



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2013-0808; FRL-9906-62-Region-6]

## Approval and Promulgation of Air Quality Implementation Plans; Withdrawal of Federal Implementation Plan; Texas; Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve portions of two revisions to the Texas State Implementation Plan (SIP) submitted by the Texas Commission on Environmental Quality (TCEQ) to EPA on October 5, 2010, and December 2, 2013.

Together, these two SIP submittals revise the Texas Prevention of Significant Deterioration (PSD) Program to provide for the regulation of greenhouse gas (GHG) emissions and clarify the applicability of Best Available Control Technology (BACT) for all PSD permit applications.

The December 2, 2013, submittal is a request for parallel processing of revisions proposed by the TCEQ on October 23, 2013. The December 2, 2013, submittal includes proposed revisions to the Texas SIP to provide the State of Texas with the express authority to regulate GHG emissions, issue PSD permits governing GHG emissions, establish appropriate emission thresholds for determining which new stationary sources and modifications to existing stationary sources become subject to Texas's PSD permitting requirements for their GHG emissions, and revises several Minor New Source Review (NSR) provisions to specify that Minor NSR permit

mechanisms cannot be used for authorizing GHG emissions. The December 2, 2013, SIP revision also defers until July 21, 2014, application of the PSD permitting requirements to biogenic carbon dioxide emissions from bioenergy and other biogenic stationary sources. The October 5, 2010, submittal revises the Texas SIP to clarify that all PSD permits must undergo BACT review consistent with the requirements in the Federal and Texas PSD programs. EPA is proposing to approve portions of the October 5, 2010, and December 2, 2013, SIP revisions to the Texas SIP and NSR permitting program as consistent with federal requirements for PSD permitting of GHG emissions. EPA is proposing to sever and take no action on the portion of the October 5, 2010, SIP revision which pertains to the Texas Minor NSR program for Qualified Facilities. EPA is also proposing to sever and take no action on the portion of the December 2, 2013, SIP revision that relates to the provisions of EPA's July 20, 2011, "Deferral for CO<sub>2</sub> Emissions from Bioenergy and other Biogenic Sources Under the Prevention of Significant Deterioration (PSD) and Title V Programs" (Biomass Deferral Rule), as the D.C. Circuit Court of Appeals issued an order to vacate that rule on July 13, 2013. EPA is also proposing to rescind the Federal Implementation Plan (FIP) for Texas, with three limited possibilities for retained authority, which was put in place to ensure the availability of a permitting authority for GHG permitting in Texas until final approval of the Texas SIP PSD GHG program. EPA is proposing this action under section 110 and part C of the Clean Air Act (CAA).

**DATES:** Comments must be received on or before **[insert date 30 days after publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R06-OAR-2013-0808 by one of the following methods:

- *www.regulations.gov*. Follow the online instructions for submitting comments.

- E-mail: Ms. Adina Wiley at [wiley.adina@epa.gov](mailto:wiley.adina@epa.gov).
- Mail or delivery: Ms. Adina Wiley, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

*Instructions:* Direct your comments to Docket ID No. EPA-R06-OAR-2013-0808. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through <http://www.regulations.gov> or e-mail, if you believe that it is CBI or otherwise protected from disclosure. The <http://www.regulations.gov> website is an “anonymous access” system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD-ROM submitted. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses. For additional information about EPA’s public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all

documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment with the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253.

**FOR FURTHER INFORMATION CONTACT:** Ms. Adina Wiley (6PD-R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD-R), Suite 1200, Dallas, TX 75202-2733. The telephone number is (214) 665-2115. Ms. Wiley can also be reached via electronic mail at [wiley.adina@epa.gov](mailto:wiley.adina@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

## **Table of Contents**

- I. Background for Our Proposed Action
  - A. History of EPA’s GHG-Related Actions
  - B. EPA’s Biomass Deferral Rule
  - C. EPA’s Tailoring Rule Step 3
- II. Summary of State Submittals
  - A. October 5, 2010
  - B. December 2, 2013
- III. EPA’s Analysis of the State Submittals
  - A. Analysis of the October 5, 2010 State Submittal
  - B. Analysis of the December 2, 2013 State Submittal
    - i. Analysis of the Proposed Revisions to the Texas PSD Program
    - ii. Analysis of the Proposed Non-PSD Revisions to the Texas SIP
- IV. EPA’s Analysis for Rescinding the Texas PSD FIP
  - A. Evaluation of Rescission of the GHG PSD FIP at 40 CFR 52.2305(a), (b) and (c)
  - B. Transition Process upon Rescission of the GHG PSD FIP for Pending GHG PSD Permit Applications and Issued GHG PSD Permits
- V. Proposed Action
- VI. Statutory and Executive Order Reviews

## **I. Background for Our Proposed Action**

The CAA at section 110(a)(2)(C) requires states to develop and submit to EPA for approval into the SIP, preconstruction review and permitting programs applicable to certain new and modified stationary sources of air pollutants for attainment and nonattainment areas that cover both major and minor new sources and modifications, collectively referred to as the NSR SIP. The CAA NSR SIP program is composed of three separate programs: PSD, Nonattainment NSR (NNSR), and Minor NSR. PSD is established in part C of title I of the CAA and applies in areas that meet the National Ambient Air Quality Standards (NAAQS) – “attainment areas” – as well as areas where there is insufficient information to determine if the area meets the NAAQS – “unclassifiable areas.” The NNSR SIP program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS – “nonattainment areas.” The Minor NSR SIP program addresses construction or modification activities that do not emit, or have the potential to emit, beyond certain major source thresholds and thus do not qualify as “major” and applies regardless of the designation of the area in which a source is located. EPA regulations governing the criteria that states must satisfy for EPA approval of the NSR programs as part of the SIP are contained in 40 CFR sections 51.160 - 51.166.

Texas submitted on October 5, 2010, and December 2, 2013, a collection of regulations for approval by EPA into the Texas SIP, including some regulations specific to the Texas PSD permitting program to clarify the applicability of BACT for all PSD permit applications and to provide for regulation of GHG emissions through the Texas PSD program. The October 5, 2010, submittal included revisions to the Permit Application requirements for the Texas NSR program at 30 TAC Section 116.111 to clarify that federal BACT will be applied to all PSD permit applications, in addition to the application of Texas BACT process as required by the Texas Clean Air Act. The October 5, 2010, submittal also included revisions to the Texas Minor NSR

Qualified Facilities Program, which is severable from today's proposed action on the Texas PSD program. The December 2, 2013, submittal includes revisions to the Texas SIP and the Texas NSR program to 1) establish that the State of Texas has the express authority to regulate GHG emissions, 2) provide for the issuance of PSD permits governing GHG emissions, 3) establish appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Texas's PSD permitting requirements for their GHG emissions consistent with the "PSD and Title V Greenhouse Gas Tailoring Final Rule" (75 FR 31514) hereafter referred to as the "Tailoring Rule", and 4) make revisions to the Texas Minor NSR program to limit the scope of GHG permitting to the Texas PSD program. The December 2, 2013, submittal also included provisions to adopt and implement EPA's July 20, 2011, GHG Biomass Deferral.

We have evaluated the SIP submissions for whether they meet the CAA and 40 CFR Part 51, and are consistent with EPA's interpretation of the relevant provisions. Today's proposed action and the accompanying Technical Support Document (TSD) present our rationale for proposing approval of these regulations as meeting the minimum federal requirements for the adoption and implementation of the PSD SIP permitting programs. Note that Texas is currently subject to the PSD Federal Implementation Plan (FIP) at 40 CFR 52.2305. See 76 FR 25178, May 3, 2011. We are also proposing to rescind the PSD FIP for Texas when we finalize today's proposed action. EPA is proposing to sever and take no action on the portions of the October 5, 2010, submittal that pertain to the Texas Minor NSR Qualified Facilities Program. EPA is proposing to sever and take no action on the portions of the December 2, 2013, submittal that relate to the provisions of EPA's Biomass Deferral for the reasons stated above.

**A. History of EPA's GHG-Related Actions**

This section summarizes EPA's recent GHG-related actions. Please see the preambles for the identified GHG-related rulemakings for more information.

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part are distinct from one another, establish the overall framework for today's proposed action on the Texas SIP. Four of these actions include, as they are commonly called, the "Endangerment Finding" and "Cause or Contribute Finding," which EPA issued in a single final action,<sup>1</sup> the "Johnson Memo Reconsideration,"<sup>2</sup> the "Light-Duty Vehicle Rule,"<sup>3</sup> and the "Tailoring Rule."<sup>4</sup> Taken together and in conjunction with the CAA, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis. EPA took this last action in the Tailoring Rule, which, more specifically, established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources. PSD is implemented through the SIP system, and so in December 2010, EPA promulgated several rules to implement the new GHG PSD SIP program. Recognizing that some states had approved SIP PSD programs that did not apply PSD to GHGs, EPA issued a SIP call for 13 states (including Texas) on December 13, 2010, that would require those states with SIPs that have approved PSD programs but do not authorize PSD permitting for GHGs to submit a SIP revision providing such

---

1 "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66496 (December 15, 2009).

2 "Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs." 75 FR 17004 (April 2, 2010).

3 "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324 (May 7, 2010).

4 "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule." 75 FR 31514 (June 3, 2010).

authority.<sup>5</sup> EPA advised the States that as of January 2, 2011, if the States had not submitted, and EPA had not approved, a SIP revision establishing PSD permitting for GHGs, or if EPA had not promulgated a Federal Implementation Plan (FIP) by the same time, then sources with GHG emissions could, as a practical matter, be precluded from lawfully constructing or modifying due to the lack of a permitting authority to issue the required permit.

All of the states identified in the SIP Call, except for Texas, either (i) submitted a corrective SIP revision to apply their CAA PSD programs to sources of GHG emissions promptly enough to avoid adverse impacts on their new or modifying sources, or (ii) did not object to EPA establishing a deadline for SIP revisions of December 22, 2010. For the latter states, EPA published a finding of failure to submit the required SIP revision by the specified deadline and then immediately promulgated the GHG PSD FIP to ensure the availability of a permitting authority for GHG emitting sources subject to PSD requirements in those states.<sup>6,7</sup>

The State of Texas did not identify a GHG SIP revision deadline; therefore, EPA assigned a default twelve-month SIP revision deadline of December 1, 2011. This meant that, absent further action, there would be no authority in Texas to issue PSD permits starting January 2, 2011. In that case, GHG-emitting sources seeking to undertake construction or modification activities during almost all of 2011 would have no permitting authority available to issue a PSD permit until, at the earliest, December 2011.

---

<sup>5</sup> "Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call," 75 FR 77698 (Dec. 13, 2010). Specifically, by notice dated December 13, 2010, EPA finalized a "SIP Call" that would require those states with SIPs that have approved PSD programs but do not authorize PSD permitting for GHGs to submit a SIP revision providing such authority.

<sup>6</sup> "Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Failure To Submit State Implementation Plan Revisions Required for Greenhouse Gases," 75 FR 81874 (December 29, 2010).

<sup>7</sup> "Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan," 75 FR 82246 (December 30, 2010).

To remedy this situation, EPA determined that pursuant to CAA Section 110(k)(6), its prior approval of Texas's PSD program "was in error" because, among other things the SIP failed to address all pollutants that would become subject to regulation in the future or provide assurance of Texas's legal authority to do so. EPA corrected its previous full approval of Texas's PSD SIP to be a partial approval and partial disapproval. The partial disapproval reflected the PSD SIP's failure to address how PSD would apply to newly regulated pollutants. At the same time, EPA promulgated a FIP that applied PSD to GHGs, which are the newly regulated pollutants presently at issue. That FIP established EPA as the permitting authority, so that as of January 2, 2011, EPA could issue PSD permits to Texas's GHG-emitting sources that sought to undertake construction or modification activities.

EPA took this action in December 2010, through an interim final rulemaking, without a prior proposal, under the "good cause" exception of 5 U.S.C. Section 553(b)(B), in light of the need to establish a permitting authority by January 2, 2011. EPA further provided that the interim final rulemaking would expire by May 1, 2011. At the same time, EPA proposed to take the same action through notice-and-comment rulemaking. By May 1, 2011, EPA completed the notice-and-comment rulemaking by finalizing a rule that mirrored the interim final rulemaking by correcting the previous full approval of Texas's PSD SIP provision to be a partial approval and partial disapproval, and by promulgating a FIP that established EPA as the permitting authority for GHG-emitting sources.<sup>8</sup>

---

<sup>8</sup> Texas, Wyoming and industry challenged the GHG PSD SIP Call rules in the D.C. Circuit. Texas and industry also challenged the Texas error correction rules in the D.C. Circuit. On July 26, 2013, the D.C. Circuit handed down a single decision for two separate cases: (1) the challenge by Texas, Wyoming and industry to three related GHG PSD SIP Call rules (Utility Air Regulatory Group v. EPA, No. 11-1037), and (2) the challenge by Texas and industry to two related Texas GHG PSD error correction and FIP rules (Texas v. EPA, No. 10-1425). The decision dismisses challenges to both of these sets of rules by holding that none of the petitioners had standing to challenge any of the rules.

For other states, EPA recognized that many states had approved SIP PSD programs that do apply PSD to GHGs, but that do so for sources that emit as little as 100 or 250 tpy of GHG, and that do not limit PSD applicability to GHGs to the higher thresholds in the Tailoring Rule. Therefore, EPA issued the GHG PSD SIP Narrowing Rule.<sup>9</sup> Under that rule, EPA withdrew its approval of the affected SIPs to the extent those SIPs covered GHG-emitting sources below the Tailoring Rule thresholds. EPA based its action primarily on the “error correction” provisions of CAA section 110(k)(6).

#### **B. EPA’s Biomass Deferral Rule**

On July 20, 2011, EPA promulgated the final Biomass Deferral Rule. The Biomass Deferral delayed until July 21, 2014, the consideration of CO<sub>2</sub> emissions from bioenergy and other biogenic sources when determining whether a stationary source meets the PSD and Title V applicability thresholds. The D.C. Circuit Court issued its decision to vacate the Biomass Deferral Rule on July 12, 2013.

#### **C. EPA’s Tailoring Rule Step 3**

On July 12, 2012, EPA promulgated the final “Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule Step 3 and GHG Plantwide Applicability Limits” (GHG Tailoring Rule Step 3 and GHG PALs). EPA’s rationale for the rule is available in the notice of final rulemaking at 77 FR 41051. EPA finalized Step 3 by determining not to lower the current GHG applicability thresholds from the Step 1 and Step 2 levels because state permitting authorities had not had sufficient time and opportunity to develop the necessary infrastructure and increase their GHG permitting expertise and capacity, and the state permitting authorities

---

<sup>9</sup>“Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting Sources in State Implementation Plans,” 75 FR 82536 (December 30, 2010). The GHG PSD SIP Narrowing Rule does not apply to Texas because the GHG PSD FIP is in place.

and EPA had not had the opportunity to develop streamlining measures to improve permit implementation. See 77 FR 41051, 41052. The Tailoring Rule Step 3 also promulgated revisions to our regulations under 40 CFR part 52 for better implementation of the federal program for establishing PALs for GHG emissions. A PAL establishes a site-specific plantwide emission level for a pollutant that allows the source to make changes at the facility without triggering the requirements of the PSD program, provided that emissions do not exceed the PAL level. Under the EPA's interpretation of the federal PAL provisions, such PALs are already available under PSD for non-GHG pollutants and for GHGs on a mass basis, and we revised the PAL regulations to allow for GHG PALs to be established on a CO<sub>2</sub>e basis as well. We also revised the regulations to allow a GHG-only source to submit an application for a CO<sub>2</sub>e-based GHG PAL while also maintaining its minor source status. We believe that these actions could streamline PSD permitting programs by allowing sources and permitting authorities to address GHG emissions one time for a source and avoid repeated subsequent permitting actions for a 10-year period. See 77 FR 41051, 41052.

The revisions to the PSD PAL rules for GHG permitting are voluntary for a state to adopt and implement. The December 2, 2013, submittal from Texas does not address the Tailoring Rule Step 3 GHG PAL revisions.

## **II. Summary of State Submittals**

### **A. October 5, 2010**

In a letter dated October 5, 2010, Mr. Bryan W. Shaw, Ph.D., Chairman of the TCEQ, submitted revisions to the Texas SIP that were adopted on September 15, 2010, and became effective on October 7, 2010. This submittal included the following revisions that were

submitted primarily to address the Texas Minor NSR Qualified Facilities Program:

- Substantive and non-substantive revisions to General Definitions for the Texas NSR Program at 30 TAC Section 116.10,
- New definitions at 30 TAC Section 116.17 for the Texas Qualified Facilities Program,
- Substantive and non-substantive revisions to the General Application Provisions for the Texas NSR Program at 30 TAC Section 116.111,
- Substantive revisions to the provisions for Changes to Facilities at 30 TAC Section 116.116 specific to qualified facilities, and
- Substantive and non-substantive revisions to the provisions for Documentation and Notification of Changes to Qualified Facilities at 30 TAC Section 116.117.

EPA's proposed action today will only evaluate the revisions to the General Application requirements at 30 TAC Section 116.111 that are necessary to support the Texas PSD program, including the permitting of GHG emissions in Texas. EPA is severing and taking no action at this time on the remaining components of the October 5, 2010, SIP submittal that address the Qualified Facilities program. By severing, we mean that the October 5, 2010 submittal of the revisions to the General Application requirements at 30 TAC Section 116.111 can be implemented independently of the portions of the submittal relating to the Texas Minor NSR Qualified Facilities program. EPA will evaluate and take action on the remaining portions of the October 5, 2010, SIP submittal at a later date.

**B. December 2, 2013**

In a letter dated December 2, 2013, Mr. Zak Covar, Executive Director of the TCEQ,

requested parallel processing of the October 23, 2013, proposed new and amended rules to implement the requirements of Texas House Bill (HB) 788, 83<sup>rd</sup> Legislature, 2013. Texas HB 788 directed the TCEQ to adopt rules necessary to implement the requirements of EPA's GHG Tailoring Rule and limit the regulation of GHGs only to the Texas PSD program. The December 2, 2013, parallel processing submittal consisted of the following revisions:

- 30 TAC Chapter 39 – Public Notice

The rules governing public notice for applications for air quality permits are contained in Chapter 39. Emissions of GHGs will be covered under the Texas PSD program, and will therefore follow the same public notice provisions as other PSD permit applications in Texas. The TCEQ has made changes to indicate that certain items required by a PSD public notice may not be applicable to GHG PSD permit applications – such as an air quality analysis or a Class I impact analysis for GHGs. Additionally, Texas HB 788, from the 83<sup>rd</sup> Legislature, 2013, has specifically exempted GHG PSD permit applications from the Texas requirement to provide an opportunity for the contested case hearing process.

- 30 TAC Section 39.411 – Text of Public Notice

The TCEQ has proposed revisions to 30 TAC Section 39.411 that will require the public notice for a GHG PSD permit application to include a statement that any person is entitled to request a public meeting or a notice and comment hearing. The TCEQ has also amended this section to include the phrase “as applicable” in reference to the air quality analyses that must be made available for review.

Additionally, the TCEQ has proposed several typographical corrections throughout section 39.411.

- 30 TAC Section 39.412 – Combined Notice for Certain Greenhouse Gases Permit Applications

The TCEQ has proposed this new section to streamline the permit application process only for permit applications that have been transferred from EPA after the effective date of the FIP rescission, or for permit applications that were previously filed with EPA and EPA has already published a draft permit. This new section would allow a permit applicant to issue one public notice combining the requirements of the Texas first notice (Notice of Receipt of Application and Intent to Obtain Permit (NORI)) and the Texas second notice (Notice of Application and Preliminary Decision (NAPD)).

- 30 TAC Section 39.419 – Notice of Application and Preliminary Decision

The TCEQ has amended this section to add the phrase “as applicable” in reference to the air quality analysis that must be available for public review.

- 30 TAC Section 39.420 – Transmittal of the Executive Director’s Response to Comments and Decision

TCEQ has amended this section to include a new provision at 30 TAC Section 39.420(e)(4) that says public notice documents for GHG PSD permits do not need to include instructions on how to request a contested case hearing or requesting the commission reconsider the Executive Director’s decision.

- 30 TAC Chapter 101 – General Air Quality Rules

The TCEQ has amended the definitions and general rules germane to the Texas SIP to implement the requirements of Texas HB 788 and to provide authority to regulate GHGs.

- 30 TAC Section 101.1 - Definitions
  - The TCEQ has proposed a new definition for GHGs at 30 TAC Section 101.1(42).
  - The TCEQ has also proposed several amendments to the definition of Reportable Quantity at 30 TAC Section 101.1(89) to establish that there is no reportable quantity for GHGs (except for the specific individual air contaminants found in the current definition of RQ), and establish a reportable quantity of 5,000 pounds for 3-pentanone, 1,1,1,2,2,4,5,5,5-nonafluoro-4-(trifluoromethyl)-, CAS No. 756-13-8 (hereafter referred to as C6 fluoroketone) rather than the default reportable quantity of 100 pounds.
  - The TCEQ has also proposed amendments to the definition of unauthorized emissions at 30 TAC Section 101.1(108) to exclude emissions of carbon dioxide (CO<sub>2</sub>) and methane (CH<sub>4</sub>).
  - The TCEQ has also proposed a number of non-substantive amendments to correct for renumbering and internal referencing to other TAC provisions.
- 30 TAC Section 101.10 – Emissions Inventory Requirements
  - The TCEQ has proposed amendments to 30 TAC Section 101.10(a)(3) to provide an exception for GHG emissions to the applicable criteria for which an owner or operator is required to submit emission inventories.
  - The TCEQ has also proposed non-substantive revisions for renumbering and formatting and to update references to other TAC provisions.

- 30 TAC Section 101.201 – Emissions Event Reporting and Recordkeeping Requirements

The TCEQ has proposed an amendment to specify that any emissions of GHG, individually or collectively, are not subject to emissions event reporting.

- 30 TAC Chapter 106 – Permits by Rule

The Texas Permits by Rule (PBR) program under 30 TAC Chapter 106, is one component of the SIP-approved Minor NSR program in Texas. The TCEQ has proposed amendments to the Minor NSR PBR program at 30 TAC Section 106.2 to clarify that emissions of GHG cannot be authorized through a PBR. Additionally, the TCEQ has proposed an amendment to 30 TAC Section 106.4 to specify that for sources that are only subject to PSD for GHG emissions, a PBR can still be used to authorize the non-PSD emissions; provided that the source obtains the GHG PSD construction permit prior to commencing construction.

- 30 TAC Chapter 116 – Control of Air Pollution by Permits for New Construction or Modification

The Texas PSD program and necessary implementing definitions are SIP-approved under 30 TAC Chapter 116. With the exception of PBR which are codified at 30 TAC Chapter 106, the remainder of the SIP-approved Texas Minor NSR program is SIP-approved at 30 TAC Chapter 116. The TCEQ has proposed several amendments to this chapter to provide for PSD permitting of GHG emissions and to limit the scope of the Texas Minor NSR programs to not include emissions of GHG. Specifically, the TCEQ has proposed the following:

- 30 TAC Section 116.12 – Nonattainment and Prevention of Significant

- Deterioration Definitions

- The TCEQ has proposed new definitions for the “CO<sub>2</sub> equivalent” and the pollutant GHG.
    - The TCEQ has also proposed revisions to the definitions of “Federally Regulated NSR pollutant,” “major stationary source,” and “major modifications.”
    - The TCEQ has also proposed renumbering to accommodate the proposed new definitions.

- 30 TAC Section 116.111 – General Application

- The TCEQ has proposed an amendment to the general application provisions to require a PSD permit for GHG emissions that meet or exceed the thresholds for GHG PSD permitting established in new proposed section 116.164. This amendment will specify that GHG permitting is statewide, without regard to an attainment designation for GHG permitting.

- 30 TAC Section 116.160 – Provision of Significant Deterioration Requirements

- TCEQ has proposed an amendment to 30 TAC Section 116.160(a) to require new major sources of GHG emissions or major modifications of GHG emissions to comply with the PSD permitting program regardless of location of the source.

- TCEQ has proposed amendments to 30 TAC Section 116.160(b)(2) to include references to the netting requirements for GHG applicability thresholds established in new section 116.164.
  - TCEQ has also proposed an amendment to 30 TAC Section 116.160(c) to clarify that emissions of GHG are subject to the applicability thresholds in new section 116.164.
- 30 TAC Section 116.164 – Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources

The TCEQ has proposed a new subsection to the Texas PSD program specifically for the permitting of GHG emissions. This new subsection establishes the applicability thresholds developed by EPA in the GHG Tailoring Rule.

- 30 TAC Section 116.169 – Greenhouse Gas Transition

The TCEQ has proposed a new subsection to the Texas PSD program to address the transition process for permit applicants upon the effective date of the rescission of the GHG PSD FIP by the EPA Administrator. The proposed subsection does not identify the actions to be taken by EPA; it only establishes that upon the rescission of the FIP, the TCEQ will accept the transfer and review of pending permit applications. The actions to be taken by EPA during the transition process will be discussed in section IV.B. of this notice.

- 30 TAC Chapter 122 – Federal Operating Permits

The TCEQ proposed several amendments to the Texas Title V program on October 23, 2013; but only the proposed revisions to 30 TAC Section 122.122 – Potential to Emit –

have been submitted for parallel processing into the Texas SIP. In this proposed revision, the TCEQ amends the potential to emit provisions to clarify that existing sites must certify emissions of GHG below major source thresholds. Existing sites that are currently operating will have 90 days after EPA's FIP rescission to certify emissions of GHGs to avoid applicability of Title V permitting.

- The TCEQ December 2, 2013, commitment letter also addresses the requirement that the state provide the necessary assurances of its authority to address all future federally regulated pollutants under the Texas PSD program, in order to remove the PSD FIP at 40 CFR 52.2305(c).
- The January 13, 2014, letter from TCEQ demonstrates its authority to administer the Texas PSD program for EPA issued GHG PSD permits.

### **III. EPA's Analysis of the State Submittals**

#### **A. Analysis of the October 5, 2010, State Submittal**

As explained previously in section II.A., EPA's analysis of the October 5, 2010, submittal only addresses the submitted substantive and non-substantive revisions to the General Application provisions to the Texas NSR program at 30 Section TAC 116.111. The substantive revision to 30 TAC Section 116.111(a)(2)(C) clarifies when federal BACT will be applied to PSD permit applications. The TCAA requires the TCEQ to apply BACT to all facilities and to all contaminants emitted from said facilities that are permitted under the TCAA, including non-PSD sources and modifications. EPA refers to this process as "Texas BACT." We view the application of Texas BACT, which would include BACT for Minor NSR permitting, to be a separate requirement from the application of federal BACT as required in EPA's PSD

regulations and the Texas SIP-approved PSD Program. To clarify the requirements of the TCAA and to ensure compliance with federal PSD regulations, the TCEQ has submitted revisions to the general application provisions at 30 TAC Section 116.111(a)(2)(C). Pursuant to the submitted revisions, BACT consistent with the Texas Clean Air Act (Texas BACT) will be applied to all permit applications under the TCAA. However, prior to the application of Texas BACT, if the permit application is for a new source or modification subject to PSD, then BACT consistent with the federal PSD requirements and the SIP-approved Texas PSD program must be applied. The SIP-approved Texas PSD program at 30 TAC Section 116.160(c)(1)(A) incorporates the requirements for BACT at 40 CFR 52.21(b)(12).<sup>10</sup> The submitted revision clearly requires that all PSD subject applications go through federal PSD BACT in addition to Texas BACT; for PSD permit applications, federal BACT requirements will govern the permitting process if there is a discrepancy between the federal BACT and Texas BACT analysis. The TCEQ also submitted several non-substantive revisions made throughout 30 TAC Section 116.111 to spell out acronyms and to clarify/update cross-references. A complete listing of all the revisions is available in the accompanying TSD for this rulemaking. EPA proposes to approve the October 5, 2010, revisions to 30 TAC Section 116.111 as consistent with the PSD requirements at 40 CFR 51.166. Further, we note that the substantive revision is consistent with and supportive of revisions to the Texas PSD program separately approved at 30 TAC Section 116.160 on

---

<sup>10</sup>The Texas PSD program incorporates the federal PSD definition of BACT at 40 CFR 52.21(b)(12). This means that PSD BACT will be based on the maximum degree of reduction for each pollutant subject to regulation under the Act, taking into account energy, environmental, and economic impacts and other costs. The Texas BACT process will apply to all permitted facilities and contaminants – not just major sources – and is not held to the same rigor as the federal PSD BACT analysis. For example, minor NSR applicants only have to meet controls currently permitted as compared to the federal PSD requirement to use the most stringent control technology.

September 15, 2010. See 75 FR 55978.

**B. Analysis of the December 2, 2013, State Submittal**

As described in the discussion in Section II.B of this proposal notice, the TCEQ proposed revisions to several portions of the Texas Air Code to implement the requirements of Texas HB 788 and to provide TCEQ the authority to regulate GHG emissions through the Texas PSD program. Texas HB 788 required further revisions to the Texas SIP and the Minor NSR program to ensure that GHG emissions would only be regulated via the PSD program as required through EPA's GHG Tailoring Rule. The analysis in this section will be presented based on those revisions necessary for the PSD program and those that are non-PSD.

EPA is parallel processing the revisions proposed on October 23, 2013, based on the request submitted on December 2, 2013. This means that EPA is proposing approval at the same time that Texas is completing the public comment and rulemaking process at the state level. The December 2, 2013, SIP revision request will not be complete and will not meet all the adequacy criteria until the state public process is complete and the SIP revision is submitted as a final adoption with a letter from the Governor or Governor's designee. EPA is proposing to approve the SIP revision request after completion of the state public process and final submittal.

i. Analysis of the Proposed Revisions to the Texas PSD Program

*Definitions to Effectuate Authority*

TCEQ has proposed several new definitions in the Texas SIP to adopt and implement the permitting of GHGs consistent with federal requirements.

- TCEQ proposed new definitions at 30 TAC Sections 101.1(42) and 116.12(16) to adopt the definition of “greenhouse gases”. Based on our analysis, EPA proposes to find that the new definitions of GHG are consistent with the federal PSD definition at 40 CFR 51.166(b)(48).
- The TCEQ has also proposed a new definition for “carbon dioxide equivalent (CO<sub>2</sub>e)” at 30 TAC Section 116.12(7)(A). Based on our analysis, EPA proposes to find that the definition at 30 TAC Section 116.12(7)(A) is consistent with the provisions at 40 CFR 51.166(b)(48)(ii)(a) and (b).
- The TCEQ also proposed revisions to the definition of “potential to emit” at 30 TAC Section 122.122. EPA proposes to find that these revisions are necessary to update the SIP-approved definition to account for the permitting of GHG emissions. The Texas PSD program relies on a source’s potential to emit for establishing applicability of the PSD rules.

EPA’s analysis is that the new definitions for GHG and CO<sub>2</sub>e at 30 TAC Sections 101.1(42), 116.12(16), and 116.12(7A) are consistent with the Act and EPA regulations at 40 CFR 51.166. The proposed revisions to the definition of “potential to emit” at 30 TAC Section 122.122 are necessary to ensure that PSD permitting applicability is calculated correctly. Therefore, we propose approval of the new definitions and propose to find that the final adoption of the definitions for “greenhouse gases” and “CO<sub>2</sub>e” will effectuate the authority for the State of Texas to regulate emissions of GHG through the Texas SIP and the Texas PSD program.

The December 2, 2013, proposed revisions included revisions to the Texas Public Notice requirements for PSD permitting at 30 TAC Chapter 39. On January 6, 2014, EPA approved the Texas public notice rules for PSD permitting for inclusion in the Texas SIP. See 79 FR 551. Our final approval found that the Texas public notice process of the Notice of Receipt of Application and Intent to Obtain Permit (NORI) and the Notice of Application and Preliminary Decision (NAPD) would satisfy all PSD-specific public notice requirements at 40 CFR 51.160, 51.161 and 51.166(q). We note that Texas regulations require that non-GHG PSD permits are subject to the Texas Contested Case Hearing (CCH) process which EPA has determined is outside the scope of the Texas SIP. Texas HB 788 specifically directed the TCEQ to adopt and implement regulations to issue GHG PSD permits; however these GHG PSD permits will be exempted from the Texas CCH process. This exemption required the TCEQ to revise the PSD public notice provisions at 30 TAC Chapter 39 to address the special requirements for issuing separate GHG PSD permits. Additionally, the PSD public notice provisions were revised to accommodate the subset of pending permit applications that will be transferred to TCEQ from EPA upon the effective date of the GHG PSD FIP rescission. Because of these revisions to the PSD public notice rules, EPA finds it necessary to evaluate the Texas proposed revisions to 30 TAC Chapter 39 with respect to the federal PSD requirements at 40 CFR 51.166(q) to ensure all federal requirements continue to be satisfied in the December 2, 2013, proposed SIP revision.

Proposed 30 TAC Section 116.111(a)(2)(I)(ii) requires that a proposed facility or modification that meets or exceeds the GHG emission thresholds defined in new 30 TAC Section 116.164 must comply with all applicable requirements in 30 TAC Chapter 116 for PSD permitting. One such applicable requirement for PSD permitting is the SIP-approved requirement at 30 TAC Section 116.111(b)(2) which requires that Chapter 39 public notice provisions are

followed for PSD permits declared administratively complete on or after September 1, 1999. Therefore, proposed 30 TAC Section 116.111(a)(2)(I)(ii) and the existing SIP establish that the requirements found in 30 TAC Chapter 39, Subchapters H and K apply to applications for the new major source or major modifications for facilities subject to Chapter 116, Subchapter B, Division 6, Sections 116.164 and 116.169 for GHG PSD Permitting. Every application for a new major source or major modification subject to GHG PSD permitting requirements will therefore go through public notice with both the NORI and NAPD. Note that under the SIP, as of January 6, 2014, the applicant, rather than the state permitting authority, is the legally responsible party for satisfying the public notice requirements for PSD applications. For example, the applicant continues to be legally responsible for the publication of the NORI and NAPD, using the specific notice text provided through regulations by the TCEQ. The applicant is also legally responsible for providing copies of the public notice documents to the EPA Regional Office, local air pollution control agencies with jurisdiction in the county, and air pollution control agencies of nearby states that may be impacted by the proposed new source or modification. The applicant is required to follow the Texas public notice regulations, which specify the text for the notice documents and specify the additional agencies that will receive notice.

The TCEQ has proposed revisions to the public notice text requirements at 30 TAC Section 39.411 specific to GHG PSD permit applications at Sections 39.411(e)(11), (e)(15), (e)(16), (f)(4) and (f)(8). These proposed revisions to the notice text require that, in addition to the text SIP-approved for PSD permits, the text of the public notice specifically for a GHG PSD permit must specify that any person is entitled to a public meeting or a notice and comment hearing from the commission and that the air quality analysis will be provided if applicable. Currently EPA does not require an air quality analysis for GHG PSD permits. In the event that an

analysis is required in the future, the proposed revisions to the Texas Public Notice requirements will include the analysis as required without further rulemaking on the part of TCEQ. Similarly, the TCEQ has proposed revisions to the NAPD text requirements specific to GHG PSD Permit applications at 30 TAC Section 30.419(e)(1) to state that an air quality analysis will be available for public notice as applicable. The proposed revisions to 30 TAC Section 39.420(e)(4) exempt applications for GHG PSD permits from the Texas CCH process. EPA is proposing to find that the GHG PSD specific revisions as discussed above continue to meet the requirements to provide opportunity for public comment and for information availability at 40 CFR 51.161 and 51.166. The NORI and NAPD both identify locations where materials, including the draft permit and all technical materials supporting the decision, will be made available for public review. The TCEQ will also respond to each comment received when making a final permit decision. The TCEQ will provide opportunity for a public meeting on the permit application if requested. TCEQ has exempted the GHG PSD permit applications from the Texas-specific process of contested case hearings, which is outside the scope of the Texas SIP.

The TCEQ has also proposed a new public notice process for the subset of GHG PSD permit applications that are transferred to TCEQ from the EPA upon the effective date of the GHG PSD FIP Rescission and where EPA has already proposed a draft permit. Proposed new Section 30 TAC 39.412 creates an optional Combined Notice process, to be used in lieu of the current SIP-approved process of a separate NORI and NAPD, to streamline the processing of these pending permit applications. Proposed new 30 TAC Section 39.412(a) establishes the applicability of this new section specifically to the subset of applications that were previously filed with EPA and which EPA proposed a draft permit prior to transfer to the TCEQ. Proposed new 30 TAC Section 39.412(b) provides the streamlined process for the subset of permit

applications to be a Combined Notice addressing the requirements of both the NORI and NAPD in one notice document, in lieu of the SIP-approved process requiring a separate NORI and NAPD. The Combined Notice will identify a public location where the application, the preliminary determination and draft permit will be available for review and comment, in addition to a list of all the GHGs proposed to be emitted and an air quality analysis, as applicable. The Combined Notice will also provide instructions on submitting comments, a statement that a public meeting will be held if requested, and a statement that the comment period will be 30 days after the last publication of the Combined Notice. Additionally, the Combined Notice will state that any comments previously submitted to EPA regarding the GHG PSD permit application will not be included in the Executive Director's response to comments unless the comments are submitted to the TCEQ during the comment period identified in the Combined Notice. EPA proposes to find the Combined Notice at 30 TAC Section 39.412, specific to the subset of transferred permit applications where a draft permit was previously proposed by EPA, is consistent with all requirements of 40 CFR 51.166(q) for PSD public notice requirements.

EPA's analysis of the Texas public participation requirements, both for newly submitted GHG PSD permit applications and those transferred from EPA, demonstrates that the submitted provisions are consistent with the Act and EPA regulations at 40 CFR 51.160, 51.161 and 51.166(q). Therefore, we propose approval of the new and revised sections in 30 TAC Chapter 39, submitted for parallel processing on December 2, 2013.

*Proposed Revisions to Establish PSD Authority and Appropriate Thresholds for GHG Permitting*

TCEQ has proposed several new provisions in the Texas NSR Program to adopt and implement the permitting of GHG emissions consistent with federal requirements in EPA's GHG Tailoring Rule. The proposed regulations are substantively similar to the federal requirements for the permitting of GHG-emitting sources subject to PSD. The detailed analysis in our TSD demonstrates that the regulatory revisions proposed on October 23, 2013, and submitted for parallel processing on December 2, 2013, establish that Texas has the authority to issue PSD permits for GHG-emitting sources subject to PSD consistent with the federal PSD requirements of EPA's final GHG Tailoring Rule. The revisions also establish thresholds for determining which stationary sources and modification projects become subject to permitting requirements for GHG emissions under its PSD program. Specifically, the December 2, 2013, submittal satisfies the Tailoring Rule requirements in the following ways:

- TCEQ proposed a new provision in the NSR Permit Application procedures at new subsection 30 TAC Section 116.111(a)(2)(I)(ii) that explicitly requires that any proposed facility or modification that meets or exceeds the GHG thresholds established in new proposed section 30 TAC Section 116.164 must comply with all applicable requirements of Chapter 116 for PSD review. This new provision ensures that all PSD requirements such as BACT and public notice will be followed for GHG PSD permit applications. The October 5, 2010, revisions to 30 TAC Section 116.111(a)(2)(C), previously discussed in this proposed rulemaking, complement the implementation of the Texas PSD program, especially with regard to the PSD permitting of GHG emissions. While the October 5, 2010, revisions are germane to the Texas PSD program and ensure that federal BACT consistent with EPA's PSD regulations will apply to all PSD permit applications, we

specifically note that the provision also applies to GHG PSD permits and ensures that federal BACT will be applied to all GHG PSD permit applications. EPA proposes to find that the October 5, 2010, revisions to 30 TAC Section 116.111(a)(2)(C) and the proposed new provision at 30 TAC Section 116.111(a)(2)(I)(ii) are necessary to implement the Texas GHG PSD permitting process.

- TCEQ proposed revisions to the Texas PSD program rules at 30 TAC Section 116.160(a) to explicitly require any new major source of GHG emissions or major modification involving GHG emissions shall comply with the applicable requirements of the Texas PSD program. TCEQ proposed further revisions to the Texas PSD program at 30 TAC Sections 116.160(b) and (c) to specify that the proposed new GHG emission thresholds established at 30 TAC Section 116.164 must be used when evaluating a proposed new source or modification for PSD applicability. EPA proposes to find that the proposed revisions to the Texas PSD program at 30 TAC Sections 116.160(a), (b), and (c) are necessary to implement the Texas GHG PSD permitting process.
- TCEQ proposed new 30 TAC Sections 116.164 to establish the PSD applicability requirements for GHG sources.
  - EPA proposes to find that proposed new 30 TAC Section 116.164(a), which establishes the applicability statement for the GHG PSD permitting thresholds, is consistent with the federal requirement at 40 CFR 51.166(b)(48)(iv) to regulate GHG emissions through the PSD program.
  - EPA proposes to find that proposed new 30 TAC Section 116.164(a)(1) is consistent with the federal requirements at 40 CFR 51.166(b)(48)(iv)(a) for the

regulation of a new major stationary source that is subject to PSD requirements for a non-GHG pollutant and will emit or have the potential to emit GHG emissions above the specified thresholds.

- EPA proposes to find that proposed new 30 TAC Section 116.164(a)(2) is consistent with the federal requirements at 40 CFR 51.166(b)(48)(iv)(b) for the regulation of an existing major stationary source that is major for non-GHG and will emit or have the potential to emit GHG emissions above the specified thresholds.
- EPA proposes to find that proposed new 30 TAC Section 116.164(a)(3) is consistent with the federal requirement at 40 CFR 51.166(b)(48)(v)(a) for the regulation of a new major stationary source that is subject to PSD only for GHG emissions based on the specified thresholds.
- EPA proposes to find that proposed new 30 TAC Section 116.164(a)(4) is consistent with the federal requirements at 40 CFR 51.166(b)(48)(v)(b) for the regulation of an existing stationary source that is major for GHG emissions and proposes a major modification for GHG emissions above the specified thresholds.
- EPA proposes to find that proposed new 30 TAC Section 116.164(a)(5) is consistent with the requirement at 40 CFR 51.166(b)(1)(i)(C) for the regulation of an existing minor stationary source for non-GHG pollutants that would undertake a physical change or change in the method of operation that will cause the source to be a major stationary source by itself for GHG emissions at the specified thresholds.

- Proposed new 30 TAC Section 116.164(b) establishes that new stationary sources or existing stationary sources that make modifications involving emissions of GHG below the thresholds established in new 30 TAC Section 116.164(a) are not required to have an authorization for the GHG emissions through a PSD permit or other Texas Minor NSR permit authorizations such as a Standard Permit, PBR or Flexible Permit. EPA proposes to find that this new provision is consistent with EPA's GHG Tailoring Rule where we have established that emissions of GHG are only subject to regulation above the Tailoring Rule thresholds.
- TCEQ proposed new 30 TAC Section 116.169 to establish the authority for the TCEQ to accept the transfer of permit applications and associated materials upon the effective date of the GHG PSD FIP rescission. EPA proposes to find that new 30 TAC Section 116.169 is necessary for establishing the legal authority for TCEQ to implement the GHG PSD permitting program.

ii. Analysis of the Proposed Non-PSD Revisions to the Texas SIP

The December 2, 2013, submittal included several proposed revisions to the remainder of the Texas SIP and the Texas Minor NSR programs to satisfy the requirements of Texas HB 788 and restrict the permitting of GHG emissions only to the extent required under federal law. As such, the TCEQ proposed revisions to the definitions of "reportable quantity" at 30 TAC Section 101.1(89) to establish there is no reportable quantity for GHG emissions. TCEQ also proposed revisions to the Emission Inventory Requirements at 30 TAC Section 101.10 to specify that emissions of GHG are not subject to the reporting requirements in the Emission Inventory.

Similarly, the TCEQ proposed revisions to the Emissions Event Reporting and Recordkeeping Requirements to specify that emissions of GHG are not included in emissions event reporting. EPA proposes to find that these provisions are consistent with EPA's GHG Tailoring Rule and our determination that emissions of GHG are only subject to regulation in the PSD program above the specified GHG thresholds. There are no federal requirements establishing reportable quantities or reporting requirements for emission inventories or emission events for GHG emissions.<sup>11</sup>

The December 2, 2013, submittal also proposed revisions to the Texas Minor NSR program at 30 TAC Sections 106.2, 106.4, 116.610, and 116.611. The proposed revisions to the Texas Minor NSR Permits by Rule (PBR) Program at 30 TAC Sections 106.2 and 106.4 clarify that a PBR cannot be used to authorize emissions of GHGs. Similarly, the proposed revisions to the Texas Minor NSR Standard Permit Program at 30 TAC Sections 116.610 and 116.611 clarify that a Standard Permit cannot be used to authorize emissions of GHGs. The Texas provisions also provide that if a source is subject to PSD requirements only for the emissions of GHGs, then a PBR or Standard Permit can be used to authorize the non-GHG pollutants. EPA proposes that the revisions to the PBR and Standard Permit are consistent with EPA's Tailoring Rule to only regulate GHG emissions through the PSD program at or above the specified GHG PSD thresholds; therefore, these proposed revisions will ensure that GHG PSD requirements will not be circumvented.

---

<sup>11</sup> EPA has separately promulgated mandatory reporting requirements for owners and operators of certain facilities that directly emit GHG emissions at 40 CFR Part 98. See 74 FR 56260, October 30, 2009. The Emission Inventory developed and maintained by a state permitting authority under the applicable SIP is separate from the requirements under 40 CFR Part 98 and is not required to include GHG emissions data.

#### **IV. EPA's Analysis for Rescinding the Texas PSD FIP**

##### **A. Evaluation of Rescission of the GHG PSD FIP at 40 CFR 52.2305(a), (b), and (c)**

EPA established the final Texas GHG PSD FIP on May 3, 2011, at 40 CFR 52.2305(a), (b), and (c). These provisions remain in effect until EPA approves the state's rules to address the permitting of GHG emissions consistent with federal requirements and EPA rescinds the FIP.

The analysis presented in Section III of this rulemaking and the accompanying TSD demonstrate that the October 23, 2013, proposed rules submitted for parallel processing on December 2, 2013, adequately address all federal requirements for GHG PSD permitting. In addition, Mr. Zak Covar, former Executive Director of the TCEQ, submitted a commitment letter on December 2, 2013, that addresses the requirement that the state provide necessary assurances of its authority to address all future regulated pollutants under the Texas PSD program in order to remove the PSD FIP at 40 CFR 52.2305(c). Based on the commitments in the December 2, 2013, letter and the October 23, 2013, proposed rulemaking for permitting emissions of GHG through the Texas PSD program, EPA proposes to find that the TCEQ has the authority under the Texas Clean Air Act to apply the Texas PSD program to all pollutants newly subject to regulation, including non-NAAQS pollutants into the future. EPA recognizes that the TCEQ may be required to proceed through a notice and comment rule development process, but this process in no way prevents the TCEQ from addressing the PSD requirements of the CAA. As such, we are proposing rescission of the Texas GHG PSD FIP at 40 CFR 52.2305(a), (b), and (c), with three limited possibilities for retained authority as detailed below in Section IV.B.

##### **B. Transition Process upon Rescission of the GHG PSD FIP for Pending GHG PSD Permit Applications and Issued GHG PSD Permits**

As explained throughout this notice, EPA is proposing approval of the December 2, 2013, submittal as consistent with the requirements for PSD permitting of GHG emissions under EPA's GHG Tailoring Rule. Our analysis demonstrates the TCEQ has proposed necessary rule revisions to provide adequate authority to regulate GHG emissions using appropriate emission thresholds under the Texas PSD program. As such, EPA is simultaneously proposing to rescind the GHG PSD FIP and intends to finalize both actions simultaneously. We expect that the FIP rescission will be effective 30 days after publication of the final approval of the Texas GHG PSD revisions. EPA has developed a process for transitioning pending permit applications and EPA issued permits to the TCEQ following the rescission of the FIP. Our transition process, titled "Transition Process for Pending GHG PSD Permit Applications and Issued GHG PSD Permits Upon Rescission of the GHG PSD FIP" is available in the docket for this rulemaking and on the EPA Region 6 GHG website at <http://yosemite.epa.gov/r6/Apermit.nsf/AirP>. The transition process is briefly summarized below. EPA believes that the transition process will ensure a smooth transfer of permitting authorities for GHG PSD permits in Texas and inform the regulated entities. Please note that this transition process is predicated on the fact that the TCEQ will proceed with final rulemaking to adopt the GHG PSD SIP rules and submit these rules to EPA for approval into the Texas SIP. If TCEQ is unable to submit a final SIP revision, EPA will not rescind the FIP and will therefore not initiate the transition process.

EPA's transition process addresses two components of the GHG PSD program – pending permit applications and issued permits.<sup>12</sup> Through application of this transition process and in

---

<sup>12</sup> A "pending permit application" is any GHG PSD permit application submitted to EPA for which EPA has not yet issued a final permit to authorize the emissions of GHG by the signature date of EPA's final approval of the Texas SIP rules and rescission of the FIP.

concert with the rescission of the GHG PSD FIP, EPA will retain GHG PSD permitting authority at 40 CFR 52.2305 in the following three limited instances:

1. EPA will retain GHG PSD permitting authority for any applicants who select to remain with EPA for GHG PSD permit issuance. This option will be detailed in a letter to the permit applicant and will contain a deadline by which the applicant must inform EPA of its decision to remain with EPA. EPA will also maintain a list of all pending permit applications retained under EPA's GHG PSD permitting authority on the EPA Region 6 GHG website, which will be referenced in any future final GHG PSD SIP approval and FIP rescission action EPA may take for Texas.
2. EPA will retain the GHG PSD permitting authority for applicants with pending permits who fail to select a permitting authority by the deadline specified in the above referenced EPA letter to each permit applicant.
3. EPA will retain GHG PSD permitting authority for issued permits for which either (a) the time for filing an administrative appeal has not expired or (b) all administrative and judicial appeal processes (including any associated remand action) have not been completed upon the signature date of any future EPA final action to approve TCEQ's SIP submittal and rescind the GHG PSD FIP. In a letter dated January 13, 2014, TCEQ requested approval to exercise its authority to administer the PSD program with respect to those sources that have final GHG PSD permits issued by EPA upon the effective date of the GHG PSD FIP rescission. This letter is available for review in the docket for this rulemaking. With respect to this transition process, a "final GHG PSD permit issued by EPA" is a permit where all final EPA actions have been taken and all administrative and

judicial appeal opportunities have expired or processes have been concluded or completed.

We note that as with any PSD permit application, an applicant may withdraw a pending application for any reason before the permit is issued. With respect to the permit applications for which EPA will retain permitting authority as specified in the transition process, EPA's permitting authority will cease upon an applicant's written request withdrawing the pending permit application before a final determination is made.

For the permit applicants who elect to transfer to TCEQ for GHG PSD permit issuance, EPA will transfer the application, all related technical materials submitted by the applicant, the proposed draft permit and any comments received on the proposed draft permit to TCEQ. The TCEQ will require the applicant to comply with SIP-approved public notice rules. The applicant will either follow the current SIP-approved process of publishing a separate NORI and NAPD, or publish a combined NORI and NAPD notice pursuant to new proposed revisions at 30 TAC Section 39.412. Further, pursuant to the Texas SIP, any comments submitted to EPA on the proposed draft permit must be resubmitted to the TCEQ during the TCEQ's public comment period. EPA intends to identify on the EPA Region 6 GHG website which applications with proposed draft permits have been transferred to TCEQ for issuance. EPA will endeavor to notify each commenter about the need to resubmit comments under the SIP-approved Texas public comment period provisions or the newly proposed revisions at 30 TAC Section 39.412.

The TCEQ will assume full PSD responsibility for the administration and implementation of final GHG PSD permits issued by EPA upon notification from EPA that all administrative and

judicial appeal processes have expired or have been completed or concluded (including any associated remand actions) for a specific permit or permit application. Assuming full PSD responsibility includes the authority to conduct general administration of these existing permits, authority to process and issue any and all subsequent PSD permit actions relating to such permits (e.g., amendments), and authority to enforce such permits. In the above referenced January 13, 2014, letter, the TCEQ explains that the provisions contained in element 1 of the Texas PSD Supplement (as adopted by the Texas Air Control Board on July 17, 1987) provide the TCEQ the authority to enforce all conditions of PSD permits issued for sources in Texas by EPA prior to full delegation of authority to implement the Texas PSD program. The TCEQ has affirmed that this provision continues to apply to the GHG PSD permits issued by EPA. Therefore, TCEQ has demonstrated it has the authority to administer EPA-issued GHG PSD permits.

## **V. Proposed Action**

EPA has made the preliminary determination that the October 5, 2010, revisions to the Texas SIP that are part of this rulemaking are approvable because they are adopted and submitted in accordance with the CAA and EPA regulations regarding NSR permitting. EPA has made the preliminary determination that the December 2, 2013, proposed revisions to the Texas SIP and request for parallel processing are in accordance with the CAA and EPA regulations regarding SIP development and GHG regulations. EPA invites the public to make comments on all aspects of the EPA proposed approval of the revisions to the Texas NSR SIP to provide for the regulation of GHG emissions and clarify the applicability of BACT for all PSD permit applications, and to submit comments by the date listed above. Therefore, under section 110 and part C of the Act, and for the reasons stated above, EPA proposes to approve the following

revisions to the Texas SIP:

- Substantive and non-substantive revisions to 30 TAC Section 116.111 adopted on September 15, 2010, and submitted on October 5, 2010, to clarify the application of BACT to all PSD permit applications in the Texas NSR program;
- Substantive and non-substantive revisions proposed October 23, 2013, and submitted for parallel processing on December 2, 2013, necessary to provide the TCEQ the authority to regulate GHG emissions under the Texas PSD Program:
  - Revisions to Public Notice requirements at 30 TAC Sections 39.411(e)(11), (e)(15), (e)(16), (f)(4), (f)(8), 39.412(a) – (d), 39.419(e)(1), and 39.420(e)(4).
  - Revisions to the entirety of the General Air Quality Definitions at 30 TAC Sections 101.1.
  - Revisions to the Emission Inventory Requirements at 30 TAC Section 101.10.
  - Revisions to Emissions Event Reporting and Recordkeeping Requirements at 30 TAC Section 101.201.
  - Revisions to the Permits by Rule Minor NSR program at 30 TAC Sections 106.2 and 106.4.
  - Revisions to the Definitions for Texas NSR Permitting at 30 TAC Section 116.12.
  - Revisions to Permit Application provisions for Texas NSR Permitting at 30 TAC Section 116.111.
  - Revisions to the Texas PSD Program at 30 TAC Section 116.160.
  - Proposed new 30 TAC Section 116.164 to tailor the PSD thresholds for GHG permitting.

- Proposed new 30 TAC Section 116.169 to establish the transition process for GHG permitting.
- Revisions to the Standard Permit Minor NSR program at 30 TAC Sections 116.610 and 116.611.
- Revisions to the definition of Potential to Emit at 30 TAC Section 122.122.

Texas is subject to the FIP for PSD permitting of GHG emissions. This GHG PSD FIP remains in place and EPA remains the PSD permitting authority for GHG-emitting sources in Texas until EPA finalizes our proposed approval of the October 23, 2013, proposed revisions submitted for parallel processing on December 2, 2013, to the Texas SIP. Therefore, we propose that upon finalization of today's action, EPA will rescind the GHG PSD FIP for Texas at 40 CFR 52.2305(a) and (b). However, as detailed in Sections IV.B.1 – 3 and our transition process, there are three limited possibilities for retained authority. First, EPA will retain GHG PSD permitting authority for any pending permit applications where the permit applicant has submitted a written request to remain with EPA for permit issuance. Second, EPA will retain GHG PSD permitting authority for any pending permit application where the applicant has not submitted a written request regarding permit authority, and EPA has made a proposed determination through a public noticed draft permit upon the signature date of EPA's rescission of the GHG PSD FIP. EPA does not intend to retain any other authority over pending permit applications. Note, even for those cases where EPA announces it will retain permitting authority over an application, this authority will cease upon an applicant's written request to EPA withdrawing the pending permit application before a final determination is made. Finally, EPA will retain GHG PSD permitting

authority for any issued permit for which either the time for filing an administrative appeal has not expired or all administrative and judicial appeals processes have not been completed by the signature date of EPA's final action to approve TCEQ's SIP submittal. Texas is also subject to the FIP for PSD permitting for any other pollutants that become newly subject to regulation under the CAA after January 2, 2011. We propose to find that the TCEQ has provided necessary and adequate assurances that the Texas PSD program will be revised in the future to address pollutants that become newly regulated under the CAA after January 2, 2011, and that the TCEQ has the adequate authority under State law to regulate the new PSD pollutants. Therefore, we propose that upon finalization of today's action, EPA will rescind the PSD FIP for Newly Regulated Pollutants for Texas at 40 CFR 52.2305(c).

EPA is severing and taking no action on the remainder of the October 5, 2010, SIP submittal for the adoption and implementation of the Texas Minor NSR Qualified Facilities Program. EPA is also severing and taking no action on the portions of the December 2, 2013, submittal concerning biomass GHG emissions at 30 TAC Section 116.12(7)(B). The D.C. Circuit Court issued an order to vacate EPA's Biomass Deferral Rule on July 12, 2013.

## **VI. Statutory and Executive Order Reviews.**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional

requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, and incorporation by reference.

Dated: February 4, 2014.

Ron Curry,  
Regional Administrator, Region 6.

[FR Doc. 2014-03429 Filed 02/14/2014 at 8:45 am; Publication Date: 02/18/2014]