



TEXAS MINING AND RECLAMATION ASSOCIATION

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November 18, 2010

Via Electronic Submission & First-Class Mail

Mr. Rick Barrett
Air Permits Section (6PD-R)
Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733
Barrett.richard@epa.gov

Re: Approval and Promulgation of Implementation Plans; Texas; Revisions to Rules and Regulations for Control of Air Pollution; Permitting of Grandfathered and Electing Electric Generating Facilities
(Docket EPA-R06-OAR-2005-TR-0031);
Comments of the Texas Mining and Reclamation Association

Dear Mr. Barrett:

On October 19, 2010, EPA Region 6 proposed to partially approve and partially disapprove a Texas State Implementation Plan ("SIP") revision that implements a mandate from the Texas Legislature that has already achieved reductions in NO_x and SO₂ in Texas. This revision to Texas' SIP was submitted by the Texas Commission on Environmental Quality ("TCEQ") on January 3, 2000, and July 31, 2002. *See* 75 Fed. Reg. at 64,235 (Oct. 19, 2010). EPA proposes to partially disapprove one integral portion of the proposed revision, despite expressly stating that the portion at issue does not interfere with attainment or maintenance of the relevant NAAQS, nor cause or contribute to any increase in PSD increments. *Id* at 64,238 and 64,240.

The Texas Mining and Reclamation Association (TMRA) is a Texas non-profit trade organization comprised of approximately 100 mining, electric utility and supplier members. We support coordinated, rational and consistent federal, state and local policies to assure the economic recovery and use of this state's minable resources in an environmentally sound and responsible manner.

Below is a summary of TMRA's comments on EPA's proposed partial approval and partial disapproval. TMRA also supports and joins in the comments of the Gulf Coast Lignite Coalition (GCLC) which have been separately filed.

- EPA's proposed disapproval in light of EPA's acknowledgement that collateral CO emissions from PCP SPs do not threaten NAAQS is unsupported.
- EPA should follow its established position that Pollution Control Project permits are acceptable under the Clean Air Act.
- EPA's disapproval of 30 TAC § 116.911(a)(2) would affect only sources that have already obtained PCP SPs under SB7 and therefore would have only a retroactive effect.

TMRA is specifically concerned with EPA's proposed disapproval of 30 TAC §116.911(a)(2), which requires Electric Generating Facilities (EGFs) proposing use of new control methods to comply with the requirements of Texas' Standard Permit ("SP") for Pollution Control Projects ("PCP") in order to be granted an electric generating facility permit ("EGFP").

In 1999, the Texas Legislature passed Senate Bill 7 which amended the Texas Utilities Code ("TUC") and required the TCEQ to establish a program that required EGFs that existed on January 1, 1999, (and were previously grandfathered) to apply for a new permit (called an "EGFP" or "SB7 permit") to emit NO_x, SO₂, and PM. Applications for EGFPs were due by September 1, 2000.

To implement the requirements of Senate Bill 7, TCEQ established a permitting program for regulating grandfathered EGFs. 75 Fed. Reg. at 64,237. On January 3, 2000, and July 31, 2002, TCEQ submitted its revisions to the Texas' SIP to EPA which related to the applications and permitting procedures for grandfathered EGFs.

As previously noted, on October 19, 2010, EPA proposed to partially approve and partially disapprove revisions to portions of Texas' SIP implementing SB7 and the EGF permitting program.

Units that were grandfathered from Texas' NSR SIP program in 1971 and that obtained EGFPs were required to comply with the requirements Senate Bill 7. Other units elected to obtain EGFPs for which low NO_x burners were proposed as new control methods to meet the new emission limits in the EGFP, and these units were also required to meet the requirements for collateral CO increases. In the proposed rule, EPA identifies by name two facilities where collateral CO emissions as a result of installing new control methods were alleged to be above the PSD significance levels. TMRA strongly disagrees with EPA's assessment of these two facilities and also disagrees with EPA's proposal to disapprove of these already issued permits.

The effect of EPA's disapproval would be to unfairly and arbitrarily apply permitting requirements *retroactively* on sources that legitimately relied on the EGFP process and installed new pollution control equipment to reduce emissions. EPA agrees that there would be no benefit to air quality in Texas resulting from its disapproval of this section. *See* 75 Fed. Reg. at 64,238 ("EPA believes that all of the resultant collateral CO increases across the State of Texas (including those from the two plants) do not interfere with attainment or maintenance of the

NAAQS for CO, *et al.*, nor cause or contribute to increase in PSD increments, much less a violation of any NAAQS.”).

Texas’ choice to achieve emissions reductions through EFGPs and to require permit holders to comply with requirements when installing pollution control equipment more than meets this standard. For one thing, this program is part of a larger permitting approach to require emission reductions of SO₂, NO_x, and PM. That Texas initiative has been extremely successful in reducing emissions. Moreover, any collateral increases in other pollutants resulting from the installation of pollution control equipment (such as increases in CO after the installation of low NO_x burners) are demonstrably not interfering with attainment of air quality standards.

EPA’s proposal should be revised to approve all of the revisions to the Texas SIP submitted to EPA on January 3, 2000, and July 31, 2002. A decision by EPA to disapprove any of these would be unsupported by the record, arbitrary and capricious, and contrary to law. At a minimum, EPA should clarify that its action applies prospectively only and does not affect existing permits issued under the SB7 program.

As a practical matter, EPA’s Proposed Disapproval has sent a chilling signal from EPA. This type of uncertainty has a chilling effect on much-needed economic investment and makes it even more difficult for companies to create jobs and provide for economic growth, both in Texas and across the country. The program has achieved substantial emission reductions while providing a fair and predictable regulatory framework that is protective of human health and the environment.

EPA’s concerns about Texas’ permitting program are misplaced. Given the substantial improvements in air quality that have been achieved in Texas over the last decade – in large measure because the State has been implementing the permitting programs now under dispute – it is hard to believe that these programs could actually be shown to interfere with Texas’s ability to achieve the national ambient air quality standards (NAAQS).

EPA should also affirmatively recognize and reaffirm the validity of permits already issued. Any retroactive application of the Proposed Disapprovals to already-issued permits would create crippling uncertainty and manifestly unjust revocation of properly obtained government authorizations.

If the Agency believes that any such permits require revision, there must be a fair and predictable prospective process for making those revisions without causing undue harm to companies that relied, in good faith, on the only program in place – the program that has been successfully implemented by the TCEQ.

Please notify me directly of your decision on this request and do not hesitate to contact me if you have any questions.

Mr. Rick Barrett
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Sincerely,

A handwritten signature in cursive script, reading "Chesley Blevins".

Chesley N. Blevins
TMRA General Counsel

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cc: TMRA Executive Committee