

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** July 23, 2010

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

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

Docket No.: 2010-0625-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 116, Control of Air Pollution by Permits for New Construction or Modification
New Source Review (NSR) Reform
Rule Project No. 2010-008-116-PR

Background and reason(s) for the rulemaking:

On June 10, 2005, the TCEQ submitted amendments to 30 TAC §116.12 to the United States Environmental Protection Agency (EPA) as revisions to the New Source Review (NSR) State Implementation Plan (SIP) and §116.150 as revisions to the Nonattainment New Source Review (NNSR) SIP, both adopted on May 25, 2005. On February 1, 2006, the TCEQ submitted amendments to §§116.12, 116.121, 116.180, 116.182, 116.186, 116.188, 116.190, 116.192, 116.196, and 116.617 to the EPA as revisions to the NSR SIP. On September 23, 2009, the EPA published notice of the proposed disapproval of these revisions to the Texas SIP (74 *Federal Register* 48467, September 23, 2009). EPA is scheduled, as required by a lawsuit settlement with industry groups, to take final action on these rules by August 31, 2010. This rulemaking will address those sections submitted as revisions to the NSR SIP and subsequently disapproved by the EPA. Other changes included in this rulemaking are discussed below.

Scope of the proposed rulemaking:

A) Summary of what the rulemaking will do:

This rulemaking and the companion rulemaking (Rule Project No. 2008-030-116-PR) will address issues identified by the EPA in its September 23, 2009, disapproval notice and ensure that TCEQ regulatory requirements regarding the NSR permitting program meet the requirements of the Federal Clean Air Act (FCAA) and are approvable into the SIP. Specifically, those concern definitions related to and other changes to the Plant-Wide Applicability Limit (PAL) rules to meet federal requirements, including the conditions for reopening PAL permits. The rulemaking would also amend the standard permit rule for pollution control projects, which is simultaneously being proposed as a non rule standard permit, to limit its use. The amendments would also include removing obsolete references and making non-substantive administrative changes.

B) Scope required by federal regulations or state statutes:

Staff is recommending amendments to §116.12, Nonattainment Review Definitions; §116.115, General and Special Conditions; §116.180, Applicability; §116.182, Plant-wide Applicability Limit Permit Application; §116.186, General and Special Conditions; §116.188, Plant-wide Applicability Limit; §116.190, Federal Nonattainment and Prevention of Significant Deterioration Review; §116.192, Amendments and Alterations; §116.196, Renewal of a Plant-wide Applicability Limit Permit; and §116.617, State Pollution Control Project Standard Permit that are consistent with the federal requirements for the NSR SIP. Staff also recommends repeal of §116.121, Actual to Projected Actual and Emissions Exclusion Test for Emissions Increases, and replacement of this section in a new §116.127. Additionally staff recommends withdrawal from consideration by EPA as revisions of the SIP the sections that reference FCAA, §112(g) that were

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renumbered and submitted to EPA in the 2006 rulemaking (§§116.400 - 116.406). Finally, the staff recommends withdrawal of §116.121 from consideration by EPA as a revision of the SIP as adopted in 2006 because the rule is proposed for repeal and readopted as §116.127, which is also proposed as a revision to the SIP.

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

Staff recommends additional nonsubstantive administrative changes.

Statutory authority:

Statutory authority includes Texas Water Code, §5.102, General Powers; §5.103, Rules; and §5.105, General Policy. Statutory Authority also includes 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; §382.016, Monitoring Requirements; Examination of Records; §382.021, Sampling Methods and Procedures; §382.040, State Air Control Plan; §382.051, Permitting Authority of the Commission; Rules, §382.0511, Permit Consolidation and Amendment; §382.0512, Modification of Existing Facility; §382.0513, Permit Conditions; §382.0514, Sampling, Monitoring, and Certification; §382.0515, Application for Permit; §382.0518, Preconstruction Permit; §382.05195, Standard Permit; and §382.055, Review and Renewal of Construction Permit. The amendments are also proposed under FCAA, 42 United States Code, §7401, *et seq.*, which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

Effect on the:

A) Regulated community: Although the EPA has noted deviations from the federal requirements for the NSR SIP in state regulations, the Air Permits Division (APD) has required applicants to comply with all applicable conditions of federal NSR, and therefore, there should be no adverse impacts associated with the resolution of these deviations. The separation of requirements to obtain a permit to comply with FCAA, §112(g) of the FCAA from SIP requirements and removal of rules regarding FCAA, §112(g) permitting from SIP consideration by EPA will result in no rule changes. The amendment of the pollution control standard permit rule will not result in any adverse impacts since a new non-rule standard permit for pollution control projects will be proposed separately and concurrently with this project.

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

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

Stakeholder meetings: No stakeholder meetings have been held. However, background documents related to this rulemaking have been posted on TCEQ's external Web site. Also, standard notice of this action and an opportunity for comment will be provided after proposal.

Potential controversial concerns and legislative interest: The rule changes and references to the federal regulations included in this rulemaking are reflective of the current APD policy regarding NSR, and therefore, no controversy is expected. There is no known legislative interest at this time.

Will this rulemaking affect any current policies or require development of new policies? This rulemaking will not affect any current policies nor require development of any new policies. The APD is currently conducting reviews of sources subject to federal NSR that meet federal definitions and requirements.

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What are the consequences if this rulemaking does not go forward? If this rulemaking does not go forward, federal SIP approval of major NSR permitting will be jeopardized.

Are there alternatives to rulemaking? The commission could decline to address EPA disapproval notices and wait for further EPA action.

Key dates in the proposed rulemaking schedule:

Anticipated proposal date: August 11, 2010

Anticipated *Texas Register* publication date: August 27, 2010

Public hearing date (if any): September 20, 2010

Public comment period: August 27, 2010 - September 27, 2010

Anticipated adoption date: January 12, 2011

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Attachments

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