



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R06-OAR-2020-0159; FRL-10014-57-Region 6]**

### **Air Plan Approval; Texas; Construction Prior to Permit Amendment Issuance**

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

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving one revision to the Texas (TX) State Implementation Plan (SIP) submitted on August, 2020, as adopted on July 15, 2020, that revised the State's New Source Review (NSR) permitting rules contained in Title 30 of the Texas Administrative Code (TAC) Chapter 116 *Control of Air Pollution by Air Permits for New Construction or Modification* by amending the criteria for air pollution control permits for new construction or modification, as well as make other non-substantive revisions.

**DATES:** This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. **EPA-R06-OAR-2020-0159**. All documents in the docket are listed on the <https://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. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Layton, EPA Region 6 Office, Air Permits Section, 214-665-2136, layton.elizabeth@epa.gov. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID-19. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

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

## **I. Background**

The background for this action is discussed in depth in our April 23, 2020, proposal (85 FR 22700). We preliminarily determined that the proposed revisions to the State’s New Source Review permitting rules were consistent with the CAA and the EPA’s regulations and guidance. Under the EPA’s “parallel processing” procedure, the EPA proposes a rulemaking action on a proposed SIP revision concurrently with the State’s public review process. If the State’s proposed SIP revision is not significantly changed, the EPA will finalize the rulemaking on the SIP revision as proposed after responding to any submitted comments. Final rulemaking action by the EPA will occur only after the final SIP revision has been fully adopted by the TCEQ and submitted formally to the EPA for approval as a revision to the Texas SIP. See 40 CFR part 51, Appendix V.

The TCEQ completed their state rulemaking process and adopted revisions on July 15, 2020. The TCEQ submitted these adopted changes to the EPA as a revision to the Texas SIP on August 21, 2020. The EPA has evaluated the State’s final SIP revision for any changes made from the time of proposal. The EPA’s evaluation of the adopted revisions including the completeness determination for the final SIP submission is included in the “Addendum to the

Technical Support Document’’ for EPA–R06–OAR–2020–0159, available in the rulemaking docket.

The EPA is proceeding with our final approval of the August 21, 2020, revisions to the Texas SIP, consistent with the parallel processing provisions in in 40 CFR part 51, Appendix V. The TCEQ adopted the revisions as they were proposed, i.e., no changes were made. We received four supportive comments regarding our proposal. Therefore, we are proceeding with our final approval because the submitted final regulations adopted by the state do not alter our rationale for proposal presented in our April 23, 2020, proposed rulemaking. The comments received on our proposed rulemaking are outlined in the section below.

## **II. Response to Comments**

We received four public comments on the proposal. All four comments supported our proposed approval. One commenter supported the approval but requested additional flexibility to allow construction to commence at an earlier stage in the permitting process. All public comments submitted are in the public docket to this rulemaking. Our responses to the comments are discussed below.

*Comment:* The State of Texas (TCEQ), the Texas Industry Project (TIP), and the Texas Oil and Gas Association (TXOGA) submitted comments supporting the proposed approval.

*Response:* The EPA appreciates the supportive comments from the TCEQ, TIP, and TXOGA. No changes will be made to the proposed rule as a result of these comments.

*Comment:* Kohler Co. supports the TCEQ’s proposed rulemaking but requested that the language be revised in the final action to allow construction to commence when the permit application is deemed administratively complete, rather than when a draft permit is issued.

*Response:* The EPA appreciates the supportive comment. In reviewing SIP submissions, the EPA's role is strictly to approve state choices, provided those choices meet the criteria of the CAA; we refer Kohler Co. to the State for comments regarding revisions to the rule.

### **III. Final Action**

The EPA has determined that the August 21, 2020, revisions to the Texas SIP are consistent with the CAA and EPA's policy and guidance on minor NSR air permitting rules. Therefore, under section 110 of the Act, the EPA approves the following revisions to the Texas SIP, submitted August 21, 2020, as adopted on July 15, 2020, in the following Sections of 30 TAC Chapter 116:

- Revisions to 30 TAC Section 116.110 (except for Sections 116.110(a)(5), (c) and (d) that are not part of the Texas SIP);
- Revisions to 30 TAC Section 116.116;
- Addition of 30 TAC Section 116.118;
- Revisions to 30 TAC Section 116.710;
- Revisions to 30 TAC Section 116.721.

Additionally, the EPA approves a ministerial change to 40 CFR 52.2270(c) to clarify that 30 TAC Section 116.110 Subsections (d) change in ownership, (e) submittal under PE seal, and (f) responsibility for permit application were approved on November 14, 2003, and include their appropriate re-lettering to 30 TAC Subsections 116.110(e), (f), and (g), respectively, from the January 30, 2020, proposed approval by parallel processing request.

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

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of 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](http://www.regulations.gov) (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.

#### **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 approves 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, 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).

The Congressional Review Act, 5 U.S.C. 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 action 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. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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: September 10, 2020.

**Kenley McQueen,**  
*Regional Administrator, Region 6.*

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

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

**Subpart SS – Texas**

2. In §52.2270 (c), the table titled “EPA Approved Regulations in the Texas SIP” is amended by:

- a. Revising the entries for Sections 116.110, 116.116, 116.710 and 116.721, and;
- b. Adding a new entry for Section 116.118.

The amendments 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
* * * * *				
<b>Chapter 116 (Reg 6) – Control of Air Pollution by Permits for New Construction or Modification</b>				
* * * * *				
<b>Subchapter B – New Source Review Permits</b>				
<b>Division 1 – Permit Application</b>				

Section 116.110	Applicability	7/15/2020	<b>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</b>	SIP does not include 116.110(a)(5), 116.110(c), or 116.110(d).
* * * * *				
Section 116.116	Changes to Facilities	7/15/2020	<b>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</b>	SIP does not include 30 TAC Section 116.116(b)(3).
* * * * *				
Section 116.118	Construction While Permit Amendment Application Pending	7/15/2020	<b>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</b>	
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<b>Subchapter G – Flexible Permits</b>				
116.710	Applicability	July 15, 2020	<b>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</b>	
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116.721	Amendments and Alterations	July 15, 2020	<b>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</b>	
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[FR Doc. 2020-20391 Filed: 10/13/2020 8:45 am; Publication Date: 10/14/2020]