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May 14, 2004

Mr. Glenn Shankle
Acting Executive Director
Texas Commission on Environmental Quality
P.O. Box 13087 – MC 109
Austin, Texas 78711-3087

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Re: Petition for Rulemaking
30 T.A.C. § 111.155



Dear Mr. Shankle:

Enclosed is a petition for rulemaking requesting the repeal of 30 T.A.C. § 111.155, *Ground Level Concentrations*. Section 111.155 is found in Division 5, Emission Limits on Nonagricultural Processes of Chapter 111 of TCEQ's Air Regulations, *Control of Air Pollution from Visible Emissions and Particulate Matter*.

If you or your staff have any questions regarding this petition, please contact me at 322.2594.

Very truly yours,

A handwritten signature in black ink, appearing to be "Jennifer Keane", written over a horizontal line.

Jennifer Keane

Enclosure

cc: David Schanbacher

PETITION FOR RULEMAKING

Baker Botts LLP hereby petitions the agency for rulemaking to delete the requirements of 30 T.A.C. §111.155, *Ground Level Concentrations*. Section 111.155 is found in Division 5, Emission Limits on Nonagricultural Processes of Chapter 111 of TCEQ's Air Regulations, *Control of Air Pollution from Visible Emissions and Particulate Matter*.

Name and Address of Petitioner

Baker Botts LLP
1500 San Jacinto Center
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Austin, Texas 78701

Explanation for Petition

In 1967, the Texas Air Control Board (TACB), predecessor agency to the TCEQ, promulgated rules on suspended particulate matter. According to the rules, concentrations of suspended particulate greater than specified levels constituted "undesirable levels" such that "it shall be considered that a state of air pollution exist[ed]" when concentrations were greater than those levels. These were akin to ambient air quality standards, with compliance to be determined on the basis of not less than ten, 24-hour samples taken within a 30-day period. Sampling procedures were specified in an appendix to the rules.

In 1971, the rules were simplified, but the basic premise remained: ground level concentrations of particulate matter were not to exceed net ground level concentrations measured in terms of micrograms of air sampled (now averaged over five hour, three hour, and one hour periods). In 1989, the five hour standard was removed. The rule, now 30 T.A.C. §111.155, has remained unchanged since that time.

The regulatory history does not provide any explanation for how the limits in §111.555 were established. It is clear, however, that the limits were intended to address nuisance conditions, not health effects. The 1967 rule specifically provided that "a state of air pollution" would exist if sampling indicated an exceedence of the standard. This was confirmed in 1989. According to the preamble to the final rule changes, "[t]he TACB's TSP standard was established to eliminate nuisance conditions while the PM₁₀ standard was designed to protect public health."¹

The genesis of §111.155 is 37 years old. In 1967, Texas had not even established an air permitting program. Thus, what is today §111.155 was promulgated at a time when the agency had far fewer enforcement tools available. The rule was adopted in order to provide TACB with an avenue to require reductions from existing sources that were causing nuisances. Since the promulgation of the original rule, the federal national ambient air quality standards for total suspended particulates has been repealed, in favor of a more meaningful small particulate (PM₁₀)

¹ 14 Tex. Reg. 3296 (July 4, 1989).

standard. Section 111.155 is an artifact that is no longer consistent with direction in which modern air quality regulation has gone.

Because this rule is still on the books, however, TCEQ New Source Review permit engineers are construing §111.155 as a requirement for which a company must be able to submit modeling to demonstrate that emissions will be in compliance. A successful modeling demonstration is required prior to permit issuance. A number of companies can demonstrate that their ambient emissions are well below the PM₁₀ ambient air quality thresholds--yet have trouble demonstrating that they will meet §111.155.

This has led to long delays in permit issuance and the imposition of additional control measures on sources for which there are no nuisance complaints and no evidence of any nuisance conditions. The rule is unnecessary today and should be repealed. TCEQ has ample tools available to both determine whether nuisance conditions exist and take appropriate measures to address nuisances should one occur.

Rule Language to be Deleted

~~§ 111.155. Ground Level Concentrations.~~

~~No person may cause, suffer, allow or permit emissions of particulate matter from a source or sources operated on a property or from multiple sources operated on contiguous properties to exceed any of the following net ground level concentrations:~~

~~(1) Two hundred micrograms per cubic meter of air sampled, averaged over any three consecutive hours.~~

~~(2) Four hundred micrograms per cubic meter of air sampled, averaged over any one hour period.~~

Statement of the Authority for Rule Repealment

Section 382.017 of the Texas Clean Air Act authorizes the TCEQ to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. That authority extends to the amendment and/or revocation of rules adopted by the Commission.

Injury or Inequity that Could Result from the Failure to Repeal Section 111.155

In order to be granted a New Source Review permit or permit amendment, the permit application must include information which demonstrates that emissions from the proposed facility will comply with all rules and regulations of the commission and with the intent of the Texas Clean Air Act, including protection of the health and property of the public.² What information satisfies this requirement is left, to some degree, to the discretion of the permit

² 30 TAC §116.111(a)(2)(A)(i).

engineer who is reviewing the permit application. Thus, not every company is asked to conduct modeling to demonstrate compliance with §111.155.

Those companies that are asked to conduct such a review--and find the modeling demonstration a difficult requirement with which to comply--are placed at a competitive disadvantage to those who are not required to conduct modeling. The delays in permit issuance and the additional control measures required to reduce emissions so that a satisfactory modeling demonstration can be made result in real, quantifiable costs to affected companies. This creates inequities in the regulated community.

Requiring all companies to make such a demonstration is not the solution. Modeling demonstrations can be very costly, particularly if the permit engineer requires sources authorized by standard exemption or permit by rule to be included in site-wide modeling runs. It is not good public policy to require large expenditures to prevent a theoretical nuisance condition, especially when there does not appear be any scientific bases for the ambient limits in the rule. Similar expenses and delays would occur if TCEQ were to require sampling in order to satisfy the rule limits. Section 111.155 is not needed and should be repealed.