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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2010-0978; FRL-9489-9]

Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Permit Renewals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the applicable State Implementation Plan (SIP) for the State of Texas that relate to Permit Renewals. The portions of the SIP revisions that EPA is approving address the following requirements related to Permit Renewals: notification of permit holder, permit renewal application, and review schedule. EPA finds that these changes to the Texas SIP comply with the Federal Clean Air Act (the Act or CAA) and EPA regulations and are consistent with EPA policies. EPA is taking this action under section 110 of the Act.

DATES: This rule is effective on **[Insert date 30 days from date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2010-0978. All documents in the docket are listed on the *www.regulations.gov* web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 Freedom of Information Act Review Room between the hours of 8:30am and 4:30pm weekdays except for legal holidays. Contact the person listed in the FOR FURTHER INFORMATION CONTACT paragraph below or Mr. Bill Deese at (214) 665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittals are also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality (TCEQ), Office of Air Quality,
12124 Park 35 Circle, Austin, Texas 78753.

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SUPPLEMENTARY INFORMATION:

Throughout this document wherever any reference to “we,” “us,” or “our” is used, we
mean EPA.

Table of Contents

- I. The State's Submittals
 - A. What is the Background of the Texas Permit Renewals program?
 - B. What Changes did the State Submit?
- II. What Action is EPA Taking?
- III. EPA's Evaluation
 - A. Section 30 TAC 116.310 – Notification of Permit Holder
 - 1. What is the background of 30 TAC 116.310?

2. What did Texas submit for 30 TAC 116.310?
3. What is EPA's evaluation of the submitted revisions to 30 TAC 116.310?

B. Section 30 TAC 116.311 – Permit Renewal Application

1. What is the background of 30 TAC 116.311?
2. What did Texas submit for 30 TAC 116.311?
3. What is EPA's evaluation of the submitted revisions to 30 TAC 116.311?

C. Section 30 TAC 116.314 – Review Schedule

1. What is the background of 30 TAC 116.314?
2. What did Texas submit for 30 TAC 116.314?
3. What is EPA's evaluation of the submitted revisions to 30 TAC 116.314?

IV. Response to Comments

V. Final Action

VI. Statutory and Executive Order Reviews

I. The State's Submittals

A. *What is the Background of the Texas Permit Renewals program?*

In this action, EPA is approving revisions to the Texas regulations relating to renewal of preconstruction permits. The rules for Permit Renewals are currently approved in the Texas SIP under 30 TAC 116.310, 116.311, 116.312, 116.313, 116.314, and 116.315. EPA approved these rules on March 10, 2006 (71 FR 12285), and revisions on March 20, 2009 (74 FR 11851), and March 11, 2010 (75 FR 11464). The approved rules require each preconstruction permit to be renewed every ten years. Permit renewal is approved based upon a demonstration in the renewal application that the permitted facility will operate in accordance with all requirements and conditions of the existing permit, including representations in the application to construct, any subsequent amendments, any previously granted renewal, and the compliance history of the facility. Although preconstruction permits must remain in effect as long as the source operates and until voided under the approved implementation procedures, periodic renewal of preconstruction permits is neither required nor prohibited under the Act or Federal Regulations.

B. What Changes did the State Submit?

On December 15, 1995; July 22, 1998; and September 4, 2002; the State of Texas submitted revisions to the Texas SIP concerning Permit Renewals under Title 30 of the Texas Administrative Code (30 TAC), Chapter 116 – Control of Air Pollution by Permits for New Construction or Modification, Subchapter D – Permit Renewals. The December 15, 1995, revisions to these provisions were superseded and rendered moot by revisions submitted to EPA on July 22, 1998, because the latter submittal repealed and replaced the earlier versions of the same provisions addressed in the December 15, 1995, submittal. Submitted revisions included changes to 30 TAC 116.310 – Notification of Permit

Holder, 30 TAC 116.311 – Permit Renewal Application, 30 TAC 116.312 – Public Notification and Comment Procedures, 30 TAC 116.313 – Renewal Application Fees, 30 TAC 116.314 – Review Schedule, and 30 TAC 116.315 – Permit Renewal Submittal. In this final action, we are addressing submitted revisions to 30 TAC 116.310, 116.311, and 116.314.

Section 30 TAC 116.310 – Notification of Permit Holder – is currently approved as adopted by Texas on August 16, 1993, approved March 10, 2006 (71 FR 12285). Today, we are approving revisions to Section 116.310 that were adopted by Texas on November 16, 1995 (submitted December 15, 1995) and June 17, 1998 (submitted July 22, 1998).

Section 30 TAC 116.311 – Permit Renewal Application – is currently approved as adopted by Texas on April 6, 1994, approved March 10, 2006 (71 FR 12285). The requirements of subsection (c) were later removed from Section 116.311 and added to a new Section 116.315 and approved by EPA on March 11, 2010 (75 FR 11464). Today, we are approving other revisions adopted by Texas on November 16, 1995 (submitted December 15, 1995); June 17, 1998 (submitted July 22, 1998); and August 21, 2002 (submitted September 4, 2002). Today's action does not address severable revisions to 30 TAC 116.311(a)(2) submitted December 15, 1995; July 22, 1998; and September 4, 2002. This provision was revised to exclude changes under the severable provisions relating to Qualified Facilities. EPA is not taking action on Paragraph (a)(2) in this rulemaking. EPA will address the revisions to that provision in a separate action in connection with the separately submitted revisions to the Texas Qualified Facilities Program, submitted October 5, 2010.

Section 30 TAC 116.314 – Review Schedule – is currently approved as adopted by Texas on August 16, 1993, approved March 10, 2006 (71 FR 12285). Today, we are approving revisions adopted by Texas on November 16, 1995 (submitted December 15, 1995) and June 17, 1998 (submitted July 22, 1998).

EPA proposed to approve these SIP revisions on June 6, 2011 (76 FR 32333). In that proposal, we requested public comments on the proposed action. The public comment period closed July 6, 2011. We received one comment letter from Baker Botts on behalf of the BCCA Appeal Group (BCCAAG) and the Texas Industry Project (TIP).

Additional information related to these SIP submittals is contained in the Technical Support Document (TSD), which is in the docket for this action.

The table below summarizes the changes that were submitted and are affected by this action. A summary of EPA's evaluation of each section and the basis for this final action is discussed in section III of this preamble. The TSD includes a detailed evaluation of the referenced SIP submittals.

Section	Title	Date submitted	Date adopted by the State	Comments
30 TAC 116.310	Notification of Permit Holder	12/15/1995* 7/22/1998*	11/16/1995* 6/17/1998*	- Non-substantive changes to the section.
30 TAC 116.311	Permit Renewal Application	12/15/1995* 7/22/1998*	11/16/1995* 6/17/1998*	- Removed paragraphs (a)(1), (a)(3), and (a)(4) and redesignated existing paragraphs (a)(2), (a)(5), and (a)(6) to paragraphs (a)(1) – (a)(3), respectively. - Added new paragraphs (a)(4) and (a)(5). - Added new subsection (b). - Revised and redesignated existing subsection (b) to new subsection (c).
		9/4/2002	8/21/2002	- Added new paragraph (a)(1) and redesignated existing paragraphs (a)(1) – (a)(5) to paragraphs (a)(2) – (a)(6), respectively.
30 TAC 116.314	Review Schedule	12/15/1995* 7/22/1998*	11/16/1995* 6/17/1998*	- Revised and reorganized subsection (a) into subsections (a) and (b). - Revised and redesignated existing subsections (b) and (c) to subsections (c) and (d), respectively.

* Because Texas repealed and resubmitted each section under Subchapter D in its 7/22/1998 submittal, our analysis includes 12/15/95 and 7/22/98 SIP submittal together.

II. What Action is EPA Taking?

We have evaluated the SIP submissions for consistency with the CAA, NSR regulations for new and modified sources in 40 CFR Part 51, and the approved Texas SIP. We have also reviewed the rules for enforceability and legal sufficiency.

This action addresses revisions to 30 TAC 116.310, 116.311, and 116.314, submitted December 15, 1995, and July 22, 1998, and revisions to 30 TAC 116.311 submitted September 4, 2002. A technical analysis of the submittals for the sections relating to Notification of Permit Holder, Permit Renewal Application, and Review

Schedule has found that these changes are consistent with the CAA, 40 CFR Part 51 and EPA policies. Therefore, EPA approves the revisions to 30 TAC 116.310, 116.311,¹ and 116.314 submitted on December 15, 1995; July 22, 1998; and September 4, 2002.

III. EPA's Evaluation

A. Section 30 TAC 116.310 – Notification of Permit Holder

1. What is the background of 30 TAC 116.310?

The currently approved provisions for 30 TAC 116.310 were submitted to EPA on August 31, 1993. EPA approved the submitted revisions on March 10, 2006 (71 FR 12285). These revisions became effective on May 9, 2006.

2. What Did Texas Submit for 30 TAC 116.310?

Since EPA's last approval for this section, TCEQ has submitted two SIP revisions to EPA for the Notification of Permit Holder in 30 TAC 116.310 on December 15, 1995, and July 22, 1998. Today we are approving the revisions of the existing provisions of section 116.310. The revisions submitted to this section include updated references to the current agency name and update of a state statutory citation to the current citation.

3. What is EPA's evaluation of the submitted revisions to 30 TAC 116.310?

These submitted revisions are non-substantive and do not change the underlying requirements of the section as currently approved. We are approving the revisions to 30 TAC 116.310 as submitted December 15, 1995, and July 22, 1998.

¹ However, EPA is taking no action on submitted revisions to 30 TAC 116.311(a)(2). See discussion in section III.B.3.c of this preamble for further information on why we are taking no action on 30 TAC 116.311(a)(2).

B. Section 30 TAC 116.311 – Permit Renewal Application

1. What is the background of 30 TAC 116.311?

The currently approved provisions for 30 TAC 116.311 were submitted to EPA on August 31, 1993, and April 29, 1994. EPA approved the submitted revisions on March 10, 2006 (71 FR 12285). These revisions became effective on May 9, 2006.

2. What Did Texas Submit for 30 TAC 116.311?

Since EPA's last approval for this section, TCEQ has submitted three SIP revisions to EPA for the Permit Renewal Application section on December 15, 1995; July 22, 1998; and September 4, 2002. On March 11, 2010, we approved the recodification and revision of the existing provisions of Section 116.311(c) to a new Section 116.315 – Permit Renewal Submittal. In this action, we are approving the remaining revisions as described below, except for the revisions to 30 TAC 116.311(a)(2). This includes the following revisions:

a. Revisions submitted December 15, 1995, and July 22, 1998.

These revisions include:

- Removal of Paragraphs (a)(1), (a)(3), and (a)(4), and the redesignation of existing Paragraphs (a)(2), (a)(5), and (a)(6) to Paragraphs (a)(1) through (a)(3), respectively;
- Addition of new Paragraphs (a)(4) and (a)(5);
- Addition of new Subsection (b); and

- Redesignation of existing Subsection (b) to Subsection (c) with non-substantive revisions.

b. Revisions submitted September 4, 2002.

These revisions include the addition of new Paragraph (a)(1) and redesignation of existing Paragraphs (a)(1) through (a)(4) to Paragraphs (a)(2) through (a)(5), respectively.

3. What is EPA's Evaluation of the Submitted Revisions to 30 TAC 116.311?

a. The addition of new Paragraph (a)(1).

Texas submitted Paragraph (a)(1) on September 4, 2002. This paragraph ensures that upon renewal, “dockside vessel emissions associated with the permitted facility will comply with all rules and regulations of the commission and with the intent of the TCAA, including protection of the health and property of the public and minimization of emissions to the extent possible, consistent with good air pollution practices.” This revision is consistent with the provision in the SIP-approved 30 TAC 116.111(a)(2) as it relates to associated dockside vessel emissions. See 72 FR 49198 (August 28, 2007). The TCEQ obtained the authority to regulate dockside emissions under House Bill (HB) 3040, 77th Legislature, 2001 which amended the Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.065 (Acts 2001, 77th Legislature, Chapter 1166, §1). See page 2 of the TCEQ’s evaluation of the revisions submitted September 4, 2002. The TCEQ further states:

The commission determined that dockside vessels are facilities as defined in TCAA, §382.003(6), and thus subject to the requirements of Chapter 116. These emissions will require best available control technology (BACT) review, maximum allowable emission limitations, monitoring, testing, recordkeeping, and ambient air impacts review. The emissions originating from a dockside vessel that are the result of functions performed by onshore facilities or using onshore

equipment include: loading and unloading of liquid bulk materials, liquefied gaseous materials, and solid bulk materials; cleaning and degassing liquid vessel compartments; and abrasive blasting and painting.

See page 4 of the TCEQ's evaluation of the revisions submitted September 4, 2002.

Finally, concerning the revision to 30 TAC 116.311, the TCEQ states:

The adopted amendment to §116.311, Permit Renewal Application, requires that owners or operators submit information that demonstrates that dockside emissions comply with all commission rules and regulations and the intent of the TCAA, including protection of the health and property of the public and the minimization of emissions to the extent practicable, consistent with good air pollution control practices. Existing dockside emissions will be reviewed for off-property effects considering magnitude, frequency, and duration.

See page 4 of the TCEQ's evaluation of the revisions submitted September 4, 2002. The addition of new paragraph (a)(1) ensures that permits to construct and permit renewals that pre-date TCEQ's rule change to regulate dockside emissions at 30 TAC 116.111(a)(2) are required at renewal to ensure all dockside emissions comply with the statute and regulations. We are approving the addition of Paragraph (a)(1), submitted September 4, 2002.

b. The removal of existing Paragraph (a)(1).

This paragraph provides that upon renewal the emissions from the facility will comply with all applicable specifications and requirements in the Texas Air Control Board (TACB)² rules and the Texas Clean Air Act (TCAA). Texas submitted the removal of existing Paragraph (a)(1) on December 15, 1995, and July 22, 1998. This provision is redundant because the SIP already contains the substantive requirement at 30 TAC 116.115(b)(2)(H)(ii) requiring that "[i]f more than one state or federal regulation or permit condition are applicable, the most stringent limit or condition shall govern and be

² The TACB is a predecessor agency to the TCEQ.

the standard by which compliance shall be demonstrated." The SIP also provides TCEQ with the authority to re-evaluate a source's ability to comply with the statute and regulations at renewal, as provided in the existing SIP rule at 30 TAC 116.311(b), and which is recodified to 30 TAC 116.311(c). Because the removal of this paragraph is merely the removal of a redundant requirement, it is not a relaxation of the SIP.

Therefore, approval of this revision will not interfere with attainment and reasonable further progress or any other applicable federal requirement, as required by section 110(l) of the CAA. Accordingly, we are approving the removal of existing Paragraph (a)(1), submitted December 15, 1995, and July 22, 1998.

c. Revisions to Paragraph (a)(2).

As currently approved, Paragraph (a)(2) provides that upon renewal, a facility continues to operate in accordance with all requirements and conditions of the existing permit, including representations in the application for permit to construct and subsequent amendments, and any previously granted renewal. This paragraph was revised and redesignated to Paragraph (a)(1) in the December 15, 1995, and July 22, 1998, SIP submittals. This paragraph was again redesignated to Paragraph (a)(2) in the September 4, 2002, SIP submittal. The revisions submitted December 15, 1995, and July 22, 1998, as redesignated in the September 4, 2002, SIP submittal, were revised to add a provision that excludes changes otherwise authorized for a Qualified Facility. The submitted revisions to paragraph (a)(2) are related to severable provisions that relate to Qualified Facilities that we disapproved on April 14, 2010 (75 FR 19468) and to the separately submitted revisions to the Qualified Facilities Program on October 5, 2010. We are taking no action on the severable submitted revision to Paragraph (a)(2) relating to

Qualified Facilities, and we will address these revisions in a separate action on the submitted revisions to the Qualified Facilities Program. The approved SIP will retain currently approved paragraph (a)(2) as adopted by Texas on April 4, 1994 (submitted April 29, 1994), and approved March 10, 2006.

Accordingly, consistent with our proposal, we will take no action on the submitted revisions to 30 TAC 116.311(a)(2). The approved SIP will retain the currently approved provisions of 30 TAC 116.311(a)(2) as adopted by Texas on April 6, 1994, and approved by EPA on March 10, 2006, 71 FR 12285.

d. The removal of existing Paragraph (a)(3).

This paragraph required that upon renewal the facility will continue to have appropriate means to measure the emission of significant air contaminants as determined necessary by the Executive Director. Texas submitted the removal of Paragraph (a)(3) on December 15, 1995, and July 22, 1998. In its December 15, 1995, submittal Texas stated:

Existing §116.311(a)(3) also duplicates a requirement applicable to the original permit application. An applicant for a permit to construct must demonstrate that a facility will have provisions for measuring the emissions of significant air contaminants, including the installation of sampling ports and sampling platforms. When necessary, such requirements are written as conditions of the permit. The renewal review will determine whether a facility is in compliance with any sampling requirements in its permit. . . . [A]n owner/operator could not remove sampling ports or platforms in violation of permit conditions.

Further, 30 TAC §101.9 provides independent authority for the TNRCC to require sampling ports and platforms when necessary. The existing §116.311(a)(3) was redundant and unnecessary.

See the December 15, 1995, SIP submittal at page 5 of the Section entitled "Evaluation of Testimony." This provision is redundant because the SIP already contains the substantive requirement in the rules at 30 TAC 101.9 and 30 TAC 116.111(a)(2)(B). These two SIP rules require the following:

Any person, at the request of the Texas Natural Resource Conservation Commission (TNRCC or Commission), shall provide in connection with each flue a power source near the point of testing in addition to such sampling and testing facilities and sampling ports, including safe and easy access thereto, exclusive of instruments and sensing devices, as may be necessary for the Commission to determine the nature and quality of emissions which are or may be discharged as a result of source operations. Evidence and data based on these samples and calculations may be used to substantiate violations of the Act, rules, and regulations. Agents of the Commission shall be permitted to sample the stacks during operating hours.

30 TAC 101.9.

(B) Measurement of emissions. The proposed facility will have provisions for measuring the emission of significant air contaminants as determined by the executive director. This may include the installation of sampling ports on exhaust stacks and construction of sampling platforms in accordance with guidelines in the "Texas Natural Resource Conservation Commission (TNRCC) Sampling Procedures Manual."

30 TAC 116.111(a)(2)(B).

Because the removal of this paragraph is merely the removal of a redundant requirement, it is not a relaxation of the SIP. Therefore, approval of this revision will not interfere with attainment and reasonable further progress or any other applicable federal requirement, as required by section 110(l) of the CAA. Accordingly, we are approving the removal of existing Paragraph (a)(3), submitted December 15, 1995, and July 22, 1998.

e. The removal of existing Paragraph (a)(4).

This paragraph required that upon renewal the facility will continue to use the control technology determined by the Executive Director to be economically reasonable and technically practicable considering the age of the facility and the impact of its emissions on the surrounding area. Texas submitted the removal of Paragraph (a)(4) on December 15, 1995, and July 22, 1998. This provision is redundant because the SIP already provides for this substantive requirement at 30 TAC 116.311(a)(2) and 30 TAC 116.111(a)(2)(C). Section 30 TAC 116.311(a)(2) provides that upon renewal, the facility is being operated in accordance with all requirements and conditions of the existing permit, including representations in the application for permits to construct and subsequent amendments, and any previously granted renewal. Therefore, the SIP-approved requirements 30 TAC 116.311(a)(2) require that upon renewal, a facility will continue to meet the requirements of 30 TAC 116.111(a)(2)(C). This SIP rule requires that a proposed facility will utilize Best Available Control Technology (BACT), with consideration given to technical practicability and economic reasonableness of reducing or eliminating the emissions from the facility. Because the removal of Paragraph (a)(4) is merely the removal of a redundant requirement, it is not a relaxation of the SIP. Therefore, approval of the removal of 30 TAC 116.311(a)(4) will not interfere with attainment and reasonable further progress or any other applicable federal requirement, as required by section 110(l) of the CAA.

The removal of Paragraph (a)(4) also removes a provision that allows director discretion relating to the control technology that could be utilized at a facility following renewal. Further, the TCEQ maintains the authority to impose, as a condition of renewal,

additional requirements that it determines to be economically reasonable and technically practicable considering the age of the facility and the impact of its emissions on the surrounding area, as provided in the submitted revisions related to 30 TAC 116.311(b) (which is evaluated in section III.B.3.i of this preamble). Accordingly, we are approving the removal of existing Paragraph (a)(4), submitted December 15, 1995, and July 22, 1998.

f. Revisions to currently submitted Paragraphs (a)(3) and (a)(4).

These paragraphs are currently approved as Paragraphs (a)(5) and (a)(6). These paragraphs require that upon renewal, the facility must continue to meet the applicable requirements of the New Source Performance Standards (required under section 111 of the Act and 40 CFR part 60) and the National Emission Standards for Hazardous Air Pollutants (required under section 112 of the Act and 40 CFR part 61). These paragraphs were redesignated to Paragraphs (a)(2) and (a)(3) with non-substantive changes in revisions submitted December 15, 1995, and July 22, 1998, and were again redesignated to Paragraphs (a)(3) and (a)(4) in a revision submitted September 4, 2002, with no substantive changes. The changes to these provisions are non-substantive revisions to the existing SIP. Accordingly, we are approving the redesignations and non-substantive changes to these paragraphs as submitted December 15, 1995; July 22, 1998; and September 4, 2002.

g. Addition of new Paragraph (a)(5).

This paragraph was submitted as Paragraph (a)(4) on July 22, 1998, and then redesignated to Paragraph (a)(5), as submitted September 4, 2002. This paragraph requires that upon renewal, the facility must continue to meet the applicable requirements

of the maximum achievable control technology standard as listed under 40 CFR Part 63, promulgated by EPA under the authority of section 112 of the CAA, or as listed under 30 TAC Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories) (FCAA §112, 40 CFR 63). This paragraph ensures that upon renewal the facility continues to meet the requirements of the current SIP at 30 TAC 116.111(a)(2)(F), which requires permitted facilities to comply with the requirements of 40 CFR part 63. Accordingly, we are approving the addition of Paragraph (a)(5) as submitted December 15, 1995; July 22, 1998; and September 4, 2002.

h. Addition of new Subsection (b).

Texas submitted Subsection (b) on December 15, 1995, and July 22, 1998. This section provides that in addition to the requirements in Subsection (a) of this section, if the TCEQ determines it necessary to avoid a condition of air pollution or to ensure compliance with otherwise applicable federal or state air quality control requirements, then: (1) the applicant may be required to submit additional information regarding the emissions from the facility and their impacts on the surrounding area; and (2) the TCEQ shall impose as a condition for renewal those requirements the Executive Director determines to be economically reasonable and technically practicable considering the age of the facility and the impact of its emissions on the surrounding area. This new subsection provides the Executive Director of the TCEQ with authority to require additional information and to require additional requirements above and beyond the requirements stipulated in Subsection (a) whenever the Executive Director deems such additional measures are necessary. EPA has already approved Subsection (a) (as adopted by the State on April 6, 1994) as meeting the requirements of the Act and 40 CFR part

51. Because the requirements in Subsection (b) are *in addition to* the requirements in Subsection (a) of this section, and because EPA has approved Subsection (a), Subsection (b) can only be used to impose *additional measures* when the Executive Director deems them necessary. Subsection (b) *does not authorize* the Executive Director to use the permit renewal process to relax terms and conditions of the existing permit. Such relaxations of the existing permit must be authorized through the SIP-approved procedures for changing a permit under 30 TAC Chapter 116, Subchapter B – New Source Review Permits.³ Further, the addition of subsection (b) provides a mechanism to ensure that upon renewal, the permit continues to meet the approved SIP requirements at 30 TAC 116.111(a)(2)(A)(1) which requires the initial permit must “comply with all rules and regulations of the commission and with the intent of the TCAA, including protection of the health and property of the public.” The addition of Subsection (b) provides TCEQ with a mechanism to impose additional requirements at renewal when TCEQ deems it necessary to address changes in air quality or changes to applicable federal and state requirements that may occur after issuance of the initial permit. We therefore find that the submitted revision to add Subsection (b) to 30 TAC 116.311 meets section 110(a)(2)(C) of the Act and 40 CFR part 51; and does not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act. Accordingly, we are approving the addition of the new Subsection (b) to the SIP.

³ Also see the SIP approved rule at 30 TAC 116.315(c) which provides that a renewal application may be submitted at the same time as an amendment application to modify an existing facility as long as it is submitted no more than three years before the permit’s expiration date and the amendment is subject to public notice requirements.

i. Revisions to Subsection (c).

This provision is currently approved as Subsection (b). This subsection requires that upon renewal, the facility shall continue to meet the requirements under the undesignated heading in Subchapter B relating to Compliance History. This provision was redesignated to Subsection (c) with revisions, submitted December 15, 1995, and July 22, 1998. The submitted revisions include changing the citations to refer to the Compliance History provisions to refer to the SIP-approved requirement under 30 TAC 116.120 through 116.126 under Subchapter B, Division 2 – Compliance History. The changes also include clarifications that failure to demonstrate compliance with the Compliance History requirements shall result in the renewal not being granted. It further changes the rule to provide that if a contested case hearing has not been requested, the Executive Director, not the staff, must notify the applicant of intent to recommend denial of an application for permit renewal if the TCEQ finds that violations of the compliance history constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including failure to make a timely and substantial attempt to correct the violations. We find that the submitted revision meets section 110(a)(2)(C) of the Act and 40 CFR part 51. Accordingly, we are approving the redesignation of Subsection (b) to Subsection (c) and the revisions thereto as submitted December 15, 1995, and July 22, 1998.

C. Section 30 TAC 116.314 – Review Schedule

1. What is the background of 30 TAC 116.314?

The currently approved provisions for 30 TAC 116.314 were submitted to EPA on August 31, 1993. EPA approved the submitted revisions on March 10, 2006 (71 FR 12285). These revisions became effective on May 9, 2006.

2. What did Texas submit for 30 TAC 116.314?

Since EPA's last approval for this section, TCEQ has submitted two SIP revisions to EPA for this section on December 15, 1995, and July 22, 1998. In this action, we are approving the revisions of the existing provisions of section 116.314. The revisions submitted to this section include the following:

- Reorganization of Subsection (a) into Subsections (a) and (b) and redesignation of existing Subsections (b) and (c) to Subsections (c) and (d).
- Non-substantive revisions to the reorganized Subsections (a) and (b).
- Revisions to Subsection (c) as recodified.
- Non-substantive revisions to Subsection (d) as recodified.

3. What is EPA's evaluation of the submitted revisions to 30 TAC 116.314?

The revisions to 30 TAC 116.314 are evaluated and addressed as described below:

a. Revisions to Subsections (a) and (b).

The revisions submitted December 15, 1995, and July 22, 1998, revised and reorganized Subsection (a) into Subsections (a) and (b). These revisions include clarifying amendments which streamline and reorganize the requirements of Subsections

(a) and (b). The submitted changes are non-substantive. Accordingly, we are approving Subsections (a) and (b) as submitted December 15, 1995, and July 22, 1998.

b. Revisions to Subsection (c).

These provisions are currently approved as Subsection (b). As approved, this subsection provides that in the event that the permit holder fails to satisfy the requirements for corrective action by the deadline specified in the report filed by the TCEQ, the applicant shall be required to show cause in a contested case proceeding why the permit should not expire. The proceeding will be pursuant to the requirements of the Administrative Procedure and Texas Register Act, Article 6252-13a, V.T.C.S. This subsection was recodified to Subsection (c) in the revisions submitted December 15, 1995, and July 22, 1998. The submitted revisions update the agency name and the statutory citation relating to contested case hearings and referred to the contested case hearing provisions in 30 TAC Chapters 1, 55, and 80. The submitted revision to 30 TAC 116.314(c) includes specific cross-references to 30 TAC Chapters 1, 55, and 80, which relate to Purpose of Rules, General Provisions; Request for Contested Case Hearings; Public Comment; and Contested Case Hearings. In contrast, the current SIP refers to the Contested Case Hearing Process without cross references to specific rules relating to Contested Case Hearings. Although the revision provides references to the specific rules relating to Contested Case Hearings, the revision *does not* make substantive changes to the requirements of the existing SIP. Texas's use of the Contest Hearing Process in this context in both the current SIP and the submitted revisions is to inform the permit applicant of the availability of the contested case hearing but does not incorporate the specific requirements of Chapters 1, 55, and 80 into the SIP. Further, the submitted

revision to 30 TAC 116.314(c) meets the requirements of section 110(a)(2)(C) of the Act and 40 CFR part 51, does not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act. Accordingly, we are approving the revisions to Subsection (c) as submitted December 15, 1995, and July 22, 1998.

d. Revisions to Subsection (d).

These provisions are currently approved as Subsection (c) and relate to the effective date of the existing permit. This subsection was revised and recodified to Subsection (d) in revisions submitted December 15, 1995, and July 22, 1998. These revisions include clarifying amendments which streamline the requirements relating to Permit Renewals. The submitted changes are non-substantive. Accordingly, we are approving the revision to Subsection (d) as submitted December 15, 1995, and July 22, 1998.

IV. Response to Comments

EPA received one comment letter submitted jointly by the BCCA Appeal Group (BCCA) and Texas Industry Project (TIP).

The commenters agreed with EPA's proposed approval of 30 TAC 116.310, 116.311, and 116.314 because approval of these provisions will enhance the Texas SIP.

We appreciate the commenters' support for our approval of these Texas Permit Renewals provisions.

The commenters asked EPA to fully approve all of the revisions to 30 TAC 116.311 on the basis that deferral would be inappropriate in light of the SIP approvability of Section 116.311 as a whole and EPA's commitment to act on the revisions to it by October 31, 2011.⁴ The commenters contend that the language at issue in section 116.311(a)(2) addresses only a requirement for the contents of a permit renewal application, and it does not independently bring the Qualified Facilities Program into the SIP. Further, the commenters assert that requiring applicants to show satisfaction of state requirements that are not yet SIP-approved does not render the provision unapprovable. So, rather than deferring action on section 116.311(a)(2) to coincide with a longer schedule for action on the revised Qualified Facilities Program, the commenters suggest that EPA should act now to approve section 116.311(a)(2).

EPA disagrees with the commenters that the revisions to 116.311(a)(2) are approvable at this time. The language of the revisions exempts renewal applicants from complying with requirements of the existing SIP-approved permit if the source is authorized as a Qualified Facility. On April 14, 2010, EPA disapproved the Qualified Facilities Program (75 FR 19468). On October 5, 2010, Texas submitted revisions to the Qualified Facilities Program in an effort to address EPA's concerns noted in our disapproval action. However, EPA has not had the opportunity to review and take action on these revisions yet, so the Qualified Facilities Program is not a part of the approved SIP at this time. We disagree with the commenters' contention that allowing applicants to show satisfaction of state requirements that are not yet SIP-approved, in lieu of compliance with SIP-approved requirements, renders the provision approvable. The

⁴ See Consent Decree, *BCCA Appeal Group v. EPA*, No. 3-08CV1491-G (N.D. Tex). This Consent Decree has been amended to extend the deadline for action on 116.311(a)(2) to the date when EPA takes final action on the Qualified Facilities submittal dated October 5, 2010.

submitted revisions to 30 TAC 116.311(a)(2) exempts sources from compliance with permit terms and conditions on the basis that the source has state-only authorization under the non-federally approved Qualified Facilities Program. At this time, EPA is taking no action on the submitted revision to 30 TAC 116.311(a)(2). We will take action on the revision to 30 TAC 116.311(a)(2) when we take action on the October 5, 2010, submitted revisions to the Qualified Facilities Program.

Finally, commenters urge EPA to act on the proposed SIP approval on the basis that prompt SIP approvals improve regulatory transparency and certainty. Commenters state that divergence between the requirements of state law and the SIP can cause confusion over the applicable requirements and increase the costs of compliance.

We agree that action on SIP submittals increases certainty for the regulated community because final action by EPA clarifies whether rules submitted by a state for inclusion in the SIP are sufficient to meet federal requirements and are federally enforceable. However, we note that approvability of an individual SIP submittal turns on whether the submittal complies with the CAA and applicable federal regulations. EPA must evaluate each SIP submittal on its own merits and determine what action to take under CAA section 110(k).

V. Final Action

Today, EPA is approving the following revisions to the Texas SIP:

- Revisions to 30 TAC 116.310 – Notification of Permit Holder – submitted December 15, 1995, and July 22, 1998.

- Revisions to 30 TAC 116.311 – Permit Renewal Application – submitted December 15, 1995; July 22, 1998; and September 4, 2002; as follows:
 - Addition of new Paragraph (a)(1);
 - Removal of existing Paragraphs (a)(1), (a)(3), and (a)(4);
 - Revisions to and redesignation of existing Paragraphs (a)(5) and (a)(6) to Paragraphs (a)(3) and (a)(4), respectively;
 - Addition of new Paragraph (a)(5);
 - Addition of new Subsection (b); and
 - Revisions to and redesignation of existing Subsection (b) to Subsection (c).
- Revisions to 30 TAC 116.314 – Review Schedule – submitted December 15, 1995, and July 22, 1998, as follows:
 - Revisions to and reorganization of existing Subsection (a) to Subsections (a) and (b); and
 - Revisions to and redesignation of existing Subsections (b) and (c) to Subsections (c) and (d), respectively.

Much of this SIP revision re-organizes and makes non-substantive changes to the Texas renewals program. This revision also revises the SIP by adding a requirement to ensure that permits that pre-date TCEQ's rule change to regulate dockside emissions are required at renewal to ensure all dockside emissions comply with the statute and regulations. The revision also removed the following three requirements from the renewals process: 1) upon renewal the emissions from the facility will comply with all

applicable specifications and requirements in the Texas Air Control Board (TACB) rules and the Texas Clean Air Act (TCAA); 2) upon renewal the facility will continue to have appropriate means to measure the emission of significant air contaminants as determined necessary by the Executive Director; and 3) upon renewal the facility will continue to use the control technology determined by the Executive Director to be economically reasonable and technically practicable considering the age of the facility and the impact of its emissions on the surrounding area. The removal of these provisions is approvable because these requirements are provided elsewhere in the Texas SIP; and therefore, their deletion will not interfere with attainment and reasonable further progress of the NAAQS or any other applicable requirement, as required by section 110(l) of the CAA.

Final action on these revisions on or before October 31, 2011, will meet EPA's obligation on the Permit Renewals component of the May 21, 2009, Consent Decree between EPA and the Business Coalition for Clean Air Appeal Group, Texas Association of Business, and Texas Oil and Gas Association.

EPA will address the severable revisions to 30 TAC 116.311(a)(2) submitted December 15, 1995; July 22, 1998; and September 4, 2002, in a separate action. While we are processing our separate action on the revisions to Paragraph (a)(2), we are retaining the currently approved provisions of paragraph (a)(2) in the SIP as adopted by Texas on April 6, 1994, approved March 10, 2006 (71 FR 12285).

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. See 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 notice merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this final 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 (Pub. L. 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.

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: October 31, 2011.

Al Armendariz,
Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52--[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart SS--Texas

2. The table in § 52.2270(c) entitled “EPA Approved Regulations in the Texas SIP” is amended under Chapter 116, Subchapter D, by revising the entries for Sections 116.310, 116.311, and 116.314, to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA-Approved Regulations in the Texas SIP

State Citation	Title / subject	State approval / submittal date	EPA approval date	Explanation
* * * * *				
Chapter 116 – Control of Air Pollution by Permits for New Construction and Modifications				
* * * * *				
Subchapter D – Permit Renewals				
Section 116.310	Notification of Permit Holder	6/17/1998	[Insert date of publication in FR], [Insert FR page number where document begins].	

Section 116.311	Permit Renewal Application	8/21/2002	[Insert date of publication in FR], [Insert FR page number where document begins].	- Paragraph (a)(2) is in the SIP as adopted by the State on 4/6/1994, and approved by EPA on 3/10/2006, 71 FR 12285. - Paragraph 116.311(a)(6) is not in the SIP.
* * * * *				
Section 116.314	Review Schedule	6/17/1998	[Insert date of publication in FR], [Insert FR page number where document begins].	
* * * * *				

[FR Doc. 2011-29179 Filed 11/10/2011 at 8:45 am; Publication Date: 11/14/2011]