

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** July 29, 2011

**Thru:** Melissa Chao, Acting 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 Proposed Rulemaking  
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 (the City) 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 adopted in §111.147 required paving as a method of dust control in the City 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 City.

In 1991, a Memorandum of Understanding (MOU) between 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 that the City has committed to an alley paving program at a level in alignment with its own internal budgetary capacities, not at the rate of 15 miles per year as required under §111.147.

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The City is monitoring compliance for PM<sub>10</sub>. For the site reporting regulatory 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 proposed rulemaking is necessary to provide the City with alternative methods of PM control. The proposed rules 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 proposed 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 proposed rulemaking would amend §111.147 to provide the City with additional flexibility in PM control measures.

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

The proposed rule would 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) alleys may not be used for garbage and recycling collection; and 3) the use of RAP may be used as an alternate means of PM control for alleys. The proposed rule would 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:**

Air Quality Division staff recommends stipulating in the proposal that the commission plans only to accept comments on the specific changes to the rules and no other changes will be considered during this rulemaking. The proposed rulemaking would also make non-substantive changes as necessary to conform to *Texas Register* style and formatting requirements.

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**Statutory authority:**

The amendment is proposed 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. The amendment is also proposed under Texas Health and Safety Code, 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; §382.011, concerning General Power 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; §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act, §382.0172, concerning international border areas, and §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 rule revisions would update the PM<sub>10</sub> controls required to attain and maintain the PM<sub>10</sub> NAAQS. The City would have greater flexibility in the implementation of the PM<sub>10</sub> control requirements in §111.147.

**B.) Public:**

Implementation of the revised rules would continue protection of public health through maintenance of the PM<sub>10</sub> standard.

**C.) Agency programs:**

There are no anticipated impacts on agency programs.

**Stakeholder meetings:**

No stakeholder meetings were held.

**Potential controversial concerns and legislative interest:**

A demonstration will be 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 EPA anti-backsliding provisions in FCAA, §110(l). It will include the substitution of the alley paving and street sweeping measures as stated in §111.147(1)(E) and §111.147(2) with alternate control

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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 complied with §111.147(1)(E) and §111.147(2). These control measures include reduced alley traffic, city ordinances requiring developers to pave any new alleys they create, and the use of recycled asphalt product 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?**

The agency could enforce §111.147 as written; however, due to budgetary constraints, the City does not have sufficient funding to meet the 15 miles per year paving requirement and the street sweeping frequency requirements.

**Are there alternatives to rulemaking?**

The commission could decide not to adopt the proposed revisions to Chapter 111.

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

<b>Anticipated proposal date:</b>	August 17, 2011
<b>Anticipated Texas Register publication date:</b>	September 02, 2011
<b>Public hearing date (if any):</b>	September 27, 2011
<b>Public comment period:</b>	September 02, to October 03, 2011
<b>Anticipated adoption date:</b>	January 25, 2012

**Agency contacts:**

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**Attachments**

None

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