is adopted under Texas Water Code, §5.103, Rules and §5.105, General Policy; Texas Health and Safety Code (THSC), §382.002, Policy and Purpose; THSC, §382.003, Definitions; THSC, §382.011, General Powers and Duties; THSC, §382.012, State Air Control Plan; THSC, §382.017, Rules; THSC, §382.051, Permitting Authority of Commission; Rules; THSC, §382.0511, Permit Consolidation and Amendment; THSC, §382.0518, Preconstruction Permit; THSC, §382.055, Review and Renewal of Preconstruction Permit; THSC, §382.056, Notice of Intent to Obtain Permit or Permit Review; Hearing; THSC, §382.058, Notice of and Hearing on Construction of Concrete Plant Under Permit by Rule, Standard Permit, or Exemption; and 42 United States Code (USC), §7401, *et seq.*

The adopted repeal implements TWC, §5.103 and §5.105; THSC, §§382.002, 382.003, 382.011, 382.012, 382.017, 382.051, 382.0511, 382.0518, 382.055, 382.056, and 382.058; and 42 USC, §7401, *et seq.*

[§116.130. Applicability.]

[(a) Any person who applies for a new permit or permit renewal shall be required to publish notice of the intent to construct a new facility or modify an existing facility or renew a permit. The notice shall be published in a newspaper in general circulation in the municipality where the facility is located or to be located. Any person who applies for a permit amendment shall provide public notification as required by the executive director.]

[(b) Upon written request by the owner or operator of a facility which previously has received a permit or special permit from the commission, the executive director, or designated representative may exempt the relocation of such facility from the requirements of this section if there is no indication that operation of the facility at the proposed new location will significantly affect ambient air quality and no indication that operation of the facility at the proposed new location will cause a condition of air pollution.]

[(c) Applications subject to the requirements of Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), whether for construction or reconstruction, are subject to the public notice requirements of this section.]

[§116.131. Public Notification Requirements.]

[(a) Notification by applicant. If the application is complete, for any permit subject to the FCAA, Title I, Part C or D, or to Title 40 Code of Federal Regulations (CFR), Part 51.165(b), the executive director shall state a preliminary determination to issue or deny the permit and require the applicant to conduct public notice of the proposed construction. If an application is received for a permit not subject to the FCAA, Part C or D, or to 40 CFR 51.165(b), the executive director shall require the applicant to conduct public notice of the proposed construction. In all cases, public notice shall include the information specified in §116.132 of this title (relating to Public Notice Format) and the applicant shall provide such notice using each of the methods specified in §116.132 of this title. The executive director may specify that additional information needed to satisfy public notice requirements of 40 CFR §52.21 also be included in the notice published under §116.132 of this title.]

[(b) Availability of application for review. The executive director shall make the completed application (except sections relating to confidential information) and the preliminary analyses of the application completed prior to publication of the public notice available for public inspection during normal business hours at the commission's Austin office and at the appropriate commission regional office in the region where construction is proposed throughout the comment period established in the notice published under §116.132 of this title.]

[§116.132. Public Notice Format.]

[(a) Publication in public notices section of newspaper. At the applicant's expense, notice of intent to obtain a permit to construct a facility, modify an existing facility, or to seek permit renewal review shall be published in the public notice section of two successive issues of a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located, or in the municipality nearest to the location or proposed location of the facility. The notice shall contain the following information:]

[(1) permit application number;]

[(2) company name;]

[(3) type of facility;]

[(4) description of the location of facility or proposed location of the facility;]

[(5) contaminants to be emitted;]

[(6) preliminary determination of the executive director to issue or not issue the permit (for permits subject to the FCAA, Title I, Part C or D, or to 40 Code of Federal Regulations 51.165(b));]

[(7) location and availability of copies of the completed permit application and the executive director's preliminary analyses;]

[(8) public comment period;]

[(9) procedure for submission of public comments concerning the proposed construction;]

[(10) notification that a person who may be affected by emission of air contaminants from the facility is entitled to request a hearing in accordance with commission rules; and]

[(11) name, address, and phone number of the appropriate commission office to be contacted for further information.]

[(b) Publication elsewhere in the newspaper. Another notice with a size of at least 96.8 square centimeters (15 square inches) and whose shortest dimension is at least 7.6 centimeters (three inches) shall be published in a prominent location

elsewhere in the same issue of the newspaper and shall contain the information specified in subsection (a)(1)-(4) of this section and note that additional information is contained in the notice published under subsection (a) of this section in the public notice section of the same issue.]

[(c) Additional alternate language public notice. The requirements of this subsection are applicable whenever either the elementary school or the middle school located nearest to the facility or proposed facility provides a bilingual education program as required by the Education Code, Chapter 29, Subchapter B, and 19 TAC §89.1205(a) or if either school has waived out of such a required bilingual education program under the provisions of 19 TAC §89.1205(g). Schools not governed by the provisions of 19 TAC §89.1205 shall not be considered in determining applicability of the requirements of this subsection. Each affected facility shall meet the following requirements.]

[(1) The applicant shall publish an additional notice at least once in each alternate language in which the bilingual education program is taught. If the nearest elementary or middle school has waived out of the requirements of 19 TAC §89.1205(a) under 19 TAC §89.1205(g), the notice shall be published in the alternate languages in which the bilingual education program would have been taught had the school not waived out of the bilingual education program.]

[(2) Each notice under this subsection shall be published in a newspaper or publication that is published in the alternate language in which public notice is required.]

[(3) The newspaper or publication must be of general circulation in the municipality or county in which the facility is located or proposed to be located.]

[(4) The requirements of this subsection are waived for each language in which no publication exists, or if the publishers of all alternate language publications refuse to publish the notice.]

[(5) Notice under this subsection shall only be required to be published within the United States.]

[(6) If the alternate language publication is published once a week or more frequently, then notice shall be published in two successive issues. Otherwise, only one publication shall be required.]

[(7) If the alternate language publication is published less frequently than once a month, this notice requirement may be waived by the executive director on a case-by-case basis.]

[(8) Each alternate language publication shall follow the requirements of subsections (a) and (b) of this section not otherwise inconsistent with this subsection.]

[(d) Exemptions from alternate language notification. Elementary or middle schools that offer English as a second language under 19 TAC §89.1205(e), and are not otherwise affected by 19 TAC §89.1205(a), will not trigger the requirements of subsection (c) of this section.]

[§116.133. Sign Posting Requirements.]

[(a) At the applicant's expense, a sign or signs shall be placed at the site of the proposed facility declaring the filing of an application for a permit and stating the manner in which the commission may be contacted for further information. Such signs shall be provided by the applicant and shall meet the following requirements:]

[(1) signs shall consist of dark lettering on a white background and shall be no smaller than 18 inches by 28 inches;]

[(2) signs shall be headed by the words "PROPOSED AIR QUALITY PERMIT" in no less than two-inch boldface block-printed capital lettering;]

[(3) signs shall include the words "APPLICATION NO." and the number of the permit application in no less than one-inch boldface block-printed capital lettering (more than one number may be included on the signs if the respective public comment periods coincide);]

[(4) signs shall include the words "for further information contact" in no less than 1/2-inch lettering;]

[(5) signs shall include the words "Texas Natural Resource Conservation Commission," and the address of the appropriate commission regional office in no less than one-inch boldface capital lettering and 3/4-inch boldface lower case lettering; and]

[(6) signs shall include the phone number of the appropriate commission office in no less than two-inch boldface numbers.]

[(b) The sign or signs must be in place by the date of publication of the newspaper notice required by §116.132 of this title (relating to Public Notice Format) and must remain in place and legible throughout the period of public comment provided for in §116.136(a) of this title (relating to Public Comment Procedures).]

[(c) Each sign placed at the site must be located within ten feet of each (every) property line paralleling a street or other public thoroughfare. Signs must be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs shall be required along any property line paralleling a public thoroughfare. The commission may approve variations from these requirements if it is determined that alternative sign posting plans proposed by the applicant are more effective in providing notice to the public.]

[(d) The commission may approve variations from the requirements of subsection (c) of this section if the applicant has demonstrated that it is not practical to comply with the specific requirements of subsection (c) of this section and alternative sign posting plans proposed by the applicant are at least as effective in providing notice to the public. The approval from the commission under this subsection must be received before posting signs for purposes of satisfying the requirements of this section.]

[(e) These sign requirements do not apply to properties under the same ownership which are noncontiguous and/or separated by intervening public thoroughfares, unless directly involved by the permit application.]

[(f) Alternate language sign posting. The requirements of this subsection are applicable whenever either the elementary school or the middle school located nearest

to the facility or proposed facility provides a bilingual education program as required by the Education Code, Chapter 29, Subchapter B, and 19 TAC §89.1205(a) or if either school has waived out of such a required bilingual education program under the provisions of 19 TAC §89.1205(g). Schools not governed by the provisions of 19 TAC §89.1205(a) shall not be considered in determining applicability of the requirements of this subsection. Each affected facility shall meet the following requirements.]

[(1) The applicant shall post an additional sign in each alternate language in which the bilingual education program is taught. If the nearest elementary or middle school has waived out of the requirements of 19 TAC §89.1205(a) under 19 TAC §89.1205(g), the alternate language signs shall be published in the alternate languages in which the bilingual education program would have been taught had the school not waived out of the bilingual education program.]

[(2) The alternate language signs shall be posted adjacent to each English language sign required in this section.]

[(3) The alternate language sign posting requirements of this subsection shall be satisfied without regard to whether alternate language notice is required under §116.132(c) of this title (relating to Public Notice Format).]

[(4) The alternate language signs shall meet all other requirements of this section.]

[(g) Exemption from alternate language sign posting. Elementary or middle schools that offer English as a second language under 19 TAC §89.1205(e), and are not otherwise affected by 19 TAC §89.1205(a), will not trigger the requirements of subsection (f) of this section.]

[§116.134. Notification of Affected Agencies.]

[When newspaper notices are published in accordance with §116.132 of this title (relating to Public Notice Format), the permit applicant shall furnish a copy of such notices and date of publication to the commission in Austin; the EPA regional administrator in Dallas; all local air pollution control agencies with jurisdiction in the county in which the construction is to occur; and the air pollution control agency of any nearby state in which air quality may be adversely affected by the emissions from the new or modified facility. Along with such notices furnished to the commission, the permit applicant shall certify that the signs required by §116.133 of this title (relating to Sign Posting Requirements) have been posted in accordance with the provisions of that section.]

[§116.136. Public Comment Procedures.]

[(a) Comment period. Interested persons may submit written comments, including requests for public hearings under TCAA, §382.056, on the permit application and on the executive director's preliminary determination or analysis. The public comment and timely hearing requests shall be processed under Chapter 55, Subchapter B of this title (relating to Hearing Requests, Public Comment).]

[(b) Consideration of comments. All written comments received by the executive director during the period specified in subsection (a) of this section shall be considered in determining whether to issue or not to issue the permit. The executive director shall make record of all comments received together with the agency analysis of such comments available for public inspection during normal business hours at the Austin office of the commission and appropriate regional office.]

[§116.137. Notification of Final Action by the Commission.]

[(a) Notification of applicant. Within 180 days of receipt of a completed application, the executive director shall notify the permit applicant of the final decision to grant or deny the permit, provided:]

[(1) no requests for public hearing or public meeting on the proposed facility have been received;]

[(2) the applicant has satisfied all public notification requirements of this section; and]

[(3) the federal regulations for Prevention of Significant Deterioration of Air Quality and nonattainment review do not apply.]

[(b) Notification of commenters. Persons submitting written comments in accordance with §116.136(a) of this title (relating to Public Comment Procedures) or persons submitting a written request to be notified of the final agency action within the comment period specified in §116.136(a) of this title will be notified of the executive director's final decision at the same time that the applicant is notified.]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 24, 2016.

TRD-201603233
David Timberger
Director, General Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: August 7, 2016
For further information, please call: (512) 239-6812

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CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

SUBCHAPTER B. NEW SOURCE REVIEW PERMITS

DIVISION 3. PUBLIC NOTIFICATION AND COMMENT PROCEDURES

30 TAC §§116.130 - 116.134, 116.136, 116.137

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to repeal §§116.130 - 116.134, 116.136, and 116.137.

If adopted, the commission will submit the repeal of §§116.130 - 116.134, 116.136, and 116.137 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 Rules

Sections 116.130 - 116.134, 116.136, and 116.137 were adopted August 27, 1993, (18 TexReg 5746) as public notification and comment procedures for New Source Review air permit applications in a rulemaking action that restructured the existing air quality permit program rules for the Texas Air Control Board. Except for §116.136, these rules were repealed and readopted by the Texas Natural Resource Conservation Commission (TNRCC, predecessor of the TCEQ) on June 17, 1998, and re-submitted to EPA. With the exception of §116.130(c) (regarding hazardous air pollutants which are not part of the SIP), these rules were approved into the SIP, as published in the September 18, 2002, issue of the *Federal Register* (67 FedReg 58709).

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting. TCEQ adopted rules to implement HB 801 (and other bills) that consolidated the public participation rules across the agency as published in the September 24, 1999, issue of the *Texas Register* (24 TexReg 8190). That rulemaking included rules in 30 TAC Chapter 39 (Public Notice), Subchapters H (Applicability and General Provisions) and K (Public Notice of Air Quality Permit Applications), that apply to certain air quality permit applications declared administratively complete on or after September 1, 1999. TCEQ submitted portions of the rulemaking to implement HB 801 to the EPA as revisions to the SIP. The public participation rules in Chapter 116 that were superseded by the rules adopted to implement HB 801 were not repealed at that time because the rules applied to pending applications that were declared administratively complete before September 1, 1999.

In 2010, TCEQ conducted a rulemaking published in the June 18, 2010, issue of the *Texas Register* (35 TexReg 5198) that clarified the public participation requirements for air quality applications. TCEQ's adoption notice included discussions addressing EPA's concerns about TCEQ's SIP submittal of the 1999 rules to implement HB 801, as well as several TCEQ public participation rulemakings for air quality permit applications adopted from 1999 - 2010, and the final set of rules submitted as SIP revisions in 2010. EPA's approvals of the 2010 submittal are published in the January 6, 2014, issue of the *Federal Register* (79 FedReg 551); the March 30, 2015, issue of the *Federal Register* (80 FedReg 16573); and the October 6, 2015, issue of the *Federal Register* (80 FedReg 60295). In addition, EPA has approved subsequent changes to public participation rules adopted by the commission in 2014, as published in the November 20, 2014, issue of the *Federal Register* (79 FedReg 66626). At the time of this proposal, no public participation rules remain pending EPA review. Inclusion in the SIP ensures the public participation requirements are federally enforceable.

No applications for which §§116.130 - 116.134, 116.136, and 116.137 are applicable remain pending with the commission. Repealing the obsolete rules and revising the SIP by removing §§116.130 - 116.134, 116.136, and 116.137 would eliminate any possible confusion as to what the applicable public participation requirements are in the SIP. The public's opportunity to participate in the air permitting process will not change nor be affected in any way as a result of this repeal.

Federal Clean Air Act §110(l)

All revisions to the SIP are subject to EPA's finding that the revision will not interfere with any applicable requirement concerning attainment and reasonable further progress of the national ambient air quality standards, or any other requirement of the Federal Clean Air Act, 42 United States Code (USC), §7410(l). This statute has been interpreted to be whether the revision will "make air quality worse" *(Kentucky Resources Council, Inc. v. EPA,* 467 F.3d 986 (6th Cir. 2006), cited with approval in *Galveston-Houston Association for Smog Prevention (GHASP) v. U.S. EPA,* 289 Fed. Appx. 745, 2008 WL 3471872 (5th Cir.)). Because procedural rules have no direct nexus with air quality, and because the current applicable public participation rules are approved as part of the Texas SIP, EPA should find that there is no backsliding from the current SIP and that this SIP revision complies with 42 USC, §7410(l).

Section by Section Discussion

The commission proposes the repeal of §116.130 (Applicability); §116.131 (Public Notification Requirements); §116.132 (Public Notice Format); §116.133 (Sign Posting Requirements); §116.134 (Notification of Affected Agencies); §116.36 (Public Comment Procedures); and §116.137 (Notification of Final Action by the Commission), because the rules were superseded and are obsolete. These rules apply to air permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer's Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the

agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rules would repeal Chapter 116, Subchapter B, Division 3 regarding public notice and participation, as these rules are obsolete. The obsolete rules apply to case-by-case air quality permit applications that were administratively complete before September 1, 1999. HB 801 superseded the public participation rules in Chapter 116 for all applications received on and after September 1, 1999. The rules that implemented HB 801 nullified the rules that would be repealed.

The rules are proposed for repeal as they have been obsolete since the Air Permits Division completed review of the last administratively complete application submitted before September 1, 1999. The current requirements for public participation for air permitting applications are in Chapter 39 and are not affected by this proposed rulemaking. The proposed rulemaking does not remove or add fees and does not affect requirements for any regulated entities. No fiscal implications are anticipated for the agency or any other unit of state or local government.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be clear and concise rules regarding the public participation requirements for air permit applications.

The proposed rules are not anticipated to result in fiscal implications for businesses or individuals. The rules are proposed for repeal as they have been obsolete since the Air Permits Division completed review of the last administratively complete application submitted before September 1, 1999. The current requirements for public participation for air permitting applications are in Chapter 39 and are not affected by this proposed rulemaking. The proposed rulemaking does not remove or add fees and does not affect requirements for any regulated entities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect for small or micro-businesses. The rulemaking does not propose additional or new requirements or expand or delete the coverage of the current requirements.

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 rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are 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 rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action 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" is 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. The proposed repeal of §§116.130 - 116.134, 116.136, and 116.137 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it 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. Rather, this rulemaking repeals obsolete rules and proposes that EPA remove them from the SIP to ensure there is no confusion regarding the applicable rules for public participation for air quality permit applications.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; 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 adopt a rule solely under the general authority of the commission. The proposed repeal of §§116.130 - 116.134, 116.136, and 116.137 do not exceed an express requirement of state law or a requirement of a delegation agreement, and were not developed solely under the general powers of the agency, but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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 the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed repeal of §§116.130 - 116.134, 116.136, and 116.137 is procedural in nature and will not burden private real property. The proposed 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 a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed rulemaking does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will 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 Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP 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

All of the requirements in Chapter 116 are applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits Program). However, the sections proposed for repeal are procedural rules applicants must follow to be issued a New Source Review permit for applications administratively complete prior to September 1, 1999, and would not have been directly referenced in Title V permits. Therefore, no effect on sites subject to the Federal Operating Permits program is expected if the commission repeals these rules.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on August 2, 2016, at 2:00 p.m. 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 from 1:30 p.m. to 2:00 p.m., 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 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Sherry Davis, 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 2016-026-116-AI. The comment period closes on 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*. For further information, please contact Tasha Burns, Air Permits Division, at (512) 239-5868.

Statutory Authority

The repeals are proposed under Texas Water Code, §5.103, Rules and §5.105, General Policy; Texas Health and Safety Code (THSC), §382.002, Policy and Purpose; THSC, §382.003, Definitions; THSC, §382.011, General Powers and Duties; THSC, §382.012, State Air Control Plan; THSC, §382.017, Rules; THSC, §382.051, Permitting Authority of Commission; Rules; THSC, §382.0511, Permit Consolidation and Amendment; THSC, §382.0518, Preconstruction Permit; THSC, §382.055, Review and Renewal of Preconstruction Permit; THSC, §382.056, Notice of Intent to Obtain Permit or Permit Review; Hearing; THSC, §382.058, Notice of and Hearing on Construction of Concrete Plant Under Permit by Rule, Standard Permit, or Exemption; and 42 United States Code (USC), §7401, *et seq.*

The proposed repeals implement TWC, §5.103 and §5.105; THSC, §§382.002, 382.003, 382.011, 382.012, 382.017, 382.051, 382.0511, 382.0518, 382.055, 382.056, and 382.058; and 42 USC, §7401, *et seq.*

§116.130. Applicability.

§116.131. Public Notification Requirements.

§116.132. Public Notice Format.

§116.133. Sign Posting Requirements.

§116.134. Notification of Affected Agencies.

§116.136. Public Comment Procedures.

§116.137. Notification of Final Action by the Commission.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 24, 2016.

TRD-201603209
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: August 7, 2016
For further information, please call: (512) 239-2141

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 9. EXPLORATION AND LEASING OF STATE OIL AND GAS

SUBCHAPTER D. PAYING ROYALTY TO THE STATE

31 TAC §9.51

BACKGROUND AND ANALYSIS OF PROPOSED AMENDMENT

On behalf of the School Land Board ("SLB"), the General Land Office ("GLO") proposes an amendment to 31 TAC §9.51 (relating to Royalty and Reporting Obligations to the State) by adding a new subsection (b)(3)(E)(iv).

The proposed amendment clarifies the procedures and standards for the reduction by the SLB of interest charged or penalties assessed under Texas Natural Resources Code §52.131 or any other interest or penalties assessed by the Land Commissioner relating to unpaid or delinquent royalties, or unfiled or delinquent reports.

FISCAL AND EMPLOYMENT IMPACTS

Brian Carter, Senior Deputy Director of Asset Enhancement of the GLO, has determined that (i) during the first five-year period

ardous air pollutants, and particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less.

The executive director has completed the technical review of the application and prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision to issue the permit because it meets all rules and regulations.

PUBLIC COMMENT/PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the Executive Director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, July 28, 2016 at 7:00 PM

Hilton Garden Inn

Room - Oakwood B

3081 University Drive

Bryan, Texas 77802

INFORMATION. Citizens are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at *http://www.tceq.texas.gov/about/comments.html.* If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at *www.tceq.texas.gov.Si desea información en español, puede llamar al (800) 687-4040.*

The permit application, executive director's preliminary decision, and draft permit will be available for viewing and copying at the TCEQ central office, the TCEQ Waco regional office, and at the Clara B. Mounce Public Library, 201 East 26th Street, Bryan, Brazos County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Waco Regional Office, 6801 Sanger Avenue Suite 2500, Waco, Texas. Further information may also be obtained from Saint-Gobain Ceramics & Plastics Inc. at the address stated above or by calling Mr. Phil Goodwin, EHS Manager at (979) 779-1500.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Amended Notice Issuance Date: July 13, 2016

TRD-201603494

Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 13, 2016

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Correction of Error

The Texas Commission on Environmental Quality proposed to repeal 30 TAC Chapter 116, Subchapter B, Division 3, §§116.130 - 116.134, 116.136, and 116.137 in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4950).

On page 4950, second column, first paragraph under the heading "Section by Section Discussion," the reference to "§116.36 (Public Comment Procedures)" should read "§116.136 (Public Comment Procedures)." The corrected paragraph reads as follows:

"The commission proposes the repeal of §116.130 (Applicability); §116.131 (Public Notification Requirements); §116.132 (Public Notice Format); §116.133 (Sign Posting Requirements); §116.134 (Notification of Affected Agencies); §116.136 (Public Comment Procedures); and §116.137 (Notification of Final Action by the Commission),..."

TRD-201603447

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Enforcement Orders

An agreed order was adopted regarding City of Dell City, Docket No. 2015-0956-MWD-E on July 12, 2016 assessing $1,562 in administrative penalties with $312 deferred. Information concerning any aspect of this order may be obtained by contacting Claudia Corrales, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding EXPLORER PIPELINE COMPANY, Docket No. 2015-1062-IWD-E on July 12, 2016 assessing $3,000 in administrative penalties with $600 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Overton, Docket No. 2015-1384-PWS-E on July 12, 2016 assessing $354 in administrative penalties with $70 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Pioneer Natural Resources USA, Inc., Docket No. 2015-1623-AIR-E on July 12, 2016 assessing $3,038 in administrative penalties with $607 deferred. Information concerning any aspect of this order may be obtained by contacting Kingsley Coppinger, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Joy Global Longview Operations LLC, Docket No. 2015-1719-IWD-E on July 12, 2016 assessing $3,050 in administrative penalties with $610 deferred. Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LAKESHORE UTILITY COMPANY, Docket No. 2015-1744-PWS-E on July 12, 2016 assess-

ORDER ADOPTING REPEALED RULES AND
REVISIONS TO THE STATE IMPLEMENTATION PLAN

Docket No. 2016-0408-RUL
Rule Project No. 2016-026-116-AI

On November 2, 2016, the Texas Commission on Environmental Quality (Commission), during a public meeting, considered adoption of the repeal of §§ 116.130 - 116.134, 116.136, and 116.137, and corresponding revisions to the State Implementation Plan (SIP). The Commission adopts this repeal of 30 Texas Administrative Code, Chapter 116, Control of Air Pollution by Permits for New Construction or Modification; §§ 116.130 - 116.134, 116.136, and 116.137, and corresponding revisions to the SIP. 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. The proposed repeal was published for comment in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4950).

Pursuant to Tex. Health & Safety Code Ann. § 382.017 (Vernon 2010), Tex. Gov't Code Ann. Chapter 2001 (Vernon 2016), and 40 Code of Federal Regulations § 51.102, and after proper notice, the Commission conducted a public hearing to consider the repealed rules 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 in Austin, Texas on August 8, 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 repealed rules and SIP revisions, either orally or in writing, at the hearings or during the comment period. Prior to the scheduled hearing, copies of the proposed repealed rules and SIP revisions were available for public inspection at the Commission's central office and on the Commission's website.

No comments were received regarding the repealed rules and SIP revisions.

IT IS THEREFORE ORDERED BY THE COMMISSION that the repealed rules and revisions to the SIP incorporated by reference to this Order are hereby adopted. The

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Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The repealed rules and the preamble to the repealed rules 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 and revisions to the SIP, to the Regional Administrator of EPA as proposed revisions 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 Tex. Gov't Code Ann., Chapter 2001 (Vernon 2016).

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

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