



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R06-OAR-2017-0124; FRL-9973-35-Region 6]**

**Approval and Promulgation of Implementation Plans; Texas; Revisions to Permitting and Public Participation for Air Quality Permit Applications**

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

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve four revisions to the Texas State Implementation Plan (SIP) on December 12, 2016 and February 21, 2017, specific to air quality permitting and public notice for air quality permit applications.

**DATES:** Written comments should be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2017-0124, at <http://www.regulations.gov> or via email to [wiley.adina@epa.gov](mailto:wiley.adina@epa.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Adina Wiley, 214-665-2115, [wiley.adina@epa.gov](mailto:wiley.adina@epa.gov). For the

full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

*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).

**FOR FURTHER INFORMATION CONTACT:** Adina Wiley, 214-665-2115, [wiley.adina@epa.gov](mailto:wiley.adina@epa.gov). To inspect the hard copy materials, please schedule an appointment with Ms. Adina Wiley or Mr. Bill Deese at 214-665-7253.

**SUPPLEMENTARY INFORMATION:** Throughout this document “we,” “us,” and “our” means the EPA.

## **I. Background**

The Act 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: Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and Minor NSR. The EPA codified minimum requirements for these State permitting programs including public participation and notification requirements at 40 CFR 51.160 – 51.164. Requirements specific to construction of new stationary sources and major modifications in nonattainment areas are

codified at 40 CFR 51.165 for the NNSR program. Requirements for permitting of new stationary sources and major modifications in attainment areas subject to PSD, including additional public participation requirements, are found at 40 CFR 51.166. This proposed approval action will address four separate revisions to the Texas NSR SIP submitted on December 12, 2016 and February 21, 2017. On December 12, 2016, the Texas Commission on Environmental Quality (TCEQ) submitted a revision to the major NSR program to remove from the Texas SIP the Compliance History provisions at 30 TAC Sections 116.120 – 116.123, 116.125 and 116.126. On February 21, 2017, the TCEQ submitted three separate revisions to the Texas SIP revising the public notice provisions applicable to air quality permit applications.

## **II. The EPA's Evaluation**

The accompanying Technical Support Documents for this action include a detailed analysis of the submitted revisions to the Texas SIP. In many instances the revisions are minor or non-substantive in nature and do not change the intent of the originally approved SIP requirements. Following is a summary of our analysis for the submitted revisions.

### *A. Evaluation of the Repeal of Chapter 116 Compliance History Requirements*

The Chapter 116 Compliance History provisions were initially adopted by the State on June 17, 1998, at 30 TAC Sections 116.120 – 116.126. These revisions were submitted to the EPA as a SIP revision on July 22, 1998. The EPA approved these requirements into the SIP on September 18, 2002 at 67 FR 58697.

The TCEQ repealed the requirements of 30 TAC Section 116.124 on September 2, 1999. The EPA approved this repeal on January 6, 2014 at 79 FR 551. The TCEQ repealed the remaining provisions at 30 TAC Sections 116.120 – 116.123, 116.125 and 116.126 on August 7, 2002 and replaced the requirements with media neutral compliance history requirements under 30 TAC Chapter 60 pursuant to the requirements of Texas House Bill 2912. The TCEQ did not

submit the repeal of 30 TAC Sections 116.120 – 116.123, 116.125 and 116.126 at the time of the state rulemaking. The repeal of these requirements was submitted on December 12, 2016 as Rule Project Number 2016-028-SIP-NR.

The repeal of the remaining compliance history provisions at 30 TAC Sections 116.120 – 116.123, 116.125 and 116.126 is approvable. This repeal was developed in accordance with the CAA and the State provided reasonable notice and public hearing. The repeal of these provisions will remove obsolete requirements from the Texas SIP. The EPA has determined it is appropriate to approve the repeal and removal of these provisions from the SIP since there are no federal requirements to include comparable provisions in a SIP. This repeal will have no negative impact on the Texas New Source Review program because the SIP-approved permit programs do not rely on the repealed Compliance History provisions. Therefore, we conclude that this repeal maintains consistency with federal requirements for SIP development and New Source Review permitting, and therefore, will not interfere with attainment or reasonable further progress.

*B. Evaluation of the Revisions to Texas Public Notice Requirements*

On February 21, 2017, the TCEQ submitted three separate revisions to the Texas SIP revising the public notice provisions applicable to air quality permit applications. The revisions to 30 TAC Chapters 39 and 55 submitted under Rule Project No 2015-018-080-LS make non-substantive revisions to the existing SIP requirements. The revisions to repeal the Chapter 116 public notice provisions submitted under Rule Project No. 2016-026-116-AI remove obsolete requirements that have been replaced with the existing SIP public notice provisions in Chapter 39. The revisions to 30 TAC Chapter 39 and 55 submitted under Rule Project No. 2016-030-039-LS substantively revise the existing public notice SIP requirements for concrete batch plant standard permits such that the notice requirements are consolidated into one 30-day notice period that satisfies the requirements of minor NSR public participation. The EPA has determined it is

appropriate to approve these three revisions to the Texas SIP because these revisions continue to be consistent with federal requirements for public notice and therefore, will not interfere with attainment or reasonable further progress.

### **III. Proposed Action**

We are proposing to approve revisions to the Texas SIP that revise the NSR permitting and public notice requirements. We have determined that the revisions submitted on December 12, 2016 were developed in accordance with the CAA and EPA's regulations, policy and guidance for NSR permitting. Therefore, under section 110 of the Act, the EPA proposes approval of the following revisions to the Texas SIP:

- Repeal of 30 TAC Section 116.120 – Applicability – adopted on November 2, 2016, and submitted on December 12, 2016;
- Repeal of 30 TAC Section 116.121 – Exemptions – adopted on November 2, 2016, and submitted on December 12, 2016;
- Repeal of 30 TAC Section 116.122 – Contents of Compliance History – adopted on November 2, 2016, and submitted on December 12, 2016;
- Repeal of 30 TAC Section 116.123 – Effective Dates – adopted on November 2, 2016, and submitted on December 12, 2016;
- Repeal of 30 TAC Section 116.125 – Preservation of Existing Rights and Procedures – adopted on November 2, 2016, and submitted on December 12, 2016; and
- Repeal of 30 TAC Section 116.126 – Voidance of Permit Applications – adopted on November 2, 2016, and submitted on December 12, 2016.

Additionally, we have determined that the revisions submitted on February 21, 2017, were developed in accordance with the CAA and EPA's regulations, policy and guidance for public

notice for air permitting. Under section 110 of the Act, the EPA proposes to approve the following revisions into the Texas SIP:

- Revisions to 30 TAC Section 39.405 adopted on December 9, 2015, and submitted on February 21, 2017;
- Revisions to 30 TAC Section 39.411 adopted on December 7, 2016, and submitted on February 21, 2017;
- Revisions to 30 TAC Section 39.419 adopted on December 9, 2015, and submitted on February 21, 2017;
- Revisions to 30 TAC Section 39.603 adopted on December 7, 2016, and submitted on February 21, 2017;
- Revisions to 30 TAC Section 55.152 adopted on December 7, 2016, and submitted on February 21, 2017;
- Withdrawal of 30 TAC Section 55.156(e) from the Texas SIP as adopted on December 9, 2015, and submitted on February 21, 2017; and the
- Repeal of 30 TAC Sections 116.130 – 116.134, 116.136, and 116.137 from the Texas SIP as adopted on November 2, 2016 and submitted on February 21, 2017.

We also propose to revise the amendatory language at 40 CFR 52.2270(c) to identify specific provisions adopted by the State were not submitted for inclusion in the Texas SIP. We propose to revise the language at 40 CFR 52.2270(c) to clearly indicate that the Texas SIP does not include the revisions to 30 TAC Sections 39.405(h)(1)(A) and 39.602(c) as adopted on December 9, 2015, or 30 TAC Section 39.411(e)(10) as adopted on December 7, 2016.

#### **IV. Incorporation by Reference**

In this rule, the EPA is proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the revisions to the Texas regulations as described in the Final Action section above. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* or at the EPA Region 6 Office (please contact Adina Wiley for more information).

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

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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 CAA; 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, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: February 7, 2018.

**Anne Idsal,**  
*Regional Administrator, Region 6.*

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