

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** June 9, 2004

Thru: LaDonna Castañuela
Chief Clerk

From: Randolph Wood, Deputy Director
Office of Environmental Policy, Analysis, and Assessment

Subject: Consideration of a Petition for Proposed Rulemaking

Docket No.: 2004-0788-RUL

Project No.: 2004-062-111-NR

Who Submitted the Petitions:

The petition was submitted on May 17, 2004 by Jennifer Keane of Baker Botts, LLP.

What the Petitioners Request:

The petition requests that TCEQ repeal §111.155, Ground Level Concentrations, hereafter referred to as the total suspended particulate (TSP) standards.

The petitioner states that the rule should be repealed because:

- ▶ it is unnecessary;
- ▶ there are other tools for assessing and addressing nuisance;
- ▶ the regulatory history does not provide an explanation for how the emission limits were set;
- ▶ modeling is not required for every permit application; and
- ▶ some applicants can demonstrate through modeling that their ambient emissions are well below the PM₁₀ ambient air quality standards, yet have trouble demonstrating that they can meet TSP standards.

Recommended Action and Justification:

The ED recommends initiating a rulemaking and repealing §111.155 as the petitioner requests. The ED also recommends that the repeal be submitted to the United States EPA, Region 6, as a revision to the Texas State Implementation Plan (SIP).

Pros

- ▶ This would remove a standard that is technically difficult to defend.
- ▶ Repealing the TSP standard would not eliminate all standards for particulates in our rules. There are current health-based standards (PM₁₀ and PM_{2.5}) and guidelines (ESLs) which address health concerns for particulate matter.

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- ▶ Repealing the TSP standard would not eliminate all mechanisms or tools to address nuisance. For example, current permitting practices allow for the incorporation of preventive measures like BACT, special permit conditions, etc. The TCEQ also has available its nuisance rule (§101.4), which is used for enforcement in instances where monitoring data showing a violation of §111.155 is not available.

Cons

- ▶ The commission would cease pursuing current enforcement actions regarding TSP, which could cause a negative public reaction.
- ▶ Repealing the rule would remove a tool from permitting and leave the commission with one less workable mechanism to minimize nuisance.
- ▶ Repealing the rule could leave the commission with one less option to support enforcement against nuisance conditions.
- ▶ The TSP standards were adopted by the Texas Air Control Board on January 26, 1972, and approved by the EPA into the Texas SIP on May 31, 1972 at 40 CFR §52.2270(b). Their repeal must be submitted to the EPA as a SIP revision.

Applicable Law:

The petition was submitted pursuant to Texas Government Code, §2001.021, which establishes the procedures by which an interested person may petition a state agency for the adoption of a rule and 30 Texas Administrative Code §20.15, which provides for such procedures specific to the commission.

The commission has the authority to repeal this rule under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and the duties under the provisions of TWC and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission and Texas Health and Safety Code, Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of Texas Clean Air Act.

Affected Public:

If the rule is repealed with no replacement, the regulated community could have a reduced regulatory burden however nuisance conditions may occur more frequently, which may adversely affect the general public.

Affected Agency Programs:

Office of Compliance and Enforcement - Field Operations Division and Enforcement Division
Office of Permitting Remediation, and Registration - Air Permits Division
Chief Engineer's Office
Office of Legal Services - Litigation Division and Environmental Law Division

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Attachment: Petition

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