

# **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.:** 2010-1862-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 111, Control of Air Pollution from Visible Emissions and Particulate Matter  
Revision of El Paso Particulate Matter of 10 Micrometers and Less (PM<sub>10</sub>)  
Controls for Roads, Streets, and Alleys  
Rule Project No. 2010-046-111-EN

**Background and reason(s) for the rulemaking:**

Under the 1990 Federal Clean Air Act (FCAA) Amendments, the City of El Paso (El Paso area) was designated nonattainment under FCAA, §107(d)(4)(B) for PM<sub>10</sub> National Ambient Air Quality Standard (NAAQS) and subsequently classified as a moderate PM<sub>10</sub> nonattainment area. In November 1991, the Texas Air Control Board (TACB), a predecessor agency of the Texas Commission on Environmental Quality (TCEQ), submitted the El Paso PM<sub>10</sub> Attainment Demonstration State Implementation Plan (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, Visible Emissions and Particulate Matter, Division 4, Materials Handling, Construction, Roads, Streets, Alleys, and Parking Lots, §111.147. The control measures previously 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.

In 1991, a Memorandum of Understanding (MOU) between the City of El Paso (the City) and the TACB was approved to outline the responsibilities and regulatory requirements for both parties. This MOU was replaced with a Memorandum of Agreement (MOA) with the City in 2001, with the same requirements.

On November 21, 2003, the El Paso Metropolitan Planning Organization submitted a letter requesting that the TCEQ develop a PM<sub>10</sub> redesignation request and maintenance plan. On December 28, 2009, the TCEQ requested information from the City to ascertain what efforts El Paso has taken to support a request for redesignation. In a response letter dated January 29, 2010, the City indicated the following:

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- 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 PM<sub>10</sub> data for all three years from 2007 through 2009 (Socorro AQS ID 481410057), there were no exceedances of the PM<sub>10</sub> 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. The City action to reduce airborne PM<sub>10</sub> has also reduced the need to sweep streets at the frequencies specified under the current rule. The adopted rulemaking is necessary to provide the City with alternative methods of PM control. The adopted rule would remove specific requirements for the number of miles of alleys to be paved per year and allow the use of reclaimed asphalt pavement (RAP) as an alternate means of PM control for pre-existing unpaved alleys. The adopted rule revisions would also decrease the number of times that soil is to be removed by mechanical sweepers from public thoroughfares from four to three times per year for those previously specified areas within the city limits and from six to four times per week within the central business district.

**Scope of the rulemaking:**

The adopted rule revision will amend §111.147 to provide the City with additional flexibility in PM control measures.

**A.) Summary of what the rulemaking will do:**

The adopted rule revision will amend §111.147(1)(E) to remove the requirement to pave alleys at the rate of 15 miles per year and replace it with the following requirements: 1) all new alleys must be paved; 2) unpaved alleys may not be used for residential garbage and recycling collection; and 3) the use of RAP may be used as an alternate means of PM control for alleys. The adopted rule will also amend §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.

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

None

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

None

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**Statutory authority:**

The amendment is adopted under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC. The amendment is also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Power and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.0172, concerning international border areas; and THSC, §382.0173 concerning Adoption of Rules Regarding Certain State Implementation Plan Requirements and Standards of Performance for Certain Sources.

**Effect on the:**

**A.) Regulated community:**

The adopted rule revision will update the PM<sub>10</sub> controls required to attain and maintain the PM<sub>10</sub> NAAQS and provide the City greater flexibility in the implementation of the PM<sub>10</sub> control requirements in §111.147.

**B.) Public:**

Implementation of the revised rule will continue protection of public health through continued control of PM<sub>10</sub> in the El Paso area.

**C.) Agency programs:**

There are no anticipated impacts on agency programs.

**Stakeholder meetings:**

No stakeholder meetings were held.

**Public comment:**

The commission held a public hearing on the proposal in El Paso on September 27, 2011. The public hearing was not officially opened because no party indicated a desire to give comment. The comment period opened September 2, 2011, and closed October 3, 2011. Two written comments were received from the City.

The City recommended adding the terms "unpaved" and "residential" to proposed §111.147(1)(E)(ii) because some trash pick-up routes do occur in alleys. In addition, future

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incorporation of Smart Growth Community Development will require trash receptacles to be located in alleys for newly developed residential areas. *The proposal was changed in response to the comment.*

The City also recommended adding the phrase "which are under the jurisdiction of the City of El Paso and which have been designated as public thoroughfares" to §111.147(1)(F). *No change was made in response to this comment.*

**Significant changes from proposal:**

In response to comments from the City, proposed §111.147(1)(E)(ii) was revised to limit the restriction to unpaved alleys used for residential garbage and recycling collection.

**Potential controversial concerns and legislative interest:**

A demonstration is required to show that changes to §111.147 will not interfere with attainment of the PM<sub>10</sub> NAAQS in order to comply with the United States Environmental Protection Agency anti-backsliding provisions in FCAA, §110(l). It included 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 PM<sub>10</sub> emissions reductions equivalent to or greater than what would have been achieved if the City had continued to implement 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.

**Will 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?**

The commission could decide not to adopt the proposed amendment to Chapter 111, and the revised MOA would not be needed. The City would be obligated to comply with existing rules and MOA requirements limiting the City's fiscal and technical flexibility to control PM<sub>10</sub> in the El Paso area and comply with the SIP.

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

**Texas Register proposal publication date:** September 2, 2011

**Anticipated Texas Register publication date:** February 10, 2012

**Anticipated effective date:** February 16, 2012

**Six-month Texas Register filing deadline:** March 2, 2012

**Agency contacts:**

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**Attachments**

None

cc: Chief Clerk, 2 copies  
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