



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
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AUG 02 2010

Mr. Michael Parrish
Office of Legal Services (MC 205)
Texas Commission of Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: EPA Comments on Rules Project Number 2010-007-116-PR

Mr. Parrish:

Thank you for providing us the opportunity to review and comment on the proposed revisions to 30 Texas Administrative Code (TAC) Chapter 116, Control of Air Pollution by Permits for New Construction or Modification sections 116.13, 116.710, 116.711, 116.715-116.718, 116.720, 116.721, 116.730, 116.740, 116.740, 116.750, and 161.765 - Subchapter G Flexible Permits, and the proposed revisions to the Texas State Implementation plan (SIP). This proposed rulemaking revises TCEQ's flexible permit program rules in response to our June 30, 2010, disapproval of the program (75 FR 41312).

Please note that these comments do not constitute final determinations concerning approvability of the revisions to the Texas SIP. At this time, the only flexible permitting programs that have been established under federal rules are for major stationary sources and major modifications; they are the Plantwide Applicability Limits (PAL) in EPA's NSR reform rules, and those found in the *Operating Permit Programs; Flexible Air Permitting Rule* (74 FR 51418) published October 6, 2009. EPA cannot approve a SIP revision if it would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act. We are providing these comments to assist TCEQ in the development of regulatory language.

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 Mr. Stanley Spruiell of my staff at (214) 665-7212.

Sincerely yours,

A handwritten signature in black ink that reads "Thomas H. Diggs".

Thomas H. Diggs
Associate Director for Air Programs
Multimedia Planning and
Permitting Division

Enclosure

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1. Because TCEQ is proposing to delete the insignificant emissions factor in Subchapter G, the reference to it in the definitions of "Emission cap" and "Individual emission limitation" at 30 TAC 116.13, must be deleted.
2. Proposed 30 TAC 116.711(2)(M)(vii) must be revised as follows to ensure it is clear that a flexible permit cannot be used for a major stationary source or major modification:

"(vii) if the flexible permit application includes facilities currently authorized by a Minor permit issued under Subchapter B of this chapter (relating to New Source Review Permits) the applicant shall identify any terms, conditions, and representations in the Subchapter B Minor permit or permits which will be superseded by or incorporated into the flexible permit. The applicant shall include an analysis of how the conditions and control requirements of Subchapter B permits will be carried forward in the proposed flexible permit. The flexible permit application cannot include facilities currently authorized by a Major NNSR or PSD permit issued under Subchapter B of this chapter."

3. Proposed new 30 TAC 116.716(a)(2)(A) must be revised as follows to ensure it is clear that a flexible permit cannot be used for a major stationary source or major modification:

"(2) emissions will be calculated for each facility within an emission cap as follows:

(A) based on application of Minor best available control technology at expected maximum capacity;"

4. Proposed 30 TAC 116.716(a)(2)(B) must be revised to ensure it is clear that a flexible permit cannot be used for a major stationary source or major modification. As written, the introductory phrase, "if the permit is used to authorize" can be interpreted to allow PSD and NNSR major stationary sources and major modifications to be covered under a flexible permit.
5. Proposed new 30 116.716(a)(3) for NNSR major stationary sources and major modifications is not acceptable. As written, it can be interpreted that a nonattainment major stationary source or major modification can be covered under a separate emissions cap established under a flexible permit. No major stationary source or major modification can be authorized under a flexible permit. A major stationary source or major modification must be authorized under a PSD or NNSR SIP permit, as established in the SIP rules codified at 30 TAC 116.150 - 116.151 and 30 TAC 116.160, which EPA approved as meeting the requirements of Title I, Parts C and D of the Act and 40 CFR 51.165 and 52.166.
6. Proposed new 30 TAC 116.716(a)(4) must be revised to be clear that the emissions from facilities subject to PSD BACT and/or NNSR LAER cannot be included in the summation of the flexible permit's emission cap(s). Moreover, it must be clear that Minor NSR BACT determinations are required to be at least as stringent as the federal applicable requirement, e.g., SIP rule, NSPS, NESHAPS, and MACT. Please provide the

SIP rule that contains this requirement or submit the TCEQ rule for approval as a SIP revision.

7. Proposed new 30 TAC 116.718(b), second sentence, seems to exclude the holder of a flexible permit from having the documentation that a change is not a major modification if there is a PAL limit established for the pollutant. This makes no sense because a PAL is for Major NSR, not Minor NSR. Therefore, why is the holder of a Minor NSR Flexible Permit excluded from having this documentation? This sentence must be revised to ensure it is clear that a flexible permit cannot be used for a major stationary source or major modification.
8. Each individual unit covered under an emission cap must still meet at the very least, its specific emission limitation derived from a federal applicable requirement, e.g., a SIP rule, Minor NSR SIP BACT determination, NSPS, MACT, NESHAPS. A unit cannot violate its federal applicable requirement. An exception could be units that were previously grandfathered units not subject to any federal applicable requirement other than a Minor NSR SIP BACT determination made at the time of the issuance of the original flexible permit.
9. The TCEQ must delineate the definitions of "account," "facility," and "group of facilities" in Subchapter G. For example, proposed 30 TAC 116.711(2)(N) in Subchapter G uses "unit" for specification of the control technology for each unit to meet the emission cap and demonstration of compliance with all emission caps. The proposed Program contained in Subchapter G is not clear how a "unit" relates to the other terms contained in Subchapter G, "facility," "group of facilities," and "account."

All four terms must be explained sufficiently so that it is clear why one (or more) is used in certain instances and not in other instances throughout Subchapter G. This is important to limit the boundaries of the emission cap to be an acceptable Minor NSR emission cap SIP program.

Furthermore, proposed 30 TAC 116.716(a)(1) in Subchapter G provides for either a site-wide emission cap or a like-kind facilities cap. "Site" is defined in the Texas SIP as including "any property identified in the permit or used in connection with the regulated activity at the same street address or location." This definition is too broad and provides broad director discretion to delineate the boundaries of the site covered by the emission cap. Under this definition, a site-wide emission cap could cover all minor stationary sources and all minor modifications on the company's property.

10. For proposed 30 TAC 116.711(2)(M)(ii), (iv), and (vi), please explain why the identification does not include "in an account." Also, please explain why (ii) and (vi) should not require the identification of "each facility included in a 'group of facilities'."
11. Included together here are several comments regarding reference to "account" and "group of facilities". In 30 TAC 116.715(c)(7), last sentence, it must include a reference to "account." In 30 TAC 116.715(c)(10) it also must include a reference to "account." In proposed revised 30 TAC 116.716(d)(4) and in proposed new 30 TAC 116.718(c), they must include references to "account" and "group of facilities."