

The latter action established an effective date of May 18, 2010. On the same day as the first action delaying the effectiveness of the NSR Aggregation Amendments, the EPA convened a proceeding for reconsideration in response to a petition from the Natural Resources Defense Council (NRDC).<sup>1</sup> See 74 FR 7193 (February 13, 2009). In addition to filing a petition for reconsideration with EPA, NRDC also filed a petition for review of the NSR Aggregation Amendments in Federal Court.<sup>2</sup>

On April 15, 2010, we published in the **Federal Register** a notice soliciting comments on the NRDC petition for reconsideration (75 FR 19567). In that notice, we solicited comment on revoking the NSR Aggregation Amendments and reverting to our policies on aggregation as they existed prior to the Amendments. We requested comment on whether the NSR Aggregation Amendments are inconsistent with the statute and key legal precedent, do not properly resolve the relevant policy issues, raise implementation concerns, and otherwise do not sufficiently clarify our aggregation policy to justify abandoning our prior policy. Additionally, we proposed to further delay the effective date for the NSR Aggregation Amendments beyond May 18, 2010.

Under section 705 of the APA, "an agency \* \* \* may postpone the effective date of [an] action taken by it pending judicial review." The provision requires that the agency find that justice requires postponing the action, that the action not have gone into effect, and that litigation be pending. As described above, the latter two requirements plainly are met. We find that justice requires postponing the effectiveness of the NSR Aggregation Amendments because allowing the rule to become effective when the Agency has expressed serious concerns about its viability and policy soundness would lead to confusion in the regulated community and the public as well as create difficulties for implementing agencies administering the program.

We also note that the comment period for the April 15, 2010 notice ends on May 17, 2010. We would not be able to review and respond to comments on that notice before the NSR Aggregation Amendments would become effective on May 18, 2010. The failure to complete the reconsideration or the proposed delay in the effective date would result in the confusion and

difficulties noted above. Therefore, we find that justice requires postponing the effectiveness of the NSR Aggregation Amendments in order to allow for proper evaluation of the comments on the April 15, 2010 notice.

## II. Issuance of a Stay and Delay of Effective Date

Pursuant to section 705 of the APA, the EPA hereby postpones the effectiveness of the NSR Aggregation Amendments until resolution of the proceeding for judicial review of this rule or the completion of the reconsideration process. By this action, we are delaying the effective date of FR Doc. E9-815, published in the **Federal Register** on January 15, 2009 (74 FR 2376). This delay of effectiveness will remain in place until judicial review is no longer pending or EPA completes the reconsideration process.

### List of Subjects

#### 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Aggregation, Air pollution control, Baseline emissions, Intergovernmental relations, Major modifications, Reporting and recordkeeping requirements.

#### 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Aggregation, Air pollution control, Baseline emissions, Intergovernmental relations, Major modifications, Reporting and recordkeeping requirements.

Dated: May 6, 2010.

**Lisa P. Jackson,**

*Administrator.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2010-0148; FRL-9151-6]

### Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to the Discrete Emission Credit Banking and Trading Program

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving severable portions of two revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas on

October 24, 2006, and August 16, 2007. These revisions amend existing sections and create a new section in Title 30 of the Texas Administrative Code (TAC), Chapter 101—General Air Quality Rules, Subchapter H—Emissions Banking and Trading, Division 4—Discrete Emission Credit Banking and Trading, referred to elsewhere in this notice as the Discrete Emission Reduction Credit (DERC) Program. The October 24, 2006, submittal creates a new section for international emission reduction provisions and amends existing sections to prohibit the generation and use of DERCs from shutdown activities and further clarify procedures for using emission protocols. The August 16, 2007, submittal amends two sections of the DERC program to update cross-references to recently recodified 30 TAC Chapter 117 provisions. Additionally, EPA finds that the Texas Commission on Environmental Quality (TCEQ) has satisfied all elements of our September 6, 2006, final conditional approval of the DERC program with the submittal of the October 24, 2006, SIP submittal; and as such, the DERC program conditional approval is converted to a full approval. EPA has determined that these SIP revisions comply with the Clean Air Act and EPA regulations, are consistent with EPA policies, and will improve air quality. This action is being taken under section 110 and parts C and D of the Federal Clean Air Act (the Act or CAA).

**DATES:** This final rule will be effective June 17, 2010.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2010-0148. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Planning Section (6PD-L), 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 or Mr. Bill Deese at 214-665-7253 to make an appointment. If possible, please make the

<sup>1</sup> John Walke, Natural Resources Defense Council, EPA-HQ-OAR-2003-0064-0116.1.

<sup>2</sup> *NRDC v. EPA*, No. 09-1103 (DC Cir.).

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 related to this SIP revision, and which is part of the EPA docket, 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:** If you have questions concerning today's final rule, please contact Ms. Adina Wiley (6PD-R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD-R), Suite 1200, Dallas, TX 75202-2733. The telephone number is (214) 665-2115. Ms. Wiley can also be reached via electronic mail at [wiley.adina@epa.gov](mailto:wiley.adina@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, whenever "we", "us", or "our" is used, we mean the EPA.

**Table of Contents**

- I. What final action is EPA taking?
- II. What is the background for this action?
- III. What are EPA's responses to comments received on the proposed action?
- IV. Statutory and Executive Order Reviews

**I. What final action is EPA taking?**

We are fully approving severable portions of two revisions to the Texas SIP submitted by the TCEQ on October 24, 2006, and August 16, 2007, specific to the DERC Program. The revisions we are approving amend existing sections and create a new section in the DERC Program at Title 30 of the Texas Administrative Code (TAC), Chapter 101—General Air Quality Rules, Subchapter H—Emissions Banking and Trading, Division 4—Discrete Emission Credit Banking and Trading. The October 24, 2006, submittal creates a new section for international emission reduction provisions and amends existing sections to prohibit the generation and use of discrete emission reduction credits from shutdown activities and further clarify procedures for using emission protocols. Additionally, EPA finds that the TCEQ has satisfied all elements of our September 6, 2006, final conditional approval of the DERC program with the submittal of the October 24, 2006, SIP submittal; and as such, the DERC program conditional approval is converted to full SIP approval. The severable portions of the August 16,

2007, submittal that we are approving non-substantively revise the DERC Program to correctly update the cross-references to the stationary source nitrogen oxide (NO<sub>x</sub>) rules found in the Texas SIP at 30 TAC Chapter 117 as a result of the non-substantive recodification of Chapter 117 approved by EPA as part of the Texas SIP on December 3, 2008 (*see* 73 FR 73562). Additionally, in both the October 24, 2006, and August 16, 2007, SIP submittals TCEQ has made several non-substantive revisions to update grammar and document style. Consequently, we are approving the revisions to the Texas SIP at 30 TAC sections 101.372(a), 101.372(d), 101.372(f), 101.372(j), 101.373(a), 101.376(c)(4), and 101.378(b) and the creation of new section 101.375 submitted on October 24, 2006. Additionally, we are approving revisions to the Texas SIP at 30 TAC sections 101.372(d) and 101.376(d) submitted on August 16, 2007, by the TCEQ.

EPA proposed the above action on March 30, 2010, at 75 FR 15648-15655. Today, we are approving the DERC program revisions as proposed and find that they comply with the CAA and EPA regulations, are consistent with EPA policies, and will improve air quality. This final approval is being taken under parts C and D of the CAA.

In a separate rulemaking, EPA is approving the severable Emission Credit Banking and Trading Program (referred to elsewhere in this notice as the Emission Reduction Credit (ERC) Program) revisions at 30 TAC sections 101.302, 101.305, and 101.306 submitted on October 24, 2006, and 30 TAC sections 101.302 and 101.306 submitted on August 16, 2007 (*see* EPA-R06-OAR-2010-0417).

At this time, EPA is not taking action on the revisions to the Emissions Banking and Trading of Allowances Program at 30 TAC sections 101.338 and 101.339 submitted on October 24, 2006. EPA is also not taking action at this time on the revisions to the general air quality definitions at 30 TAC Section 101.1 or the revisions to the System Cap Trading Program at 30 TAC sections 101.383, and 101.385 submitted on August 16, 2007. These severable revisions remain under review by EPA and will be addressed in separate actions.

**II. What is the background for this action?**

The DERC Program, conditionally approved by EPA on September 6, 2006, establishes an open market trading program to provide flexibility for sources in complying with certain State

and Federal requirements. In an open market trading program, a source generates emission credits by reducing its emissions during a discrete period of time. These credits, called discrete emission credits, or DEC, in the Texas program, are quantified in units of mass. Discrete emission credit (DEC) is a generic term that encompasses reductions from stationary sources (discrete emission reduction credits, or DERCs) and reductions from mobile sources (mobile discrete emission reduction credits, or MDERCs).<sup>1</sup> Generally, discrete emission reductions of criteria pollutants (excluding lead) or precursors of criteria pollutants may be banked and used as DERCs. EPA's September 6, 2006, final conditional approval of the DERC program addressed the original submission of the program on December 23, 1997, and the subsequent revisions on January 18, 2001; April 14, 2002; January 17, 2003; and December 6, 2004.

Since our September 6, 2006, final conditional approval, TCEQ has revised the DERC program to address the commitments of the DERC conditional approval. Additionally, the TCEQ adopted revisions to the DERC program consistent with the requirements of Senate Bill 784, adopted during regular session, 2005, of the 79th Texas Legislature. Senate Bill 784 allows for greater flexibility in the generation and use of international emission reductions. These revisions were adopted by the TCEQ on October 4, 2006, and became effective on October 26, 2006. The adopted regulations were submitted to EPA as a SIP revision on October 24, 2006. TCEQ has also promulgated revisions to the DERC program that update the cross-references to the new numbering structure in 30 TAC Chapter 117. These revisions were adopted on July 25, 2007, and became effective on August 16, 2007. The adopted regulations were submitted to EPA as a SIP revision on August 16, 2007.

**III. What are EPA's responses to comments received on the proposed action?**

EPA received no comments on our proposed rulemaking.

**IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the

<sup>1</sup> In this action, when we refer to the program as the "DERC Rule" or the "DERC Program" we are speaking of the entire Discrete Emission Credit Banking and Trading Program, which encompasses both DERCs and MDERCs.

provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. 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 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 (Pub. L. 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 Clean Air Act; 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, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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 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 July 19, 2010. 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, Incorporation by reference, Intergovernmental Relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: April 30, 2010.

**Lawrence E. Starfield,**  
*Acting 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**

■ 2. The table in § 52.2270(c) entitled "EPA Approved Regulations in the Texas SIP" under Chapter 101 is amended by:

■ a. Revising the entries for Sections 101.372, 101.373, 101.376, and 101.378 under Subchapter H—Emissions Banking and Trading, Division 4—Discrete Emission Credit Banking and Trading.

■ b. Adding an entry for Section 101.375 under Subchapter H—Emissions Banking and Trading, Division 4—Discrete Emission Credit Banking and Trading, in numerical order.

The revisions and additions 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 101—General Air Quality Rules</b>				
*	*	*	*	*
<b>Subchapter H—Emissions Banking and Trading</b>				
*	*	*	*	*
<b>Division 4—Discrete Emission Credit Banking and Trading</b>				

## EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
*	*	*	*	*
Section 101.372 .....	General Provisions .....	7/25/2007	5/18/2010 [Insert FR page number where document begins].	
Section 101.373 .....	Discrete Emission Reduction Credit Generation and Certification.	10/4/2006	5/18/2010 [Insert FR page number where document begins].	
*	*	*	*	*
Section 101.375 .....	Emission Reductions Achieved Outside the United States.	10/4/2006	5/18/2010 [Insert FR page number where document begins].	
Section 101.376 .....	Discrete Emission Credit Use ....	7/25/2007	5/18/2010 [Insert FR page number where document begins].	
Section 101.378 .....	Discrete Emission Credit Banking and Trading.	10/4/2006	5/18/2010 [Insert FR page number where document begins].	
*	*	*	*	*

[FR Doc. 2010-11681 Filed 5-17-10; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2010-0147; FRL-9151-5]

#### Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to the Emission Credit Banking and Trading Program

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving severable portions of two revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas on October 24, 2006, and August 16, 2007. These revisions amend existing sections and create a new section in Title 30 of the Texas Administrative Code (TAC), Chapter 101—General Air Quality Rules, Subchapter H—Emissions Banking and Trading, Division 1—Emission Credit Banking and Trading, referred to elsewhere in this notice as the Emission Reduction Credit (ERC) Program. The October 24, 2006, submittal creates a new section for international emission reduction provisions and amends existing sections to further clarify procedures for using emission protocols and to update the approved list of emission credit uses. The August 16, 2007, submittal amends two sections of the ERC program to

update cross-references to recently recodified 30 TAC Chapter 117 provisions. EPA has determined that these SIP revisions comply with the Clean Air Act and EPA regulations, are consistent with EPA policies, and will improve air quality. This action is being taken under section 110 and parts C and D of the Federal Clean Air Act (the Act or CAA).

**DATES:** This final rule will be effective June 17, 2010.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2010-0147. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Planning Section (6PD-L), 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 or Mr. Bill Deese at 214-665-7253 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.

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#### SUPPLEMENTARY INFORMATION:

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#### I. What final action is EPA taking?

We are fully approving severable portions of two revisions to the Texas SIP submitted by the Texas Commission on Environmental Quality (TCEQ) on