

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: April 1, 2011

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

From: Susana M. Hildebrand, P.E., Chief Engineer

Docket No.: 2010-2068-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 101, General Air Quality Rules
General Conformity Rule Repeal
Rule Project No. 2010-047-101-EN

Background and reason(s) for the rulemaking:

On December 12, 1994, the Texas Natural Resource Conservation Commission, now known as the Texas Commission on Environmental Quality (TCEQ), adopted 30 Texas Administrative Code (TAC) Chapter 101, Subchapter A, §101.30, Conformity of General Federal Actions to State Implementation Plans. The purpose of the rule was to establish the criteria and procedures for general conformity determinations, as required by 40 Code of Federal Regulations (CFR) §51.851. In August 2005, the United States Congress passed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) that eliminated the requirement for states to adopt and submit general conformity state implementation plan (SIP) revisions. On April 5, 2010, the United States Environmental Protection Agency (EPA) adopted revisions to the general conformity regulations in 40 CFR Parts 51 and 93 (*75 Federal Register* 17254, April 5, 2010). The revisions made the adoption and submittal of the general conformity SIP optional for the state and deleted all of 40 CFR Part 51, Subpart W except for §51.851. Title 40 CFR §51.851 was revised to clarify that if a state chooses to submit a general conformity SIP, it must be consistent with the requirements of 40 CFR Part 93, Subpart B. These changes became effective on July 6, 2010.

The EPA's April 2010 revisions also added four new sections to 40 CFR Part 93: §§93.161, 93.163, 93.164, and 93.165. Under the new 40 CFR §93.161, federal agencies may negotiate a facility-wide emissions budget to be incorporated into the SIP. After the EPA approves the SIP, any action at the facility can be presumed to conform if the emissions from the proposed action along with all other emissions at the facility are within the approved facility-wide emissions budget. Therefore, a conformity determination would not be necessary. The new 40 CFR §93.163 allows alternate schedules for mitigating emission increases. Federal agencies and states can negotiate a program for some emissions mitigation to occur in future years, and states can use this approach to accommodate short-term increases in emissions if the state believes that a substantial long-term reduction in emissions will result from a federal action. The new 40 CFR §93.164 allows

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the emissions of one precursor of a criteria pollutant to be offset by the reduction in the emissions of another precursor of that pollutant. For example, emissions of volatile organic compounds could be offset by a reduction in emissions of nitrogen oxides. Finally, the new 40 CFR §93.165 incorporates the use of early emissions reduction credits into the regulations. This section also provides other federal agencies with regulations and guidance similar to the Airport Early Emissions Reduction Credit program established by the United States Congress in the Federal Aviation Administration Reauthorization Act of 2003.

The general conformity requirements in 30 TAC §101.30 mirror the federal requirements in 40 CFR Part 93, Subpart B and Part 51, Subpart W, and specifically reference the now repealed Part 51, Subpart W. Amended 40 CFR Part 93, Subpart B continues to subject certain federal actions to general conformity requirements without the need for identical state rules and SIPs. Therefore, repealing the state rule would not impact program continuity, but it would eliminate references in state rules to repealed federal rules and the need for future state rule revisions as a result of amendments to federal regulations.

Scope of the rulemaking:

The proposed rule revision would repeal 30 TAC §101.30.

A.) Summary of what the rulemaking will do:

The proposed rulemaking would repeal the general conformity requirements in 30 TAC §101.30, which mirror the federal requirements in 40 CFR Part 93, Subpart B and Part 51, Subpart W, and specifically reference the now repealed Part 51, Subpart W. Amended 40 CFR Part 93, Subpart B continues to subject certain federal actions to general conformity requirements without the need for identical state rules and SIPs. Therefore, repealing the state rule would not impact program continuity, but it would eliminate references in state rules to repealed federal rules and the need for future state rule revisions as a result of amendments to federal regulations.

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

The proposed rulemaking would repeal the general conformity requirements in 30 TAC §101.30, which mirror the federal requirements in 40 CFR Part 93, Subpart B and Part 51, Subpart W, and specifically reference the now repealed Part 51, Subpart W.

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

None.

Statutory authority:

The repeal is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC. The repeal is also proposed under Texas Health and Safety Code (THSC), Texas

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Clean Air Act (TCAA), §382.011, which authorizes the commission to administer the requirements of the TCAA; THSC, §382.013, which authorizes the commission to designate air quality control regions to provide adequate implementation of air quality standards; and THSC, §382.017 which authorizes the commission to adopt rules consistent with the policy and purpose of the TCAA.

The proposed repeal implements TWC, §§5.102, 5.103, and 5.105; and THSC, §§382.011, 382.013, and 382.017.

Effect on the:

A.) Regulated community:

There would be no effect on the regulated community, because the regulated community would need to comply with the federal rules whether state rules are revised or not.

B.) Public:

The proposed rule revisions would not have an adverse affect on the public.

C.) Agency programs:

Repealing the rule would streamline the process for the agency by eliminating the need for any future rule revisions.

Stakeholder meetings:

Stakeholder meetings will not be held.

Potential controversial concerns and legislative interest:

None anticipated.

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

No policies are affected by this proposed rule repeal.

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

If the rule repeal does not go forward, 30 TAC §101.30 will continue to reference the now repealed 40 CFR Part 51, Subpart W.

Key points in the proposal rulemaking schedule:

Anticipated proposal date:	April 20, 2011
Anticipated <i>Texas Register</i> publication date:	May 6, 2011
Public hearing date (if any):	May 31, 2011
Public comment period:	May 6, 2011 – June 6, 2011
Anticipated adoption date:	September 28, 2011

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Attachments

75 Federal Register 17254, April 5, 2010

cc: Chief Clerk, 2 copies
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