

The Texas Commission on Environmental Quality (commission or TCEQ) adopts the amendment to §116.160 *without changes* to the proposed text as published in the January 29, 2010, issue of the *Texas Register* (35 TexReg 569) and will not be republished.

The amendment to §116.160 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

On February 1, 2006, the TCEQ submitted an amendment to §116.160, to the EPA as a SIP revision to the Texas prevention of significant deterioration (PSD) SIP. This amendment included the inadvertent removal of certain references to federal definitions and requirements regarding best available control technology (BACT) as it relates to PSD, and the 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 or modification's capacity to emit a pollutant. On September 23, 2009, the EPA published notice of the proposed disapproval of these revisions to the Texas PSD SIP (74 *Federal Register* 48467, September 23, 2009). In addition to the section previously noted, the EPA's September 23, 2009, notice included additional concerns regarding TCEQ's February 1, 2006, SIP submittal as well as a submittal of a SIP revision made by the TCEQ on June 10, 2005. These issues will be addressed in a subsequent rulemaking.

The EPA stated in the notice that the 2006 SIP revision submittal removed from §116.160(a) the incorporation by reference of the federal PSD definition of BACT as defined in 40 Code of Federal Regulations (CFR) §52.21(b)(12) and that the currently approved PSD SIP requires that a state include

this definition of BACT as part of its SIP. The EPA also noted that the 2006 submittal also removed the PSD SIP requirement at 40 CFR §52.21(r)(4) that had previously been incorporated by reference. The currently approved PSD SIP mandates this requirement. This provision specifies that if a project becomes a major stationary source or major modification solely because of a relaxation of an enforceable limitation on the source or modification's capacity to emit a pollutant, then that source or modification is subject to PSD requirements. Although these references are currently missing from §116.160, in its permitting actions, the TCEQ does not circumvent Federal New Source Review (FNSR) requirements and does not allow a control technology review to be conducted that results in a technology that is less stringent than BACT as defined in federal rule. Additionally, TCEQ ensures that if a project becomes a major source through the relaxation of an enforceable limitation, PSD review is required.

The commission is also including the reference to 40 CFR §52.21(j), which implements the definition of BACT. Although this reference has not historically been included in the commission's rule regarding the applicable requirements for a PSD permit, it is being included because it complements the reinserted definition of BACT.

In an effort to ensure that the commission's rule regarding the PSD permitting program meets the requirements of the Federal Clean Air Act (FCAA) and are approvable into the SIP, the commission is adopting the following amendments to eliminate any EPA-identified deficiencies that would prevent approval. Because this amendment would reinstate PSD permit program requirements that were previously approved by EPA as part of the Texas SIP and because they incorporate by reference the federal rules, this amendment is at least as stringent as the FNSR revised base program. This amendment will not interfere with any applicable requirement concerning attainment of the national ambient air

quality standards, reasonable further progress, or any other applicable requirement under the FCAA, 42 United States Code (USC), §§7401 *et seq.*

SECTION DISCUSSION

§116.160, Prevention of Significant Deterioration Requirements

The commission is amending §116.160(c)(1) by adding a reference to the federal definition of BACT located in 40 CFR §52.21(b)(12). The application of BACT is an integral part of air pollution control under the FCAA and a primary consideration during review of sources subject to FNSR by TCEQ staff. Although there is a definition of BACT in §116.10, the federal definition of BACT is necessary for the PSD permitting program, and therefore, must be included in the commission's rules for that program.

The commission is amending §116.160(c)(2) by adding references to two federal requirements related to the application of BACT to FNSR sources subject to PSD requirements. In addition to other references to federal regulations, §116.160(c)(2)(A) now includes a reference to 40 CFR §52.21(j), which is the federal requirement to use control technology that is equivalent to or more stringent than BACT. Although the EPA did not address this requirement in its September 23, 2009, notice of disapproval, the inclusion provides regulatory certainty that the federal definition of BACT applies to those facilities subject to PSD. Additionally, the reference to 40 CFR §52.21(k) previously in §116.160(c)(2)(B) has been incorporated into §116.160(c)(2)(A) and the section has been renumbered accordingly. Adopted §116.160(c)(2)(C) references 40 CFR §52.21(r)(4), which is the federal requirement ensuring that sources or modifications which become major as a result of the relaxation of an enforceable limitation are subject to PSD requirements. Inclusion of a reference to this federal requirement will help ensure that the TCEQ's

regulation of these types of major stationary sources or modifications will be as stringent as the federal program.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Although the PSD permitting program is specifically intended to protect the environment and reduce risks to human health from environmental exposure to air pollutants, the primary purpose of this rulemaking is to correct deficiencies in §116.160 as identified by the EPA. Specifically, those corrections are to add certain references to federal definitions and requirements regarding BACT as it relates to PSD, and the 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 or modification's capacity to emit a pollutant. This rule amendment is necessary to ensure that the rule can be a federally approved part of the Texas SIP. The Texas SIP already includes the requirements of 40 CFR §52.21(b)(12) and (r)(4), and although these requirements were omitted in the previous rulemaking, the TCEQ continued to implement them. As discussed in the proposal of this rulemaking, no fiscal implications are anticipated for other state agencies, local governments, individuals, or for large, small or micro-businesses as a result of administration or enforcement of the rule. Therefore, this rulemaking will not adversely affect in a material way the economy, a sector of the economy,

productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the amendment to §116.160 was developed to correct EPA-identified deficiencies in commission's PSD permitting program to ensure SIP approval by EPA and thus meet a requirement of federal law. This rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was specifically developed to meet the requirements of the FCAA, and is authorized under Texas Health and Safety Code (THSC), §§382.011, 382.012, 382.017, 382.051, 382.0513, 382.0515 and 382.0518, and FCAA, 42 USC, §§7401 *et seq.*

The commission invited comments on the draft regulatory impact analysis determination, but none were received.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The amendment to §116.160 amends the requirements for PSD permits. The primary purpose of the rulemaking is to correct deficiencies in §116.160 as identified by the EPA to ensure that the rule can be approved by EPA as part of the Texas SIP. Promulgation and enforcement of the rulemaking will not burden private real property. The rule does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). Although the rule does not directly prevent a nuisance or prevent an immediate threat to life or property, it does partially fulfill a federal mandate under 42 USC, §7410. Consequently, the exemption that applies to this rule is that of an action reasonably taken to fulfill an obligation mandated by federal law. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with Texas Coastal Management Program. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies.

The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1), relating to Goals). The amendment adds references to federal regulations that the state has no authority to change. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.32). Therefore, in accordance with 31 TAC §505.22(e) (relating to Consistency Required for New Rules and Rule Amendments Subject to the Coastal Management Program) the commission affirms that this rulemaking action is consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received regarding the CMP.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Chapter 116 is an applicable requirement of 30 TAC Chapter 122, Federal Operating Permits Program. Owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, upon the effective date of the adopted rulemaking, revise their operating permit to include the new Chapter 116 requirements. Additionally, sources subject to the adopted rules may become subject to the federal operating permit program.

PUBLIC COMMENT

The commission held a public hearing on February 22, 2010. The comment period closed on March 1, 2010.

The commission received comments from the Association of Electric Companies of Texas, Inc. (AECT), Hilliard Emission Controls (HEC), Sierra Club Lone Star Chapter as a single entity (SC), Texas Association of Business (TAB), Texas Chemical Council (TCC), Texas Industry Project (TIP), the EPA, and Zephyr Environmental Corporation (ZEC). In addition, the commission received a comment letter from the University of Texas School of Law Environmental Clinic on behalf of Citizens for Environmental Justice, Texas Environmental Justice Advocacy Services, Public Citizen's Texas Office, Environmental Integrity Project; KIDS for Clean Air, Sustainable energy and Economic Development (SEED) Coalition, Citizens Opposed to Power Plants (COPPs) for Clean Air, Multi-County Coalition, Robertson County: Our Land, Our Lives, Texans Protecting Our Water, Environment and Resources (TPOWER), Environmental Defense Fund, and Sierra Club Lone Star Chapter (Environmental Groups). All commenters supported parts of the proposed changes while opposing others and all suggested changes or additions to the rule or preamble language.

RESPONSE TO COMMENTS

HEC suggested that there should be incentives, such as emission reduction credits with sliding scale value, for companies to develop and market systems and methods to reduce volatile organic compounds (VOC), nitrogen oxides (NO_x), carbon monoxide (CO), and carbon monoxide (CO₂) air emissions when complying with 30 TAC §115.541.

The commission made no changes in response to this comment. Section 115.541 concerns specific requirements for certain VOC emissions from degassing or cleaning of stationary, marine and transport vessels in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston/Brazoria areas.

TCEQ establishes environmental performance standards for pollution control equipment that are reasonably available, and does not mandate the use of any particular technology except in limited situations. The Texas Clean Air Act (TCAA), in THSC, §382.017(f), prohibits the TCEQ from mandating or forbidding the use of a particular technology except in specific situations required by the TCAA or to meet federal requirements. The control requirements of 30 TAC, Chapter 115, Subchapter F, Division 3 do not meet any of the exceptions provided for in THSC, §382.017(f) and a specific control technology is not mandated by a federal requirement in this situation. The TCEQ must consider the availability of pollution control technology when establishing environmental regulatory requirements.

The purpose of this rulemaking is to ensure that the commission's rule regarding the PSD permitting program meets the requirements of the FCAA and are approvable into the SIP. Section 116.160 includes the requirements for PSD permitting of all NSR regulated pollutants. The control requirements (BACT) are determined on a case-by-case basis. The BACT determination under §116.160, as well as the rule itself, is an independent requirement from §115.541. Therefore, the comment is beyond the scope of this rulemaking.

AECT, SC, TAB, TIP, and Environmental Groups commented favorably on TCEQ's effort to more closely align state requirements regarding PSD with federal regulations.

The commission appreciates this support.

TAB and TIP objected to language regarding any deficiencies in TCEQ's PSD program and the need to incorporate federal regulation by reference in order for state requirements to be sufficiently stringent.

Although the commission acknowledges the need to add the references to this rule, the absence of those sections was characterized as deficiencies in Texas's major NSR permitting program by EPA in its proposed disapproval notice. Although these references were missing from §116.160, in its permitting actions, the TCEQ did not and does not circumvent FNSR requirements and does not allow a control technology review to be conducted that results in a technology that is less stringent than BACT as defined in federal rule. Additionally, TCEQ ensures that if a project becomes a major source through the relaxation of an enforceable limitation, PSD review is required. No changes were made in response to this comment.

TAB, TCC, and TIP stated that the current definition of BACT in state rules is sufficient.

The commission is not making changes in response to this comment. The definition of BACT in §116.10 has a broad application, which is to all NSR permitting actions under the TCAA. In the NSR permitting process, the first determination is whether federal requirements are triggered. If so, then the BACT requirements of 40 CFR §52.21(b)(12) are applied. The commission's BACT process is then applied for any other air contaminants and any other facilities not subject to federal permitting requirements, §116.10(3) is not approved as part of the Texas SIP; in another rulemaking, the commission has proposed a revision to the definition, which would be relocated to §116.10(1). Consequently, the reference to the federal version of BACT is necessary. TCEQ's 2006 submittal of revisions the PSD SIP inadvertently removed the reference to the federal definition of

BACT in 40 CFR §52.21(b)(12) that had previously been in §116.160(a). This reference to federal BACT was included to ensure that the commission's rules meet FCAA requirements for the Texas PSD SIP.

AECT and ZEC suggested language in the adoption preamble stating that the rule revisions would not change how TCEQ conducts BACT reviews for current or future PSD permit applications. AECT requested the preamble state that these rule revisions do not support an argument that any BACT review conducted for any PSD permit that was issued before the rule revisions become effective was inadequate or invalid.

The preamble states that although references to FNSR are currently missing from §116.160, in its permitting actions, the TCEQ does not circumvent FNSR requirements and does not allow a control technology review to be conducted that results in a technology that is less stringent than BACT as defined in federal rule. The commission agrees that these rule revisions do not support an argument that any BACT review conducted for any PSD permit that was issued before the rule revisions become effective was inadequate or invalid.

AECT, TAB, TCC, and TIP stated that TCEQ's PSD program is SIP approved and all previously issued PSD permits are valid and enforceable and requested the inclusion of this language in the adoption preamble.

EPA approved Texas's PSD permitting program, and TCEQ expects EPA will approve the amendments in this rulemaking as a revision to the Texas' SIP. The commission's position is that all PSD permits issued by the commission and its predecessor agency are valid and enforceable.

Environmental Groups and SC expressed concern that TCEQ's three-tiered BACT review is not sufficiently stringent to meet EPA guidance. Environmental Groups requested that the TCEQ state in the adoption order that, "three-tier guidance is not relevant to federal BACT determinations and that federal guidance should be followed in conducting such determinations." ZEC also requested that the TCEQ state in the response to comments that three-tier BACT will continue to meet PSD BACT review requirements.

In conducting a BACT review, TCEQ uses a three-tiered approach. In Tier I, there is a comparison of the proposed BACT limits to BACT limits accepted in recent permit reviews for the same type of process. However, this would not be applied if there are new technical developments that have been made indicating that additional reductions are economically reasonable or technically feasible. Tier II consists of application of BACT from a different production process to the proposed process on the basis that the air emissions streams of these processes share physical characteristics. Tier III consists of evaluation of BACT from the standpoint of technical feasibility and economic reasonableness.

In addition, there are some special considerations for PSD BACT review in Texas, based on commitments that Texas made to the EPA to obtain a SIP-approved PSD program. The Texas Air Control Board (TACB), the predecessor agency to the TCEQ, agreed to require the applicant to consider the lowest emission limits in the EPA's Reasonably Available Control Technology

(RACT)/BACT/ Lowest Achievable Emission Rate (LAER) Clearinghouse (RBLC), and review several other obsolete EPA information sources, to identify the most recent developments in BACT. The EPA also expressed an expectation that the permit application review include an independent review of the applicant's analysis, if the applicant does not propose the lowest emission limit identified in the RBLC or other information source. A record of the BACT methodology issue is available in the EPA's proposed approval of the Texas PSD program published in the December 22, 1989, issue of the *Federal Register* (54 FedReg 52823-52826) and in the final approval published in the June 24, 1992, issue of the *Federal Register* (57 FedReg 28093-28098). The TCEQ has used its permit workshops to identify the need to evaluate the RBLC in the PSD BACT review and Air Permits Division staff are aware of the need to evaluate the RBLC in the course of PSD review.

Furthermore, the TCEQ also uses the EPA's Draft October 1990 New Source Review Workshop Manual Prevention of Significant Deterioration and Nonattainment Area Permitting. It provides a source of reference for understanding EPA's PSD permitting process. While almost 20 years old, it remains the primary EPA guidance in PSD permitting used by both the EPA and the states.

The EPA top down approach requires the applicant to look at all of the technologies that can reduce emissions from the proposed source and rank them starting with the most stringent, and to use the most stringent limit or technology that is technically practical and economically reasonable.

As noted in the December 22, 1989 and June 24, 1992 *Federal Register* notices, PSD-SIP approved states are free to follow their own course, as long as the state's actions are consistent with the letter and spirit of the SIP. EPA has concurred that TCEQ's three-tiered BACT evaluation is equivalent

to EPA's top down evaluation considering a review of the RBLC and the review of similar permits across the country. Therefore, TCEQ's BACT evaluation and determination process is consistent with the federal BACT requirements in 40 CFR §52.21(b)(12) and (j).

EPA requested TCEQ revise its BACT guidance document and submit it to EPA as a SIP revision to the Texas PSD SIP. SC commented that it prefers the TCEQ follow EPA guidance for BACT determination or that TCEQ assemble a workgroup after the adoption of these rules that would include permit engineers, and representatives of industry and environmental groups to develop a presumptive BACT for specific sources.

The TCEQ's Air Permits Division is currently engaged in development of the Air Pollution Control guidance document which will replace all previous agency pollution control guidance documents, including the October 30, 2000 *Texas Natural Resource Conservation Commission Best Available Control Technology* and the *Best Available Control Technology (BACT) Tier III Cost Analysis* guidance documents. The draft document will be published and the commission will request comments on the document prior to its adoption. The commission is reviewing the EPA request to submit this as a revision to the SIP.

EPA requested that TCEQ permit writers submit an explanation of their BACT analysis for each PSD permit application and include it in the Preliminary Determination Summary document.

TCEQ permit writers prepare an explanation of their BACT analysis for each PSD permit application and include it in the Preliminary Determination Summary document.

EPA commented that the revisions to §116.160 appear to satisfy its concerns regarding the sufficiency of the commission's rules for PSD permitting.

The commission appreciates this support.

SUBCHAPTER B: NEW SOURCE REVIEW PERMITS

DIVISION 6: PREVENTION OF SIGNIFICANT DETERIORATION REVIEW

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The amendment is also adopted under THSC, §382.051, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0515, concerning Application for Permit, and THSC, §382.0518, which authorizes the commission to issue preconstruction permits. The amendment is also adopted under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.*, which requires states to

submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The amendment implements THSC, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.0513, 382.0515 and 382.0518, and FCAA, 42 USC, §§7401 *et seq.*

§116.160. Prevention of Significant Deterioration Requirements.

(a) Each proposed new major source or major modification in an attainment or unclassifiable area shall comply with the requirements of this section. The owner or operator of a proposed new or modified facility that will be a new major stationary source for the prevention of significant deterioration air contaminant shall meet the additional requirements of subsection (c)(1) - (4) of this section.

(b) The *de minimis* threshold test (netting) is required for all modifications to existing major sources of federally regulated new source review pollutants, unless the proposed emissions increases associated with a project, without regard to decreases, are less than major modification thresholds for the pollutant identified in 40 Code of Federal Regulations (CFR) §52.21(b)(23).

(c) In applying the *de minimis* threshold test (netting), if the net emissions increases are greater than the major modification levels for the pollutant identified in 40 CFR 52.21(b)(23), the following requirements apply.

(1) In addition to those definitions in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions) the following definitions from prevention of significant deterioration of air quality regulations promulgated by the United States Environmental Protection Agency (EPA) in 40 CFR §52.21 and the definitions for protection of visibility and promulgated in 40 CFR §51.301 as amended July 1, 1999, are incorporated by reference:

(A) 40 CFR §52.21(b)(12) - (15), concerning best available control technology, baseline concentrations, dates, and areas;

(B) 40 CFR §52.21(b)(19), concerning innovative control technology; and

(C) 40 CFR §52.21(b)(24) - (28), concerning federal land manager, terrain, and Indian reservations/governing bodies.

(2) The following requirements from prevention of significant deterioration of air quality regulations promulgated by the EPA in 40 CFR §52.21 are hereby incorporated by reference:

(A) 40 CFR §52.21(c) - (k), concerning increments, ambient air ceilings, restrictions on area classifications, exclusions from increment consumption, redesignation, stack heights, exemptions, control technology review, and source impact analysis;

(B) 40 CFR §52.21(m) - (p), concerning air quality analysis, source information, additional impact analysis, and sources impacting federal Class I areas;

(C) 40 CFR §52.21(r)(4), concerning relaxation of an enforceable limitation; and

(D) 40 CFR §52.21(v), concerning innovative technology.

(3) The term "facility" shall replace the words "emissions unit" in the referenced sections of the CFR.

(4) The term "executive director" shall replace the word "administrator" in the referenced sections of the CFR except in 40 CFR §52.21(g) and (v).

(d) All estimates of ambient concentrations required under this subsection shall be based on the applicable air quality models and modeling procedures specified in the EPA Guideline on Air Quality Models, as amended, or models and modeling procedures currently approved by the EPA for use in the state program, and other specific provisions made in the prevention of significant deterioration state implementation plan. If the air quality impact model approved by the EPA or specified in the guideline is inappropriate, the model may be modified or another model substituted on a case-by-case basis, or a generic basis for the state program, where appropriate. Such a change shall be subject to notice and opportunity for public hearing and written approval of the administrator of the EPA.