

Bryan W. Shaw, Ph.D., P.E., *Chairman*  
Toby Baker, *Commissioner*  
Zak Covar, *Commissioner*  
Richard A. Hyde, P.E., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

January 27, 2015

Ms. Stephanie Kordzi  
U.S. Environmental Protection Agency  
Air Permits Section (6PD-R)  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

Attn: Docket No. EPA-R06-OAR-2013-0542

Re: Title 40 Code of Federal Regulations (CFR) Part 52  
Approval and Promulgation of Air Implementation Plans; Texas; Revisions to the  
New Source Review (NSR) State Implementation Plan; Flexible Permit Program;  
Proposed Rule.

Dear Ms. Kordzi:

The Texas Commission on Environmental Quality (TCEQ) appreciates the opportunity to respond to the U.S. Environmental Protection Agency's (EPA) notice published in the December 31, 2014, issue of the *Federal Register* (FR) entitled: "Approval and Promulgation of Air Implementation Plans; Texas; Revisions to the New Source Review State Implementation Plan [SIP]; Flexible Permit Program [FPP]; Proposed Rule."

The TCEQ concurs with the EPA's proposed determination that the TCEQ fulfilled its December 9, 2013 commitment to submit the FPP SIP revision. These rule amendments, made to revise the rule text to conform to the TCEQ's 2013 SIP submittal, were adopted on July 2, 2014, and submitted to the EPA on July 31, 2014, well in advance of the November 30, 2014 deadline. The TCEQ also concurs with EPA's proposed finding that the TCEQ has satisfied all the elements of the EPA's July 14, 2014 final conditional approval (79 FR 40666).

Specifically, TCEQ concurs with the EPA's assessment that the FPP rules comply with the requirements of the Federal Clean Air Act (FCAA) and with the EPA's rules for minor NSR SIP revisions in 40 CFR §§ 51.160 – 51.164, as well as other general SIP requirements. The EPA correctly determined that the FPP is a component of the Texas Minor NSR program and that the FPP does not violate statutory and regulatory requirements for the FCAA permitting programs for Major NSR, Prevention of Significant Deterioration and Nonattainment New Source Review. In addition, the rules

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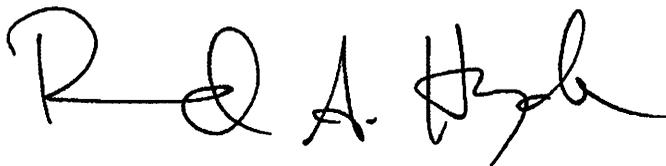
Re: Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to the New Source Review (NSR) State Implementation Plan; Flexible Permit Program

and the EPA's proposed approval appropriately and adequately respond to *Texas v. EPA*, 690 F.3d 670 (5th Cir. 2012), Texas' successful challenge of the EPA's prior disapproval of the FPP rules, in which the court specifically found that the FPP "affirmatively requires compliance with Major NSR, and does not, therefore, allow Major NSR evasion."<sup>1</sup>

In closing, the TCEQ supports the EPA's proposed action to convert the approved conditional FPP to a fully SIP-approved FPP, and requests that the EPA issue final rules as expeditiously as possible.

If you have any questions concerning these comments, please contact Mr. Michael Wilson, P.E., Director, Air Permits Division, Office of Air, (512) 239-1922, or at [mike.wilson@tceq.texas.gov](mailto:mike.wilson@tceq.texas.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Richard A. Hyde". The signature is written in a cursive, flowing style.

Richard A. Hyde, P.E., Executive Director  
Texas Commission on Environmental Quality

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<sup>1</sup> *Texas v. EPA*, 690 F.3d 670, 680 (5th Cir. 2012), citing to rules currently codified as 30 Tex. Admin. Code § 116.711(2)(H) and (I).