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Mark R. Vickery, P.G., *Executive Director*

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 18, 2010

Mr. Rick Barrett
Air Permits Section (6PD-R)
U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
Attn: Docket ID No. EPA-R06-OAR-2005-TX-0031

Re: Title 40 Code of Federal Regulations Part 52

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to Rules and Regulations for Control of Air Pollution; Permitting of Grandfathered and Electing Electric Generating Facilities; Proposed Rule.

Dear Mr. Barrett:

The Texas Commission on Environmental Quality (TCEQ) appreciates the opportunity to respond to the U.S. Environmental Protection Agency's (EPA) notice of proposed rulemaking published in the October 19, 2010, edition of the *Federal Register* entitled: "Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to Rules and Regulations for Control of Air Pollution; Permitting of Grandfathered and Electing Electric Generating Facilities; Proposed Rule."

Enclosed, please find the TCEQ's detailed comments relating to the EPA proposal referenced above. If you have any questions concerning the enclosed comments, please contact Mr. Steve Hagle, P.E., Director, Air Permits Division, Office of Permitting and Registration, (512) 239-5721 or shagle@tceq.state.tx.us.

Sincerely,



Mark R. Vickery, P.G.
Executive Director

Enclosure

**Texas Commission on Environmental Quality Comments on
Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to
Rules and Regulations for Control of Air Pollution; Permitting of Grandfathered and
Electing Electric Generating Facilities
Docket ID No. EPA-R06-OAR-2005-TX-0031, FRL 9215-1**

The Texas Commission on Environmental Quality (TCEQ) provides the following comments on the U.S. Environmental Protection Agency's (EPA) proposed rule referenced above. The proposed rule was published in the October 19, 2010, issue of the *Federal Register* (75 FR 64235).

I. Background

In the October 19, 2010, proposal, the EPA proposed to partially approve and partially disapprove the changes to Title 30 Texas Administrative Code (TAC) Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, submitted by the State of Texas to the EPA on January 3, 2000, as revisions to the State Implementation Plan (SIP). The January 3, 2000, submittal included new and amended rules in Subchapter A: "Definitions," § 116.18; and Subchapter I: "Electric Generating Facility Permits," §§ 116.910–914, 116.916, 116.920–922, 116.930, and 116.931. The EPA proposed to fully approve all of the 2000 submittal but for the severable reference in 30 TAC § 116.911(a)(2) that required, for new control methods in initial applications, compliance with portions of the Pollution Control Project Standard Permit (PCP SP) in 30 TAC § 116.617. The EPA proposed to disapprove 30 TAC § 116.911(a)(2) which allowed the use of a PCP SP for the collateral carbon monoxide (CO) emissions that were affiliated with the new controls. The EPA also proposed to fully approve certain new and amended rules in 30 TAC Chapter 116 submitted by the State of Texas on July 31, 2002. The July 31, 2002, submittal included new and amended rules in Subchapter A: "Definitions," §§ 116.10 and 116.18; and Subchapter I: "Electric Generating Facility Permits," §§ 116.910, 116.911, 116.913, 116.917, 116.918, 116.921, 116.926, 116.928, and 116.930. The TCEQ adopted these revisions on December 16, 1999, and May 22, 2002, respectively.

II. Comments

Section 116.911(a)(2) was adopted by the commission to provide a means of authorizing collateral emissions increases for grandfathered electrical generating facilities (EGF) that were required to reduce and permit sulfur dioxide (SO₂), nitrogen oxide (NO_x), and particulate emissions (PM) under Senate Bill 7, 76th Legislature (1999). The PCP SP provides a method to expedite the authorization process for certain pollution control projects that do not necessitate a full case-by-case new source review (NSR) permit review. These SO₂, NO_x, and PM emission reductions from sources that had been previously exempt from permitting had the effect of improving air quality and supporting the attainment of federal air quality standards. The collateral CO emissions increases did not result in any increase in Prevention of Significant Deterioration (PSD) increments or a violation of the National Ambient Air Quality Standards.

The EPA states in its October 19, 2010, notice that the PCP SP is not part of the Texas SIP and that the EPA has disapproved it as a part of the Texas SIP. The commission acknowledges that the court's opinion in *New York v. EPA*, 413 F.3d (D.C. Cir. 2005) disallowed the use of PCP SPs for major new NSR requirements and left the EPA little choice in disapproving paragraph (2) of the rule. However, at the time of adoption, this paragraph was in compliance with all applicable state rules and federal regulations and policies. Additionally, paragraph (2) applied only to initial applications of grandfathered EGFs. These applications were required to be submitted by September 1, 2000. This section of the rule has no current application since this date has long passed and there will be no new initial applications from grandfathered facilities.

On September 23, 2009, the EPA proposed disapproval of 30 TAC § 116.617 (74 FR 48467), as adopted by the commission effective February 1, 2006, and subsequently disapproved the rule (75 FR 56424, September, 15 2010). This disapproval was several years after adoption of the rules to implement Senate Bill 7 and the deadlines for the required permit applications. The disapproval concerned the version of the rule after amendments to 30 TAC § 116.617 were adopted in 2006 to address prior comments from the EPA after the *New York v. EPA* opinion. The court ruled that the EPA's rules that exempted pollution control projects from PSD review by defining "modifications" to exclude collateral emission increases associated with those projects did not meet the requirements of the Federal Clean Air Act. Specifically, the amendments adopted in 2006 clarified that any project that constitutes a new major stationary source or major modification as defined in 30 TAC § 116.12, Nonattainment and Prevention of Significant Deterioration Definitions is subject to the requirements of 30 TAC Chapter 116, Subchapter B, rather than the requirements of 30 TAC Chapter 116, Subchapter F. The commission amended § 116.617 to continue the program to assist with the efficient authorization method for installation of pollution control equipment for projects that do not trigger major NSR federal review.

In its disapproval action, the EPA acknowledged that § 116.617 (as adopted in 2006) explicitly prohibits the use of the PCP SP for new major sources and major modifications, thus addressing the court's decision in *New York v. EPA*. The EPA has not adopted any rules that provide detailed requirements for this type of permit, nor any rules prohibiting it. In fact, the applicable rule in 40 CFR § 51.160 is broadly written and has been interpreted by the EPA to provide states discretion to tailor their own minor NSR permit programs. As noted earlier, the commission's standard permit program is part of the approved Texas SIP, and the EPA has determined it meets 40 CFR Part 51.

The TCEQ has proposed a new non-rule PCP SP and has received comments from the EPA regarding that proposal. The executive director will present his response to those comments to the commission for consideration of a new non-rule PCP SP. In the interim, the TCEQ maintains its position that § 116.617 is an efficient and legally supportable authorization for pollution control projects in Texas.

The TCEQ PCP Standard Permit has been used to implement control technologies required by regulatory changes; statutory changes, such as those in Senate Bill 7; and EPA consent decrees. As such, control devices may be applied to numerous different facility types and industry types, ranging from storage tanks to fired units. The TCEQ understands the EPA's comments and will work with the EPA to develop an approvable authorization that will achieve the same goals and emission reductions.



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RETURN SERVICE REQUESTED

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