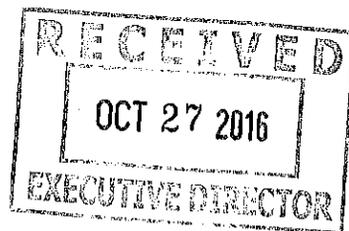


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DLS/
Texas Register

October 21, 2016

Executive Director
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3807



Re: Petition for Rule Adoption Title 30, PART 1, CHAPTER 111, SUBCHAPTER A, DIVISION 4, RULE 111.149, PART (b).

Standing

My name is Richard C. Bonart DVM and I'm the petitioner. My address is 6524 Loma de Cristo Dr., El Paso, Texas 79912-7301. I am a resident of the State of Texas.

Background

The City of El Paso is designated as a moderate non-attainment area by the Federal Clean Air Act Amendments for PM10. Texas submitted a State Implementation Plan to the United States Environmental Protection Agency to reduce PM10 per National Ambient Air Quality Standards. Provisions of the Plan which are specific to fugitive dust control are codified within Texas Administrative Code Title 30 and El Paso Municipal Code Section 20.14.080.

Although the major sources of fugitive dust in the El Paso Area are windblown dust from sparsely vegetated expanses and re-entrained dust from vehicles, additional rules to mitigate PM10, including dust control of parking areas dating back to 1988 are still in effect. Relevant to this petition is rule 111.149 PART B, which applies only to the City of El Paso, and requires application of water, oil or chemicals to temporary parking lots used for less than one month.

Since 2005 the El Paso region reported between 2 and 6.7 instances for exceeding PM10/24hr seven out of ten years. However, based upon data reporting no instances of non-attainment for 24 hour PM10 in years 2007 through 2009; 30 TAC, the SIP and Memorandum of Agreement were amended to reduce requirements for alley paving and the frequency of street sweeping.

There are notable exceptions to the intent and goals of the SIP. Tactical training areas in Fort Bliss, where tanks and other heavy military hardware are used off road and consequently generate significant amounts of fugitive dust are exempted. El Paso Municipal Code Section 20.14.080 Section A Allowed uses, Subsection 5. Temporary Uses (b.) and Subsection 6. Utility, miscellaneous and governmental facilities (b.) both conflict with State Statute by stating Temporary uses with no parking requirements (construction areas, etc.) are exempt from parking surface requirements.

Currently there are no codified specifications for water application to temporary parking areas referencing 30 TAC, the SIP, the Memorandum of Agreement, or El Paso Municipal Code Section 20.14.080. Requirements for gallons per acre, frequency of application and temperature adjustments are nonexistent.

In 2006 NAAQS revised PM standards. PM10/24hr were retained at 150 micrograms per cubic meter but the yearly PM10 standard was revoked because there was no evidence linking long term exposure and health problems.

The El Paso Area is required to have between 4 and 8 monitors for PM10. Table 6 of the 2015 Texas Five-Year Ambient Monitoring Network Assessment seems to show non-compliance with only 4 of 10 years producing data from 4 or more meters. In El Paso metering is not continuous; most results are reported just once every 6 days.

El Paso has an annual outdoor recreational event with temporary parking on unpaved non-gravel surface with less than 100 vehicles. The 4 day event occurs annually in mid January since 2008, and is located on Bowen Ranch in Northeast El Paso. The temporary parking area associated with this event has never been watered. Therefore, an attempt to quantify fugitive dust from a typical temporary parking without application of water from this event is presented in table 1. Polling the 3 closest monitors to the event; Van Buren 481410693, Clendenin 481410059, and Skyline Park 481410058 on the four event days, one day before, and one day after yielded 7 data points out of 108 possible readings. The results ranged from 4.1 to 58.9 micrograms per cubic meter all were well below the 150 microgram per cubic meter standard.

Explanation of the Proposed Rule Change

Fugitive dust emissions from temporary parking for outdoor events are so infrequent and of such low volume that they should be considered de minimis and regulation is unwarranted. The current requirement to apply water is nebulous, without written standards, and inequitably enforced. The current requirement is impractical as effective reapplication will not be possible among parked vehicles. The current requirement is counter-productive and may actually increase fugitive dust, wet dirt and sand will adhere to tires be dragged onto adjacent pavement and be re-entrained. NAAQS no longer recognizes the need for an annual PM10 standard and concludes an inability to correlate deleterious health issues to long term exposure.

Proposed Language

Additional language to Title 30, PART 1, CHAPTER 111, SUBCHAPTER A, DIVISION 4, RULE 111.149, PART (b). appears in red.

In the City of El Paso, parking surfaces with more than five parking spaces shall be paved or uniformly covered with gravel. This provision shall not apply to temporary parking lots defined at lots used for less than one month, after which access is prohibited. Such temporary lots shall be required to apply water or suitable oil or chemical. Temporary parking lots used less than 5 days are not required to apply water, oil, or chemicals. Lots with more than 100 parking spaces shall be paved or covered by an equivalent method determined by the executive director. An equivalent method shall not include the utilization of waste materials from industrial processes.

Statutory authority

The authority to propose and adopt this SIP revision is derived from Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.002, which provides that the policy and purpose of the TCAA is to safeguard the state's air resources from pollution; TCAA, §382.011, which authorizes the commission to control the quality of the state's air; and §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air.

Allegation of Injury or Inequity

There are significant monetary implications for individuals or smaller organizations trying to hold events utilizing temporary parking lots within the City of El Paso. The costs associated with applying water typically would include: meter rental from El Paso Water Utility \$2,000.00 deposit, hookup fee \$125.00, minimum water \$81.00, minimum fuel cost \$75.00, water truck rental \$1,275.00/week, part time driver with commercial driver's license/ week \$300,00. For typical small events hosting between 100 to 250 participants paying \$40.00 or less in entry fees, these are significant expenses.

Although the intent is control PM10 in the air basin, temporary parking lots are not confined to the City limits. It is inequitable to only regulate temporary parking lots within the City and ignore other parts of the basin within Texas, specifically El Paso County and abutting townships. TCEQ has the authority to regulate these areas.

The lack of codified requirements makes complying with the rule a guessing game. Applicants are subject to enforcement and standards that are variable, enforced at the whim of the inspectors and regulators, and based entirely on subjective observation.

NAAQS has changed the status of PM10. The science behind the regulation which originally proclaimed PM10 was a long term health hazard is in question. Although technically in compliance, the area is not deploying adequate numbers or types of monitors capable of accurately assess PM10 from infrequent short term contributors. Contribution to area PM10 from these short term contributors is based on assumption not science. Dust from streets is by far one of the largest contributors to PM10. Yet based on sparse data, TCEQ has amended the rules to reduce costs for the municipality by reducing the frequency of street sweeping. To impose significant financial costs, concentrate resources and regulatory efforts on infrequent, demonstrably minor emitters, while relaxing or omitting requirements for major PM10 contributors is the very definition of excessive and unfair.

Table 1

RACE DATE	1 DAY PRIOR + 1 DAY AFTER + 4 DAYS OF EVENTS	MONITOR LOCATION	ONE DAY PRIOR	EVENT DAY 1	EVENT DAY 2	EVENT DAY 3	EVENT DAY 4	ONE DAY POST EVENT	DATE OF READING
Feb. 2, 2008	01/30 - 02/4/2008	Clendenin Skyline	*	*	*	*	*	*	
Feb. 7, 2009	02/4 - 02/9/2009	Clendenin Skyline	*	17	*	*	*	*	02/06/09
Jan. 17, 2010	01/14 - 01/19/2010	Van Buren Skyline	*	*	*	*	*	*	
Jan. 16, 2011	01/13 - 01/17/2012	Van Buren Skyline	*	4.1	*	*	*	*	01/15/11
Jan. 15, 2012	01/12 - 01/17/2012	Van Buren Skyline	*	*	*	6.5	*	*	01/16/12
Jan. 20, 2013	01/17 - 01/22/2013	Van Buren Skyline	*	*	*	*	28.6	*	01/22/13
Jan. 19, 2014	01/16 - 01/21/2014	Van Buren Skyline	58.9	*	*	*	*	*	01/21/14
Jan. 18, 2015	01/15 - 01/20/2015	Van Buren Skyline	*	20.15	*	*	*	*	01/18/15
Jan. 17, 2016	01/4 - 01/11/2016	Van Buren Skyline	4.2	*	*	*	*	*	01/19/16