

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** October 15, 2010

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 Proposed Rulemaking
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) is proposing amendments to TCEQ rules found in 30 Texas Administrative Code (TAC) Chapters 101 and 106. The amendments 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 finalized the bulk of the major new source review (NSR) program regulations for PM_{2.5} and published notice on May 16, 2008. EPA noted that this final action along with EPA's proposed rule on increments, significant impact levels (SILs), and significant monitoring concentration (SMC), when final, will represent the final elements necessary to implement a PM_{2.5} Prevention of Significant Deterioration (PSD) program. EPA also indicated that states with state implementation plan (SIP) approved programs may continue to implement a particulate matter 10 micrometers or less (PM₁₀) program as a surrogate to meet the PSD program requirements for PM_{2.5} pursuant to 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 (73 *Federal Register* 28341, May 16, 2008). In an effort to ensure the TCEQ meets regulatory requirements of the FCAA, the Air Permits Division is proposing amendments to add specific definitions related to PM_{2.5} regulation and to address known requirements for implementation.

Scope of the proposed rulemaking:

The proposed 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 proposed rulemaking will provide guidance as TCEQ implements PM_{2.5} as a PSD requirement for the 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.

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}.

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B) Scope required by federal regulations or state statutes:

The proposed 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 proposed rulemaking will not create a group of affected persons who were not affected previously. In addition, it should not provide any fiscal impact.

Stakeholder meetings:

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

Potential controversial concerns and legislative interest:

The proposed 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}. 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}. Therefore, EPA may impose additional technical requirements in the future to address the secondary formation concern that could include photochemical modeling to demonstrate compliance for PSD and minor NSR permitting actions.

Will 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. There are not any alternatives if the TCEQ wants to ensure regulatory requirements of the FCAA are met.

Key dates in the proposed rulemaking schedule:

Anticipated proposal date: November 3, 2010
Anticipated *Texas Register* publication date: November 19, 2010
Public hearing date: December 13, 2010
Public comment period: November 19 - December 20, 2010
Anticipated adoption date: April 20, 2011

Agency contacts:

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Attachments

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