

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**  
for Adoption of Rules Review & Readoption of Chapter 122

**AGENDA REQUESTED:** August 2, 2023

**DATE OF REQUEST:** July 14, 2023

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Gwen Ricco, Agenda Coordinator, (512) 239-2678

**CAPTION: Docket No. 2022-1698-MIS.** Consideration for the adoption of the rules review and readoption of 30 TAC Chapter 122, Federal Operating Permits Program. This review is in accordance with Texas Government Code, Section 2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. The proposal was published in the February 24, 2023, issue of the *Texas Register* (48 TexReg 1158). (David Munzenmaier, John Minter) (Non-Rule Project No. 2023-027-122-AI)

Richard C. Chism  
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**Director**

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**Division Deputy Director**

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**Agenda Coordinator**

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** July 14, 2023

**Thru:** Laurie Gharis, Chief Clerk  
Kelly Keel, Interim Executive Director

**From:** Richard C. Chism, Director *RCC*  
Office of Air

**Docket No.:** 2022-1698-MIS

**Subject:** Commission Approval for Adoption of Rules Review and Readoption of Rules  
Chapter 122, Federal Operating Permits Program  
Rules Review of 30 TAC Chapter 122  
Non-Rule Project No. 2023-027-122-AI

**What the adopted action would do:**

This action will approve the rules review of Chapter 122, and readopt the chapter.

This action constitutes a determination by the Texas Commission on Environmental Quality (TCEQ), after opportunity for public review and comment, that the initial reasons for adopting the rules of this chapter continue to exist.

**Applicable law:**

The review of the rules is authorized under the requirements of Texas Government Code, §2001.039; and the General Appropriations Act, Article IX, §9-10.13, 76th Texas Legislature, 1999, which require state agencies to review and consider for readoption each of their rules every four years.

**Reason rules are needed:**

Chapter 122 contains rules implementing the Federal Operating Permits Program established under Federal Clean Air Act (FCAA), Title V. Under Texas Health and Safety Code, §382.051 and §§382.054 - 382.0564, the Texas Legislature provided TCEQ with the authority to regulate federal sources through the issuance and enforcement of a federal operating permit. A federal operating permit is required for: an affected source as defined by FCAA, §402; a major source as defined by FCAA, Title III; a major source as defined by FCAA, Title V; a source subject to the standards or regulations under FCAA, §111 or §112; a source required to have a permit under FCAA, Title I, Part C or Part D; a major stationary source or major emitting facility under FCAA, §302; and any other stationary source in a category designated by the United States Environmental Protection Agency (EPA) through rulemaking as subject to the requirements of FCAA, Title V.

Texas received final interim approval from the EPA in 1996 to implement the Federal Operating Permits Program. In 2001, Texas was granted final full approval by EPA to implement the Federal Operating Permits Program. Maintaining Chapter 122 provides TCEQ the authority to implement, regulate, and enforce regulations for applicable sources. Without the rules codified in Chapter 122, the authority to administer this program and issue Federal Operating Permits would be remitted to EPA Region 6 pursuant to 40 Code of Federal Regulations (CFR) Part 71. Ultimately, the result would be

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an increased burden on the regulated community, and the state would be subject to federal sanctions as specified in FCAA, §502(i) for failure to implement and enforce the required permitting program. Sanctions may include loss of federal highway funds and the application of emission offset requirements for new or modified sources of emissions located in nonattainment areas.

**Rules found to be obsolete:**

None.

**Public comment:**

A public hearing was not offered for this review. The comment period for the rules review closed on April 14, 2023. Comments were received from EPA Region 6. The EPA expressed a variety of concerns including but not limited to: Chapter 122 compliance with new or updated language in 40 CFR 70, the need for clarification that emission and/or operation limits are not entitled to confidential treatment, ensuring that all permitted emission units are included in Title V permits, and the consolidation of off-permit changes and operational flexibility into Title V permits. At the time of this review, the Chapter 122 rules are being readopted without changes, but these comments will be considered as general stakeholder input for possible future policy or rulemaking actions.

**Affected agency program(s):**

The program area responsible for implementing these rules is the Air Permits Division.

**Agency contacts:**

David Munzenmaier, Project Manager, Air Permits Division, (512) 239-6092

John Minter, Staff Attorney, Environmental Law Division, (512) 239-4113

Gwen Ricco, Texas Register/Agenda Coordinator, General Law Division, (512) 239-2678

**Attachments:**

*Texas Register* publication of Proposed Rule Review Notice

cc: Chief Clerk, 7 copies

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re adoption, re adoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 20 continue to exist.

Comments regarding suggested changes to the rules in Chapter 20 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rule-making action by the commission.

#### Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 20. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-026-020-LS. Comments must be received by March 27, 2023. For further information, please contact Kathy Humphreys, Environmental Law Division, at (512) 239-3417.

TRD-202300690

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: February 14, 2023

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 122, Federal Operating Permits Program.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re adoption, re adoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 122 continue to exist.

Comments regarding suggested changes to the rules in Chapter 122 may be submitted during this review but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

#### Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 122. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to [fax4808@tceq.texas.gov](mailto:fax4808@tceq.texas.gov). Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-027-122-AI. Comments must be received by March 27, 2023. For further information, please contact David Munzenmaier, Air Permits Division, at (512) 239-6092.

TRD-202300691

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: February 14, 2023

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 218, Brine Evaporation Pits.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re adoption, re adoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 218 continue to exist.

Comments regarding suggested changes to the rules in Chapter 218 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

#### Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 218. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-028-218-OW. Comments must be received by March 27, 2023. For further information, please contact Shannon Gibson, Water Quality Division, at (512) 239-4284.

TRD-202300687

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: February 14, 2023

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 305, Consolidated Permits.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re adoption, re adoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 305 continue to exist.

Comments regarding suggested changes to the rules in Chapter 305 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

#### Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 305. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-029-305-WS. Comments must be received by March 27, 2023. For further information, please contact Jarita Sepulvado, Waste Permits Division, at (512) 239-4413.

The Texas Commission on Environmental Quality (commission or TCEQ) has completed its Rule Review of 30 TAC Chapter 122, Federal Operating Permits Program, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the February 24, 2023, issue of the *Texas Register* (48 TexReg 1158).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 122 are required because the rules implement the Federal Operating Permits Program established under Federal Clean Air Act (FCAA), Title V. Under Texas Health and Safety Code, §382.051 and §§382.054 - 382.0564, the Texas Legislature provided the commission with the authority to regulate federal sources through the issuance and enforcement of a federal operating permit. A federal operating permit is required for: an affected source as defined by FCAA, §402; a major source as defined by FCAA, Title III; a major source as defined by FCAA, Title V; a source subject to the standards or regulations under FCAA, §111 or §112; a source required to have a permit under FCAA, Title I, Part C or Part D; a major stationary source or major emitting facility under FCAA, §302; and any other stationary source in a category designated by the United States Environmental Protection Agency (EPA) through rulemaking as subject to the requirements of FCAA, Title V.

Texas received final interim approval from the EPA in 1996 to implement the Federal Operating Permits Program. In 2001, Texas was granted final full approval by EPA to implement the Federal Operating Permits Program. Maintaining Chapter 122 provides TCEQ the authority to implement, regulate, and enforce regulations for applicable sources. Without the rules codified in Chapter 122, the EPA could make a determination that TCEQ is not adequately administering and enforcing the operating permits program. After such a determination, if not corrected by TCEQ, authority to administer this program would be remitted to the EPA and Region 6 would have to take over the program and issue the permits. Ultimately, the result would be an increased burden on the regulated community, and the state would be subject to federal sanctions as specified in FCAA, §502(i) for failure to implement and enforce the required permitting program, which include loss of federal highway funds and the application of emission offset requirements for new or modified sources of emissions.

### **Public Comment**

The public comment period closed on April 14, 2023. Comments were received on this review from the United States Environmental Protection Agency Region 6 (EPA).

### ***Comments***

EPA provided a variety of comments and concerns about the Title V program. A summary of EPA's comments is provided below:

- A. TCEQ should evaluate whether any of the Chapter 122 rules should be revised or amended to reflect changes made to the Part 70 regulations to the petition provisions made final on February 5, 2020 (85 Federal Register 6431). EPA states 30

TAC §122.360(a) does not currently comply with the additional language added to 40 CFR §70.12(a)(1).

- B. EPA stated there are recurring programmatic issues with the TCEQ Title V program that EPA has objected to in a number of Title V permits, and TCEQ should revise Chapter 122 rules to address those issues.
- C. EPA stated there is inadequate incorporation of permits by rule (PBRs) into Title V permits and suggests revising the definition of “applicable requirement” in 30 TAC §122.10(2)(H) to clarify that all emission units permitted under Chapter 106 or Chapter 116 must be included in Title V permits.
- D. TCEQ should make necessary corrections to their rules or forms to ensure that documentation of insignificant activities which are exempted due to size or production rate are included in a Title V permit application.
- E. EPA stated that they support TCEQ’s efforts to incorporate PBRs into the Title V permit in a manner clearly identifying each registration and the emission unit(s) to which it applies and noted that the PBR Supplemental Tables are accomplishing the task. EPA stated they regularly find the PBR Supplemental Tables do not always identify all registered PBRs and lack detailed information. EPA stated TCEQ should evaluate whether Chapter 122 rules should be revised to ensure that PBRs will be cited to the lowest level of citation necessary to identify what applicable requirements apply.
- F. EPA suggested that Title V permits issued by TCEQ should include a reference table identifying all emission units with the emission point number (EPN), or other identifier from the New Source Review (NSR) permit, and the Unit/Group/Process ID number from the Title V permit.
- G. TCEQ should consider whether changes to Chapter 122 rules are necessary to clarify that emission limitations and operational limits cannot not be claimed as confidential under the Title V program, and to clarify that Title V applications are not entitled to confidential treatment.

- H. EPA stated that while certain emission limitations and standards can be incorporated by reference into Title V permits, they object to TCEQ's use of incorporation by reference for requirements contained in Plant-Wide Applicability Limit (PAL), Prevention of Significant Deterioration (PSD), and Nonattainment NSR permits. EPA stated TCEQ should confirm that the program is being implemented properly to ensure Title V permits satisfy the FCAA.
- I. TCEQ should consider revising 30 TAC §122.222 to require that off-permit changes and operational flexibility actions are consolidated into Title V permits on renewal.
- J. EPA stated a concern that TCEQ routinely issues Title V permits that contain high level citations for New Source Performance Standard (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) applicable requirements. EPA stated TCEQ should consider revising Chapter 122 rules to require NSPS and NESHAP applicable requirements are identified to a sufficient detail within Title V permits.
- K. EPA stated a concern that TCEQ's OP-REQ1 application form does not include all the emissions related information required by 40 CFR §70.5(c)(3) and stated that TCEQ should ensure all of its forms comply with the federal standard.

***Response to all comments***

**The commission recognizes that the EPA has expressed concern about a number of aspects of the Chapter 122 rules implementing the Federal Operating Permit Program. As stated in the February 24, 2023, *Texas Register* notice of this rules review, the commission is not considering any rule amendments to the Chapter 122 rules as part of this review action. The Federal Operating Permits Program authorization mechanism implemented by Chapter 122 is an essential component of the agency's air permitting program, and the commission finds that the reasons**



**that the Chapter 122 rules were initially adopted continue to exist. The commission is readopting Chapter 122 without change. The commission will consider these comments as ongoing stakeholder input for possible future policy or rulemaking action.**

As a result of the review, the commission finds that the reasons for adopting the rules in 30 TAC Chapter 122 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

# Texas Commission on Environmental Quality



## ORDER ADOPTING RULES REVIEW AND READOPTING RULES

Docket No. 2022-1698-MIS  
Non-Rule Project No. 2023-027-122-AI

On August 2, 2023, the Texas Commission on Environmental Quality (Commission) approved the rules review of 30 Texas Administrative Code (TAC) Chapter 122, Federal Operating Permits Program, in accordance with the requirements of Texas Government Code, § 2001.039, which requires a state agency to review and consider for re-adoption each of its rules every four years. The proposed Notice of Intention to Review was published in the February 24, 2023, issue of the *Texas Register* (48 TexReg 1158).

IT IS THEREFORE ORDERED BY THE COMMISSION, that the rules review of 30 TAC Chapter 122 is hereby adopted. The rules and the preamble to the rules approved by the Commission are incorporated by reference in this Order as if set forth at length verbatim in this Order.

IF ANY PORTION OF THIS ORDER is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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Jon Niermann, Chairman

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Date Signed