

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** February 4, 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.: 2010-1333-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 116, Control of Air Pollution by Permits for New Construction or
Modification
Repeal of §116.118, Pre-change Qualification
Rule Project No. 2010-052-116-PR

Background and reason(s) for the rulemaking:

On September 15, 2010, the commission adopted amendments to Chapter 116 (TCEQ Rule Project No. 2010-006-116-PR, 35 TexReg 8944 (October 1, 2010)) to address the issues identified by the United States Environmental Protection Agency (EPA) which resulted in the disapproval of the qualified facility program rules (75 *Federal Register* 19468 (April 14, 2010)).

Section 116.118 allowed grandfathered facilities to make facility changes under the qualified facility rules. By statute, all grandfathered facilities must now be permitted, and the rules adopted on September 15, 2010 require an application for a permit revision to make qualified facility changes (35 TexReg 8944). Section 116.118 has no further application in the air permitting rules. It could not be repealed in the September 15, 2010 action because it was not then proposed for repeal.

The repealed §116.118 will also be withdrawn from EPA consideration as a SIP revision. This will ensure that EPA is notified that the rule has been repealed and that the Commission no longer would expect EPA to reconsider the rule as part of any future SIP review process, including the changes adopted by the Commission to the qualified facilities program on September 15, 2010, which were submitted to the EPA as a revision to the SIP

Scope of the proposed rulemaking:

A) Summary of what the rulemaking will do:

The proposed rule would repeal §116.118, Pre-change Qualification, and withdraw the repealed §116.118 from further EPA consideration as a SIP revision.

B) Scope required by federal regulations or state statutes:

The repeal and withdrawal from EPA consideration of §116.118 will complete the rulemaking actions of the commission related to the EPA disapproval of the qualified facility program (75 *Federal Register* 19468).

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

None.

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Statutory authority:

The repeal is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeal is also adopted under Texas Health and Safety Code, §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; §382.003, concerning Definitions; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §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; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; §382.0511, concerning Permit Consolidation and Amendment, which allows the commission to combine permits; §382.0512, concerning Modification of Existing Facility, which restricts what the commission may consider in determining a facility modification; §382.0518, concerning Preconstruction Permit, which authorizes the commission to require a permit before a facility is constructed or modified; and §382.05181, concerning Permit Required, which requires grandfathered facilities to obtain an air quality permit.

Effect on the:

A) Regulated community:

No effect. All grandfathered facilities were required by statute to be under permit by March 2008.

B) Public:

No effect.

C) Agency programs:

No effect.

Stakeholder meetings:

No stakeholder meetings were held.

Public Comment

No comments were received during the public comment period which closed on November 15, 2010.

Significant changes from proposal: None

Potential controversial concerns and legislative interest:

This repeal should not be controversial and should not generate legislative interest.

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

No.

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

During the comment period on Rule Project No. 2010-006-116-PR, EPA commented that §116.118 appeared to apply to grandfathered facilities and confused the issue of whether qualified facilities required permits. Retention of the section may complicate EPA consideration of the amended qualified facility rules as a state implementation revision.

Key dates in the proposed rulemaking schedule:

Texas Register proposal publication date: October 15, 2010

Anticipated Texas Register publication date: March 11, 2011

Anticipated effective date: March 17, 2011

Six-month adoption deadline: April 15, 2011

Agency contacts:

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Attachments

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