

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** April 1, 2011

Thru: LaDonna Castañuela, Chief Clerk
Mark R. Vickery, P.G. Executive Director

From: Richard A. Hyde, P.E., Deputy Director
Office of Permitting and Registration

Docket No.: 2010-0711-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 101, General Air Quality Rules
Chapter 106, Permits By Rule
Regulation of Particulate Matter with diameters
less than 2.5 micrometers (PM_{2.5})
Rule Project No. 2010-020-101-PR

Background and reason(s) for the rulemaking:

The Air Permits Division (APD) has proposed amendments to TCEQ rules found in 30 Texas Administrative Code (TAC) Chapters 101 and 106. The amendments, proposed in the *Texas Register* on November 19, 2010, are necessary to implement changes to the Federal Clean Air Act (FCAA) and United States Environmental Protection Agency (EPA) regulations regarding particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (PM_{2.5}). EPA has indicated that states with state implementation plan (SIP) approved programs may continue to implement a PM₁₀ program as a surrogate to meet the Prevention of Significant Deterioration (PSD) program requirements for PM_{2.5} under the 1997 PM₁₀ Surrogate Policy for up to three years (until May 2011) or until the individual revised state PSD programs for PM_{2.5} are approved by EPA, whichever comes first. In an effort to ensure the TCEQ meets regulatory requirements of the FCAA, APD has proposed amendments for adoption to add specific definitions related to PM_{2.5} regulation and to address known requirements for implementation.

Scope of the rulemaking:

The adopted amendments to Chapters 101 and 106 will add specific definitions related to PM_{2.5} regulation and address known requirements for implementation. In addition, the adopted rulemaking will provide guidance as TCEQ implements PM_{2.5} as a PSD requirement for the New Source Review (NSR) program. The guidance includes, but will not be limited to, direct PM_{2.5} emissions, precursor pollutants, definitions, and references to federal requirements. APD staff will make the necessary updates to PSD guidance documents for agency staff as well as external customers.

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A.) Summary of what the rulemaking will do:

1. Replace Figure 30 TAC §101.1(25) concerning de minimis impact levels with a reference to 40 Code of Federal Regulations §51.165(b)(2).
2. Add definitions for PM₁₀, PM_{2.5}, direct and secondary PM emissions.
3. Add the applicable significant emission thresholds for PM, PM₁₀, and PM_{2.5}.

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

The adopted rules are intended to ensure the TCEQ meets regulatory requirements of the FCAA once the revisions are submitted to the EPA for approval to the SIP.

C.) Additional staff recommendations that are not required by federal rule or state statute: There are no additional staff recommendations.

Statutory authority:

Statutory authority includes Texas Water Code, §5.102, General Powers, §5.103, Rules, and §5.105, General Policy; and Texas Health and Safety Code, §382.017, Rules, §382.002, Policy and Purpose, §382.011, General Powers and Duties, §382.012, State Air Control Plan, §382.051, Permitting Authority of the Commission, Rules, §382.0513, Permit Conditions, §382.0515, Application for Permit, and §382.0518, Preconstruction Permit.

Effect on the:

A.) Regulated community: Permit applicants will have to specifically quantify and address controls and impacts for PM_{2.5} as a PSD and minor NSR requirement. This may be accomplished through various TCEQ forms and tables, and modeling as applicable.

B.) Public: There will be no effect on the public since APD is currently conducting reviews of sources subject to PSD and minor NSR that meet federal definitions and requirements.

C.) Agency programs: There will be no effect on agency programs since APD is currently conducting reviews of sources subject to PSD and minor NSR that meet federal definitions and requirements.

This adopted rulemaking will not create a group of affected persons who were not affected previously. In addition, it should not have fiscal effects.

Stakeholder meetings:

No stakeholder meetings have been held. However, standard notice of this action and an opportunity for public comment was provided after proposal.

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Public comment:

A total of 3 comment letters were received and no oral comments were made at the public hearing. The Texas Industry Project is opposed to the rule project and was concerned that EPA had not finalized approved test methods for measuring different types of PM and condensable PM_{2.5}. EPA appreciated the proposed revisions but had concerns about the definitions for “Direct PM Emissions” and “Secondary PM Emissions.” An individual supported this rule project.

Significant changes from proposal:

Revised definitions for “Direct PM Emissions” and “Secondary PM Emissions” to be consistent with definitions for “Direct PM_{2.5} Emissions” and “PM_{2.5} Precursor” as reflected in 40 CFR §51.1000 as specified by EPA’s comment.

Potential controversial concerns and legislative interest remaining after proposal and public comment:

The adopted amendments included in this rulemaking will be consistent with current EPA presumptions and APD policy regarding NSR programs. There is no known legislative interest at this time. However, the current NSR program does not address secondary formation of PM_{2.5}.

In the Final Rule for increments, significant impact levels (SILs), and significant monitoring concentration (SMC), EPA removed the reference to “direct” PM_{2.5} emissions, to allow for consideration of precursor emissions when determining whether the air quality impact of a major new source or modification would be less than the PM_{2.5} SILs. EPA has indicated that estimating techniques are being developed that will be able to be applied to the PM_{2.5} analysis in the near future.

EPA is concerned that a large fraction of PM_{2.5} monitored in ambient air is formed by photochemical interaction of precursor pollutants and the lack of technical tools to predict the formation of secondary PM_{2.5}. Removing the reference to direct emissions in the rule, also allows EPA to include precursor emissions through guidance without notice and comment required for rulemaking. Therefore, EPA may impose additional technical requirements in the future such as photochemical modeling to obtain concentrations that could include direct and secondarily formed PM_{2.5} in the source impact and air quality analyses for PSD and minor NSR permitting compliance demonstrations.

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

APD is currently conducting reviews of sources subject to PSD and minor NSR that meet federal definitions and requirements. There will be necessary updates to PSD guidance for staff and external customers.

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What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

The TCEQ will not meet the regulatory requirements of the FCAA.

Key points in adoption rulemaking schedule:

- Texas Register proposal publication date: November 19, 2010
- Anticipated *Texas Register* publication date: May 6, 2011
- Anticipated effective date: May 12, 2011
- Six-month *Texas Register* filing deadline: May 19, 2011

Agency contacts:

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