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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R06-OAR-2005-TX-0016; FRL-8045-5]

### Approval and Promulgation of Air Quality Implementation Plans; Texas; Permits by Rule

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision for the State of Texas. This action removes a provision from the Texas SIP which provided public notice for concrete batch plants which were constructed under a permit by rule (PBR). On September 1, 2000, Texas replaced the PBR for concrete batch plants with a standard permit for concrete batch plants. The standard permit for concrete batch plants also requires public notice for concrete batch plant subject to the standard permit. Texas maintained the public notice requirements of its PBR to assure that proper procedures were followed for concrete batch plants that were permitted under the PBR prior to the effective date of the standard permit. All authorization requests for concrete batch plants which were constructed under the PBR have now been resolved and the public notice and comment provisions under the PBR are no longer needed.

**DATES:** This rule is effective on April 17, 2006.

**ADDRESSES:** EPA has established a docket for this action under Regional Material in EDocket (RME) Docket ID No. R06-OAR-2005-TX-0016. All documents in the docket are listed in the Regional Material in EDocket (RME) index at <http://docket.epa.gov/rmepub/>, once in the system, select "quick search," then key in the appropriate RME Docket identification number. Although listed in the index, some information is not publicly available, i.e., CBI 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 in RME or in hard copy at the Air Permit Sections (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 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below 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 submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

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

**FOR FURTHER INFORMATION CONTACT:** Stanley M. Spruiell, Air Permits Section (6PD-R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7212; fax number 214-665-7263; e-mail address [spruiell.stanley@epa.gov](mailto:spruiell.stanley@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we," "us," or "our" is used, we mean the EPA. Outline:

- I. What Action Are We Taking?
- II. What Is a State Implementation Plan?
- III. What Does Federal Approval of a SIP Mean to Me?
- IV. What Is the Background for This Action?
- V. Why Are We Approving the Removal of Section 106.5?
- VI. What Comment Did We Receive and What Is Our Response to the Comment?
- VII. Final Action
- VIII. Statutory and Executive Order Reviews

#### I. What Action Are We Taking?

This action removes 30 Texas Administrative Code (TAC), section 106.5 from the Texas SIP. This section provided public notice for concrete batch plants that were constructed under a PBR.<sup>1</sup> On September 1, 2000, Texas replaced the PBR for concrete

<sup>1</sup> A PBR is a permit which is adopted under 30 TAC Chapter 106, which provides an alternative process for approving the construction of new and modified facilities which Texas Commission on Environmental Quality has determined will not make a significant contribution of air contaminants to the atmosphere. These provisions provide a streamlined mechanism for approving the construction of certain small sources that would otherwise be required to apply for and receive a permit before commencing construction or modification. For further description of Texas regulations concerning PBRs, see the discussion in our November 14, 2003 approval (68 FR 64544-64545).

batch plants with a standard permit<sup>2</sup> for concrete batch plants. The standard permit for concrete batch plants also requires public notice for concrete batch plants which are subject to the standard permit. Texas had maintained the public notice requirements of section 106.5 to assure that proper procedures were followed for concrete batch plants that were permitted under the PBR process prior to the effective date of the standard permit. All authorization requests for concrete batch plants that were constructed under the PBR have now been resolved and section 106.5 is no longer needed. Texas submitted a SIP revision to remove section 106.5.

#### II. What Is a State Implementation Plan?

Section 110 of the Act requires States to develop air pollution regulations and control strategies to ensure that the state air quality meets the National Ambient Air Quality Standards (NAAQS) that EPA has established. Under section 109 of the Act, EPA established the NAAQS to protect public health. The NAAQS address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each state has a SIP designed to protect air quality. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

#### III. What Does Federal Approval of a SIP Mean to Me?

A state may enforce state regulations before and after we incorporate those regulations into a federally approved SIP. After we incorporate those regulations into a federally approved SIP, both EPA and the public may also take enforcement action against violators of these regulations.

<sup>2</sup> A standard permit is a permit which is adopted under 30 TAC Chapter 116, Subchapter F, which provides an alternative process for approving the construction of certain categories of new and modified sources for which the TCEQ has adopted a standard permit. These provisions provide a streamlined mechanism for approving the construction of certain sources within categories that contain numerous similar sources. For further description of Texas regulations concerning standard permits, see the discussion in our November 14, 2003 approval (68 FR 64546-64547).

#### IV. What Is the Background for This Action?

This action addresses the SIP submittal by Texas to EPA by letter dated June 28, 2004. In the submittal, Texas submitted its repeal of section 106.5—Public Notice, which it had adopted June 9, 2004.

At this time, the Texas has resolved all of the outstanding authorization requests as explained above; the maintenance of section 106.5 is no longer needed.

On September 28, 2005 (70 FR 56566), we published a direct final rule approving the plan revisions that Texas submitted June 28, 2004. We concurrently published a proposed rulemaking with the direct final rule (70 FR 56612) and stated that if we received any adverse comment by the end of the comment period we would withdraw the direct final rule. We would then respond to the comments when we take final action on the proposed approval. We received an adverse comment on the direct final rule before the end of the comment period and consequently withdrew our direct final rule on November 23, 2005 (70 FR 70736).

#### V. Why Are We Approving the Removal of Section 106.5?

40 CFR 51.161 requires public notice prior to approval of any new or modified source. The process for issuing, revising and removing PBRs is through rulemaking. A new or revised PBR must undergo public notice and a 30-day comment period in order to satisfy the requirements of 40 CFR 51.161. The basis for approval of the Texas program for PBR with regards to these requirements is discussed in our approval of Chapter 106 on November 14, 2003.

With the creation of the concrete batch plant standard permit, concrete batch plants are no longer authorized by PBR under Chapter 106. The public notice requirements for concrete batch plants are now contained in the standard permit, therefore section 106.5 is no longer needed. The removal of section 106.5 will not affect the obligation for Texas to provide for public notice when it issues new or revised PBR.

The standard permit for concrete batch plants was originally issued in 2000 (effective September 1, 2000) and was later revised in 2003 (effective July 10, 2003). The standard permit for batch concrete plants contains a provision which requires public notice for concrete batch plants. This requirement for public participation under the standard permit satisfies the

requirements under 40 CFR 51.161. Our approval of the public notice provisions for the standard permit for Texas concrete batch plants is discussed in greater detail in our FR notice of November 14, 2003. See 68 FR 64547. We found that public notice provisions in standard permits meet the requirements of 40 CFR 51.161. See 68 FR 64545 and 64547. In addition, the public participation requirements of the standard permit for concrete batch plants are reinforced by an additional statutory public notice requirement under Texas Health and Safety Code, section 382.058. Consequently, our approval of the removal of section 106.5 is based on the fact that Texas has provided sufficient regulatory and statutory safeguards in its standard permit process to provide ample opportunity for public comment and satisfy the applicable Federal requirements.

#### VI. What Comment Did We Receive and What Is Our Response to the Comment?

##### *Comment*

In response to the parallel proposal to our direct final rule, we received an adverse comment from the public. A citizen commented that EPA is about to implement a rule that will limit the public notice with regard to proposed construction of concrete batch plants. The commenter further stated that this is a violation of his right to know about things that may affect his life (health), liberty and pursuit of happiness—a violation of the Constitution of the United States. He inquired concerning what authority EPA has in this matter and what he can do to stop this encroachment on public notice.

##### *Response*

Section 110 of the CAA provides for state submission and EPA review of new and revised SIP submissions. Under section 110(l), a SIP revision may not be approved if it will interfere with attainment, reasonable further progress or any other requirement of the Act. The removal of section 106.5 from the SIP will not interfere with attainment, reasonable further progress or any other requirement of the Act. As explained in more detail in the September 2005 direct final rule, concrete batch plants are no longer subject to the PBR in Chapter 106. Rather, these facilities are subject to a standard permit adopted by Texas in 2000 and revised in 2003. This standard permit establishes public participation requirements for concrete batch plants and EPA has previously found that those public participation requirements are consistent with what is

required by our new source review regulations in 40 CFR 51.161. See 68 FR 64547 (November 14, 2003). All future actions will be subject to public participation requirements in the standard permit and all past actions taken under the PBR have been resolved. Furthermore, the public participation procedures under the standard permit will allow the same level of public involvement as the public participation procedures in section 106.5. Thus, the removal of section 106.5 from the approved SIP will not interfere with attainment, reasonable further progress or any other applicable requirement of the Act.

For these reasons, the commenter is incorrect that this action will limit public notice regarding the proposed construction of concrete batch plants. As discussed in detail in the September 2005, direct final rule and in our November 2003 action approving the standard permit, the standard permit requires public participation prior to its application to a specific facility.

#### VII. Final Action

On the basis of the above analysis and evaluation we conclude that we can remove the provisions of section 106.5 from the SIP on the basis that Texas replaced the PBR for concrete batch plants which required public notice, with a standard permit for concrete batch plants that also requires public notice for concrete batch plants that are subject to the standard permit.

#### VIII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 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. 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 May 15, 2006. 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, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 6, 2006.

**Richard E. Greene,**

*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

##### § 52.2270 [Amended]

■ 2. The table in § 52.2270(c) entitled "EPA Approved Regulations in the Texas SIP" is amended under Chapter 106, Subchapter A, by removing the entry for section 106.5, "Public Notice."

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2005-GA-0005-200601; FRL-8045-4]

#### Approval and Promulgation of Implementation Plans; Georgia: Approval of Revisions to the State Implementation Plan

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

**ACTION:** Final rule.

**SUMMARY:** EPA is correcting the State Implementation Plan (SIP) for the State of Georgia to remove a provision relating to a Georgia general "nuisance" rule. EPA has determined that this provision relating to Georgia Rule 391-3-1.02(2)(a)1, was erroneously incorporated into the SIP. EPA is removing this rule from the approved Georgia SIP because the Georgia rule is not related to the attainment and maintenance of the national ambient air quality standards (NAAQS). This final rule addresses comments made on the proposed rulemaking EPA previously published for this action.

**DATES:** *Effective Date:* This rule will be effective April 17, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2005-GA-0005. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, i.e., 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 <http://www.regulations.gov> or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9043. Mr. Lakeman can also be reached via electronic mail at [lakeman.sean@epa.gov](mailto:lakeman.sean@epa.gov).

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