



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R06-OAR-2013-0542; FRL-9921-09-Region 6]**

**Approval and Promulgation of Air Implementation Plans; Texas; Revisions to the New Source Review State Implementation Plan; Flexible Permit Program**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the Texas New Source Review (NSR) State Implementation Plan (SIP) submitted by the Texas Commission on Environmental Quality (TCEQ) on July 31, 2014. These revisions support this action to convert the approved conditional Flexible Permit Program (FPP) to a fully approved FPP. The EPA is proposing to find the TCEQ has satisfied all the elements of our July 14, 2014, final conditional approval, and as such, the FPP conditional approval is proposed for full approval with this action. Those commitments consisted of revising the rules to ensure they are properly structured. The EPA has determined that these SIP revisions comply with the Federal Clean Air Act (the Act or CAA) and are consistent with the EPA's regulations and policies. This action is being taken under section 110(k) of the Act.

**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-2013-0542, by one of the following methods:

- <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- E-mail: Ms. Stephanie Kordzi at [kordzi.stephanie@epa.gov](mailto:kordzi.stephanie@epa.gov).
- Mail or delivery: Ms. Stephanie Kordzi, 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-2013-0542. The 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 the 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 the 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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the 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 the 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 the 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. Stephanie Kordzi (6PD-R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD-R), Suite 1200, Dallas, TX 75202-2733. Telephone (214) 665-7520, e-mail at [kordzi.stephanie@epa.gov](mailto:kordzi.stephanie@epa.gov).

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

**Table of Contents**

- I. Background
- II. What Action is the EPA Taking?
- III. What did Texas Submit?
- IV. What is the EPA's Evaluation of This SIP Revision?
- V. What is the EPA's Evaluation of the TCEQ's Response to the FPP Conditional Approval?
  - A. What is a conditional approval?
  - B. What are the terms of the FPP conditional approval?
  - C. Were the terms of the FPP conditional approval met?
- VI. Proposed Action
- VII. Statutory and Executive Order Reviews

**I. Background**

On July 14, 2014, the EPA took final rulemaking action conditionally approving revisions to the Texas NSR SIP to establish the Texas Minor NSR Flexible Permits Program, submitted by the (TCEQ). The EPA's proposed conditional approval was published in 79 FR 8368, February 12, 2014. The conditional approval was predicated on a commitment from TCEQ in a letter dated December 9, 2013, to adopt certain minor clarifications to the Flexible Permit Program by November 30, 2014. (97 FR 40666, July, 14, 2014). On September 12, 2014, Environmental Integrity Project, et al, filed a Petition for Review challenging the EPA conditional approval of the FPP with the Fifth Circuit Court of Appeals. The Appeal is on-going

as of the date of publication of this notice.

## **II. What Action is the EPA Taking?**

We are proposing to approve revisions to the Texas SIP submitted by the TCEQ on July 31, 2014. The FPP was conditionally approved by EPA on July 14, 2014. This action only addresses the minor changes the State has submitted to the conditionally approved FPP and converts the conditional to a full approval. The docket to this action contains the full FPP as revised and will replace the current conditional approved rules. The FPP is a minor NSR permit program which functions as an alternative to the traditional preconstruction permit program that is authorized in Title 30 of the Texas Administrative Code (30 TAC) Chapter 116, Subchapter G. The FPP is intended to eliminate the need for owners or operators of participating facilities to submit an amendment application each time certain types of operational or physical changes are made at a permitted facility. The revisions we are proposing to approve amend existing sections §§116.13, 116.710, 116.711, 116.715, 116.716, 116.717, 116.718, 116.721, and 116.765. In addition, the commission resubmitted §§116.720; 116.740(a); and 116.750, from the October 21, 2013, submittal. The EPA is proposing to find that the TCEQ has satisfied all elements of our July 14, 2014, final conditional approval of the FPP with the submittal of the July 31, 2014, SIP submittal; and as such the FPP is proposed for full approval.

## **III. What Did Texas Submit?**

We are proposing to approve revisions to the Texas SIP submitted on July 31, 2014, specific to the Texas FPP. The revisions were adopted on July 2, 2014, and include certain changes to the rules for FPP in the 30 TAC Chapter 116, Subchapter G. The rulemaking contains rules that are now properly structured within and according to the rulemaking requirements of the Texas Administrative Procedure Act and the Texas Administrative Code. The TCEQ committed to making these rule revisions in its commitment letter of December 9, 2013. This action was necessary because some of the rules were repealed and readopted in 1998, and from the 1999 to 2003 timeframe. The rulemaking would also repeal text of the rules adopted in 2010 which were not part of the submission by the Commission on September 24, 2013, with the exception of some selected citations agreed upon by both EPA and TCEQ. These rule changes ensure that all regulatory citations in the package are labeled and referenced correctly and placed in proper sequence. The TCEQ committed to providing a SIP submittal by November 30, 2014, that would reformat, reorganize and renumber the FPP into a cohesive rule to ensure the rules are properly structured within and according to the rulemaking requirements of the Texas Administrative Procedure Act and the Texas Administrative Code. With the submittal of this rule package, the EPA has determined that the commitment was met. The commitment letter is available in the docket for this rulemaking. All the necessary provisions of the FPP were included in the submission and the conditions address formatting and style requirements as specified by state law.

A copy of the July 31, 2014, SIP submittal as well as our Technical Support Document (TSD) can be obtained from the Docket, as discussed in the “Docket” section above. A

discussion of the specific Texas rule changes that we are approving is included in the TSD and summarized below.

The existing SIP-approved version of Subchapter G was adopted by the TCEQ on September 24, 2013, and conditionally approved by the EPA on July 14, 2014 (see 79 FR 40666). The revisions adopted by the TCEQ on July 2, 2014, amend the rules to fulfill the commitment necessary so that the EPA can grant full approval of the Commission's SIP revision for the FPP. The amendments cover revisions to 30 TAC Sections 116.13, 116.710, 116.711(1), (2)(A), (B) and (C)(i) and (ii), (D) – (J), and (L) – (N); 116.715(a) – (e) and (f)(1) and (2)(B); 116.716; 116.717; 116.718; 116.721; and 116.765 as revisions to the SIP. In addition, the commission is submitting amended 116.720, 116.740(a), and 116.750 as adopted on December 14, 2010. All of these rule amendments are submitted to fulfill the condition for EPA SIP-approval of the Commission's SIP revision for the FPP adopted by the Commission on September 24, 2013, and minor NSR FPP.

#### **IV. What Is the EPA's Evaluation of This SIP Revision?**

The Act at Section 110(a)(2)(C) requires states to develop and submit to the EPA for approval into the state SIP, preconstruction review programs applicable to 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 New Source Review (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.

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), i.e., “attainment areas”, as well as areas where there is insufficient information to determine if the area meets the NAAQS, i.e., “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, i.e., “nonattainment areas.” The Minor NSR SIP program addresses construction or modification activities that do not emit, or have the potential to emit, more than certain major source thresholds and thus do not qualify as “major”.

The EPA regulations governing the criteria that states must satisfy for the EPA approval of the NSR programs as part of the SIP are contained in 40 CFR Sections 51.160 - 51.166. Regulations covering minor NSR programs are contained in 40 CFR Section 51.160-51.164. In addition, there are several provisions in 40 CFR Part 51 that apply generally to all SIP revisions. The TCEQ has developed the FPP as a component of the Texas Minor NSR program; therefore, we evaluated the revisions to the approved Texas FPP as submitted in July 31, 2014, and the December 9, 2013, commitment letter against the federal requirements for minor NSR programs.

The EPA has preliminarily determined that the July 31, 2014, revisions to Chapter 116, Subchapter G, are approvable. The July 2, 2014, revisions to 30 TAC Sections 116.13, 116.710, 116.711(1), (2)(A), (B) and (C)(i) and (ii), (D) – (J), and (L) – (N); 116.715(a) – (e) and (f)(1) and (2)(B); 116.716; 116.717; 116.718; 116.721; and 116.765 were revised to ensure that the amended rules are properly structured and consistent with the actions taken by the Commission and the rulemaking requirements of the Texas Administrative Procedure Act. Please see section V of this notice for a discussion of how the TCEQ has addressed the elements of the FPP

conditional approval and the December 9, 2013, commitment letter. The EPA believes the commitment to restructure the rules without removing the content or its intent was followed. Therefore, the EPA is now publishing in the Federal Register a proposal that converts the conditional approval of the FPP to a full approval.

**V. What is the EPA’s Evaluation of the TCEQ’s Response to the FPP Conditional Approval?**

*A. What is a conditional approval?*

Under section 110(k)(4) of the Clean Air Act, the EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures within one year from the date of approval. The conditional approval remains in effect until the EPA takes its final action—either a final approval or disapproval.

If the EPA determines that the revised rule is approvable, the EPA will propose approval of the rule through a notice and comment rulemaking. After responding to comments received, the EPA will publish a final approval of the rule and the conditional approval is no longer in effect. However, if the State fails to meet its commitment by the date specified within the one year period, then the EPA must proceed with a disapproval action. The EPA will propose disapproval of the rule through notice and comment rulemaking, and will finalize the disapproval after responding to all comments received. Note that the EPA will conditionally approve a certain rule only once. Subsequent submittals of the same rule that attempt to correct the same specifically identified problems will not be eligible for conditional approval.

*B. What are the terms of the Texas FPP conditional approval?*

The EPA conditionally approved the Texas FPP on July 14, 2014. Our conditional approval was based on a commitment letter submitted by the TCEQ on December 9, 2013. The December 9, 2013, commitment letter included a provision that the TCEQ agreed to address by November 30, 2014. Specifically, the TCEQ would propose and adopt rule amendments ensuring that the rules are properly structured within and according to the rulemaking requirements of the Texas Administrative Procedure Act and the Texas Administrative Code.

*C. Were the terms of the FPP conditional approval met?*

The TCEQ adopted the appropriate FPP citations of 30 TAC Section 116 and submitted the revised rules as a SIP revision within the specified time frame. The EPA analyzed each FPP element of the revised rules submitted in response to the December 9, 2013, commitment letter. All regulatory components discussed and agreed upon between the EPA and TCEQ were included in the SIP submittal package. Therefore, the EPA has determined that TCEQ met the commitment of the conditional approval.

**VI. Proposed Action**

For the reasons presented above and in our accompanying TSD, the EPA is proposing to approve the following revisions to the Texas FPP submitted on July 31, 2014, as a minor NSR permit program in accordance with the CAA Section 110. The revisions to the Texas SIP were

submitted on July 31, 2014, and the amendments are identified below:

- Revisions to 30 TAC Section 116.13 – Flexible Permit Definitions.
- Revisions to 30 TAC Section 116.710 – Applicability.
- Revisions to 30 TAC Section 116.711(1), (2)(A), (B) and (C)(i) and (ii), (D) – (J), and (L) – (N) - Flexible Permit Application.
- Revisions to 30 TAC Section 116.715(a) – (e) and (f)(1) and (2)(B) - General and Special Conditions.
- Revisions to 30 TAC Section 116.716 – Emission Caps and Individual Emission Limitations.
- Revisions to 30 TAC Section 116.717 – Implementation Schedule for Additional Controls.
- Revisions to 30 TAC Section 116.718 – Significant Emission Increase.
- Revisions to 30 TAC Section 116.720 – Limitation of Physical and Operational Changes.
- Revisions to 30 TAC Section 116.721 – Amendments and Alterations.
- Revisions to 30 TAC Section 116.740 – Public Notice.
- Revisions to 30 TAC Section 116.750 – Flexible Permit Fee.
- Revisions to 30 TAC Section 116.765 – Compliance Schedule.

The EPA invites the public to make comments on our proposal to approve the July 31, 2014, Texas SIP revision and to convert our conditional approval of the Texas FPP to a full approval. We also are proposing to find that Texas has met its December 9, 2013, commitment to submit the SIP revision in a timely manner in advance of the November 30, 2014, deadline.

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

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. See, 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 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 CAA; and
- does not provide the 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).

The SIP is not approved to apply on any Indian reservation land or in any other area where the 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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.”

**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: December 16, 2014.

**Ron Curry,**

*Regional Administrator, Region 6.*

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

[FR Doc. 2014-30717 Filed 12/30/2014 at 8:45 am; Publication Date: 12/31/2014]