

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** January 6, 2012

Thru: Bridget Bohac, Chief Clerk
Mark R. Vickery, P.G., Executive Director

From: Susana M. Hildebrand, P.E., Chief Engineer

Docket No.: 2011-0707-SIP

Subject: Commission Approval of the Adoption of the El Paso State Implementation Plan (SIP) Revision to Incorporate a Revised Memorandum of Agreement (MOA) with the City of El Paso
Non-Rule Project No. 2011-010-SIP-NR

Background and reason(s) for the SIP revision:

The City of El Paso (El Paso area) was designated nonattainment under Federal Clean Air Act (FCAA), §107(d)(4)(B) for National Ambient Air Quality Standard (NAAQS) for particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀) and subsequently classified as a moderate nonattainment area. In November 1991, the Texas Air Control Board (TACB), a predecessor agency of the Texas Commission on Environmental Quality (TCEQ), submitted an attainment demonstration SIP revision. The SIP revision included particulate matter (PM) control measures in 30 Texas Administrative Code (TAC) Chapter 111, Control of Air Pollution from Visible Emissions and Particulate Matter, Subchapter A, Division 4, Materials Handling, Construction, Roads, Streets, Alleys, and Parking Lots. The control measures adopted in §111.147 required paving as a method of dust control in the El Paso area for specified roads and added a requirement that alleys be paved at the rate of 15 miles per year. Section 111.147 also set frequencies for street sweeping in designated sections of the El Paso area.

On November 5, 1991, a Memorandum of Understanding (MOU) between the City of El Paso local government (the City) and the TACB was signed to outline the responsibilities and regulatory requirements for both parties. This MOU was submitted to the United States Environmental Protection Agency (EPA) as Appendix Q of the 1991 El Paso PM₁₀ attainment demonstration SIP revision. The EPA approved the MOU as part of the El Paso PM₁₀ SIP on January 18, 1994.

On October 9, 2001, the 1991 MOU was replaced with a Memorandum of Agreement (MOA) since MOUs are typically used only for agreements between two state agencies and this agreement was between an agency and a city. Although the MOA was submitted to the EPA in a letter dated February 19, 2002, it is unclear whether the EPA accepted it as a SIP revision. Furthermore, the MOA is not included in the listed SIP documents in the Code of Federal Regulations (CFR). The proposed SIP revision would incorporate a revised MOA into the El Paso PM₁₀ SIP.

To prepare the revisions to the Chapter 111 rules and MOA, the TCEQ requested information from the City on December 28, 2009, to ascertain what efforts the City is

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taking to control PM emissions. In a response letter dated January 29, 2010, the City of El Paso indicated the following:

- the City has programs funded annually in both the City's capital improvement budget and in the Department of Transportation operations budget in an effort to comply with environmental regulations;
- the City has committed to an alley paving program at a level in alignment with its own internal budgetary capacities, but not at the rate of 15 miles per year as required under §111.147;
- the City maintains an inventory of street and alley paving efforts to document the current status and projections for future paving activities; and
- the City's Air Quality Program conducts surveillance and investigations to ensure compliance with, and enforcement of, Chapter 111 rules.

For the site reporting Federal Reference Method (FRM) PM₁₀ data for all three years from 2007 through 2009 (Socorro AQS ID 481410057), there were no exceedances of the PM₁₀ 24-hour NAAQS. The inventory of unpaved alleys has decreased from 66% in 1991 to 16% in 2010, with approximately 23 miles of unpaved alleys remaining. City action to reduce airborne PM₁₀ has also reduced the need to sweep streets at the frequencies specified under the current §111.147 rule.

The TCEQ has a separate rulemaking (Rule Project No. 2010-046-111-EN) that amends §111.147(1)(E) to remove the requirement for the City of El Paso to pave alleys at the rate of 15 miles per year and replace it with the following requirements: 1) all new alleys shall be paved; 2) unpaved alleys may not be used for residential garbage and recycling collection; and 3) reclaimed asphalt pavement (RAP) may be used as an alternate means of PM control for alleys. The rulemaking also amends §111.147(2) to change the sweeping frequency requirement from four times per year to three times per year in the city limits and from six times per week to four times per week in the central business district. The City has demonstrated that the unpaved alley inventory will not increase due to a city ordinance that requires developers to pave any new alleys. Furthermore, alleys have not been used for residential garbage collection since 1997, so the traffic in alleys has been dramatically reduced. Finally, RAP has been used to cover some unpaved alleys, which has proven to be as effective as paving. In addition, the City continues to include paving and sweeping in its annual budget. The TCEQ believes that the combination of these actions demonstrates that the EPA anti-backsliding provisions in FCAA, §110(l) are met.

The 2001 MOA with the City has been revised to reflect these changes to §111.147 (Project No. 2011-026-MIS-NR). The adopted SIP revision will incorporate the revised MOA into the El Paso PM₁₀ SIP.

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Scope of the SIP revision:

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

The adopted SIP revision will incorporate the changes to §111.147 as adopted in a separate rulemaking (Rule Project No. 2010-046-111-EN). The adopted SIP revision will also incorporate a revised MOA between the City of El Paso and the TCEQ (Project No. 2011-026-MIS-NR) into the SIP. The 2001 MOA with the City is being revised to reflect the alternative control measures proposed in the revisions to §111.147 and the respective responsibilities of the City and TCEQ under the SIP.

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

This SIP revision will incorporate a revised MOA with the City and the adopted revisions to the Chapter 111 rules.

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

None

Statutory authority:

The authority to propose and adopt this SIP revision is derived from Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.002, which provides that the policy and purpose of the TCAA is to safeguard the state's air resources from pollution; TCAA, §382.011, which authorizes the commission to control the quality of the state's air; and §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air.

Effect on the:

A.) Regulated community:

The rule revision and revised MOA will update the PM controls required to attain and maintain the PM₁₀ NAAQS. The City will have greater flexibility in the implementation of the PM control requirements in §111.147.

B.) Public:

Implementation of the revised rules and MOA will continue protection of public health through continued control of PM₁₀ in the El Paso area.

C.) Agency programs:

There is no anticipated impact on agency programs.

Stakeholder meetings:

No stakeholder meetings were held.

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Public comment:

The commission offered a public hearing for the proposed SIP revision in El Paso on September 27, 2011. A question and answer session was held 30 minutes prior to the meeting. The hearing was not officially opened, because no party indicated a desire to give comment.

The public comment period opened on September 2, 2011, and closed on October 3, 2011. Two comment letters were received from the City of El Paso. The City of El Paso suggested language to be added to the §111.147 rule amendments and non-substantive edits to the MOA. A summary of the comments and the TCEQ response is provided as part of this SIP revision in the *Response to Comments*.

Significant changes from proposal:

The City of El Paso recommended adding “unpaved” and “residential” to proposed §111.147(1)(E) because some trash pick-up routes do occur in paved alleys. The TCEQ has made the suggested changes to §111.147(1)(E) and these changes are also reflected in this SIP revision.

Potential controversial concerns and legislative interest:

The separate rulemaking (Rule Project No. 2010-046-111-EN) includes a demonstration to comply with the EPA anti-backsliding provisions in §110(l) of the FCAA. The §110(l) demonstration includes the substitution of the alley paving and street sweeping measures as stated in §111.147(1)(E) and (2) with alternate control measures currently in place in the El Paso area that have resulted in PM₁₀ emissions reductions equivalent to, or greater than, what would have been achieved if the City had complied with the prior version of §111.147(1)(E) and (2). These control measures include reduced alley traffic, city ordinances requiring developers to pave any new alleys they create, and the use of RAP on existing alleys. The EPA did not submit comments on the proposed rulemaking or §110(l) demonstration.

Does 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 to this SIP revision?

The commission could decide not to adopt the proposed amendments to Chapter 111, and the revised MOA would not be needed. The City of El Paso would be obligated to comply with existing rules and MOA requirements limiting the City’s fiscal and technical flexibility to control PM₁₀ in the El Paso area and comply with the SIP.

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