



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
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OFFICE OF
PERMITTING & REGISTRATION

Ms. Patricia Duron
Office of Legal Services (MC 205)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

RE: EPA Comments on Rule Project Number 2010-005-116-PR

Ms. Duron:

Thank you for providing us the opportunity to review and comment on the proposed revisions to the Texas Administrative Code (TAC) Title 30, Chapter 116.160. In general, we are supportive of this proposed rulemaking, but we would like to provide the enclosed comments for your consideration.

Please note that our comments do not constitute final determinations concerning approvability of the revisions to the Texas SIP. We are providing these comments to assist TCEQ in the development of the regulations and to outline our expectations should these rules be approved into the State Implementation Plan (SIP). We look forward to working with the TCEQ as you move forward in responding to these comments and finalizing the revisions to the Texas SIP. If you have any questions, please call Jeff Robinson of my staff at (214) 665-6435.

Sincerely yours,

Carl E. Edlund, P.E.
Director
Multimedia Planning & Permitting

Enclosure

cc: Mr. Richard Hyde, TCEQ
Mr. Steve Hagle, TCEQ
Ms. Stephanie Bergeron Perdue, TCEQ

AIR PERMITS DIVISION
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Enclosure

TCEQ Proposed Revision to 30 TAC 116.160 to Incorporate the Definition of BACT and Provisions for Permit Review Regarding PSD Review for Projects that Become Major Stationary Sources or Major Modifications Solely Because of a Relaxation of an Enforceable Limitation on the Source's or Modification's Capacity to Emit a Pollutant

Rule Project No. 2010-005-116-PR

Background.

On February 1, 2006, the TCEQ submitted amendments to 30 TAC 116.160 to EPA as a SIP revision to Texas PSD SIP. These amendments included removal of certain references to federal definitions and requirements regarding “best available control technology” or “BACT” as it relates to PSD, and the permit review regarding PSD review of projects that become major stationary sources or major modifications because of a relaxation of an enforceable limitation on the source's or modification's capacity to emit a pollutant. On September 23, 2009, EPA proposed disapproval of these revisions to the Texas SIP. *See* 74 FR 48467, 48472, September 23, 2009. TCEQ has proposed amendments to 30 TAC 116.160 to eliminate these deficiencies.

EPA Comments on the Proposed Changes.

TCEQ proposes to revise §116.160(c)(1)(A) to add a reference to 40 CFR 52.21(b)(12) – definition of “best available control technology.” The reinstatement of this definition appears to satisfy the concerns at 74 FR 48472 concerning the removal of BACT from the currently approved PSD SIP.

TCEQ further proposes to revise §116.160(c)(2)(C) to incorporate the requirements of 40 CFR 52.21(r)(4) which relate to the PSD review of projects that become major stationary sources or major modifications because of a relaxation of an enforceable limitation on the source's or modification's capacity to emit a pollutant. The reinstatement of this requirement appears to satisfy the concerns at 74 FR 48472 concerning the removal of 40 CFR 52.21(r)(4) from the currently approved PSD SIP.

TCEQ further proposes to revise §116.160(c)(2)(A) to cross-reference 40 CFR 52.21(j), which implements the definition of BACT. Although TCEQ has not historically included this reference in its PSD rule, the proposed addition is proposed because it complements the reinserted definition of BACT. The addition of the 40 CFR 52.21(j) requirements appears to satisfy the concerns of a clear distinction between Minor NSR SIP BACT and PSD SIP BACT.

EPA Related Observations on TCEQ's Three Tier BACT Analysis Guidance Memorandum.

As you know, best available control technology is defined in the Federal Clean Air Act as “an emission limitation based on the *maximum degree* of reduction of each pollutant subject to regulation under this chapter emitted from or which results from any major

emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant.”

Consequently, it is essential that the Texas PSD SIP, all applicable TCEQ guidance and forms, and most importantly, implementation of the Texas PSD SIP, on a permit-by-permit basis, demonstrate that each emissions limitation established as PSD BACT reflects the maximum degree of reduction, unless a rigorous site-specific analysis of energy, environmental, and economic impacts justifies a less stringent emissions limitation.

After the 1992 approval of the Texas PSD SIP (with TCEQ’s BACT guidance memorandum), TCEQ issued its 2001-revised Three Tier BACT Analysis guidance memorandum. This guidance appears to have dropped the core criteria, in particular ensuring that the permit writers know to review the most stringent control technology (and associated emission limitation) and provide a detailed rationale if it were not selected.

It is our understanding that TCEQ staff has been instructed to conduct a thorough analysis of BACT, including the most stringent available control technology. However, we have ongoing concerns because TCEQ has not yet revised the Three Tier BACT analysis guidance to ensure its clarity. Also, the State committed in its PSD SIP revision submittal (that was approved in 1992) to implement BACT related decisions given through EPA Administrator orders responding to Title V operating permit petitions, the EPA Environmental Appeals Board (EAB), and Federal courts. We are concerned that the State may not be following through with this Texas PSD SIP commitment. Potential examples include BACT analysis based on cleaner fuels, Integrated Gasification Combined Cycle consideration, and BACT for PM_{2.5} emissions.

First, we request that the TCEQ revise its BACT guidance memorandum and take it through the SIP regulatory process for adoption and submittal to EPA for approval as a SIP revision to the Texas PSD SIP. We believe the appropriate time for such rulemaking is when TCEQ is proposing the NSR and NSR Reform regulatory changes. The TCEQ then would submit the revised BACT guidance demonstrating how case-specific BACT analyses will be implemented in Texas when your revised NSR and NSR Reform rules are submitted to EPA for revision of the State Implementation Plan.

Further, to ensure transparency of TCEQ’s evaluation and implementation of the PSD BACT requirements, TCEQ’s BACT analysis for each PSD permit application must detail how TCEQ arrived at its BACT decision and be included in the Preliminary Determination Summary document prepared by TCEQ permit writers. This Preliminary Determination Summary must accompany the draft PSD permit sent to public notice. This should include the technical and economic analyses prepared to support TCEQ’s BACT determination.

In conclusion, we expect the TCEQ to fully implement any SIP approved BACT requirements in accordance with all Federal regulations, guidance, and policy, including any EPA Administrator orders responding to Title V operating permit petitions, EPA Environmental Appeals Board (EAB) decisions, and Federal court decisions.