

Cause No. 03-21-00204-CV

IN THE COURT OF APPEALS FOR THE
THIRD DISTRICT OF TEXAS AT AUSTIN

Texas Commission on Environmental Quality
and Vulcan Construction Materials, L.L.C.,
Appellants,

v.

Friends of Dry Comal Creek, Stop 3009 Vulcan Quarry,
Jeffrey Reeh, Terry Olson, *et al.*,
Appellees.

**BRIEF OF APPELLANT, THE TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY**

On Appeal from the 353rd Judicial District Court of
Travis County, Texas, Cause No. D-1-GN-20-000941

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Table of Contents

Identity of Parties and Counsel	ii
Index of Authorities.....	ix
List of Acronyms and Shorthand Terms.....	xiv
Statement of the Case	xvi
Statement Regarding Oral Argument	xvii
Statement Regarding Citations	xvii
Issues Presented.....	xviii
Statement of Facts	1
I. Legal Background—the Air Permitting Process in Texas.....	1
A. Minor-source NSR permitting under the Texas Clean Air Act.....	2
B. NAAQS analysis.....	4
i. Health effects analysis.....	7
ii. TCEQ review and public participation.....	9
II. Vulcan’s NSR Permit Application.....	10
Summary of the Argument	12
Standard of Review	15
Argument.....	18
I. TCEQ’s Findings on Crystalline Silica Emissions Are Supported by Substantial Evidence and Are the Product of Reasoned Decision-Making.	18

A.	TCEQ’s finding of no adverse impacts from crystalline silica is supported by the MERA guidance.	20
B.	TCEQ’s findings on crystalline silica are supported by Vulcan’s voluntary health effects analysis.....	23
i.	Vulcan’s air quality analysis shows that its crystalline silica emissions will not negatively impact human health or welfare and will be below the ESLs.....	24
ii.	Vulcan relied on a representative sample for its calculation of the crystalline silica content of its aggregate material.....	28
iii.	Though flawed in its collection method, the Reeh Appellees’ off-site sample showed a crystalline silica content consistent with TCEQ’s finding.....	30
iv.	The off-site samples the Friends Appellees relied upon were flawed.....	31
v.	The district court improperly reweighed the evidence.....	32
II.	TCEQ’s Findings on Vulcan’s NAAQS Demonstration for PM ₁₀ and PM _{2.5} Are Supported by Substantial Evidence and Are the Product of Reasoned Decision-Making.....	34
A.	Vulcan’s audited application and air quality analysis are substantial evidence to support TCEQ’s findings related to PM ₁₀ and PM _{2.5}	35
B.	TCEQ properly determined that emissions from quarry operations and roads should be excluded from Vulcan’s NAAQS analysis.	40

i.	Vulcan’s air quality analysis was proper without modeling fugitive emissions from in-plant roads and Vulcan’s quarry.....	40
ii.	Appellees’ arguments on the possible levels of road and quarry emissions require policy determinations beyond the scope of TCEQ’s authority.....	43
C.	Although not necessary to demonstrate compliance with the NAAQS, Vulcan’s voluntary full NAAQS analysis for PM _{2.5} and PM ₁₀ was proper.	45
i.	Vulcan’s preliminary impact determinations for PM _{2.5} and PM ₁₀ made the analysis of off-site sources and background concentrations unnecessary.....	45
ii.	TCEQ’s approval of off-site sources is supported by substantial evidence and is the product of reasoned decision-making.	47
iii.	TCEQ’s approval of Vulcan’s representative background monitors is supported by substantial evidence and is the product of reasoned decision-making.....	52
a.	The Heritage Middle School monitor provided a representative background concentration for PM _{2.5}	55
b.	The Selma monitor provided a representative background concentration for PM ₁₀	56
III.	The ALJ’s Ruling on Vulcan’s Trade Secret Did Not Prejudice Appellees’ Substantial Rights.....	58
IV.	The Appellees Were Provided Due Process.	62

A.	The ALJ’s ruling on Vulcan’s trade secret was consistent with due process.	64
B.	The ALJ’s limits cross examination and discovery were consistent with due process.	66
C.	The exclusion of road and quarry emissions from Vulcan’s air quality analysis was consistent with due process.	69
Conclusion and Prayer		70
Certificate of Compliance.....		72
Certificate of Service		73

Index of Authorities

Cases	Page(s)
<i>Citizens Against Landfill Location v. TCEQ</i> , 169 S.W.3d 258 (Tex. App.—Austin 2005, pet. denied)	15, 16, 33
<i>City of El Paso v. Pub. Util. Comm’n of Tex.</i> , 883 S.W.2d 179 (Tex. 1994)	16
<i>DuPont Photomasks, Inc. v. Strayhorn</i> , 219 S.W.3d 414 (Tex. App.—Austin 2006, pet. denied)	18, 43
<i>Ferrara v. Moore</i> , 318 S.W.3d 487 (Tex. App.—Texarkana 2010, pet. denied)	68
<i>Heritage on San Gabriel Homeowners Ass’n v. TCEQ</i> , 393 S.W.3d 417 (Tex. App.—Austin 2012, pet. denied)	17
<i>Huston v. United Parcel Serv., Inc.</i> , 434 S.W.3d 630 (Tex. App.—Houston [1st Dist.] 2014, pet. denied).....	67
<i>Jones v. Fowler</i> , 969 S.W.2d 429 (Tex. 1998)	17
<i>Liberty Mut. Ins. Co. v. Garrison Contractors, Inc.</i> , 966 S.W.2d 482 (Tex. 1998)	17
<i>Luminant Generation Co., L.L.C. v. EPA</i> , 675 F.3d 917 (5th Cir. 2012).....	2
<i>Marozsan v. U.S.</i> , 90 F.3d 1284 (7th Cir. 1996)	66
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976).....	63
<i>Meier Infiniti Co. v. Motor Vehicle Bd.</i> , 918 S.W.2d 95 (Tex. App.—Austin 1996, writ denied)	33

<i>Nissan N. Am., Inc. v. Tex. Dep’t of Motor Vehicles</i> , 592 S.W.3d 480 (Tex. App.—Texarkana 2019, no pet.)	60
<i>Office of Pub. Util. Counsel v. Pub. Util. Comm’n of Tex.</i> , 185 S.W.3d 555 (Tex. App.—Austin 2006, pet. denied)	60, 63, 64
<i>Osage Envtl., Inc. v. R.R. Comm’n of Tex.</i> , No. 03-08-00005-CV, 2008 WL 2852295 (Tex. App.— Austin July 24, 2008, no pet.) (mem. op.).....	40
<i>Pers. Care Products, Inc. v. Smith</i> , 578 S.W.3d 262 (Tex. App.—Austin 2019, no pet.)	15
<i>Pub. Util. Comm’n of Tex. v. Sw. Bell Tel. Co.</i> , 960 S.W.2d 116 (Tex. App.—Austin 1997, no pet.)	16, 24, 46
<i>R.R. Comm’n of Tex. v. Tex. Citizens for a Safe Future & Clean Water</i> , 336 S.W.3d 619 (Tex. 2011)	17, 18, 43
<i>S. Union Gas Co. v. R.R. Comm’n of Tex.</i> , 692 S.W.2d 137 (Tex. App.—Austin 1985, writ ref’d n.r.e.).....	33
<i>Scally v. Tex. State Bd. of Med. Examiners</i> , 351 S.W.3d 434 (Tex. App.—Austin 2011, pet. denied)	69
<i>State ex rel. State Dep’t of Highways & Pub. Transp. v. Gonzalez</i> , 82 S.W.3d 322 (Tex. 2002)	17
<i>Sw. Pub. Serv. Co. v. Pub. Util. Comm’n of Tex.</i> , 962 S.W.2d 207 (Tex. App.—Austin 1998, pet. denied)	33
<i>Texas v. EPA</i> , 690 F.3d 670 (5th Cir. 2012).....	1
<i>United Copper Indus., Inc. v. Grissom</i> , 17 S.W.3d 797 (Tex. App.—Austin 2000, pet. dismiss’d)	15, 64
<i>Univ. Tex. Med. Sch. at Houston v. Than</i> , 901 S.W. 2d 926 (Tex. 1995)	63, 66, 69

Constitutional Provisions and Statutes

U.S. Const. amend. XIV	63
Tex. Const. art. I, § 19.....	63
42 U.S.C.	
§ 7407(a).....	1
§ 7408(a).....	1
§ 7409(a).....	1
§ 7410(a)(2)(C).....	2
§ 7479(1).....	2
Tex. Gov’t Code	
§ 2001.058(a)-(d)	66
§ 2001.174(2).....	59
§ 2001.174(2)(F)	16
§ 2003.047(a).....	10
§ 2003.047(e)	60
§ 2003.047(f).....	60
§ 2003.047(n).....	66
Tex. Health & Safety Code	
ch. 382 (“Texas Clean Air Act”)	<i>passim</i>
§ 382.002(a).....	3
§ 382.003(6).....	26, 41
§ 382.003(12).....	41
§ 382.017(a).....	3
§ 382.032(a).....	15
§ 382.032(e).....	15
§ 382.051(a).....	3
§ 382.056(a).....	9
§ 382.056(f).....	9
§ 382.056(g).....	10
§ 382.056(k).....	10
§ 382.056(n).....	10
§ 382.0517	9
§ 382.0518(a).....	3, 41

§ 382.0518(b)(1).....	3
§ 382.0518(b)(2).....	3, 20, 22

Tex. Water Code

§ 5.556	10
§ 5.556(e)(1).....	10
§ 5.557	10

Rules

40 C.F.R.

pt. 50	1
§ 51.160	2
§ 51.165(b)(2).....	6
§ 52.2270	2

30 Tex. Admin. Code

ch. 116, subch. B	3
§ 50.115(b)	10
§ 80.272(e)(1).....	12
§ 116.10(1)	3
§ 116.10(4).....	26, 41
§ 116.10(15)	41
§ 116.110(a)	4
§ 116.111(a)(2)(A)(i)	4, 20, 22
§ 116.111(a)(2)(J)	4, 23, 26, 42

Other Authorities

In the Matter of EOG Resources,

TCEQ Docket No. 2012-0971-AIR; SOAH Docket No. 582-12-6347	42, 43
--	--------

EPA, NAAQS Table, *available at*

https://www.epa.gov/criteria-air-pollutants/naaqs-table	1
---	---

National Institutes of Health, PubChem, “Silicon Dioxide”

available at https://pubchem.ncbi.nlm.nih.gov/compound/Silicon-dioxide	8
---	---

Proposal for Decision, SOAH Docket No. 582-12-6347; Application of EOG Resources, Inc. for Air Quality Permit Number 95412 in Cooke County, Texas.....	43
Travis (Tex.) Civ. Dist. Ct. Loc. R. 10.3	40
Travis (Tex.) Civ. Dist. Ct. Loc. R. 10.5	40

List of Acronyms and Shorthand Terms

Act	Texas Clean Air Act
ALJ	Administrative Law Judge
APA	Administrative Procedure Act
A.R.	Administrative Record
BACT	Best Available Control Technology
C.R.	Clerk's Record
EPA	U.S. Environmental Protection Agency
ESL	Effects Screening Level
Friends Appellees	The Friends of Dry Comal Creek and Stop 3009 Vulcan Quarry
GAQM	<i>Revisions to the Guideline on Air Quality Models</i>
GLC	ground-level concentration
GLC _{max}	maximum ground-level concentration
MERA	<i>Modeling and Effects Review Applicability: How to Determine the Scope of Modeling and Effects Review for Air Permits, APDG 5874</i>
NAAQS	National Ambient Air Quality Standards
NO ₂	nitrogen dioxide
NSR	New Source Review
PM	particulate matter

List of Acronyms and Shorthand Terms **(*continued*)**

PM _{2.5}	particulate matter with a diameter of 2.5 microns or less
PM ₁₀	particulate matter with a diameter of 10 microns or less
R.R.	Reporter's Record
Reeh Appellees	Jeffrey Reeh, Terry Olson, Mike Olson, and Comal Independent School District
SIL	Significant Impact Level
SiO ₂	silicon dioxide or silica
SO ₂	sulfur dioxide
SOAH	State Office of Administrative Hearings
TCEQ or Commission	Texas Commission on Environmental Quality
Vulcan	Vulcan Construction Materials, L.L.C.

Statement of the Case

- Nature of the Case: The Friends of Dry Comal Creek and Stop 3009 Vulcan Quarry (Friends Appellees) filed a suit for judicial review of a Texas Commission on Environmental Quality (TCEQ or Commission) order granting an application by Vulcan Construction Materials, L.L.C., (Vulcan) for an air quality permit to construct and operate a portable rock-crushing plant in Comal County, Texas.¹ Another suit for judicial review of the same order was filed by Jeffrey Reeh, Terry Olson, Mike Olson, and Comal Independent School District (Reeh Appellees).² The district court consolidated these suits.³
- Course of Proceedings: The Travis County district court held a hearing on the merits on December 8, 2020.⁴
- Trial Court: 353rd Judicial District Court, Travis County, the Honorable Maya Guerra-Gamble.
- Trial Court Disposition: The district court affirmed in part and reversed in part TCEQ's final order and remanded to TCEQ.⁵ TCEQ and Vulcan filed timely appeals of the final judgment.⁶

¹ C.R. 4-30.

² C.R. 61.

³ C.R. 61.

⁴ The administrative record was admitted into evidence at the hearing on the merits. R.R. 38:1-16.

⁵ C.R. 540-542.

⁶ C.R. 548 and 552.

Statement Regarding Oral Argument

TCEQ requests oral argument. This case involves a complex regulatory scheme TCEQ used to approve Vulcan's application for an air quality permit. Oral argument will provide an opportunity for TCEQ to answer questions about its permitting scheme to aid in the Court's decision-making process.

Statement Regarding Citations

In this brief, citations to the Reporter's Record will be in the following form: R.R. [Page number]. Citations to the Clerk's Record will be in the following form: C.R. [Page number]. Citations to the Administrative Record will be in the following form: [Volume number] A.R. [Item number].

Issues Presented

1. Are TCEQ's findings on crystalline silica emissions from Vulcan's proposed plant supported by substantial evidence and the product of reasoned decision-making?
2. Are TCEQ's findings on Vulcan's NAAQS demonstration for PM_{2.5} and PM₁₀ supported by substantial evidence and the product of reasoned decision-making?
3. Did the ALJ's ruling on Vulcan's assertion of the trade secret privilege over documents from its unrelated subsurface investigation of the proposed site prejudice Appellees substantial rights?
4. Did the Appellees demonstrate due process violations arising from the ALJ's ruling on Vulcan's trade secret documents; from limits on cross examination and discovery; or from TCEQ not requiring Vulcan to input quarry and road emissions into its modeling for the air quality analyses?

Statement of Facts

I. Legal Background—the Air Permitting Process in Texas

TCEQ regulates air pollution from stationary sources pursuant to a delegation of authority under the federal Clean Air Act. The federal Clean Air Act requires the U.S. Environmental Protection Agency (EPA) to identify emissions that cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare and to set primary and secondary National Ambient Air Quality Standards (NAAQS) for such pollutants, identified as “criteria pollutants.” *See* 42 U.S.C. §§ 7408(a) and 7409(a). EPA has promulgated primary and secondary NAAQS for six criteria pollutants, including particulate matter (PM) with a diameter of 10 microns or less (PM₁₀), and PM with a diameter of 2.5 microns or less (PM_{2.5}).⁷ To implement these standards, each state must submit for EPA approval a state implementation plan. 42 U.S.C. § 7407(a). Each plan must include a New Source Review (NSR) preconstruction permitting scheme to control emissions from new or modified sources of air pollutants. *Texas v. EPA*, 690 F.3d 670, 674 (5th

⁷ The other criteria pollutants include sulfur dioxide (SO₂), nitrogen dioxide (NO₂), carbon monoxide (CO), ozone (O₃), and lead (Pb). EPA, NAAQS Table, *available at* <https://www.epa.gov/criteria-air-pollutants/naaqs-table> (last accessed July 22, 2021); *see also* 40 C.F.R. pt. 50.

Cir. 2012); 40 C.F.R. § 51.160.

The federal Clean Air Act and EPA’s implementing regulations provide extensive requirements for the construction and modification of “major”⁸ sources of air pollution under NSR permitting programs. *Luminant Generation Co., L.L.C. v. EPA*, 675 F.3d 917, 922 (5th Cir. 2012). This case, however, involves regulation of a “minor” source of air pollution that does not meet the major-source thresholds.⁹ For minor sources, the federal Clean Air Act requires each state implementation plan to include an NSR permitting program that ensures the NAAQS are attained and maintained in the state. *Id.* 42 U.S.C. § 7410(a)(2)(C). TCEQ administers the requirements of the federal Clean Air Act for Texas under an EPA-approved state implementation plan that includes a minor-source NSR permitting scheme. 40 C.F.R. § 52.2270.

A. Minor-source NSR permitting under the Texas Clean Air Act

The Texas Clean Air Act, codified at Texas Health and Safety Code ch. 382, (Act) was adopted “to safeguard the state's air resources from

⁸ Major emitting sources are those stationary sources that emit 250 tons per year or more of a federally regulated pollutant or 100 tons per year for 28 listed types of facilities. 42 U.S.C. § 7479(1).

⁹ Emissions of criteria pollutants from Vulcan’s proposed plant will each be less than 20 tons per year. 1 A.R. 1, p. 26.

pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of public health, general welfare, and physical property . . . ” Tex. Health & Safety Code § 382.002(a). The Act requires a TCEQ permit for the construction or modification of any facility that emits or may emit air contaminants. *Id.* §§ 382.051(a), 382.0518(a). TCEQ’s permits ensure that facilities emitting air contaminants will utilize best available control technology¹⁰ (BACT), *see id.* 382.0518(b)(1), and protect public health, general welfare, and physical property. *See id.* §§ 382.002(a), 382.0518(b)(2) (providing the Commission authority to grant permits upon a showing of “no indication that the emissions from the facility will contravene the intent of [the Act]” . . .”). The Act also grants TCEQ authority to adopt rules to implement the Act’s requirements. *Id.* 382.017(a).

TCEQ has adopted rules governing NSR permits. *See* 30 Tex. Admin. Code Chapter 116, Subchapter B (caption). TCEQ rules provide that a permit is required before construction or modification of any

¹⁰ BACT is an “air pollution control method for a new or modified facility that through experience and research, has proven to be operational, obtainable, and capable of reducing or eliminating emissions from the facility, and is considered technically practical and economically reasonable for the facility.” 30 Tex. Admin. Code § 116.10(1).

facility that may emit air contaminants. *Id.* § 116.110(a). An applicant for an NSR permit must demonstrate that emissions from the proposed facility will comply with TCEQ rules and the intent of the Act, including protection of human health and property of the public. *Id.* § 116.111(a)(2)(A)(i). For criteria pollutants, the applicant must show that a proposed facility will not cause or contribute to an exceedance of the NAAQS.¹¹ This demonstration is usually made through an air quality analysis supported by air-dispersion modeling.¹² Air-dispersion modeling is a computer-based simulation of how pollutants emitted from a facility will disperse in the atmosphere.¹³ For pollutants other than EPA's criteria pollutants, TCEQ may require a health-effects analysis in which air-dispersion modeling results for relevant contaminants are compared against Effects Screening Levels (ESLs) developed by TCEQ's Toxicology Division.¹⁴

B. NAAQS analysis

TCEQ has published guidance on processing NSR permit

¹¹ 2-B2 A.R. 232, p. 15:4-8, 26-30.

¹² 2-B2 A.R. 232, pp. 4:35-5:4; *see also* 30 Tex. Admin. Code § 116.111(a)(2)(J).

¹³ 2-B2 A.R. 232, p. 4:20-34.

¹⁴ 2-B2 A.R. 232 p. 21:24-29; 2-B2 A.R. 237, p. 5:10-17.

applications, titled *Air Quality Modeling Guidelines, APDG 6232*.¹⁵ TCEQ also follows EPA's guidance for NSR permits, *Revisions to the Guideline on Air Quality Models (GAQM)*.¹⁶ A minor-source NAAQS analysis begins with a preliminary impact determination to predict whether emissions of criteria pollutants from the proposed facility could make a significant impact on existing air quality.¹⁷ To show this, the applicant conducts an air quality analysis to calculate the off-site ground-level concentrations (GLCs) of the pollutants at receptor points located at the facility boundaries and extending outward at different distances and directions based on certain averaging times.¹⁸ The calculations are based on the maximum allowable emission rates for each facility established in the permit application, meteorological data, and other required inputs.¹⁹ Based on this analysis, the maximum ground-level concentration (GLC_{\max}) of each pollutant can be determined.²⁰

¹⁵ 2-B2 A.R. 232, p. 5:21-25; 2-B2 A.R. 234.

¹⁶ 2-B2 A.R. 232, p. 5:26-28; 2-B2 A.R. 235.

¹⁷ 2-B2 A.R. 234, p. 17.

¹⁸ 2-B1 A.R. 185, p. 9:5-8.

¹⁹ 2-B1 A.R. 185, p. 9:25-28; 2-B2 A.R. 232, pp. 7:15-19

²⁰ 2-B1 A.R. 185, p. 10:16-17; 2-B2 A.R. 232, p. 22:18.

The GLC_{max} of each criteria pollutant is then compared to its Significant Impact Level (SIL).²¹ The SILs are set by EPA for major-source permitting as minimum thresholds under which a full NAAQS analysis is not necessary.²² When the GLC_{max} of a criteria pollutant is below the SIL level, EPA expects that emissions of the pollutant will not degrade air quality.²³ Thus, when an applicant shows that the GLC_{max} for a criteria pollutant is below the applicable SIL, the NAAQS demonstration is complete for that pollutant.²⁴ If, however, the GLC_{max} for a criteria pollutant is in excess of the SIL, the applicant must conduct a full NAAQS analysis.²⁵ While EPA does not require the use of a preliminary impact analysis in minor-source NSR permits, TCEQ uses this analysis for both major and minor-source permits.

A full minor-source NAAQS analysis requires modeling the maximum allowable emissions from all on-property facilities and nearby off-property sources to determine the GLC_{max} .²⁶ The applicant must then

²¹ 2-B2 A.R. 232, p. 16:5-11; 2-B2 A.R. 234, p. 17.

²² 2-B2 A.R. 232, p. 16:8-10; *see also* 40 C.F.R. § 51.165(b)(2).

²³ 2-B2 A.R. 232, p. 16:8-10.

²⁴ 2-B2 A.R. 232, p. 16:6-8; 2-B2 A.R. 234, p. 17 An applicant must also justify using the SIL for $PM_{2.5}$. 2-B2 A.R. 234, Appendix A.

²⁵ 2-B2 A.R. 232, p. 16:11-12.

²⁶ 2-B2 A.R. 232, p. 17:2-3; 2-B2 A.R. 234, pp. 17-18.

add a representative background concentration to the GLC_{max} to account for emissions from facilities and other sources that are not explicitly modeled.²⁷ This calculation produces a total maximum off-site GLC.²⁸ The total maximum off-site GLC is then compared to the applicable NAAQS.²⁹ To obtain authorization under an NSR permit, the applicant must demonstrate that the total maximum off-site GLC for each criteria pollutant is under the applicable NAAQS.³⁰

i. Health effects analysis

TCEQ has published guidance on health-effects analyses for non-criteria pollutants, titled *Modeling and Effects Review Applicability: How to Determine the Scope of Modeling and Effects Review for Air Permits, APDG 5874* (MERA).³¹ Under the MERA guidance, if TCEQ determines that a health effects analysis is necessary for a non-criteria pollutant, it may require air-dispersion modeling for that pollutant and a comparison of the resulting GLC_{max} against the applicable ESL.³² The ESLs are not emissions limits, but rather a screening tool set at levels lower than those

²⁷ 2-B2 A.R. 232, p. 17:3-5; 2-B2 A.R. 234, p. 18.

²⁸ 2-B1 A.R. 185, p. 10:8-12.

²⁹ 2-B1 A.R. 185, p. 10:25-27; 2-B2 A.R. 234, p. 18.

³⁰ 2-B2 A.R. 232, p. 16:2-4.

³¹ 2-B2 A.R. 211, p. 33:17-23; 2-B2 A.R. 223.

³² 2-B2 A.R. 211, p. 31:2-8; 2-B2 A.R. 223, p. 1.

reported to produce adverse health effects.³³ The ESLs are established to protect the general public, including sensitive subgroups.³⁴ If a pollutant's GLC_{max} is above an ESL, it is not necessarily indicative that an adverse health effect will occur, but rather that further investigation is warranted.³⁵ Adverse health effects are not expected from emissions modeled to show a GLC_{max} below the applicable ESL.³⁶

This case involves emissions of crystalline silica, which is one form of silicon dioxide (SiO_2).³⁷ SiO_2 is commonly found in nature as a major component of sand.³⁸ In addition to crystalline silica, SiO_2 appears as cryptocrystalline silica and amorphous silica.³⁹ While these forms have the same chemical makeup, crystalline silica has a different molecular structure such that it breaks along regular planes.⁴⁰ TCEQ considers crystalline silica to be potentially carcinogenic to humans via inhalation and has, accordingly, set ESLs for long and short-term exposure to

³³ 2-B2 A.R. 237, p. 6:9-24.

³⁴ 2-B2 A.R. 237, p. 7:8-13.

³⁵ 2-B2 A.R. 211, p. 31:20-22.

³⁶ 2-B2 A.R. 211, p. 31:18-20.

³⁷ 2-B1 A.R. 204, p. 12:29-30.

³⁸ National Institutes of Health, PubChem, "Silicon Dioxide" available at <https://pubchem.ncbi.nlm.nih.gov/compound/Silicon-dioxide> (last accessed July 16, 2021).

³⁹ 2-B1 A.R. 204, pp. 12:30-13:1.

⁴⁰ 2-B1 A.R. 204, p. 13:1-3.

crystalline silica.⁴¹ These ESLs were set conservatively at levels well below measured health effects and are protective against adverse health and welfare effects for all members of the public, including sensitive subgroups.⁴²

ii. TCEQ review and public participation

After TCEQ determines an application for an NSR permit is administratively complete and the applicant has published a public notice, Tex. Health & Safety Code §§ 382.0517, 382.056(a), TCEQ conducts a technical review of the application. TCEQ staff ensure that BACT is incorporated for each facility being reviewed.⁴³ TCEQ also audits the air quality analysis for modeling methodology, modeling inputs, and emission source characterization.⁴⁴ If TCEQ's executive director is satisfied that the application is complete and complies with all applicable requirements, he will issue a notice of preliminary decision and draft permit. *Id.* § 382.056(f).

The Texas Clean Air Act allows for public participation in NSR permitting decisions. In addition to providing a public comment period

⁴¹ 2-B2 A.R. 237, p. 8:26-37.

⁴² 2-B2 A.R. 237, p. 8:37-39.

⁴³ 2-B2 A.R. 211, p. 6:32:33.

⁴⁴ 2-B2 A.R. 232, pp. 7:25-26, 8:4-5, 11:11-12.

and opportunity to request a public meeting, the Act allows interested parties to request a contested-case hearing after issuance of a draft permit. *Id.* § 382.056(g), (k), (n) (incorporating Tex. Water Code §§ 5.556, 5.557). The State Office of Administrative Hearings (SOAH) conducts contested-case hearings for TCEQ. Tex. Gov't Code § 2003.047(a). If a contested-case hearing is granted, the Commission will identify the disputed issue or issues for determination at SOAH before acting on the application. Tex. Water Code § 5.556(e)(1); 30 Tex. Admin. Code § 50.115(b).

II. Vulcan's NSR Permit Application

Vulcan applied for an NSR permit to construct a portable rock-crushing plant in Comal County, Texas.⁴⁵ The proposed plant will be located at a limestone quarry that will also be operated by Vulcan, but the subject of the permit application in this case is solely the proposed rock crusher. The proposed rock-crushing plant will process limestone aggregate material.⁴⁶ The aggregate material will be quarried from a geological formation known as the Edwards Group.⁴⁷ Operations from the

⁴⁵ 1 A.R. 1, p. 14.

⁴⁶ 2-B1 A.R. 204, pp. 10:20-21, 12:4-6.

⁴⁷ 2-B1 A.R. 204, p. 12:13-17.

plant will emit criteria air pollutants, including PM_{2.5} and PM₁₀.⁴⁸ In addition, the proposed plant will emit non-criteria pollutants, including crystalline silica contained in the aggregate material.⁴⁹ However, SiO₂ appearing in the Edwards Group formation is predominantly amorphous silica and cryptocrystalline silica, rather than crystalline silica.⁵⁰

TCEQ's executive director declared Vulcan's application technically complete and issued a draft permit on January 19, 2018.⁵¹ After receiving numerous public comments and hearing requests, TCEQ granted the hearing requests filed by Friends of Dry Comal Creek, Stop 3009 Vulcan Quarry, and other parties.⁵² TCEQ referred 19 issues to SOAH for a contested-case hearing.⁵³

Following a two-day hearing, the presiding administrative law judges (ALJs) issued a proposal for a decision, including proposed findings of fact and conclusions of law, finding that Vulcan met its burden of proof on all referred issues and recommending issuance of the permit.⁵⁴

⁴⁸ 1 A.R. 1, p. 25; 2-B2 A.R. 232, p. 15:31-36.

⁴⁹ 1 A.R. 26, p. 6; 2-B2 A.R. 232, p. 22:3-4.

⁵⁰ 2-B1 A.R. 204, p. 13:13-15.

⁵¹ 1 A.R. 40.

⁵² 1 A.R. 99, p. 3.

⁵³ 1 A.R. 99, pp. 3-4.

⁵⁴ 1 A.R. 161.

The TCEQ commissioners adopted the ALJs' findings of fact and conclusions of law in a final order and issued the permit on November 21, 2019, with minor changes not relevant to this case.⁵⁵ The Friends and Reeh Appellees filed timely motions for rehearing.⁵⁶ The commissioners did not act on the motions. As a result, the motions for rehearing were overruled by operation of law.⁵⁷

Summary of the Argument

The district court erred in reversing TCEQ's order granting Vulcan's permit application and improperly reweighed the evidence before the Commission. The Reeh and Friends Appellees did not meet their burden of showing that the Commission acted arbitrarily or capriciously or that the Commission's findings are unsupported by substantial evidence. Most of the issues raised by the Appellees concern analyses Vulcan conducted voluntarily above and beyond the requirements of the Texas Clean Air Act and TCEQ's rules. These analyses provided the Commission additional assurance that Vulcan's

⁵⁵ 1 A.R. 173; 1 A.R. 174.

⁵⁶ 1 A.R. 177; 1 A.R. 178.

⁵⁷ Unless the commission extends time or rules on the motion for rehearing not later than 55 days after the date that the decision or order is signed, the motion is overruled by operation of law. 30 Tex. Admin. Code § 80.272(e)(1).

permit would be protective of the Act's requirements, but error cannot be shown based on such cumulative evidence.

TCEQ properly and reasonably found that Vulcan's crystalline silica emissions will not negatively impact human health or welfare or contravene the intent of the Act. This finding is supported by TCEQ's prior determination that rock crushers emit insignificant amounts of crystalline silica. TCEQ's prior finding on rock crushers is substantial evidence and a reasonable basis for its finding. However, Vulcan voluntarily conducted a health effects analysis confirming that its emissions of crystalline silica would not negatively impact human health or welfare. Vulcan's voluntary health effects analysis was conducted properly and was based on a representative sample from Vulcan's aggregate material. Based on Vulcan's voluntary analysis, TCEQ made additional findings regarding crystalline silica emissions, which are also supported by substantial evidence and are the product of reasoned decision making.

TCEQ's findings on PM_{2.5} and PM₁₀ are likewise the product of reasoned decision making and supported by substantial evidence. The NAAQS demonstration for PM_{2.5} and PM₁₀ was complete under Vulcan's

preliminary impact determination. However, Vulcan voluntarily conducted a full minor NAAQS analysis for these air contaminants to confirm that emissions of criteria pollutants would not negatively impact human health or welfare. Even if Vulcan's full NAAQS analysis were flawed, the Appellees' failed to show error because a full NAAQS analysis for PM₁₀ and PM_{2.5} was not necessary for issuance of the permit. Nevertheless, Vulcan's full NAAQS analysis was conducted in accordance with TCEQ rules and guidance.

Appellees showed no reversible error regarding the ALJ's ruling on Vulcan's claim of the trade secret privilege over documents associated with its 2016 subsurface investigation of the proposed site. Vulcan's representative sample of aggregate produced from cores left over from the investigation was not a controlling issue to be determined at SOAH.

Finally, the Appellees were provided a full and fair hearing on issues relating to Vulcan's trade secret information from its prior subsurface investigation. The Appellees were also provided a full and fair hearing on the issue of road and quarry emissions in Vulcan's NAAQS analysis. There was no denial of due process rights. The Court should reverse the district court's judgment and render judgment affirming

TCEQ's order.

Standard of Review

The Texas Clean Air Act authorizes a suit for judicial review of a final Commission order. Tex. Health & Safety Code § 382.032(a). The standard of review is “whether the action is invalid, arbitrary, or unreasonable.” *Id.* § 382.032(e). This Court has held that by this standard, the Act incorporates the substantial-evidence standard of review set out in the Administrative Procedure Act (APA). *United Copper Indus., Inc. v. Grissom*, 17 S.W.3d 797, 801 (Tex. App.—Austin 2000, pet. dism'd).

Whether an administrative agency's order satisfies the substantial-evidence standard is a question of law. *Pers. Care Products, Inc. v. Smith*, 578 S.W.3d 262, 266 (Tex. App.—Austin 2019, no pet.). The Court reviews the evidence as a whole to determine if reasonable minds could have reached the same conclusion as the agency in the disputed action. *Citizens Against Landfill Location v. TCEQ*, 169 S.W.3d 258, 264 (Tex. App.—Austin 2005, pet. denied). The reviewing court may not substitute its judgment for that of the agency on the weight of the evidence and may consider only the record on which the agency based its decision. *Id.* The

issue before the court is not whether the agency reached the correct conclusions but whether there is some basis in the record for its action. *Id.* Although substantial evidence is more than a mere scintilla, the evidence in the record may preponderate against the agency's decision and nonetheless amount to substantial evidence. *Id.* The court presumes that the agency's findings, inferences, conclusions, and decisions are supported by substantial evidence. *Id.* The burden to prove otherwise is on the party seeking review. *Id.* In addition, under the substantial-evidence standard, the Court should sustain the agency's order on any legal basis shown in the record. *Pub. Util. Comm'n of Tex. v. Sw. Bell Tel. Co.*, 960 S.W.2d 116, 121 (Tex. App.—Austin 1997, no pet.).

The reviewing court also considers whether an agency decision is arbitrary, capricious, or characterized by an abuse of discretion. Tex. Gov't Code § 2001.174(2)(F). An agency's decision is arbitrary or results from an abuse of discretion if the agency failed to consider a factor the legislature directs it to consider; considered an irrelevant factor; or weighed only relevant factors but still reached a completely unreasonable result. *City of El Paso v. Pub. Util. Comm'n of Tex.*, 883 S.W.2d 179, 184 (Tex. 1994). In essence, the reviewing court determines whether the

agency genuinely engaged in reasoned decision-making. *Heritage on San Gabriel Homeowners Ass’n v. TCEQ*, 393 S.W.3d 417, 423 (Tex. App.—Austin 2012, pet. denied).

The Reeh and Friends Appellees raised issues involving the interpretation of statutes within TCEQ’s jurisdiction and TCEQ’s rules. In construing a statute, courts determine and give effect to the legislature’s intent. *State ex rel. State Dep’t of Highways & Pub. Transp. v. Gonzalez*, 82 S.W.3d 322, 327 (Tex. 2002). The court should look first to the “plain and common meaning of the statute’s words.” *Id.* (quoting *Liberty Mut. Ins. Co. v. Garrison Contractors, Inc.*, 966 S.W.2d 482, 484 (Tex. 1998)). If a statute’s meaning is unambiguous, the statute should be interpreted according to its plain meaning. *Id.* The court should determine legislative intent from the entire act and not just from isolated portions. *Id.* Courts “read the statute as a whole and interpret it to give effect to every part.” *Id.* (quoting *Jones v. Fowler*, 969 S.W.2d 429, 432 (Tex. 1998)).

When a statute is subject to multiple interpretations, courts will uphold the enforcing agency’s interpretation if it is reasonable and in harmony with the statute. *R.R. Comm’n of Tex. v. Tex. Citizens for a Safe*

Future & Clean Water, 336 S.W.3d 619, 629 (Tex. 2011). An agency’s long-standing construction of a statute is particularly worthy of deference. *Id.* at 632. Similarly, courts defer to an agency's interpretation of an agency rule as long as the interpretation is reasonable and does not contradict the plain meaning of the authorizing statute. *DuPont Photomasks, Inc. v. Strayhorn*, 219 S.W.3d 414, 420 (Tex. App.—Austin 2006, pet. denied).

Argument

I. TCEQ’s Findings on Crystalline Silica Emissions Are Supported by Substantial Evidence and Are the Product of Reasoned Decision-Making.

TCEQ found in Conclusion of Law 12 that “there is no indication that emissions from the Plant will contravene the intent of the [Act], including the protection of the public’s health and physical property.”⁵⁸ To support this conclusion, TCEQ made several findings of fact regarding crystalline silica under Issue O at the contested-case hearing. These findings include the following:

- “The maximum offsite concentrations of crystalline silica from Vulcan's modeling are well below the crystalline silica Effects Screening Level.”⁵⁹
- “The Plant's crystalline silica emissions will not negatively impact human health and welfare, or

⁵⁸ 1 A.R. 173, Conclusion of Law 12.

⁵⁹ 1 A.R. 173, Finding of Fact 44.

contravene the intent of the Texas Clean Air Act . . .”⁶⁰

- “The Plant's crystalline silica emissions would not negatively impact human health and welfare, or contravene the intent of the [Act], even if the crystalline silica percentage used to calculate the Plant's crystalline silica emissions was 135 times higher.”⁶¹

The district court ruled that TCEQ's findings that 1) the plant's crystalline silica emissions will not negatively affect human health or welfare is not supported by substantial evidence; and 2) Vulcan's silica emissions calculations are not based on representative site conditions, and TCEQ's determination that Vulcan's silica emissions calculations are representative of those to be expected from the site is not supported by substantial evidence.⁶²

In addition, under Conclusion of Law 14, TCEQ found that “Vulcan has made all demonstrations required under applicable statutes and regulations, including 30 Texas Administrative Code § 116.111 regarding air permit applications, to be issued an air quality permit with conditions as set out in the Draft Permit.”⁶³ The district court found reversible error under this conclusion based on “TCEQ's determination that quarry and

⁶⁰ 1 A.R. 173, Finding of Fact 45.

⁶¹ 1 A.R. 173, Finding of Fact 46.

⁶² C.R. 540-541.

⁶³ 1 A.R. 173, Conclusion of Law 14.

road emissions were adequately considered” in Vulcan’s air quality analysis for crystalline silica.⁶⁴

In these rulings, the district court disregarded ample evidence of the Commission’s reasoned decision-making. The Appellees did not show reversible error on any of these issues. TCEQ’s findings on crystalline silica are supported by substantial evidence and are the result of reasoned decision-making.

A. TCEQ’s finding of no adverse impacts from crystalline silica is supported by the MERA guidance.

The only finding on crystalline silica necessary for issuance of Vulcan’s permit was that emissions of this non-criteria pollutant will not negatively impact human health and welfare, or contravene the intent of the Act. *See* Tex. Health & Safety Code § 382.0518(b)(2); 30 Tex. Admin. Code § 116.111(a)(2)(A)(i). To establish that emissions of non-criteria pollutants will have no negative impacts, TCEQ may require a health-effects analysis in which the GLC_{maxs} of pollutants are compared to their ESLs.⁶⁵

⁶⁴ C.R. 541.

⁶⁵ 2-B2 A.R. 232, p. 21:26-28.

However, under its MERA guidance, TCEQ does not require a health effects analysis for certain industries based on the agency's accumulated knowledge of emissions created by different industrial processes.⁶⁶ Among these are PM emissions, including crystalline silica, from rock crushers.⁶⁷ TCEQ's witness, Joel Stanford, explained that this determination was based on the TCEQ's review of numerous NSR applications for rock-crushers in which the agency found that these facilities typically emit insignificant amounts of crystalline silica in the 10 micron or less size range.⁶⁸ Once TCEQ finds that certain industrial processes do not pose a health-effects risk for a given pollutant, it does not need to re-invent the wheel every time it processes an application for that industry by making this finding anew. Thus, it was unnecessary for Vulcan to conduct a health effects analysis to determine that its emissions of crystalline silica will not negatively impact human health or welfare or contravene the intent of the Act.⁶⁹ Following its guidance,

⁶⁶ 2-B2 A.R. 211, p. 33:31-34, 34:1-4.

⁶⁷ 2-B2 A.R. 211, p. 34:1-4; 2-B2 A.R. 223, Appendix B.

⁶⁸ 2-B2 A.R. 211, pp. 33:33-34:6.

⁶⁹ 2-B2 A.R. 211, p. 34:6-8.

TCEQ did not require—and did not need to require—Vulcan to conduct a health-effects analysis for crystalline silica.⁷⁰

In raising objections on the adequacy of Vulcan’s health effects analysis for crystalline silica, the Reeh and Friends Appellees wrongly assumed that a health effects analysis is necessary to meet the Texas Clean Air Act’s requirements. But there is no provision of the Act or TCEQ rules that requires a health effects analysis for non-criteria pollutants like crystalline silica to support every NSR permit application. Instead, the Act leaves considerable discretion to the Commission. The Act requires issuance of a permit upon finding “no indication that the emissions from the facility will contravene the intent of [the Act], including protection of the public’s health and physical property.” Tex. Health & Safety Code § 382.0518(b)(2). TCEQ’s rules for NSR permits likewise provide no requirement to conduct a health-effects analysis for each non-criteria pollutant. Rather, applicants must demonstrate that “emissions from the proposed facility will comply with all rules and regulations of the commission and with the intent of the [Act] . . . , including protection of the health and property of the public.” 30 Tex.

⁷⁰ 1 A.R. 10; 2-B2 A.R. 211, p. 33:27-30.

Admin. Code § 116.111(a)(2)(A)(i). In making this determination, “[c]omputerized air dispersion modeling *may* be required by the executive director to determine air quality impacts from a proposed new facility . . .” *Id.* § 116.111(a)(2)(J) (emphasis added).

TCEQ’s MERA guidance contains the agency’s accumulated knowledge on the characteristics of emissions from rock crushing plants and is substantial evidence to support TCEQ’s finding that Vulcan’s crystalline silica emissions will not negatively impact human health and welfare. Furthermore, TCEQ acted reasonably by following its guidance when considering Vulcan’s crystalline silica emissions.

B. TCEQ’s findings on crystalline silica are supported by Vulcan’s voluntary health effects analysis.

Even though a health effects analysis for crystalline silica was not required under the Act, Vulcan voluntarily performed an analysis for its proposed plant.⁷¹ Based on this analysis, TCEQ made additional findings that the maximum off-site concentrations of crystalline silica from Vulcan’s modeling are well below the ESLs,⁷² and the maximum off-site emissions of crystalline silica from Vulcan’s plant would not negatively

⁷¹ 1 A.R. 26, p. 35; 2-B2 A.R. 211, p. 33:29-30.

⁷² 1 A.R. 173, Finding of Fact 44.

impact human health and welfare or contravene the intent of the Act even if the crystalline silica percentage used to calculate the plant's crystalline silica emissions were 135 times higher.⁷³

The district court erred by finding any reversible error based on Vulcan's voluntary analysis. The Court should uphold TCEQ's decision on any legal basis supported in the record. *Public Util. Comm'n*, 960 S.W.2d at 121. Because TCEQ's required finding on adverse impacts from crystalline silica is independently supported by the MERA guidance, Vulcan's voluntary analysis provided only cumulative evidence. There can be no reversible error based on Vulcan's *voluntary* analysis. Nevertheless, Vulcan's health effects analysis of crystalline silica provided substantial evidence to support all three findings on crystalline silica.

- i. Vulcan's air quality analysis shows that its crystalline silica emissions will not negatively impact human health or welfare and will be below the ESLs.**

To conduct its health effects analysis for crystalline silica, Vulcan determined the maximum crystalline silica emissions rates as a

⁷³ 1 A.R. 173, Finding of Fact 46.

component of the modeled project-related hourly and annual PM₁₀ emissions with analytical results showing that 0.2% of project-related PM₁₀ emissions is crystalline silica.⁷⁴ Vulcan's determination that the crystalline silica content of its aggregate is 0.2% was derived from a representative sample of aggregate material taken from core hole samples that Vulcan had previously obtained from the site during an unrelated subsurface investigation.⁷⁵

Vulcan then compared the modeled GLC_{max} of crystalline silica to the hourly and annual TCEQ ESLs for crystalline silica.⁷⁶ Vulcan's modeling showed that the GLC_{max} for short-term crystalline silica exposure is 0.7% of the ESL.⁷⁷ For annual crystalline silica, Vulcan's modeling showed the GLC_{maxS} without in-plant road emissions is 0.04% of the ESL, and 0.8% of the ESL with in-plant roads included.⁷⁸ Based on its modeling, Vulcan determined that even if the crystalline silica content of its aggregate material were 27% (135 times the calculated 0.2%), the GLC_{maxS} would still be under the relevant ESLs.⁷⁹

⁷⁴ 2-B1 A.R. 187, pp. 23:29-24:3

⁷⁵ 2-B1 A.R. 198, pp. 5:18-6:15.

⁷⁶ 2-B1 A.R. 187, p. 24:3-4.

⁷⁷ 2-B1 A.R. 185, p. 12:2-6.

⁷⁸ 2-B1 A.R. 185, p. 12:2-6.

⁷⁹ 2-B1 A.R. 185, p. 36:1-4.

Moreover, Vulcan ran air-dispersion models with and without in-plant roads to provide additional assurance that the maximum off-site concentrations of crystalline silica would be well below the ESLs. The inclusion of in-plant roads was voluntary, and TCEQ did not err by failing to require modeling that included other road and quarry emissions, even if Vulcan's air quality analysis for crystalline silica were necessary. As discussed *infra*, pp. 41-43, TCEQ may request air dispersion modeling to determine air-quality impacts from a new "facility" that produces air emissions. 30 Tex. Admin. Code § 116.111(a)(2)(J). Roads and quarries are expressly exempt from regulation as facilities under the Act. Tex. Health & Safety Code § 382.003(6); 30 Tex. Admin. Code § 116.10(4). Thus, even though Vulcan was not required to model crystalline silica emissions in general, or crystalline silica emission from in-plant roads in particular, it voluntarily provided such calculations. Under either calculation, the GLC_{\max} of crystalline silica is less than 1% of TCEQ's ESLs.

Although TCEQ did not request a health-effects analysis for crystalline silica, it did review Vulcan's voluntary analysis.⁸⁰ TCEQ

⁸⁰ 2-B2 A.R. 211, pp. 33:27-30, 35:8-18.

determined that the 0.2% crystalline silica content of Vulcan's aggregate material was consistent with published geological data for aggregate material in the area of Vulcan's proposed plant. TCEQ compared the 0.2% figure to data on the geological composition of limestone in the area provided in a report by the University of Texas Bureau of Economic Geology.⁸¹ The report showed that limestone rock in the Edwards Group formation, from which Vulcan expects to obtain aggregate material, contains very low percentages of total SiO₂, of which crystalline silica is an even smaller subset. For the high-purity aggregate material that Vulcan expects to process, the report specified a 0.97% average of total SiO₂ and a range of total SiO₂ from 0.18 to 3.08%.⁸² These figures were calculated based on numerous samples from across the Edwards Group formation.⁸³ Thus, Vulcan's calculation of 0.2% for crystalline silica is consistent with the known composition of limestone in the Edwards Group.

⁸¹ 2-B2 A.R. 211, p. 35:28-31.

⁸² 2-B1 A.R. 206, p. 2; 2-B2 A.R. 211, p. 36:26-31.

⁸³ 2-B2 A.R. 211, p. 35:31-33.

ii. Vulcan relied on a representative sample for its calculation of the crystalline silica content of its aggregate material.

The Reeh Appellees argued that Vulcan did not produce a representative sample to support its crystalline silica calculation.⁸⁴ But there is substantial evidence showing Vulcan's sample was representative. As explained by Vulcan's professional geoscientist, Thomas Mathews, a representative sample must be a composite of samples collected from different parts of the aggregate material.⁸⁵ Vulcan's representative sample was derived from three core samples that had been previously taken from three different parts of the property.⁸⁶ To obtain a composite sample, Vulcan collected randomized subsamples every 10 feet along each of the three selected core samples.⁸⁷ This evidence was uncontroverted.

The Reeh Appellees also suggested that Vulcan's sample is suspect because Vulcan used only three core samples from a larger set of 41 cores it had obtain in its prior subsurface investigation of the property.⁸⁸ But

⁸⁴ C.R. 261.

⁸⁵ 2-B1 A.R. 204, p. 8:18-23.

⁸⁶ 2-B1 A.R. 198, p. 6:6-8, 19-26.

⁸⁷ 2-B1 A.R. 198, p. 6:21-26.

⁸⁸ C.R. 262.

Vulcan's geologist, Dr. Lori Eversull, explained that the company had previously obtained the 41 cores to determine the quantity and quality of the aggregate material at different depths and locations at the Vulcan property and to ensure the aggregate material that will be quarried from the Vulcan property and processed in the proposed plant will meet the required specifications for construction aggregate.⁸⁹ Many of these cores were destroyed in that testing process.⁹⁰ Dr. Eversull explained how she used three of the remaining cores to produce a representative sample. These cores were chosen from the north, central, and southern parts of the property in an effort to capture any lateral and vertical variability of the crystalline silica content across the property.⁹¹ Based on her knowledge and experience with the low level of variability of material in the Edwards Group in general and at the property,⁹² Dr. Eversull found the use of these three cores appropriate to produce a representative sample.⁹³ The Reeh Appellees failed to show any error in Vulcan's

⁸⁹ 2-B1 A.R. 198, p. 6:10-15.

⁹⁰ 3 A.R. 271, pp. 174:24-25, 202:20-23.

⁹¹ 3 A.R. 271, pp. 202:21-203:3.

⁹² 3 A.R. 271, pp. 166:3-11, 177:19-178:17, 213:9-214:8.

⁹³ 3 A.R. 271, pp. 156:19-157:7.

sampling protocol that would have prevented Vulcan from producing a representative sample.

The fact that Vulcan did not utilize or produce the other remaining cores that it previously obtained from the property does not show error in producing a representative sample for this case. Nor was TCEQ required, as the Reeh Appellees argued,⁹⁴ to conduct an independent investigation of the cores Vulcan used to generate a representative sample. Dr. Eversull's and Mr. Matthews' testimony on the methods used to obtain a representative sample show that Vulcan relied on a representative sample for its calculation of the crystalline silica content of its limestone aggregate.

iii. Though flawed in its collection method, the Reeh Appellees' off-site sample showed a crystalline silica content consistent with TCEQ's finding.

In an additional effort to cast doubt on the representativeness of Vulcan's sample, the Reeh Appellees argued that a core sample they obtained from a neighboring property showed a "far greater" crystalline silica content of 1%.⁹⁵ However, Vulcan's geoscientist, Thomas Mathews,

⁹⁴ C.R. 262.

⁹⁵ C.R. 263.

showed that the Reeh Appellees' sample was not representative. The sample was generated from a series of non-randomized grab samples that were not representative of the entire core they were taken from.⁹⁶ In addition, Mr. Mathews testified that the actual crystalline silica content of the Reeh sample calculates to be less than 1%.⁹⁷ But even if the crystalline silica content of Vulcan's aggregate were 1%, it would not invalidate TCEQ's finding that the maximum off-site concentrations of crystalline silica are well below the ESLs.⁹⁸ Vulcan showed that the crystalline silica content of its aggregate material could be up to 27% and the GLC_{max} of crystalline silica would still be under the relevant ESLs.⁹⁹

iv. The off-site samples the Friends Appellees relied upon were flawed.

The Friends Appellees wrongly suggested that there is uncertainty about the crystalline silica composition of Vulcan's aggregate material, arguing that samples collected from nearby quarries had crystalline silica percentages ranging from 2% to 49%.¹⁰⁰ This testimony came from their expert who purchased samples from nearby quarries to determine

⁹⁶ 3 A.R. 272, pp. 305:19-306:17.

⁹⁷ 3 A.R. 272, pp. 308:12-309:16.

⁹⁸ 1 A.R. 173, Findings of Fact 44 and 45.

⁹⁹ 2-B1 A.R. 185, p. 36:1-4.

¹⁰⁰ C.R. 131.

their crystalline silica content. Vulcan's expert, Thomas Mathews, showed that the analysis offered by the Friends' expert was flawed. First, the wide variation between 2% and 49% for those samples calls their accuracy into question.¹⁰¹ Moreover, Mr. Mathews showed that the calculation of those percentages was erroneous. The total SiO₂ content of one of these samples was 9.32%, but crystalline silica, which is a subset of the total SiO₂, was recorded at 18%, a figure larger than the total.¹⁰² Likewise, the sample that showed 49% crystalline silica also indicated a total percentage of SiO₂ at 8.47%.¹⁰³ Based on these discrepancies, TCEQ could reasonably find the Friends' expert analysis unreliable.

v. The district court improperly reweighed the evidence.

TCEQ's required finding on health and welfare impacts from crystalline silica is supported by the Commission's prior determination recorded in the MERA guidance. This finding and TCEQ's additional findings on crystalline silica are further supported by Vulcan's air quality analysis and the Bureau of Economic Geology report. Together, these

¹⁰¹ 2-B1 A.R. 204, p. 22:19-26.

¹⁰² 2-B1 A.R. 204, p. 23:1-13.

¹⁰³ 2-B1 A.R. 204, p. 23:13-15.

provide substantial evidence to support the Commission's decision and reflect a process of reasoned decision making.

It is error for a court to reverse an agency decision simply because it would have decided differently. *Sw. Pub. Serv. Co. v. Pub. Util. Comm'n of Tex.*, 962 S.W.2d 207, 215 (Tex. App.—Austin 1998, pet. denied). The test is not whether the court agrees with the agency's determination or whether the agency reached the best decision. Rather, the test is whether reasonable minds could have reached the decision made by the agency. *Citizens Against Landfill Location*, 169 S.W.3d at 264. Further, “an agency may, or may not, accept the testimony of witnesses, expert or non-expert.” *S. Union Gas Co. v. R.R. Comm'n of Tex.*, 692 S.W.2d 137, 141 (Tex. App.—Austin 1985, writ ref'd n.r.e.). The agency is the judge of the weight to be accorded the witnesses' testimony. *Id.* Accordingly, “the agency may accept part of the testimony of one witness and disregard the remainder.” *Id.* at 141-142. Additionally, an agency is not required to include findings on evidence it considered but did not find persuasive. *Meier Infiniti Co. v. Motor Vehicle Bd.*, 918 S.W.2d 95, 99 (Tex. App.—Austin 1996, writ denied). The district court improperly reweighed the evidence.

II. TCEQ's Findings on Vulcan's NAAQS Demonstration for PM₁₀ and PM_{2.5} Are Supported by Substantial Evidence and Are the Product of Reasoned Decision-Making.

Under Conclusion of Law 14, TCEQ found that “Vulcan has made all demonstrations required under applicable statutes and regulations, including 30 Texas Administrative Code § 116.111 regarding air permit applications, to be issued an air quality permit with conditions as set out in the Draft Permit.”¹⁰⁴ The district court reversed this conclusion based on several findings of fact regarding Vulcan's NAAQS demonstration for PM₁₀ and PM_{2.5}.¹⁰⁵ Specifically, the court found error based on:

- “TCEQ's determination that Vulcan's air dispersion modeling adequately accounts for or addresses cumulative impacts;”
- “TCEQ's determination that quarry and road emissions were adequately considered;” and
- “TCEQ's determination that Vulcan's choice of the relevant background concentrations used in its voluntary Full Minor [NAAQS] Analyses were appropriate . . .”¹⁰⁶

¹⁰⁴ 1 A.R. 173, Conclusion of Law 14.

¹⁰⁵ TCEQ's findings of fact relevant to the district court's ruling include findings 22-23 (finding compliance with the NAAQS and no adverse effects on human health, welfare, or property), 25-26 (finding proper consideration of cumulative impacts), 48-49 (finding that Vulcan properly identified all sources of air emissions that are subject to permitting under the Act), and 40-41 and 50 (finding proper determination of background concentrations).

¹⁰⁶ C.R. 541.

In addition, the district court found error in the NAAQS analysis under TCEQ's Conclusion of Law 12. The district court ruled that TCEQ committed reversible error in rejecting the "Reeh Appellees' assertions regarding ways the permit allegedly is not sufficiently protective of public health or property."¹⁰⁷

Again, the district disregarded ample evidence of the Commission's reasoned decision making. TCEQ's findings on Vulcan's NAAQS demonstration are supported by substantial evidence and were the product of reasoned decision making.

A. Vulcan's audited application and air quality analysis are substantial evidence to support TCEQ's findings related to PM₁₀ and PM_{2.5}.

The district court found error based on the Reeh Appellees' argument that Vulcan failed to meet its burden to demonstrate compliance with the NAAQS for PM_{2.5} and PM₁₀—specifically that the proposed plant will not negatively affect human health, including sensitive subgroups, physical property, wildlife, vegetation, flora and fauna.¹⁰⁸ The Reeh Appellees relied on the testimony of residents in the

¹⁰⁷ C.R. 541.

¹⁰⁸ C.R. 273.

area of the proposed plant who stated concerns about potential adverse impacts on their health, businesses, and property.¹⁰⁹

The Reeh Appellees' argument is based on unsubstantiated claims about possible impacts and ignores the work done at the Commission to ensure that Vulcan's permit is protective. Vulcan's audited application and supporting air quality analysis are substantial evidence that the maximum allowable PM_{2.5} and PM₁₀ emissions from the proposed plant will not negatively affect human health, welfare, or property and that the maximum off-site concentrations of criteria pollutants will be below the NAAQS.

TCEQ's findings on PM_{2.5} and PM₁₀ were the result of an extensive review and audit of Vulcan's application and air quality analysis. Upon receipt of Vulcan's application, TCEQ conducted a technical review to ensure that the throughput amounts throughout the entire process are both reasonable and acceptable.¹¹⁰ TCEQ also verified that all potential emission sources are represented in the application, identified applicable

¹⁰⁹ C.R. 272. This claim appeared under the Reeh Appellees' issues concerning BACT. The district court found no error in TCEQ's application of BACT in Vulcan's permit. To the extent these claims also raise issues on Vulcan's air quality analysis, TCEQ addresses them here.

¹¹⁰ 2-B2 A.R. 211, p. 6:25-28.

state and federal rules and regulations, and performed independent emission calculations to verify Vulcan's calculations and ensure the calculations include current control factors and accepted emission factors.¹¹¹ TCEQ staff further ensured that BACT was incorporated for each facility identified in the application.¹¹²

Vulcan's air quality analysis included the results of air-dispersion modeling for each pollutant TCEQ requested to demonstrate compliance with the Act.¹¹³ The air-dispersion modeling was conducted using an EPA-approved air-dispersion model,¹¹⁴ and TCEQ's Air Quality Modeling Guidelines.¹¹⁵ TCEQ's Air Dispersion Modeling Team reviewed and approved Vulcan's modeling methodology,¹¹⁶ modeling data inputs,¹¹⁷ and the source characterization for each emission facility.¹¹⁸

Vulcan's air quality analysis calculated the maximum allowable emissions for the facilities comprising its proposed plant.¹¹⁹ Vulcan's

¹¹¹ 2-B2 A.R. 211, p. 6:28-32.

¹¹² 2-B2 A.R. 211, p. 6:32-33.

¹¹³ 1 A.R. 10; 1 A.R. 26, p. 6.

¹¹⁴ 2 B-1 A.R. 185, p. 9:17-18.

¹¹⁵ 1 A.R. 26, p. 1.

¹¹⁶ 2-B2 A.R. 232, p. 7:25-8:1.

¹¹⁷ 2-B2 A.R. 232, p. 8:4-17.

¹¹⁸ 2-B2 A.R. 232, pp. 11:11-27, 12:3-13.

¹¹⁹ 2-B1 A.R. 185, pp. 9:25-28, 10:1-4; 2-B1 A.R. 183, p. 14:1-22.

preliminary impact determination showed that the GLC_{max} s from Vulcan's proposed plant for 24-hour PM_{10} , 24-hour $PM_{2.5}$, and annual $PM_{2.5}$ were all below the applicable SILs.¹²⁰ Only the modeled concentrations for 1-hour NO_2 and 1-hour SO_2 were above the SILs and required a full NAAQS analysis.¹²¹ The Appellees did not raise any issues regarding emissions of NO_2 or SO_2 . Thus, for the criteria pollutants at issue in this case, PM_{10} and $PM_{2.5}$, Vulcan's NAAQS demonstration was complete at the preliminary impact determination stage. However, Vulcan voluntarily conducted a full NAAQS analysis for all criteria pollutants included in its application, including PM_{10} and $PM_{2.5}$.¹²² Vulcan's full NAAQS analysis showed that the total maximum off-site GLCs for PM_{10} and $PM_{2.5}$, as well as the other criteria pollutants to be emitted, are all below the applicable NAAQS.¹²³

EPA established each primary NAAQS at a concentration level that will protect public health, including the health of sensitive members of the public, with a margin of safety.¹²⁴ EPA established each secondary

¹²⁰ 1 A.R. 26, p. 30; 2-B2 A.R. 232, p. 16:24-27. Vulcan also completed the required justification to use the SIL for $PM_{2.5}$. 1 A.R. 26, p. 30, n.13.

¹²¹ 1 A.R. 26, pp. 31-32; 2-B2 A.R. 232, p. 16:28-31.

¹²² 1 A.R. 26, p. 34; 2-B2 A.R. 232, p. 16:32-36.

¹²³ 1 A.R. 26, p. 34; 2-B2 A.R. 232, pp. 20:36-21:8.

¹²⁴ 2-B2 A.R. 232, p. 15:12-16.

NAAQS at a concentration level that will protect public welfare, which includes, physical property, animals, crops, and vegetation.¹²⁵ Therefore, Vulcan's audited application and air quality analysis provided substantial evidence that the total maximum GLC of criteria pollutants from Vulcan's proposed plant will not exceed the NAAQS and that the maximum allowable emissions authorized under the permit will not negatively affect human health, physical property, or welfare.

The Reeh Appellees further argued that Vulcan failed to demonstrate that the maximum operating hours authorized under the permit will have no adverse impacts to human health, welfare, and the environment.¹²⁶ But Vulcan showed that the plant would not adversely impact human health, welfare, and the environment even if operated 24 hours a day and 365 days a year.¹²⁷ Vulcan's air quality analysis assumed the plant will operate 24 hours a day and 365 days a year.¹²⁸ Vulcan's expert witness, David Knollhoff, explained that this is a conservative assumption because the plant will not likely be operated continuously throughout the year due to variable production demands, planned

¹²⁵ 2-B2 A.R. 232, p. 15:16-20.

¹²⁶ C.R. 271.

¹²⁷ 2-B1 A.R. 185, p. 24:1-13.

¹²⁸ 2-B2 A.R. 211, p. 11:27-30.

maintenance, and inclement weather.¹²⁹

Finally, the Reeh Appellees also claimed that Vulcan has withheld “vital information, emissions, and data from its application, modeling, and the TCEQ.”¹³⁰ But they did not specify any specific information that has been withheld. Such general objections fail to present error.¹³¹

B. TCEQ properly determined that emissions from quarry operations and roads should be excluded from Vulcan’s NAAQS analysis.

The district court found that Vulcan’s air quality analysis did not adequately consider emissions from roads and quarries.¹³² The district court erred in this ruling because the Texas Clean Air Act expressly exempts these sources from regulation as facilities under the NSR permitting scheme.

i. Vulcan’s air quality analysis was proper without modeling fugitive emissions from in-plant roads and Vulcan’s quarry.

Vulcan’s modeling emissions inventory included all facilities in its

¹²⁹ 2-B1 A.R. 185, p. 24:15-19.

¹³⁰ C.R. 273.

¹³¹ If a party’s brief fails to support its arguments with citation to authority and to specific relevant evidence in the record, the party waives the point. *See Osage Envtl., Inc. v. R.R. Comm’n of Tex.*, No. 03-08-00005-CV, 2008 WL 2852295, at *7 (Tex. App.—Austin July 24, 2008, no pet.) (mem. op.). The same rule applies in Travis County District Court. Travis (Tex.) Civ. Dist. Ct. Loc. R. 10.3, 10.5.

¹³² C.R. 536.

rock-crushing plant, including rock crushing equipment and diesel engines, as well as five acres of stockpiles.¹³³ Vulcan also included proposed paved and unpaved in-plant roads associated with the rock crusher for annual PM_{2.5}.¹³⁴ However, Vulcan's inclusion of road emissions was voluntary. The Texas Clean Air Act excludes roads and quarries from regulation under the NSR permitting scheme.

Under the Act, NSR permits are required only for the construction and operation of a “new facility” or modification of an “existing facility.”

Tex. Health & Safety Code § 382.0518(a). A “facility” is:

a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, *quarry*, well test, or *road* is not considered to be a facility.

Id. § 382.003(6); 30 Tex. Admin. Code § 116.10(4) (emphasis added). In contrast, a “source” is “a point of origin of air contaminants, whether privately or publicly owned or operated.” Tex. Health & Safety Code § 382.003(12); 30 Tex. Admin. Code § 116.10(15). TCEQ may request an applicant for an NSR permit to include modeling that determines “air

¹³³ 1 A.R. 26, Appendix A, Table 4, pp. 19-20; 2-B2 A.R. 232, p. 11:23-24.

¹³⁴ 1 A.R. 26, p. 20; 2-B2 A.R. 232, p. 11:25-26.

quality impacts from a proposed new *facility*.” 30 Tex. Admin. Code § 116.111(a)(2)(J) (emphasis added). Thus, the emissions inventory included in Vulcan’s air-dispersion model may include only regulated facilities, not roads or quarries.¹³⁵

TCEQ has consistently excluded roads and quarries from the inventory of modeled emissions required in NSR permit proceedings. TCEQ’s 2014 order *In the Matter of EOG Resources* specifically addressed this exclusion.¹³⁶ *EOG Resources* concerned an NSR permit application for a sand processing plant associated with a quarry.¹³⁷ The Commission found that “[t]he conservative background levels of particulate matter assumed in Applicant’s analysis account for emission impacts, if any, from the quarry.”¹³⁸ The Commission also relied on the definition of a “facility” in Section 382.003 of the Act to conclude that “[t]he roads and the quarry are not facilities, and the BACT requirements do not apply to the roads and quarries.”¹³⁹ The same applies in this case regarding

¹³⁵ 2-B2 A.R. 232, p. 11:21-34.

¹³⁶ 2-B2 A.R. 211, p. 25:17-27 (citing *In the Matter of EOG Resources*, TCEQ Docket No. 2012-0971-AIR; SOAH Docket No. 582-12-6347). In closing arguments, Vulcan cited to additional permit proceedings in which quarry emissions and roads were excluded from modeling. 1 A.R. 152, p. 44, n.336.

¹³⁷ *In the Matter of EOG Resources*, Findings of Fact 18-20.

¹³⁸ *Id.*, Finding of Fact 45.

¹³⁹ *Id.*, Conclusions of Law 10 and 14.

Vulcan’s air quality analysis, which was required under the same subsection of the Act as the requirement for BACT—Section 382.0518(b). In *EOG Resources*, the Commission also found compliance with the NAAQS and no adverse health effects based on modeling that did not include roads or the sand quarry.¹⁴⁰

The Court should follow the plain meaning of the Act and TCEQ’s rule excluding road and quarry emissions from Vulcan’s air dispersion modeling. If the Act or TCEQ rules are ambiguous on this point, the Court should defer to TCEQ’s reasonable and long-standing construction. *R.R. Comm’n of Tex.*, 336 S.W.3d at 629; *DuPont Photomasks, Inc.*, 219 S.W.3d at 420.

ii. Appellees’ arguments on the possible levels of road and quarry emissions require policy determinations beyond the scope of TCEQ’s authority.

Appellees questioned the exclusion of road and quarry emissions from Vulcan’s modeling based on speculation that such emissions may be

¹⁴⁰ *Id.*, Conclusions of Law 31 and 32; Proposal for Decision, SOAH Docket No. 582-12-6347; Application of EOG Resources, Inc. for Air Quality Permit Number 95412 in Cooke County, Texas, pp. 23, 25.

significant.¹⁴¹ But their witness did not provide any evidence or analysis to support his characterization of emissions from quarries.

The Friends Appellees further argued that the modeled total maximum off-site GLC for annual PM_{2.5} was 13 times higher when Vulcan voluntarily added in-plant roads associated with the rock-crushing plant to its calculation.¹⁴² This is irrelevant for an air quality analysis designed to show compliance with the NAAQS. The difference between Vulcan's calculation of annual PM_{2.5} with and without roads is insignificant when compared to the NAAQS for annual PM_{2.5}. Vulcan's GLC_{max} calculation for annual PM_{2.5} including in-plant roads is under 5% of the NAAQS.¹⁴³ Without in-plant roads, it is less than 1% of the NAAQS.¹⁴⁴ With or without in-plant roads included, Vulcan's proposed plant will have minimal impact on the annual PM_{2.5} concentration relative to the NAAQS. Nevertheless, arguments on the need to input emissions from roads and quarries into the modeling for NSR permits are

¹⁴¹ 2-B3 A.R. 240, p. 5:5-15.

¹⁴² C.R. 109.

¹⁴³ Vulcan's AQA shows the GLC_{max} for annual PM_{2.5} with modeled road emissions at 0.57 micrograms per cubic meter (µg/m³). The NAAQS for annual PM_{2.5} is 12 µg/m³. 1 A.R. 26, p. 34.

¹⁴⁴ Vulcan's air quality analysis shows the GLC_{max} for annual PM_{2.5} without modeled road emissions at 0.04 µg/m³. 1 A.R. 26, p. 34.

policy matters properly directed to the legislature. TCEQ followed the Texas Clean Air Act and its own rules by requiring Vulcan to model only the emissions from the facilities associated with its proposed rock-crushing plant.

C. Although not necessary to demonstrate compliance with the NAAQS, Vulcan's voluntary full NAAQS analysis for PM_{2.5} and PM₁₀ was proper.

The district court erred in reversing based on the analysis of cumulative impacts and selection of a representative background monitor, which were part of Vulcan's full NAAQS analysis for PM_{2.5} and PM₁₀. The district court erred in reversing on these issues primarily because Vulcan's NAAQS analysis was complete at the preliminary impact stage. Nevertheless, the Appellees showed no error regarding Vulcan's full NAAQS analysis. Vulcan's voluntary full NAAQS analysis was conducted in accordance with TCEQ's guidance and provided cumulative evidence that emissions from the proposed plant will be protective of human health, welfare, and property.

i. Vulcan's preliminary impact determinations for PM_{2.5} and PM₁₀ made the analysis of off-site sources and background concentrations unnecessary.

As explained above, a full NAAQS analysis is not necessary when

the GLC_{max} for a criteria pollutant does not exceed the applicable SIL.¹⁴⁵ The requirement to input emissions from other sources near a proposed facility and add the representative background concentration occurs *only* in a full NAAQS analysis.¹⁴⁶ Because Vulcan's NAAQS demonstrations for $PM_{2.5}$ and PM_{10} were complete at the preliminary impact determination,¹⁴⁷ the full NAAQS analysis for these air contaminants provided cumulative evidence. TCEQ's findings that the GLC_{max} s of 24-hour PM_{10} , 24-hour $PM_{2.5}$, and annual $PM_{2.5}$ are below the applicable NAAQS and that these emissions will not negatively affect human health and welfare or physical property are supported by Vulcan's preliminary impact determinations.

The voluntariness of Vulcan's full NAAQS analysis was, in fact, acknowledged by the district court.¹⁴⁸ The Court should uphold TCEQ's decision on any legal basis supported in the record. *Public Util. Comm'n*, 960 S.W.2d at 121. No reversible error can be assigned to analysis Vulcan

¹⁴⁵ See *supra* p. 6.

¹⁴⁶ 2-B2 A.R. 232, p. 16:12-14.

¹⁴⁷ 2-B2 A.R. 232, p. 16:24-27.

¹⁴⁸ C.R. 541 (reversing based on "TCEQ's determination that Vulcan's choice of the relevant background concentrations used in its *voluntary* Full Minor National Ambient Air Quality Standard ("NAAQS") Analyses were appropriate") (emphasis added).

provided voluntarily. With respect to PM emissions, the Commission's decision should be sustained based on the preliminary impact determinations.

ii. TCEQ's approval of off-site sources is supported by substantial evidence and is the product of reasoned decision-making.

Even though Vulcan was not required to perform a full NAAQS analysis for PM_{2.5} and PM₁₀, its voluntary analysis was proper under TCEQ and EPA guidance. A full NAAQS analysis requires the evaluation of emissions from off-site sources.¹⁴⁹ Following EPA guidance, Vulcan obtained from TCEQ a list of facilities permitted for air emissions within a 10 km radial distance from the center of Vulcan's proposed crushing plant.¹⁵⁰ Only the facilities associated with the Martin Marietta rock crushing plant, located approximately 9.3 km southwest of Vulcan's proposed plant, met that criterion.¹⁵¹ TCEQ agreed with this approach, finding that Vulcan's proposed plant is isolated with no other sources other than the Martin Marietta rock-crushing plant that would cause a significant concentration gradient of emissions in the vicinity and that

¹⁴⁹ 2-B2 A.R. 232, p. 17:2-5; 2-B2 A.R. 234, p. 17.

¹⁵⁰ 2-B1 A.R. 185, p. 17:18-25.

¹⁵¹ 2-B1 A.R. 185, p. 17:25-30.

the area of impact from Vulcan's emissions is small.¹⁵² Vulcan then inputted the maximum allowable emissions under Martin Marietta's NSR permit for its rock-crusher into the GLC_{max} modeling for Vulcan's project-related emissions.¹⁵³ Vulcan's analysis shows that, for PM₁₀ and PM_{2.5}, the GLC_{max}s from its proposed plant and modeled off-site emissions from the Martin Marietta plant combined are insignificant compared to the representative background concentrations.¹⁵⁴ However, even the total maximum off-site GLC for PM₁₀ and PM_{2.5} emissions, which includes the representative background concentrations, will be well below the NAAQS.¹⁵⁵

The Reeh Appellees argued that Vulcan failed to account for other significant sources of PM emissions in the area.¹⁵⁶ They relied on Mr. Gebhart's testimony that there are a number of other emissions sources in the area.¹⁵⁷ But Mr. Gebhart did not name any specific facility that Vulcan should have included in its modeling under TCEQ guidance, and

¹⁵² 2-B2 A.R. 232, p. 17:14-25.

¹⁵³ 2-B1 A.R. 185, p. 17:28-30; 2-B2 A.R. 232, p. 17:11-13.

¹⁵⁴ 1 A.R. 26, p. 34; 2-B1 A.R. 185, p. 14:7-10.

¹⁵⁵ 2-B1 A.R. 185, p. 11.

¹⁵⁶ C.R. 270.

¹⁵⁷ 2-B3 A.R. 240, p. 7:8-18.

the map included with his testimony lacks any scale to establish distances from Vulcan's proposed plant.¹⁵⁸

Both the Reeh and Friends Appellees argued that TCEQ erred by not requiring Vulcan to model emissions from the Martin Marietta quarry and its in-plant roads or Vulcan's own quarry and associated roads as part its consideration of other nearby sources of PM.¹⁵⁹ But Vulcan did not need to include such emissions in its modeling. These sources were accounted for in the next step of Vulcan's full NAAQS analysis, which requires the applicant to add a representative background concentration of the criteria pollutants to the GLC_{max} s from the modeling.¹⁶⁰ As TCEQ's modeling expert, Rachel Melton, explained, the addition of the representative background concentration accounts for surrounding sources of air emissions not explicitly included in the air-dispersion model, such as roads, natural sources, and other nearby sources.¹⁶¹

The Friends Appellees argued that under EPA's GAQM guidance, it was error to require Vulcan to include the Martin-Marietta rock

¹⁵⁸ 2-B3 A.R. 242.

¹⁵⁹ C.R. 105, 269.

¹⁶⁰ 2-B2 A.R. 232, p. 17:2-5.

¹⁶¹ 2-B2 A.R. 232, p. 18:3-6.

crushing plant but not Vulcan's quarry and roads.¹⁶² This argument was based on a faulty reading of EPA's guidance. The GAQM provides:

[a]ll sources in the vicinity of the source(s) under consideration for emissions limits that are not adequately represented by ambient monitoring data should be explicitly modeled. Since an ambient monitor is limited to characterizing air quality at a fixed location, sources that cause a significant concentration gradient in the vicinity of the source(s) under consideration for emissions limits are not likely to be adequately characterized by the monitored data due to the high degree of variability of the source's impact.¹⁶³

Simply put, a significant source of air emissions in the vicinity of a proposed facility may cause an area of concentrated emissions that cannot be accounted for by a representative background concentration. Emissions from such sources should be inputted into the air-dispersion model; however, EPA's guidance continues:

The number of nearby sources to be explicitly modeled in the air quality analysis is expected to be few except in unusual situations. In most cases, the few nearby sources will be located within the first 10 to 20 km from the source(s) under consideration. Owing to both the uniqueness of each modeling situation and the large number of variables involved in identifying nearby sources, no attempt is made here to comprehensively define a "significant concentration gradient." Rather, identification of nearby sources calls for the exercise of professional judgment by the appropriate reviewing authority.¹⁶⁴

¹⁶² C.R. 111.

¹⁶³ 2-B2 A.R. 235, Section 8.3.3(b).

¹⁶⁴ 2-B2 A.R. 235, Section 8.3.3(b)(iii).

In addition, the GAQM acknowledges the interconnectedness of off-site sources included in the modeling and the representative background concentration.¹⁶⁵ This means that the off-site sources added to the air-dispersion model and the representative background monitor should together adequately represent sources near the site.¹⁶⁶

TCEQ reasonably did not require the emissions from Vulcan's on-site roads and its quarry or the Martin Marietta quarry and associated roads to be inputted into Vulcan's modeling because 1) the Vulcan plant is an isolated source with no other sources in the area that would cause a significant concentration gradient;¹⁶⁷ and 2) representative background monitors accounted for roads (including Vulcan's own roads) and industrial sources of PM such as quarry emissions.¹⁶⁸ EPA's guidance makes it clear that the inclusion of nearby sources depends on a variety of factors and is within TCEQ's "professional judgment" as the NSR permitting authority in Texas.¹⁶⁹ TCEQ's determination of off-site

¹⁶⁵ 2-B2 A.R. 235, Section 8.3.3(a).

¹⁶⁶ 2-B2 A.R. 232, p. 17:29-34.

¹⁶⁷ 2-B2 A.R. 232, p. 17:14-18.

¹⁶⁸ 2-B2 A.R. 232, p. 18:1-6.

¹⁶⁹ 2-B2 A.R. 235, Section 8.3.3(b)(iii).

sources is supported by substantial evidence and is the product of reasoned decision-making.

iii. TCEQ's approval of Vulcan's representative background monitors is supported by substantial evidence and is the product of reasoned decision-making.

The Appellees' criticisms of Vulcan's choice of background monitors do not now show error. Rather, they demonstrate nothing more than a disagreement with the agency charged by the legislature to make these determinations.

When an applicant for an NSR permit conducts a full NAAQS analysis, a representative monitored background concentration of the modeled pollutants must be added to the GLC_{max} .¹⁷⁰ However, data from a monitor near the site of a proposed facility is rarely available. In that case, a representative monitor may be used to establish the representative background concentration.¹⁷¹

No site-specific ambient data was available for Vulcan's proposed plant.¹⁷² There is also no monitor in Comal County that measures the ground-level concentrations of the criteria pollutants included in

¹⁷⁰ 2-B2 A.R. 234, p. 18; 2-B2 A.R. 232, p. 16:12-14.

¹⁷¹ 2-B2 A.R. 234, p. 44, Appendix D; 2-B2 A.R. 232, p. 18:15-18.

¹⁷² 2-B1 A.R. 185, p. 27:3-5.

Vulcan's air quality analysis.¹⁷³ Therefore, Vulcan relied on representative monitors to establish the background concentrations for all modeled NAAQS pollutants.¹⁷⁴

In selecting a representative background monitor, TCEQ guidance requires an applicant to justify why the selected monitor adequately represents a pollutant's ambient concentration.¹⁷⁵ An applicant can justify the selection of a monitor in different ways, including a comparison of county emissions, county populations, categories of source emissions for each county, as well as through a quantitative assessment of emissions surrounding the location of the monitor compared to the project site.¹⁷⁶ Vulcan's justification for the use of representative background monitors included a comparison of the county-wide emissions, county-wide population, nearby highways, and a quantitative assessment of emissions surrounding the location of the selected monitors, which TCEQ staff reviewed and found consistent with TCEQ guidance.¹⁷⁷

¹⁷³ 2-B1 A.R. 185, p. 28:21-22.

¹⁷⁴ 1 A.R. 26, pp. 12-15; 2-B1 A.R. 185, p. 28:22-25.

¹⁷⁵ 2-B2 A.R. 232, 18:26-27; 2-B2 A.R. 234, pp.44-45, Appendix D.

¹⁷⁶ 2-B2 A.R. 232, p. 18:30-36; 2-B2 A.R. 234, pp. 44-45, Appendix D.

¹⁷⁷ 2-B2 A.R. 232, pp. 19:1-15, 20:36-37, 21:1.

The Reeh Appellees argued that Vulcan’s choice of representative monitors for PM was flawed because both monitors are upwind of what Appellees have termed “Quarry Row.”¹⁷⁸ This is an area south-east of Vulcan’s proposed plant that contains quarries and rock crushers.¹⁷⁹ The Reeh Appellees wrongly assumed that a representative background monitor must capture the specific sources of PM near a proposed facility. In fact, TCEQ’s guidance requires a monitor to be *representative* of the ambient air near the proposed facility. In some cases, this may require an ambient monitor from across the state.¹⁸⁰ In this case, there is no PM₁₀ or PM_{2.5} monitor downwind of “Quarry Row” or in Comal County.¹⁸¹ Moreover, Vulcan’s modeling expert, Mr. Knollhoff, testified that the PM₁₀ and PM_{2.5} emissions from “Quarry Row” will have no cumulative or additive impact with the PM₁₀ or PM_{2.5} emissions from Vulcan’s proposed plant.¹⁸² As shown below, the background concentrations from Vulcan’s choice of ambient monitors adequately represents pollution

¹⁷⁸ C.R. 269.

¹⁷⁹ C.R. 98.

¹⁸⁰ For instance, to establish the background level of one-hour and annual NO₂, Vulcan relied on an ambient air quality monitor in Ellis County, south of the Dallas-Fort Worth area. 1 A.R. 26, p. 14.

¹⁸¹ 2-B1 A.R. 185, p. 28:21-22.

¹⁸² 2-B1 A.R. 185, p. 22:10-23.

concentrations near the Vulcan site. Thus, it would not have been necessary to use ambient monitors downwind of “Quarry Row,” even if such monitors existed.

a. The Heritage Middle School monitor provided a representative background concentration for PM_{2.5}.

Vulcan selected the Heritage Middle School monitor as the representative monitor for annual and 24-hour PM_{2.5}.¹⁸³ The background PM_{2.5} recorded at this monitor is representative of or conservatively higher than the background concentration near the proposed Vulcan plant. First, the Heritage monitor is in Bexar County, a county with a higher population than Comal County where the proposed Vulcan plant will be located.¹⁸⁴ There are also more sources of PM emissions from vehicle traffic in the vicinity of the Heritage monitor. The Heritage monitor is located 6.4 km east of I-410 and 8.2 km northeast of I-37, whereas the Vulcan site is over 15 km from a major roadway.¹⁸⁵ There are also 15 permitted facilities that produce PM nearby the Heritage monitor, including a coal-fired power plant and an electric distribution

¹⁸³ 1 A.R. 26, p. 13; 2-B1 A.R. 185, p. 31:11-13.

¹⁸⁴ 2-B1 A.R. 185, p. 32:23-24.

¹⁸⁵ 2-B2 A.R. 232, p. 19:33-34.

plant.¹⁸⁶ Comparatively, only two permitted facilities are located in the area of the proposed Vulcan site, and Vulcan modeled emissions from the only one of these within 10 km of the proposed plant—the Martin Marietta rock-crushing plant.¹⁸⁷ Based on these factors, TCEQ reasonably determined that the use of the Heritage monitor adequately represents background PM_{2.5} emissions at the Vulcan site.¹⁸⁸

b. The Selma monitor provided a representative background concentration for PM₁₀.

Vulcan selected the Selma monitor to establish the 24-hour PM₁₀ background concentration.¹⁸⁹ The background PM₁₀ recorded at this monitor is also representative of or conservatively higher than the background concentration near the proposed Vulcan plant. Like the Heritage monitor, the Selma monitor is located in Bexar County.¹⁹⁰ There are also more sources of PM emissions from vehicle traffic in the vicinity of the Selma monitor. The monitor is located 0.5 km north of I-35 and 3 km northeast of North Loop 1604, while the Vulcan site is over 15 km

¹⁸⁶ 2-B2 A.R. 232, p. 20:4-6.

¹⁸⁷ 2-B2 A.R. 232, p. 20:11-13.

¹⁸⁸ 2-B2 A.R. 232, p. 20:15-18.

¹⁸⁹ 1 A.R. 26, p. 13; 2-B1 A.R. 185, p. 31:9-11.

¹⁹⁰ 1 A.R. 26, p. 13; 2-B1 A.R. 185, p. 31:20-21.

from a major roadway.¹⁹¹ Additionally, there are several emission sources of PM₁₀ near the monitor, including a cement company and over 30 other permitted facilities.¹⁹² TCEQ also reviewed aerial photography showing that open pit quarry operations appear to exist within 7 km of the Selma monitor.¹⁹³ The same open pit operations are over 12 km from the proposed Vulcan site.¹⁹⁴ Based on these factors, TCEQ reasonably determined that the Selma monitor would provide a representative PM₁₀ background concentration.¹⁹⁵

Both the Reeh and Friends Appellees relied on the testimony of Howard Gebhart to cast doubt on the representativeness of the Selma monitor.¹⁹⁶ Mr. Gebhart stated that the Selma monitor is surrounded mostly by residential areas with no significant emission sources in the immediate vicinity.¹⁹⁷ This erroneous conclusion was based only on his personal visit to the site and a visual review of the area using Google Earth.¹⁹⁸ Mr. Gebhart did not consider the fact that there are numerous

¹⁹¹ 2-B2 A.R. 232, p. 19:32-35.

¹⁹² 2-B2 A.R. 232, p. 20:1-2.

¹⁹³ 2-B2 A.R. 232, p. 20:3-4.

¹⁹⁴ 2-B2 A.R. 232, p. 20:13-15.

¹⁹⁵ 2-B2 A.R. 232, p. 20:15-18.

¹⁹⁶ C.R. 107, 266

¹⁹⁷ 2-B3 A.R. 240, p. 8:21-24.

¹⁹⁸ 2-B3 A.R. 240, p. 8:22-24.

sources of PM₁₀ in the vicinity, including large industrial sources and major highways. TCEQ's approval of Vulcan's representative background monitors for PM_{2.5} and PM₁₀ is the product of reasoned decision-making and is supported by substantial evidence.

III. The ALJ's Ruling on Vulcan's Trade Secret Did Not Prejudice Appellees' Substantial Rights.

The district court ruled that “[t]he [ALJ] abused her discretion by ruling that Vulcan could maintain information from its 2016 subsurface investigation at the property where the Plant will be located as confidential under the trade secret privilege.”¹⁹⁹ This point of error stems from a discovery dispute at the SOAH proceeding regarding Vulcan's health effects analysis of crystalline silica.

The cores Vulcan used to develop a representative sample of aggregate material for its health effects analysis of crystalline silica were collected from the company's unrelated 2016 subsurface investigation of the proposed site.²⁰⁰ Vulcan conducted the investigation to determine whether to purchase the property and how much to pay for the

¹⁹⁹ C.R. 542.

²⁰⁰ 2-B1 A.R. 198, p. 6:6-26.

property.²⁰¹ The investigation provided information on the quantity and quality of limestone available at the site for processing.²⁰²

The Friends Appellees served written discovery on Vulcan, requesting documents relating to the investigation and any evaluation of aggregate materials to be processed at the plant.²⁰³ Vulcan objected to producing documents from its investigation based on the trade secret privilege,²⁰⁴ and the Friends Appellees filed a motion to compel.²⁰⁵ They later filed a motion for continuance, alleging they needed information from the subsurface investigation to “effectively question Vulcan’s experts” and to depose Vulcan’s witnesses.²⁰⁶ The ALJ denied the motion to compel and the motion for continuance.²⁰⁷

The Appellees failed to show reversible error on this ruling. Under the APA, a reviewing court may reverse an agency decision if the “substantial rights of the appellant have been prejudiced” by agency error. Tex. Gov’t Code § 2001.174(2). To show prejudice and obtain

²⁰¹ 1 A.R. 119, p. 13.

²⁰² 1 A.R. 271, p. 156:1-18.

²⁰³ 1 A.R. 111, p. 1.

²⁰⁴ 1 A.R. 119.

²⁰⁵ 1 A.R. 111.

²⁰⁶ 1 A.R. 129, pp. 3-4.

²⁰⁷ 1 A.R. 132.

reversal on the grounds that an agency wrongly excluded evidence, the party seeking judicial review must show “that the evidence is controlling on a material issue, not merely cumulative.” *Office of Pub. Util. Counsel v. Pub. Util. Comm’n of Tex.*, 185 S.W.3d 555, 576 (Tex. App.—Austin 2006, pet. denied). A court may reverse the decision “if it appears that improperly excluded evidence affected the result.” *Nissan N. Am., Inc. v. Tex. Dep’t of Motor Vehicles*, 592 S.W.3d 480, 487 (Tex. App.—Texarkana 2019, no pet.).

The material issues for the hearing were determined by TCEQ’s order referring the matter to SOAH. When TCEQ refers a matter to SOAH, it must provide the ALJ a list of disputed issues. Tex. Gov’t Code § 2003.047(e). The scope of the hearing is limited to the issues referred by TCEQ. *Id.* § 2003.047(f). Regarding crystalline silica, TCEQ referred to SOAH the issue of “[w]hether emissions of silica from the proposed plant will negatively impact human health and welfare.”²⁰⁸

Vulcan’s documents relating to its 2016 subsurface investigation of the proposed site were not controlling on the issue of crystalline silica emissions. As shown above, Vulcan’s health effects analysis for

²⁰⁸ 1 A.R. 99, p. 4.

crystalline silica was not necessary for TCEQ to make findings on the health and welfare effects from crystalline silica emissions at Vulcan's proposed plant.²⁰⁹ TCEQ's executive director introduced the MERA into evidence, showing that the agency did not require health effects analysis for crystalline silica emissions from rock crushers because it had already determined that rock-crushers emit insignificant levels of crystalline silica.²¹⁰ Vulcan's voluntary health effects analysis provided cumulative evidence to support TCEQ's conclusion that crystalline silica emissions from Vulcan's proposed plant would not negatively impact human health and welfare. Thus, documents from Vulcan's prior subsurface investigation were not controlling on a material issue that could prejudice the Appellees' substantial rights.

Moreover, documents related to Vulcan's prior subsurface investigation could not be used to challenge the representativeness of Vulcan's sample, as the Reeh and Friends Appellees claimed. Vulcan's expert, Dr. Eversull, testified that none of the cores taken as part of the subsurface investigation was drilled for the purpose of determining the

²⁰⁹ *See supra* pp. 20-23.

²¹⁰ 2-B2 A.R. 211, p. 34:3-6.

crystalline silica content.²¹¹ Furthermore, Dr. Eversull testified that she did not rely on photographs, boring logs, or other documents from the 2016 subsurface investigation to form an opinion on the representative sample of aggregate material.²¹² Instead, she selected cores from the north, central, and southern portion of the site and gathered samples along regular ten-foot intervals in each core to establish a representative sample of aggregate material across the proposed site.²¹³ This selection was based on her experience and knowledge of geology in the area.²¹⁴ The process Dr. Eversull used to obtain a representative sample of aggregate material in no way depended on documents from the prior subsurface investigation. The Appellees failed to show that their substantial rights were prejudiced by the ALJ's ruling on the trade secret issue.

IV. The Appellees Were Provided Due Process.

The district court improperly found due process violations and reversed TCEQ's decision based on the following issues:

- “the [ALJ's] ruling that Vulcan could maintain information from its 2016 subsurface investigation at the property where the Plant will be located as confidential under the trade secret privilege;”

²¹¹ 3 A.R. 271, p. 162:22-23.

²¹² 3 A.R. 271, pp. 159:8-160:11.

²¹³ 3 A.R. 271, pp. 193:6-7, 202:21-203:3.

²¹⁴ 3 A.R. 271, p. 166:3-11.

- “the [ALJ’s] denial of Appellees’ discovery and cross-examination of the “privileged” information;” and
- “TCEQ’s not requiring Vulcan to input emissions from quarries and roads into its modeling for the [air quality analysis] for 24-hour PM10, 24-hour PM2.5, and Annual PM2.5.”²¹⁵

TCEQ agrees that due process protections extend to permit proceedings conducted at the Commission. Under both the “due course of the law” provision of the Texas Constitution, art. I, § 19, and the Fourteenth Amendment to the U.S. Constitution, due process at a minimum requires notice and opportunity to be heard at a meaningful time and in a meaningful manner. *Univ. Tex. Med. Sch. at Houston v. Than*, 901 S.W. 2d 926, 930 (Tex. 1995) (citing *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). What process is due is measured by a flexible standard that depends on the practical requirements of the circumstances. *Id.*

Although administrative proceedings are not required to measure up to judicial standards for due process, they must provide parties a full and fair hearing on disputed fact issues. *Office of Pub. Util. Counsel*, 185

²¹⁵ C.R. 542.

S.W.3d at 576. At a minimum, due process requires that the “rudiments of fair play” be observed in such proceedings. *Id*; see also *United Copper Indus., Inc.*, 17 S.W.3d at 805 (“[B]asic due process requires that when a decision maker is called upon to make a decision grounded on evidence, the parties involved should be provided fair notice and a meaningful opportunity to present their evidence.”).

The district court erred in reversing these issues on due process grounds. For each of these issues, the Appellees were provided notice and a meaningful opportunity to present evidence in accordance with due process requirements. The SOAH hearing on Vulcan’s application spanned two days. Appellees had the opportunity to conduct discovery, submit testimony, and cross-examine witnesses. Appellees were provided due process.

A. The ALJ’s ruling on Vulcan’s trade secret was consistent with due process.

The Reeh Appellees argued that they were deprived of due process because they were denied any access to the subsurface rock samples and data concerning the crystalline silica content of the proposed emissions

at the Vulcan Facility.²¹⁶ The Friends Appellees argued that they were denied due process by the ALJ's limits on discovery on the subsurface investigation.²¹⁷ But the Appellees did not show any due-process errors related to the ALJ's rulings.

First, the Reeh Appellees' complaint that they were denied access to Vulcan's rock samples is incorrect. The dispute was over documents related to the 2016 subsurface investigation. It did not involve access to the core samples themselves. The ALJ did not restrict Appellees' access to any aspect of Vulcan's crystalline silica analysis of the cores.

Second, as demonstrated above, the ALJ's ruling on the trade secret issue did not affect the Appellees' substantial rights.²¹⁸ Vulcan's representative sample produced from the subsurface investigation provided only cumulative evidence to support TCEQ's finding of no adverse impacts to human health and welfare from crystalline silica emissions.

Third, ALJ's alleged failure to correctly rule on the Friends Appellees' motion to compel does not demonstrate a denial of due process.

²¹⁶ C.R. 260.

²¹⁷ C.R. 130

²¹⁸ *See supra* pp. 60-63.

Procedural due process is a guarantee of a fair *process*. See *Marozsan v. U.S.*, 90 F.3d 1284, 1289 (7th Cir. 1996) (“[T]he Due Process Clause is not a guarantee against incorrect results”); *Than*, 901 S.W.2d at 931 (“[T]he due course of law guarantee, like the due process clause, does not ensure that the academic disciplinary process is accurate and without error”). There is no evidence in the record that the Appellees were denied a fair hearing. At the SOAH hearing, the Appellees had an opportunity to present their case to an ALJ who, by statute, is a neutral administrative magistrate. See Tex. Gov’t Code §§ 2001.058(a)–(d), 2003.047(n). The ALJ’s order shows that before ruling on the motion to compel, she considered the motion, Vulcan’s response, and a reply filed by the Friends Appellees.²¹⁹ Such consideration satisfies due process.

B. The ALJ’s limits cross examination and discovery were consistent with due process.

The Friends Appellees argued that during the cross-examination of Dr. Eversull, they were denied the ability to explore Dr. Eversull’s reliance on materials produced in the subsurface investigation.²²⁰ In addition, the Friends Appellees argued that the denial of the motion to

²¹⁹ 1 A.R. 132, p.1.

²²⁰ C.R. 125.

compel prevented them from effectively cross-examining Dr. Eversull.²²¹ The district court erred in finding due-process violations on these claims.

First, the Friends Appellees failed to show how either of these rulings affected their substantial rights. As shown above, Dr. Eversull's testimony provided TCEQ with only cumulative evidence on the referred issue of whether crystalline silica emissions from the proposed plant would negatively impact human health and welfare.²²² Even without the testimony of Dr. Eversull, TCEQ's MERA guidance provided substantial evidence to find that such emissions would be protective of human health and welfare.

Second, the limit on cross examination imposed by the ALJ was reasonable and consistent with due process. The right to cross examination is not unqualified. A trial court may permissibly limit the scope and extent of cross-examination. *Huston v. United Parcel Serv., Inc.*, 434 S.W.3d 630, 636 (Tex. App.—Houston [1st Dist.] 2014, pet. denied). Limits imposed on cross-examination will not be disturbed

²²¹ C.R. 125 and 130.

²²² See *supra* pp. 21-23.

unless they are arbitrarily and unreasonably made. *Ferrara v. Moore*, 318 S.W.3d 487, 497 (Tex. App.—Texarkana 2010, pet. denied).

On cross-examination, Dr. Eversull made it clear that her opinion on the representative sample of aggregate material did not depend on photographs,²²³ boring logs,²²⁴ or any other documents associated with the 2016 subsurface investigation.²²⁵ Later, Dr. Eversull was questioned about items in Vulcan’s privilege log. Counsel for the Friends Appellees confused the witness by stating that his questions were “about your work on the project” without specifying whether “the project” meant the work she performed for the 2016 investigation or the later crystalline silica analysis.²²⁶ After repeated questions about the investigation photographs, the ALJ asked counsel to “move on” to another topic.²²⁷ However, counsel had an opportunity to re-cross Dr. Eversull where he was able to ask further questions about the subsurface investigation.²²⁸ The ALJ’s limit on cross examination was reasonable and consistent with due process.

²²³ 3 A.R. 271, pp. 158:25-159:2.

²²⁴ 3 A.R. 271, pp. 159:24-160:1.

²²⁵ 3 A.R. 271, p. 160:5-6.

²²⁶ 3 A.R. 271, p 164:6-11.

²²⁷ 3 A.R. 271, p 168:10-11.

²²⁸ 3 A.R. 271, p. 212:4-8.

C. The exclusion of road and quarry emissions from Vulcan’s air quality analysis was consistent with due process.

Finally, the Reeh Appellees argued that Vulcan’s failure to include quarry and road emissions in its modeling resulted in a denial of due process.²²⁹ The district court erred in finding a due process violation on this basis. Again, the Reeh Appellees attempted to reframe a complaint on the merits of TCEQ’s decision with due process. Due process protections are not a guarantee a correct decision. *Than*, 901 S.W.2d at 931. In addition, the Reeh Appellees failed to preserve error on this issue by raising it in the motion for rehearing.²³⁰ A motion for rehearing is a statutory prerequisite to an appeal in a contested case. *Sally v. Tex. State Bd. of Med. Examiners*, 351 S.W.3d 434, 444 (Tex. App.—Austin 2011, pet. denied). To preserve error in a suit for judicial review, a party’s motion for rehearing must set forth the fact finding, legal conclusion, or ruling complained of and the legal basis of that complaint. *Id.* at 445. The Reeh Appellees’ failed to preserve any due process issues on the air quality analysis.

²²⁹ C.R. 260.

²³⁰ 1 A.R. 178.

Finally, the Reeh Appellees were provided due process on all contested matters of Vulcan's application. The Reeh Appellees submitted public comments on Vulcan's application.²³¹ The ED responded to all public comments, including the Reeh Appellees' comments.²³² At the contested-case hearing, the Appellees had the opportunity to conduct discovery, introduce testimony, and cross examine witnesses, including the TCEQ's witness and Vulcan's witnesses who testified on the NAAQS analysis. The Reeh Appellees were provided due process.

Conclusion and Prayer

The Reeh and Friends Appellees failed to show any reversible errors in TCEQ's order granting Vulcan's permit. The Court should reverse the district court and render judgment affirming TCEQ's order in full.

Respectfully submitted,

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²³¹ 5 A.R. Comment Letters Pt. 1, pp. 964 and 1125; 5 A.R. Comment Letters Pt. 2, p. 1102.

²³² 1 A.R. 45, p. 86.

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Certificate of Compliance

I certify that this brief conforms to the type-volume limitation of Texas Rule of Appellate Procedure 9.4(i)(2)(B), because it contains 13,355 words, excluding the parts of the brief exempted by Rule 9.4(i)(1). This is a computer-generated document created in Microsoft Word.

/s/ Mark A. Steinbach
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Certificate of Service

I hereby certify that on this 23rd day of July 2021, a true and correct copy of the foregoing TCEQ's Brief on the Merits has been served upon the parties listed below via electronic service or email.

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Appendix 1

Final Judgment of District Court


calculations are not based on representative site conditions, and TCEQ's determination that Vulcan's silica emissions calculations are representative of those to be expected from the site is not supported by substantial evidence; and iii) TCEQ's rejection of Reeh Plaintiffs' assertions regarding ways the Permit allegedly is not sufficiently protective of public health or property is arbitrary and capricious and not supported by substantial evidence.

2. TCEQ's Conclusion of Law No. 14 (concluding that Vulcan has made all demonstrations required under applicable statutes and regulations, including 30 Texas Administrative Code § 116.111 regarding air permit applications, to be issued an air quality permit with conditions as set forth in the Draft Permit) is reversed because i) TCEQ's determination that Vulcan's air dispersion modeling adequately accounts for or addresses cumulative impacts; ii) TCEQ's determination that quarry and road emissions were adequately considered; and iii) TCEQ's determination that Vulcan's choice of the relevant background concentrations used in its voluntary Full Minor National Ambient Air Quality Standard ("NAAQS") Analyses were appropriate, is arbitrary and capricious, and not supported by substantial evidence.
3. TCEQ's Best Available Control Technology ("BACT") reviews for Vulcan's Application met the standards of Texas Health and Safety Code § 382.0518 and 30 Texas Administrative Code § 116.111(a)(2)(C), were properly conducted, supported by substantial evidence, and not arbitrary, capricious, or unlawful. TCEQ's BACT determination is affirmed.

4. The Administrative Law Judge abused her discretion by ruling that Vulcan could maintain information from its 2016 subsurface investigation at the property where the Plant will be located as confidential under the trade secret privilege.
5. Plaintiffs were denied due process such that their substantial rights were prejudiced by: (1) the Administrative Law Judge's ruling that Vulcan could maintain information from its 2016 subsurface investigation at the property where the Plant will be located as confidential under the trade secret privilege; (2) the Administrative Law Judge's denial of Plaintiffs' discovery and cross-examination of the "privileged" information; and (3) TCEQ's not requiring Vulcan to input emissions from quarries and roads into its modeling for the AQAs for 24-hour PM₁₀, 24-hour PM_{2.5}, and Annual PM_{2.5}.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Final Order is AFFIRMED IN PART and REVERSED IN PART and REMANDED.

Signed this 1st day of April, 2021


JUDGE MAYA GUERRA GAMBLE
JUDGE, 459TH DISTRICT COURT

Approved as to form only:



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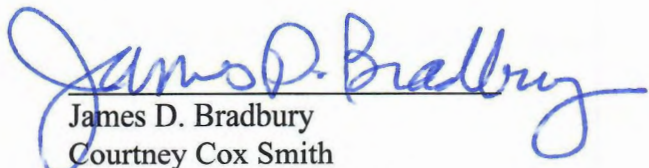
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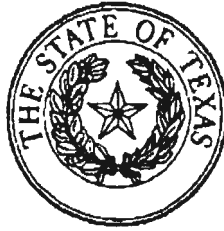
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Appendix 2

ORDER GRANTING THE APPLICATION
BY VULCAN CONSTRUCTION
MATERIALS, LLC FOR PERMIT NO.
147392L001; TCEQ DOCKET NO. 2018-
1303-AIR; SOAH DOCKET NO. 582-19-1955

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER GRANTING THE APPLICATION BY VULCAN CONSTRUCTION MATERIALS, LLC FOR PERMIT NO. 147392L001; TCEQ DOCKET NO. 2018-1303-AIR; SOAH DOCKET NO. 582-19-1955

On November 20, 2019, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the application of Vulcan Construction Materials, LLC for an air quality permit for a new rock crushing plant to be located in Bulverde, Comal County, Texas. A Proposal for Decision (PFD) was issued by Victor John Simonds and Rebecca S. Smith, Administrative Law Judges (ALJs) with the State Office of Administrative Hearings, and considered by the Commission.

After considering the PFD, the Commission makes the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

Background

1. On June 26, 2017, Vulcan Construction Materials, LLC (Vulcan or Applicant) filed an application for an air quality permit to authorize the construction and operation of a new rock crushing plant (Plant). The application, the Air Quality Analysis (AQA) submitted on November 7, 2017, and the revisions submitted on November 17, 2017, will be collectively referred to as the Application.

2. Vulcan proposes to construct the Plant on property whose northeast corner is the southwest corner of the intersection of Highway 46 and Farm-to-Market Road 3009, Bulverde, Comal County, Texas.
3. TCEQ's Executive Director (ED) declared the Application administratively complete on July 5, 2017.
4. The ED determined the Application was technically complete on January 19, 2018, and issued a draft permit for the Application (Draft Permit).

Notice and Jurisdiction

5. On July 28, 2017, Vulcan published a Notice of Receipt and Intent to Obtain an Air Quality Permit in Spanish in *La Prensa Comunidad del Valle*, and on July 31, 2017, published it in English in the *San Antonio Express-News*.
6. On January 12, 2018, the ED provided written notification of the Draft Permit to the state senator and state representative who represent the area where the Plant will be located.
7. On January 26, 2018, Vulcan published a Combined Notice of Public Meeting and Notice of Application and Preliminary Decision in English in the *San Antonio Express-News* and in Spanish in *La Prensa Comunidad del Valle*.
8. Vulcan posted required signs, including alternative language signs.
9. Notice of the Application was made to all persons and entities to which notification was required.
10. The TCEQ held a public meeting in New Braunfels on February 27, 2018.
11. The public comment period ended on February 27, 2018.
12. On September 6, 2018, the ED filed a Response to Public Comments and stated that no changes were made in response to public comment for the final Draft Permit.
13. On December 13, 2018, the Commission issued an interim order granting certain hearing requests, denying certain hearing requests and requests for reconsideration, and referring the Application to the State Office of Administrative Hearings (SOAH) for a contested evidentiary hearing on the following nineteen issues:
 - A. Whether the proposed plant will negatively affect human health, included sensitive subgroups, and physical property;
 - B. Whether the conditions in the proposed permit will adequately protect against dust emissions from the proposed plant, including during periods of high winds;
 - C. Whether cumulative impacts of existing sources were properly considered;

- D. Whether the controls in the proposed permit constitute Best Available Control Technology (BACT);
- E. Whether the proposed facility will adversely affect wildlife, vegetation, flora and fauna;
- F. Whether the proposed operating hours of the rock crusher ensure that there will be no adverse impacts to human health, welfare, and the environment;
- G. Whether the air quality modeling conducted as part of this application adequately incorporated the local prevailing winds;
- H. Whether the Applicant complied with TCEQ's public notice requirements related to sign-posting and newspaper notice;
- I. Whether the proposed permit contains adequate monitoring and recordkeeping requirements to ensure compliance with all applicable rules and requirements;
- J. Whether emissions from on-site diesel engines are adequately calculated and adequately controlled;
- K. Whether an adequate site review was conducted for this application;
- L. Whether the background concentrations used in the air dispersion modeling are representative of the proposed location of the plant;
- M. Whether emissions from maintenance, start-up, and shutdown activities are adequately addressed in the proposed permit;
- N. Whether chemical dust suppressant is safe to use as a control for emissions from the proposed plant;
- O. Whether emissions of silica from the proposed plant will negatively impact human health and welfare;
- P. Whether the proposed permit conditions, including emissions limitations, are enforceable;
- Q. Whether the permit application, and associated air dispersion modeling, included and properly evaluated all applicable emissions;
- R. Whether site specific monitoring data should have been used in the air dispersion modeling conducted for this application; and
- S. Whether the Applicant's compliance history precludes issuance of the draft permit or necessitates additional special conditions in the draft permit.

Proceedings at SOAH

14. On January 29, 2019, the Chief Clerk mailed the Notices of Public Hearing for the preliminary hearing to persons entitled to receive notice under TCEQ rules or who requested notice. Notice of the preliminary hearing was published February 1-2, 2019.
15. On February 4, 2019, the Chief Clerk filed with SOAH the Application; the Draft Permit; the preliminary decisions issued by the ED; and other supporting documentation in the administrative record of the Application, which are collectively referred to as the Prima Facie Demonstration.
16. On March 6, 2019, ALJ Rebecca S. Smith held a preliminary hearing at the Comal County Courthouse in New Braunfels, Texas. Jurisdiction was established, and the Administrative Record was admitted into evidence.
17. At the preliminary hearing, the ALJ admitted the following as parties to this proceeding: Vulcan, the ED, the Office of Public Interest Counsel (OPIC), Friends of Dry Comal Creek, Stop 3009 Vulcan Quarry, Comal Independent School District, Doug Harrison, Michael L. Maurer, Ora Lee Frisch, Nathan & Kira Olson, Jack Olivier, Jim & Joyce Doyle, Bob & Jeanne Nebergall, Bruce & Grace Murphy, John P. Mooney, Stephan & Jane Johnson, Sheryl Lynn Mays, Keith & Susan Randolph, Ted Martin, James & Linda Martin, Chris Lupo, Claire H. Loomis, James & Gladys Kuhn, Chuech Kuentz, Judy Krup, William & Linda Mohr, Lara Stonesifer, Mike Zimmerman, Michael Wilkinson, Ronald J. Walton, Michael & Terry Olson, Jack & Trudy Striegel, Peggy Pueppke, Mike Stemig, James Shipley, Gerald & Tracy Schulke, Esther Scanlon, Josh & Jakki Saul, Gaspar & Anna Rivera, Jeff Reeh, Chris M. Hoppman, Mary Ann Trujillo, Renee Wilson, Richard C. Keady, Robert Carrillo, Windell Cannon, William K. Byerley, Ron & Elaine Bigbee, Michael & Deborah Bell, Yvonne R. Arreaga, Thomas & Kathleen Chaney, Mark & Betty Abolafia-Rosenzweig, Lorraine DelaRiva, Pamela Seay, Craig Johnson, Kenneth & Diane Higby, Milann & Pru Guckian, Liz James, Becky Cox, Ruby Hartmann, Katheryn Acklen, Stephen & Mary Lee Freeman, Richard & Sally Harvey, Alan M. Hammack, Kleo Halm, David & Debbie Granato, Carol Glover, Robert & Maureen Cartledge, Karl & Linda Fuchs, Brigitte & Gail Dean Deyle, David N. Fletcher, Jana Fichtner, Kyra Faught, Deborah Farrar, Larry Ewald, Don & Linda Everingham, Stephanie Elizondo, James K. & Michele Drake, Joyleen Dodson, Charles Gerdes, Greater Edwards Aquifer Alliance, Donna H. Gibson Dell, Trustee of the Robert P. and Shirley D. Gibson Living Trust, Smithson Valley Heritage Oaks Property Owners Association, and Zuercher-Froboese Family Ranch. Doug Harrison, Ron & Elaine Bigby, Mike & Terry Olson, Jeffrey Reeh, and Comal Independent School District were aligned and will be referred to as Harrison Protestants. The remaining protesting individuals and groups were aligned with Friends of Dry Comal Creek and Stop 3009 Vulcan Quarry. They will be collectively referred to as Friends Protestants.
18. ALJs Rebecca S. Smith and Victor John Simonds conducted a prehearing conference on June 6, 2019. All parties participated in the prehearing conference through their designated representatives.

19. The hearing on the merits was held from June 10-11, 2019 before ALJs Smith and Simonds at the SOAH offices, William P. Clements State Office Building, 300 West 15th Street, Fourth Floor, Austin, Texas. The hearing record closed on July 10, 2019, after replies to written closing arguments were filed.

The Application

20. The Application includes a complete Form PI-1 General Application signed by Vulcan's authorized representative.
21. The Applications were administratively and technically complete and included all necessary supporting information and appropriate TCEQ forms.

Issue A: Whether the proposed plant will negatively affect human health, including sensitive subgroups, and physical property

22. The maximum offsite concentrations from AQA are all below applicable National Ambient Air Quality Standards (NAAQS) and Commission Effects Screening Levels (ESLs).
23. Vulcan's AQA demonstrates that the maximum allowable emissions from the Plant will not negatively affect human health or welfare, including sensitive subgroups, or physical property.

Issue B: Whether the conditions in the proposed permit will adequately protect against dust emissions from the proposed plant, including during periods of high winds

24. The conditions in the Draft Permit will adequately protect against dust emissions from the Plant, including during periods of high winds.

Issue C: Whether cumulative impacts of existing sources were properly considered

25. Each of Vulcan's full Minor NAAQS analyses analyzed any cumulative impacts of the emissions from nearby emissions sources by inputting the emissions from the Martin Marietta Materials rock crusher into the modeling, and other off-site emissions sources by adding a representative background concentration of the criteria pollutant to its modeled maximum off-site ground level concentration (GLC_{max}).
26. Vulcan's AQA properly considered any cumulative impacts of emissions from nearby operations, plus other offsite emissions sources.

Issue D: Whether the controls in the proposed permit constitute Best Available Control Technology (BACT)

27. The BACT evaluations for the Plant were conducted using Tier I of the Commission's three-tiered BACT process.

28. In Tier I, controls accepted as BACT in recent permit reviews for the same type of facility are BACT if no new technical developments have occurred that would justify additional controls as economically or technically reasonable.
29. No new technical development has occurred that shows a new emissions control is technically practical and economically reasonable for any of the facilities that comprise the Plant.
30. The emissions controls required by the Draft Permit meet BACT.
31. A BACT review is not required for emissions from quarrying operations and roads.

Issue E: Whether the proposed facility will adversely affect wildlife, vegetation, flora, and fauna

32. Based on Findings of Fact Nos. 22 and 23, the maximum allowable emissions from the Plant will not adversely affect wildlife, vegetation, flora and fauna, or contravene the intent of the Texas Clean Air Act.

Issue F: Whether the proposed operating hours of the rock crusher ensure that there will be no adverse impacts to human health, welfare, and the environment

33. Based on Findings of Fact Nos. 22 and 23, the proposed operating hours of the Plant ensure there will be no adverse impacts to human health, welfare, and the environment.

Issue G: Whether the air quality modeling conducted as part of this application adequately incorporated the local prevailing winds

34. Vulcan's AQA modeling adequately incorporated local prevailing winds.

Issue H: Whether the Applicant complied with TCEQ's public notice requirements related to sign-posting and newspaper notice

35. Based on Findings of Fact Nos. 5 through 9, Vulcan complied with the Commission's public notice requirements related to sign-posting and newspaper notice.

Issue I: Whether the proposed permit contains adequate monitoring and recordkeeping requirements to ensure compliance with all applicable rules and requirements

36. The Draft Permit's monitoring and recordkeeping requirements are adequate to ensure compliance with the permit conditions and all applicable rules.
37. Ambient fence-line monitoring is not required or necessary.

Issue J: Whether emissions from on-site diesel engines are adequately calculated and adequately controlled

38. Emissions from on-site diesel engines were adequately calculated and will be adequately controlled to meet BACT.

Issue K: Whether an adequate site review was conducted for this application

39. The ED conducted an adequate site review for the Application.

Issue L: Whether the background concentrations used in the air dispersion modeling are representative of the proposed location of the plant

40. Vulcan identified ambient air monitors in counties with higher total emissions and higher populations than Comal County, and for each pollutant for which more than one monitor was identified, Vulcan chose as the background concentration the highest concentration from any of those monitors.
41. The background concentrations used in Vulcan's AQA are conservatively representative of ambient concentrations of pollutants at the Plant location.

Issue M: Whether emissions from maintenance, start-up, and shutdown activities are adequately addressed in the proposed permit

42. Based on the prima facie demonstration, the Draft Permit adequately addresses emissions from maintenance, start-up, and shutdown activities.

Issue N: Whether chemical dust suppressant is safe to use as a control for emissions from the proposed plant

43. Based on the prima facie demonstration, the chemical dust suppressant used to control emissions from the Plant will be safe.

Issue O: Whether emissions of silica from the proposed plant will negatively impact human health and welfare

44. The maximum offsite concentrations of crystalline silica from Vulcan's modeling are well below the crystalline silica Effects Screening Level.
45. The Plant's crystalline silica emissions will not negatively impact human health and welfare, or contravene the intent of the Texas Clean Air Act (TCAA).
46. The Plant's crystalline silica emissions would not negatively impact human health and welfare, or contravene the intent of the TCAA, even if the crystalline silica percentage used to calculate the Plant's crystalline silica emissions was 135 times higher.

Issue P: Whether the proposed permit conditions, including emissions limitations, are enforceable

47. The Draft Permit conditions, including emission limitations, are enforceable.

Issue Q: Whether the permit application, and associated air dispersion modeling, included and properly evaluated all applicable emissions

48. The Application properly identified all sources of air emissions that are subject to permitting under the TCAA and Commission rules and the types of emissions associated with the Plant.
49. Vulcan's AQA and modeling properly evaluated the identified emissions sources and types of emissions associated with the Plant.

Issue R: Whether site specific monitoring data should have been used in the air dispersion modeling conducted for this application

50. The use of site-specific monitoring data was not required in Vulcan's AQA because no site-specific ambient air monitoring data was available.

Issue S: Whether the Applicant's compliance history precludes issuance of the draft permit or necessitates additional special conditions in the draft permit

51. Based on the prima facie demonstration, Vulcan's compliance history does not preclude issuance of the Draft Permit or necessitate any additional or revised conditions in the Draft Permit.

Transcript Costs

52. The total cost for recording and transcribing the preliminary hearing, prehearing conference, and the hearing on the merits was \$6,084.00.
53. The transcript was required by SOAH's rules, with neither party requesting it.
54. Vulcan, Protestants, the ED, and OPIC all participated in the contested case hearing and benefitted from having a transcript for use in preparing written closing arguments and responses.
55. Transcript costs cannot be assessed against the ED and OPIC because they are statutory parties who are precluded from appealing the decision of the Commission.
56. Vulcan and Protestants were each represented by private attorneys in connection with the contested case hearing.
57. Vulcan and Protestants participated fully in the hearing.

58. Vulcan and Protestants presented testimony and exhibits.
59. Vulcan will benefit from the issuance of the permit and its resources are greater than Protestants.
60. Protestants agreed to pay 50% of the surcharge for an expedited transcript of the hearing on the merits. This amount is \$782.60.
61. Protestants should pay \$782.60 of the transcript costs, and Vulcan should pay the remaining \$5,301.40.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the emission of air contaminants and the authority to issue a permit under Texas Health and Safety Code §§ 382.011 and .0518 and Texas Water Code § 5.013.
2. The Application was referred to SOAH under Texas Water Code § 5.556.
3. SOAH has jurisdiction to conduct a hearing and to prepare a PFD in contested cases referred by the Commission under Texas Government Code § 2003.047.
4. Notice was provided in accordance with Texas Water Code § 5.5553; Texas Health and Safety Code §§ 382.0516, .0517, and .056; Texas Government Code §§ 2001.051 and .052; and 30 Texas Administrative Code chapter 39.
5. Vulcan properly submitted the Application pursuant to Texas Health and Safety Code §§ 382.0515 and .0518, and 30 Texas Administrative Code §§ 116.110, .111, and .140.
6. The Application is subject to the requirements of Texas Government Code § 2003.047(i-1)-(i-3).
7. The filing of the Application, the Draft Permit, the preliminary decisions issued by the ED, and other supporting documentation in the administrative record of the Application established a prima facie case that: (i) the Draft Permit meets all state and federal legal and technical requirements; and (ii) the permit, if issued consistent with the Draft Permit, would protect human health and safety, the environment, and physical property. Tex. Gov't Code § 2003.047(i-1).
8. A party may rebut the prima facie demonstration by presenting evidence that: (1) relates to an issue directly referred; and (2) demonstrates that one or more provisions in the Draft Permit violates a specifically applicable state or federal requirement. Tex. Gov't Code § 2003.047(i-2); 30 Tex. Admin. Code §§ 80.17(c)(2), .117(c)(3).
9. Applicant retains the burden of proof on the issues regarding the sufficiency of the Application and compliance with the necessary statutory and regulatory requirements. 30 Tex. Admin. Code § 80.17(a).

10. The Commission is to issue a permit for a facility that may emit air contaminants upon finding that: (1) the proposed facility will use at least BACT, considering the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility; and (2) there is no indication that the emissions from the facility will contravene the intent of the TCAA, including protection of the public's health and physical property. Tex. Health & Safety Code § 382.0518(b).
11. Consistent with Texas Health and Safety Code § 382.0518 and 30 Texas Administrative Code § 116.111(a)(2)(C), the Plant will use BACT, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating emissions from the facilities.
12. Consistent with Texas Health and Safety Code § 382.0518 and 30 Texas Administrative Code § 116.111(a)(2)(A), there is no indication that emissions from the Plant will contravene the intent of the TCAA, including the protection of the public's health and physical property.
13. The special conditions in the Draft Permit are appropriately imposed under 30 Texas Administrative Code § 116.115(c)(1) and are consistent with the TCAA.
14. Vulcan has made all demonstrations required under applicable statutes and regulations, including 30 Texas Administrative Code § 116.111 regarding air permit applications, to be issued an air quality permit with conditions as set out in the Draft Permit.
15. In accordance with Texas Health and Safety Code § 382.0518(b), the Application for Air Quality Permit No. 147392L001 should be granted, under the terms contained in the Draft Permit.
16. No transcript costs may be assessed against the ED or OPIC because the TCEQ's rules prohibit the assessment of any cost to a statutory party who is precluded by law from appealing any ruling, decision, or other act of the Commission. 30 Tex. Admin. Code § 80.23(d)(2).
17. Factors to be considered in assessing transcript costs include: the party who requested the transcript; the financial ability of the party to pay the costs; the extent to which the party participated in the hearing; the relative benefits to the various parties of having a transcript; and any other factor which is relevant to a just and reasonable assessment of the costs. 30 Tex. Admin. Code § 80.23(d)(1).
18. Considering the factors in 30 Texas Administrative Code § 80.23(d)(1), a reasonable assessment of hearing transcript costs against parties to the contested case proceeding is that Protestants should pay \$782.60 of the transcript costs, and Vulcan should pay the remaining \$5,301.40.

III. EXPLANATION OF CHANGES

The Commission incorporated the correction to Finding of Fact No. 2 recommended by the Applicant and the Executive Director in their exceptions dated September 23, 2019,

regarding the address of Vulcan's property on which the plant is to be located. By letter dated October 10, 2019, the ALJs agreed that the recommended correction suggested by the Applicant and the ED should be incorporated into the Proposed Order. Therefore, the Commission adopted that correction to Finding of Fact No. 2, as recommended by the ALJs.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. The application by Vulcan for Air Quality Permit No. 147392L001 is approved and the attached permit is issued.
2. Protestants shall pay \$782.60 of the transcription cost, and Vulcan shall pay the remaining \$5,301.40.
3. The Commission adopts the Executive Director's Response to Public Comment in accordance with 30 Texas Administrative Code § 50.117. If there is any conflict between the Commission's Order and the Executive Director's Responses to Public Comments, the Commission's Order prevails.
4. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
5. The effective date of this Order is the date the Order is final, as provided by Texas Government Code § 2001.144 and 30 Texas Administrative Code § 80.273.
6. TCEQ's Chief Clerk shall forward a copy of this Order to all parties.
7. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

**TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**



Jon Niermann, Chairman

11-21-19

Date Signed

Appendix 3

Proposal for Decision, SOAH Docket No. 582-12-6347; Application of EOG Resources, Inc. for Air Quality Permit Number 95412 in Cooke County, Texas

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

October 18, 2013

Les Trobman, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087

RE: SOAH Docket No. 582-12-6347; TCEQ Docket No. 2012-0971-AIR; Application of EOG Resources, Inc. for Air Quality Permit Number 95412 in Cooke County, Texas

Dear Mr. Trobman:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.


Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than November 7, 2013. Any replies to exceptions or briefs must be filed in the same manner no later than November 18, 2013.

This matter has been designated **TCEQ Docket No. 2012-0971-AIR; SOAH Docket No. 582 12-6347**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at


SOAH Docket No. 582-12-6347
TCEQ Docket No. 2012-0971-AIR
Proposal for Decision and Order
October 18, 2013
Page 2

<http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,



Penny A. Wilkov
Administrative Law Judge



Travis Vickery
Administrative Law Judge

PAW/TEV/ap/mle
Enclosures
cc: Mailing List

**SOAH DOCKET NO. 582-12-6347
TCEQ DOCKET NO. 2012-0971-AIR**

APPLICATION BY EOG	§	BEFORE THE STATE OFFICE
	§	
RESOURCES, INC., FOR AIR	§	OF
	§	
QUALITY PERMIT NUMBER 95412	§	ADMINISTRATIVE HEARINGS

TABLE OF CONTENTS

I. INTRODUCTION.....	1
A. Summary.....	1
B. Description of Project.....	2
C. Procedural History, Application Notice, Notice of Hearing, and SOAH Jurisdiction	3
D. Legal Standards	6
1. Burden and Standard of Proof.....	6
2. New Source Review Permits – Statutory/Regulatory Requirements	6
a. Whether the permit application demonstrates that emissions from the proposed facilities will comply with all rules and regulations of the commission and with the intent of the TCAA, including the protection of the health and property of the public in accordance with 30 TAC § 116.111(a)(2)(A)(i).	8
b. Whether the permit application demonstrates that BACT was evaluated and applied to all facilities subject to the TCAA in accordance with 30 TAC § 116.111(a)(2)(C).....	8
c. Whether the permit application includes information demonstrating that the emissions from the facilities will meet the requirements of any applicable New Source Performance Standard (NSPS) as listed under 40 CFR Part 60, in accordance with 30 TAC § 116.111(a)(2)(D).	9
d. Whether the permit application demonstrates that the proposed facilities will achieve the performance specified in the application in accordance with 30 TAC § 116.111(a)(2)(G).....	9

3.	New Source Review Air Quality Permits – Protestant’s Position Regarding Additional Applicable Commission Rules and Statutes.....	10
a.	Whether the permit application includes information demonstrating that the emissions from the facility will meet the requirements for Air Dispersion Modeling in 30 TAC § 116.111(a)(2)(J).....	10
b.	Whether the permit application includes information demonstrating that the emissions from the facility will meet the requirements of 30 TAC § 116.115.....	10
c.	Whether the permit application includes information demonstrating that the requirements of 30 TAC § 101.3 regarding circumvention are met.....	11
d.	Whether the permit application includes information demonstrating that the requirements of 30 TAC § 101.4 regarding nuisance are met.....	11
e.	Whether the permit application includes information demonstrating that the requirements of 30 TAC § 101.20 regarding NSPS are met.....	11
f.	Whether the permit application includes information demonstrating that the requirements of 30 TAC § 101.21 regarding National Ambient Air Quality Standards (NAAQS) are met.....	12
g.	Whether the permit application includes information demonstrating that the requirements of the TCAA are met.....	12
h.	Whether the permit application includes information demonstrating that the requirements of Texas Water Code § 5.130 are met.....	12
II.	ANALYSIS OF CONTESTED ISSUES	13
A.	Emission Sources.....	16
1.	Roads.....	16
2.	Quarry	24
3.	Combined Water.....	25
4.	Background Levels.....	27

a.	Silica	28
b.	PM ₁₀	29
c.	PM _{2.5}	30
B.	Emission calculations/estimates.....	32
1.	AP-42 Factors	32
2.	Dryer Baghouse.....	34
3.	Use of PM ₄ for Silica	36
4.	Point Source Emissions Reduced by 10% for Long-Term Analysis	39
C.	Air Dispersion Modeling/Results.....	41
1.	Worst-Case Conditions.....	49
2.	Number of Years for Analyses.....	51
3.	Source of Meteorological data (DFW/Denton).....	54
D.	BACT (trucks vs. conveyors)	57
E.	NAAQS for PM ₁₀ (full impact analysis).....	58
F.	Silica Evaluation.....	59
1.	Worst-Case Scenario/Conditions.....	64
2.	Exceedance of ESL.....	65
G.	Special Conditions in the Draft Permit.....	69
III.	ANALYSIS OF CONTESTED STATUTORY AND REGULATORY REQUIREMENTS	71
A.	Whether the permit application demonstrates that emissions from the proposed facilities will be protective of public health and welfare in accordance with 30 TAC § 116.111(a)(2)(A), including NAAQS.	71
B.	Whether the permit application demonstrates that the proposed facilities will utilize best available control technology in accordance with 30 TAC § 116.111(a)(2)(C).....	73

C.	Whether the permit application includes information demonstrating that the emissions from the facility will meet the requirements of the New Source Performance Standards in 30 TAC § 116.111(a)(2)(D).	75
D.	Whether the permit application demonstrates that the proposed facilities will achieve the performance specified in the application in accordance with 30 TAC § 116.111(a)(2)(G).	77
E.	Whether the permit application includes information demonstrating that the emissions from the facility will meet the requirements for Air Dispersion Modeling in 30 TAC § 116.111(a)(2)(J).....	80
F.	Whether the permit application includes information demonstrating that the emissions from the facility will meet the requirements of 30 TAC § 116.115.	81
G.	Whether the permit application includes information demonstrating that the requirements of 30 TAC § 101.3 regarding circumvention are met.	82
H.	Whether the permit application includes information demonstrating that the requirements of 30 TAC § 101.4 regarding nuisance are met.	84
I.	Whether the permit application includes information demonstrating that the requirements of 30 TAC § 101.20 regarding New Source Performance Standards are met.....	86
J.	Whether the permit application includes information demonstrating that the requirements of 30 TAC § 101.21 regarding NAAQS are met.	87
K.	Whether the permit application includes information demonstrating that the requirements of the TCAA are met.....	88
L.	Whether the permit application includes information demonstrating that the requirements of Texas Water Code § 5.130 are met.....	90
IV.	OTHER ISSUES.....	93
V.	ASSESSMENT OF TRANSCRIPT COSTS	93
VI.	SUMMARY AND CONCLUSION.....	96

SOAH DOCKET NO. 582-12-6347
TCEQ DOCKET NO. 2012-0971-AIR

APPLICATION BY EOG	§	BEFORE THE STATE OFFICE
	§	
RESOURCES, INC., FOR AIR	§	OF
	§	
QUALITY PERMIT NUMBER 95412	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. INTRODUCTION

A. Summary

EOG Resources, Inc. (EOG or Applicant) filed an application with the Texas Commission on Environmental Quality (TCEQ or Commission) for issuance of an Air Quality Permit to construct and operate an industrial sand processing plant in Cooke County, Texas. The plant will be a minor source because the annual amount of predicted emissions for any particular air contaminant from the facilities is less than 100 tons per year.¹ The application is opposed by Rebecca Harris, Holly Harris-Bayer, and Red River Motorcycle Trails, Inc. Recreation Park (collectively RRMT or Protestant) and the Commission's Office of Public Interest Counsel (OPIC). The Executive Director (ED) of the TCEQ supports the application.

The Administrative Law Judges (ALJs) recommend that the application be granted. Principle disagreements among the parties centered on the scope of emissions sources and whether EOG's and the ED's analyses were sufficiently conservative. Although OPIC and RRMT raised valid concerns over EOG's analysis, the ALJs find that the Applicant's analysis was sufficiently conservative and EOG met its statutory and regulatory burden for a preconstruction permit.

¹ 30 Texas Administrative Code (TAC) § 122.10(13); App. Ex. 2 at 62-63; ED Ex. 20 at 3.

B. Description of Project²

EOG has applied to the TCEQ for issuance of Air Quality Permit Number 95412, which would authorize construction of an industrial sand processing plant to be located at 14596 North Farm-to-Market Road 373, near Saint Jo, Cooke County, Texas, on approximately 1,445 acres. Once permitted, the facilities will consist of hoppers, belt conveyors, bucket elevators, screens, stockpiles, a dryer with a baghouse and truck load out bins, which will be used to supply sand for oil and gas well operations.³

As proposed, sand will be mined on the property and transported by a conveyor system to a stockpile and then to the sand processing plant. The conveyor system would include hoppers, belt conveyors, and a screen. The screen will remove larger material, to be temporarily stored in a stockpile and ultimately returned to the quarry by trucks. The smaller material will be sent to the sand processing plant for cleaning, screening, and drying. Waste material will be moved back to the quarry by trucks over roads.⁴

The sand processing plant will consist of a wet processing operation and a dry processing operation. The wet processing operation will screen, wash, and separate the material. Hoppers and belt conveyors will be used to transfer the material up to and through the screen. At that point, the material will be in slurry form and pumped in enclosed piping through the washing, separation, and dewatering process, and then conveyed to a surge bin. From the surge bin, the material will be conveyed to the dry processing operation where it will be dried and screened into product sizes, stored in silos, and loaded into trucks. Hoppers, belt conveyors, and bucket elevators will be used to transfer the material throughout the dry processing operation. This process is depicted in the process description and flow diagrams in the application.⁵

² As explained at the hearing, the Administrative Law Judges (ALJs) have borrowed directly from the parties' briefing throughout this Proposal for Decision (PFD).

³ App. Ex. 2 at 21-23.

⁴ App. Ex. 2 at 21-23.

⁵ App. Ex. 2 at 21-23.

As contemplated by the draft air quality permit (Draft Permit),⁶ the facilities will be authorized to operate 8,760 hours per year, except for the dryer baghouse and associated dryer, the dry plant transfer dust collector baghouse and associated dry feed bins, dry screens and conveyors, the surge bin dust collector and the product silo dust collectors, and associated product load facilities, which will each be limited to a maximum operating schedule not to exceed 7,884 hours per year in any rolling twelve-month period.⁷ The throughput of the plant will be limited to a maximum of 500 tons per hour (tph) and 4,380,000 tons per year (tpy) at the vibrating scalping screen; 300 tph and 2,628,000 tpy at the wash screen; and 158 tph and 1,182,600 tpy at the dryer.⁸

Contaminants authorized under this permit include organic compounds (VOCs), nitrogen oxides (NO_x), sulfur dioxide (SO₂), carbon monoxide (CO), and particulate matter (PM), including PM with diameters of 10 micrometers or less (PM₁₀) and 2.5 micrometers or less (PM_{2.5}).⁹

C. Procedural History, Application Notice, Notice of Hearing, and SOAH Jurisdiction

On March 25, 2011, Applicant submitted its application for the project, along with the required \$75,000 fee, to the TCEQ Air Permits Division. The application was received on March 25, 2011, and declared administratively complete on April 7, 2011.

The Notice of Receipt and Intent to Obtain an Air Quality Permit (NORI or first public notice) for the application was published on April 15, 2011, in the *Muenster Enterprise*, and on May 27, 2011, in the *Saint Jo Tribune*. The Applicant arranged for the placement of the completed application for inspection and copying at the Bettie M. Luke Muenster Public Library

⁶ The Draft Permit is attached to the PFD after Attachment A.

⁷ ED Ex. 21 at 244 (Draft Permit Special Condition No. 9).

⁸ ED Ex. 21 at 244 (Draft Permit Special Condition No. 8).

⁹ ED Ex. A. For the Commission's convenience, the ALJs have attached, as Attachment A, a list of acronyms and abbreviations, drafted by the parties.

beginning on April 15, 2011. On the same day, in accordance with TCEQ rules, signs were posted along the fence line of the property where the proposed plant would be constructed and operated.

In response to public comment and requests for a public hearing, the TCEQ Chief Clerk held a public meeting at the Muenster Independent School District cafeteria on August 23, 2011, in Muenster, Cooke County, Texas.

On January 18, 2012, in response to public comment and requests for a contested case hearing, the Applicant requested that the application be directly referred to the State Office of Administrative Hearings (SOAH) for a hearing.¹⁰

On May 31, 2012, the TCEQ Chief Clerk informed the Applicant that the ED had completed the technical review of the application and made a preliminary decision to issue the permit. Applicant then published additional notices in three newspapers (*Saint Jo Tribune*, *Muenster Enterprise* and *Gainesville Daily Register*) informing the public of the ED's decision and of the preliminary hearing in this matter scheduled for July 12, 2012, at the Cooke County Court Annex Building in Gainesville, Texas.

On June 8, 2012, the Notice of Application and Preliminary Decision for an Air Quality Permit (NAPD or second public notice) and Notice of Hearing for the application was published in the *Gainesville Daily Register*, *Muenster Enterprise*, and *Saint Jo Tribune*.¹¹ Applicant arranged for publication of the NORI in two local newspapers. Also on June 8, 2012, the application and all subsequent revisions, along with the Draft Permit and the ED's preliminary

¹⁰ 30 TAC § 55.210(a) (“[T]he applicant may file a request with the chief clerk that the application be sent directly to State Office of Administrative Hearings (SOAH) for a hearing on the application.”).

¹¹ 30 TAC § 39.603, requires that public notice for air applications be published in only one newspaper of general circulation in the municipality in which the facility is located or proposed to be located or in the municipality nearest to the location of the facility. In this case, the Applicant published the notice in three newspapers.

decision, were made available for inspection and copying by the public at the Muenster Public Library.¹²

As a result of additional public comment and requests for a public meeting to discuss the ED's decision, the TCEQ Chief Clerk scheduled a second public meeting, which was held on July 11, 2012, at the Gainesville Civic Center, in Gainesville, Texas. The comment period ended at the close of the second public meeting on July 11, 2012.

On July 12, 2013, ALJs Penny Wilkov and Travis Vickery conducted a preliminary hearing in Gainesville, Texas. At the preliminary hearing, the ED offered ED Exhibit A, which was admitted. No party objected to SOAH and Commission jurisdiction over this case, and the ALJs proceeded to determine party status, align parties pursuant to 30 Texas Administrative Code (TAC) § 80.109(c), and identify party representatives.¹³

The hearing on the merits was held April 15 through April 17, in Austin; April 22 through April 23, in Gainesville, and; April 25, 2013, in Austin. The parties began submitting post-hearing briefing on June 28, 2013, and the record closed on August 23, 2013.

The ALJs note that Kathy Nielson and Red River Agriculture and Wildlife Tourism, represented by Mary Del Olmo, did not enter an appearance at or otherwise participate in the hearing on the merits or post-hearing briefing. No party moved to dismiss these parties. RRMT

¹² ED Ex. A.

¹³ At the preliminary hearing, the Cooke County Commissioner's Court and Kathy Nielson were admitted as individual parties. In addition, the following parties were admitted as groups: Rebecca Harris, Holly Harris-Bayer, and Red River Motorcycle Trails, Inc. Recreation Park (collectively RRMT, represented by Blackburn & Carter); Mary E. Del Olmo, John Frederick, Mike Bartush, J'Lynn Hare, Wildcat Archery, Bartush Land & Cattle Co., Blue Ostrich Winery and Vineyard, and Arche Winery (Red River Agriculture and Wildlife Tourism, represented by Mary Del Olmo); and Penny Jordan, Jenny and John Shiffer, Barbara and Donald Rohmer, Joan and David Brockett, Roger Reiter, Susan Nelson, Nancee Turlington, Rita Blakely, Bob Wartman, Marina Greenhill, A.J. Knabe, Robert Fazen, Wylie Harris, Rhelda Harris, Terry Fender, Özlem Altıok, Janis Sneed, Ivars Lasis, Patty Fleiman, Judith Kulop, and Joy Philpott (Save the Trinity Aquifer, represented by Penny Jordan). Non-lawyer party representatives were only determined for service of pleadings and cross-examination. SOAH Docket No. 582-12-6347, Order No.1. The Cooke County Commissioner's Court and Save the Trinity Aquifer subsequently requested to withdraw as parties to the contested case hearing. Ms. Del Olmo did not participate or otherwise make an appearance at the hearing on the merits.

was the only protestant to enter an appearance and participate in the hearing and post-hearing briefing. As a result, the ALJs only refer to RRMT as a singular protestant in this case, because Ms. Nielson and Red River Agriculture and Wildlife Tourism offered no evidence and no argument.

D. Legal Standards

1. Burden and Standard of Proof

Under 30 TAC § 80.17, the burden is on the Applicant to prove by a preponderance of the evidence that the application complies with all applicable statutory and regulatory requirements.¹⁴

The ED's participation in a contested case hearing is defined by statute and limited to two issues: (1) to provide information to complete the administrative record; and (2) support the ED's position developed in the underlying proceeding.¹⁵

2. New Source Review Permits – Statutory/Regulatory Requirements

The Texas Clean Air Act (TCAA)¹⁶ grants the Commission the authority to issue a permit to construct a new facility or modify an existing facility that may emit air contaminants.¹⁷ The TCAA defines a facility as a “discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not considered to be a facility.”¹⁸ Before issuing a permit for a facility, the TCAA requires the Commission to find that

¹⁴ 30 TAC §§ 80.17(a) and 55.210(b).

¹⁵ Texas Water Code (Water Code) § 5.228.

¹⁶ Texas Health & Safety Code (TCAA) ch. 382.

¹⁷ TCAA § 382.051(a)(1).

¹⁸ TCAA § 382.003(6); 30 TAC § 116.10(4).

the facility will employ “at least the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility . . . and [there is] no indication that the emissions from the facility will contravene the intent of [the TCAA], including protection of the public’s health and physical property.”¹⁹

Under the TCAA and Commission rules, a project that meets the applicable requirements is entitled to an air quality permit.²⁰ The TCEQ may not issue an air quality permit unless the permit is protective of public health and welfare.²¹ The TCEQ must ensure that the facilities will use best available control technology (BACT) and find no indication that emissions from the facilities will contravene the intent of the TCAA.²²

All representations in the application with regard to construction plans, operating procedures, and maximum emission rates become conditions on which the proposed plant must be constructed and operated. The Applicant’s representations in the application are legally binding requirements under which the proposed plant must operate.²³

The issues set forth below, under Section I.D.2(a) through (d), are the rules that the Applicant and the ED contend apply to the application. Protestant, however, argues that additional rules and law apply to the application, which are set out in Section I.D.3(a) through (h) of this Proposal for Decision (PFD). Applicant and the ED disagree with this contention. The parties’ positions are briefly summarized below. Each of these issues are fully discussed in Sections II and III, regarding the analysis of the contested issues:

¹⁹ TCAA § 382.0518(b)(1) and (2) (Preconstruction Permit).

²⁰ TCAA § 382.0518(b); 30 TAC § 116.111.

²¹ 30 TAC § 116.111(a)(2)(A).

²² TCAA § 382.0518(b)(1); 30 TAC § 116.111(a)(2)(B)-(C).

²³ 30 TAC § 116.116.

- a. **Whether the permit application demonstrates that emissions from the proposed facilities will comply with all rules and regulations of the commission and with the intent of the TCAA, including the protection of the health and property of the public in accordance with 30 TAC § 116.111(a)(2)(A)(i).**

EOG argues it has demonstrated that emissions from the proposed facilities will comply with the Commission's rules and the U.S. Environmental Protection Agency's (EPA) regulations, comply with the intent of the TCAA, and protect the public's health and property. Protestant argues that this generic compliance requirement was violated in many respects and the Applicant failed to meet its burden of proof.

- b. **Whether the permit application demonstrates that BACT was evaluated and applied to all facilities subject to the TCAA in accordance with 30 TAC § 116.111(a)(2)(C).**

Under the TCAA, the TCEQ must find that the proposed facilities will use BACT before issuing the permit.²⁴ BACT is defined as:

[A]n air pollution control method for a new or modified facility that through experience and research, has proven to be operational, obtainable, and capable of reducing or eliminating emissions from the facility, and is considered technically practicable and economically reasonable for the facility. The emissions reduction can be achieved through technology . . . or by enforceable changes in production processes, systems, methods, or work practice.²⁵

EOG argues that it evaluated and applied BACT to all of the facilities at the proposed plant subject to the TCAA. Applicant contends it will use state of the art control methods, which have been accepted by the TCEQ for the type of operation involved. The ED's technical staff concluded that Applicant met the requirements of this rule.

²⁴ TCAA § 382.0518(b)(1).

²⁵ 30 TAC § 116.10(1).

Protestant argues that Applicant failed to comply with this provision, because EOG allegedly circumvented the BACT requirement by using roads to return waste material to the quarry site instead of a conveyor. This issue is discussed in Sections II and III below.

- c. Whether the permit application includes information demonstrating that the emissions from the facilities will meet the requirements of any applicable New Source Performance Standard (NSPS) as listed under 40 CFR Part 60, in accordance with 30 TAC § 116.111(a)(2)(D).**

Applicant argues that only one NSPS applies to the proposed facilities. Subpart UUU of 40 Code of Federal Regulations (CFR) part 60 and the Draft Permit require EOG to conduct initial stack testing from the dryer baghouse within 180 days of startup. Protestant argues that the dryer baghouse is the single largest emissions source analyzed by the Applicant, and yet EOG failed to provide a manufacturer's guarantee for that equipment. This matter is discussed in Sections II and III below.

- d. Whether the permit application demonstrates that the proposed facilities will achieve the performance specified in the application in accordance with 30 TAC § 116.111(a)(2)(G).**

Applicant argues that it met its burden under 30 TAC § 116.111(a)(2)(G) through the analyses performed by its air permitting consultant, Lisa Hoover, as set forth in the application and her testimony. The ED concurs that the proposed facilities will achieve the performance specified in the application. RRMT argues that the application and Draft Permit lack specificity as to the timing and manner of the operation of the dryer such that annual modeling representations cannot be achieved. Protestant also argues that given the lack of a manufacturer's guarantee, there is no proof that the dryer will comply with NSPS. These matters are discussed in Sections II and III below.

3. New Source Review Air Quality Permits – Protestant’s Position Regarding Additional Applicable Commission Rules and Statutes.

RRMT takes the position that the permit for EOG’s proposed plant may not be issued unless the application demonstrates compliance with the following rules and statutes. The Applicant and the ED generally argue that these issues are either cumulative of the requirements listed above or inapplicable to this case. The issues summarized below are analyzed in Sections II and III of the PFD.

a. Whether the permit application includes information demonstrating that the emissions from the facility will meet the requirements for Air Dispersion Modeling in 30 TAC § 116.111(a)(2)(J).

Protestant argues that the Applicant failed to use the best information available when modeling and made numerous choices that effectively lowered modeled pollutant levels. Protestant contends that if more appropriate data had been used, then modeled results would have been higher, triggering additional controls and evaluations that were not undertaken, but should have been under 30 TAC § 116.111(a)(2)(J).

b. Whether the permit application includes information demonstrating that the emissions from the facility will meet the requirements of 30 TAC § 116.115.

The Draft Permit includes special conditions prohibiting “visible emissions” from crossing the site’s property line. RRMT argues that the application lacks a method by which the Applicant will address visible emissions at night when they cannot be seen. As a result, Protestant claims that there are major off-site pollution issues that simply cannot be addressed. Further, RRMT argues that it is unclear whether the Applicant could comply with the various conditions of the permit, because even if it took steps to control visible emissions, those steps may be inadequate to prevent significant emissions that cause or contribute to a condition of air pollution.

- c. **Whether the permit application includes information demonstrating that the requirements of 30 TAC § 101.3 regarding circumvention are met.**

Under 30 TAC § 101.3, EOG is prevented from circumventing the regulations. RRMT argues that Applicant has proposed to use roads to truck waste back to the quarry, instead of a conveyor system, because roads fall outside the definition of a facility by law and rule, and thus those emissions were not considered. Protestant argues that the failure to use a conveyor system for the return of material to the quarry site represents circumvention of the BACT regulations, among other provisions.

- d. **Whether the permit application includes information demonstrating that the requirements of 30 TAC § 101.4 regarding nuisance are met.**

Protestant argues that EOG failed to demonstrate that its operations will not violate the Commission's nuisance rule. RRMT argues that because 30 TAC § 101.4 prohibits a discharge from "any source whatsoever" that creates a nuisance, road and quarry emissions, as well as background emissions, should be evaluated. RRMT contends that Applicant made no such evaluation.

- e. **Whether the permit application includes information demonstrating that the requirements of 30 TAC § 101.20 regarding NSPS are met.**

Under 30 TAC § 101.20(a), EOG must demonstrate compliance with NSPS requirements found in 40 CFR part 60. RRMT argues that Applicant cannot show compliance, because it failed to provide a manufacturer's guarantee that the dryer baghouse meets applicable NSPS requirements.

- f. Whether the permit application includes information demonstrating that the requirements of 30 TAC § 101.21 regarding National Ambient Air Quality Standards (NAAQS) are met.**

Under 30 TAC § 101.21, the NAAQS promulgated by the EPA are enforced throughout the State of Texas. RRMT challenges EOG's proof of compliance with two NAAQS related to particulate matter – the standards applicable to PM_{2.5} and PM₁₀. Each of those standards include short-term and long-term analysis. With regard to the PM_{2.5} standard, the issue is whether EOG's modeling used the appropriate meteorological conditions and included all appropriate sources. With regard to PM₁₀, the issue is whether the Significant Impact Level (SIL) was exceeded, thereby necessitating a full blown PM₁₀ impact analysis.

- g. Whether the permit application includes information demonstrating that the requirements of the TCAA are met.**

RRMT argues that Applicant's proposed plant will cause or contribute to a condition of air pollution in violation of the policy of the TCAA.

- h. Whether the permit application includes information demonstrating that the requirements of Texas Water Code § 5.130 are met.**

Texas Water Code Section 5.130 requires the Commission to develop and implement policies to protect the public from cumulative risks in areas of concentrated operations. RRMT questions whether the Commission has implemented policies in its consideration and review of EOG's application that protect the public from cumulative risks. Protestant argues that the public would not be protected from cumulative risk if this permit were issued, due to allegedly inadequate analysis of background concentrations and the failure to include all sources in EOG's computer modeling. Absent full consideration of background concentrations and all sources, Protestant argues the Commission cannot meet the requirements of this section.

II. ANALYSIS OF CONTESTED ISSUES

This case came to SOAH as a direct referral from the Commission. As a result, the parties determined the issues to be addressed in this proceeding. After the close of the evidentiary hearing, the parties developed an agreed briefing outline, which the ALJs have adopted in this PFD.

In accordance with the parties' agreed briefing outline, the ALJs turn to an analysis of contested issues. Many of these issues are also addressed in Section III, below, in the context of statutory and regulatory analysis. In developing the briefing outline for this PFD, the parties sought to address interrelated factual and regulatory matters as distinct substantive and regulatory issues. Although this makes the parties' specific arguments easier to assess, this approach also resulted in some repetition of the issues addressed.

As explained below, EOG prevailed on all major contested issues. In general, the Applicant argues that it conducted extensive engineering analyses, following well-established TCEQ and EPA guidance, to demonstrate that the permit will be protective of air quality and human health, welfare, and the environment. In support of the application, EOG presented testimony from the following expert witnesses: Lisa Hoover, P.E., Keith Zimmermann, P.E., and Dr. Thomas Dydek, Ph.D., D.A.B.T., P.E.

Ms. Hoover assisted with the preparation and submission of the application. She reviewed plant design, identified emission points, used methodologies for developing BACT for plant facilities, and used emission factors to calculate the estimated emission rates for air contaminant estimates for the proposed facilities.

Mr. Zimmerman conducted air dispersion modeling analysis using Ms. Hoover's work, a site investigation, a Commission-approved meteorological data set, and an EPA-approved dispersion model to predict maximum off-property concentrations of air contaminants from the facilities at the plant. Those estimates showed that none of the maximum modeled

concentrations of federal criteria pollutants exceeded NAAQS. The modeling did predict that the short- and long-term silica concentrations would exceed the Effects Screening Levels (ESLs) set by the TCEQ for this pollutant.

Dr. Dydek conducted a toxicological analysis of Mr. Zimmermann's work and determined that the predicted maximum concentrations of all air contaminants from the proposed facilities, including silica, will not cause adverse health or welfare effects.

The ED argues that he performed a thorough technical review of the application and prepared the Draft Permit for the proposed facilities, finding that the application meets all applicable rules and statutory requirements. Both the ED and the Applicant argue that the Draft Permit is based on conservative, protective methodologies that assumed maximum operating conditions, and will ensure compliance with all state and federal air quality requirements.

In support of this finding, the ED offered the testimony of TCEQ staff from the Air Permits Division, Air Dispersion Modeling Team (ADMT), Toxicology Division, and a manager from the TCEQ's Dallas-Fort Worth (DFW) Regional Air Section. Larry Buller, P.E., was the permit engineer in charge of the TCEQ's technical review. Mr. Buller determined that the emission factors used by Ms. Hoover were conservative and acceptable, that her emission rate calculations were accurate, and that the application applied the appropriate BACT.

Justin Cherry, P.E., from the ADMT, audited Mr. Zimmermann's modeling results and found the analysis acceptable and in accordance with TCEQ and EPA guidelines. Mr. Cherry determined that the Applicant accurately represented all input data in the model, used the recommended meteorological data set to sufficiently represent worst-case conditions, and made appropriate characterizations of the emissions sources. Mr. Cherry agreed that the analysis showed the maximum modeled concentrations of air contaminants would be below the NAAQS and therefore protective of the health and welfare of the general public.

Angela Curry performed a toxicological evaluation of the predicted exceedances of the short- and long-term silica ESLs. Ms. Curry agreed with Dr. Dydek that there is no risk of adverse health or welfare effects as a result of the predicted silica emissions from the proposed plant.

Alyssa Taylor, the TCEQ's DFW Regional Air Section Manager, testified regarding the Commission's monitoring, investigative, and enforcement mechanisms. Part of her testimony focused on the ability of TCEQ investigators to detect emissions at night.

Upon completing his review, the ED determined that the application meets all rules and regulations and issued a preliminary decision and Draft Permit.

Protestant generally argues that the Applicant's and the ED's analyses were flawed due to the omission of certain known emission sources and an inadequately conservative set of methodologies and data inputs, which resulted in modeling that failed to accurately predict a worst-case scenario for future emissions from the plant. RRMT claims that the ED's and EOG's focus on the plant has been too narrow and legalistic, and their failure to consider the project as a whole undermines a genuine prediction of emissions. OPIC generally agrees with Protestant, with a focus on potential silica emissions.

In support of its arguments, Protestant offered the testimony of Holly Harris-Bayer, Vice-president of Red River Motorcycle Trails, Inc., Michael Kleinman, Ph.D., and Jim Tarr, P.E. Ms. Harris-Bayer testified about activities at RRMT, its history, and concerns over the impact of the project on RRMT's operations.

Mr. Tarr reviewed the application and Mr. Zimmerman's work. Mr. Tarr questioned the accuracy and reliability of EOG's emissions factors, and meteorological and source inputs. He opined that EOG's modeling failed to account for all potentially significant emission sources, such as emissions that include combined water, road dust, mining operations at the quarry, and background concentrations of PM₁₀ and silica. Mr. Tarr developed new emissions and modeling

estimates to conduct modeling that Protestant argues used better, more reliable inputs, such as more comprehensive meteorological data, the addition of known emission sources, and background information that justifies a full impact analysis for PM₁₀.

Dr. Kleinman reviewed Mr. Tarr's results, the application, EOG's prefiled testimony, and a number of other materials. Based on Mr. Tarr's modeling results, Dr. Kleinman concluded that the project entails potential serious health risks to the public from exposure to PM₁₀ and fresh crystalline silica. This would include increased risks of the public contracting silicosis, cancer, bronchitis, tuberculosis, scleroderma, and lupus.

RRMT presented reasonable arguments and raised some genuine concerns over the Applicant's analysis. However, the ALJs find that EOG met its burden in this matter. As discussed below, while the Applicant and the ED did not analyze known sources of potential emissions, the omissions were justified under the TCAA and the Commission's rules. There is a regulatory difference between the requirements for a new minor source and limits on post-construction emissions or the creation of nuisance conditions. Furthermore, many of Protestant's arguments centered on Mr. Tarr's analysis, which at times was too speculative or raised questions regarding the reliability of his inputs. On the other hand, the ED's and EOG's experts used sufficiently conservative modeling and accepted guidance in reaching their conclusions. In short, the ALJs find that Applicant's projections satisfied all statutory and regulatory requirements applicable to the proposed facilities.

A. Emission Sources

1. Roads

EOG proposes to transport sand from the quarry to the plant by an enclosed belt conveyor system. Front-end loaders and trucks will move material from the quarry into a portable load hopper, which will, in turn, load the material onto the belt conveyors. Waste material, however,

will be returned to the quarry by trucks over roads.²⁶ Although EOG modeled emissions from the conveyor system, it did not model emissions from roads. Protestant argues that emissions from roads should have been modeled, just as they were for the conveyor system. The ALJs find that, although Protestant is correct that roads will be a source of emissions, the Applicant and the ED were correct in not modeling road emissions for the application.

The TCAA requires a New Source Review Permit for the construction of any “facility that may emit air contaminants.”²⁷ The TCAA and the Commission’s rules define “facility” to specifically exclude roads. Under the TCAA:

“Facility” means a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not considered to be a facility.²⁸

As a result, EOG did not analyze roads at the proposed plant as a source of emissions.²⁹ The ED supports this approach, arguing that, with the exception of the Commission’s jurisdiction over nuisance conditions that are prohibited from any source, a road is not a facility subject to Commission regulation for a new source permit.³⁰

The ED and EOG also note that TCEQ rules exclude roads from the definition of a facility.³¹ They argue that, consistent with the statutory exclusion, the TCEQ’s rules limit the required demonstrations in an application to proposed facilities. EOG points to the language in 30 TAC § 116.111(a)(2)(J), which limits dispersion modeling required by the ED, to an evaluation of “air quality impacts from a proposed new facility”³²

²⁶ App. Ex. 28 at 2, 8, 10; Tr. at 32-35, 59-60.

²⁷ TCAA § 382.0518.

²⁸ TCAA § 382.003(6). The definition of “facility” found in 30 TAC § 116.10(4) is very similar.

²⁹ Tr. at 29, 52, 57, 60, 72, 996; Prot. Ex. CX-5.

³⁰ 30 TAC § 101.4.

³¹ 30 TAC § 116.10(4).

³² 30 TAC § 116.111(a)(2); (a)(2)(A)(i); (a)(2)(B)–(J).

Even though EOG and the ED argue that road emissions were not required to be modeled for the application, they point out that EOG is still prohibited from creating a nuisance from any source.³³ In addition, the Draft Permit requires EOG to implement best management practices (BMP) in order to prevent nuisance conditions from any in-plant road and to prevent visible emissions from crossing the property line. The Draft Permit thus requires all in-plant roads, traffic areas, and active work areas to be cleaned or sprayed with water upon detection of visible particulate matter emissions.³⁴ Mr. Buller testified that, in his opinion, BMPs required by the Draft Permit will adequately prevent nuisance conditions.³⁵

Protestant acknowledges that a road alone is not a facility under the TCAA and the TCEQ's new permit rules. RRMT argues, however, that when a road is proposed as part of a project that requires an air quality permit, then those emissions need to be addressed and included in the analysis of potential adverse impacts. Regardless of legal definitions, Protestant contends that roads are a recognized source of particulate emissions, including silica.

Protestant's expert, Mr. Tarr, evaluated potential road emissions, which he incorporated into his air dispersion modeling, along with updated meteorological data and EOG's air dispersion modeling input, to arrive at off-site maximum concentrations of particulate matter, including silica. Because EOG and the ED did not analyze road emissions, Mr. Tarr could not look to the application for that information. Thus, he made certain assumptions in developing a "worst-case" scenario for road emissions. Protestant acknowledges that Mr. Tarr's results provide an upper boundary of the potential impact of road emissions when added to the emission sources considered by the Applicant.³⁶

RRMT also argues that roads should have been included in the analysis, because Commission guidance in Section 6.6 of the Commission's Air Quality Modeling Guidelines

³³ 30 TAC § 101.4 (prohibiting nuisance conditions).

³⁴ ED Ex. 35 at 685, 691; ED Ex. 21 (Draft Permit Special Condition Nos. 5 and 19).

³⁵ Tr. at 423.

³⁶ Prot. Ex. JT-1 at 13; Tr. at 750.

(RG-25) specifically addresses how to evaluate roads as a known source of emissions.³⁷ The ED counters that although RG-25 discusses road emissions, it also states that such emissions should be included only in a long-term modeling analysis and under limited circumstances. Under the guidance, long-term road emissions should not be modeled if they cannot be accurately quantified and the applicant will use BMPs. RG-25 indicates that the use of control measures and BMPs are usually the most effective means to address off-property impacts from road sources.³⁸ As a result, Mr. Buller testified the ED's practice is not to directly review road emissions because roads are not a facility and the Draft Permit requires BMPs to ensure compliance with all TCEQ rules and regulations, including the prohibition on visible emissions crossing the property line.³⁹ EOG notes that extensive experience has demonstrated the effectiveness of BMPs in controlling and minimizing potential road emissions.⁴⁰

Regardless of RG-25's guidance, Protestant argues that the use of BMPs on roads will not result in zero emissions. RRMT points out Ms. Hoover's testimony that under the EPA's emission factor guidance (AP-42), BMPs applied to unpaved roads to suppress emissions is only 75 to 95% effective.⁴¹ Furthermore, the Draft Permit only requires EOG to water roads when visible emissions are present, which Protestant asserts will be difficult or impossible to detect at night.⁴² So, even with the application of BMPs, the plant's roads could still emit up to 25% of total emissions, which could increase at night. Considering that such emissions are anticipated, RRMT argues that proper evaluation of the application requires that road emissions be quantified, modeled, and the predicted concentrations added to those from the proposed facilities and existing background levels.

³⁷ App. Ex. 13 at 58-60 (Bates 76-77) (*See also* ED Ex. 22 at 335-36); Tr. at 52, 72, 127; Prot. Ex. JT-1 at 6.

³⁸ App. Ex. 13 at 58-60 (Bates 76-77) (*See also* ED Ex. 22 at 335-36).

³⁹ ED Ex. 35 at 691; Tr. at 423.

⁴⁰ App. Ex. 28 at 9; App. Ex. 29 at 4.

⁴¹ Tr. at 972-73.

⁴² App. Ex. 3 at 3; Tr. at 403.

During the hearing, EOG committed to paving all in-plant roads, an option authorized under the Draft Permit's typical requirement for implementation of BMPs for minimizing road emissions.⁴³ In briefing, OPIC specifically requested that the ALJs recommend that roads be paved. Applicant argues that, while other alternatives are acceptable, paved roads are considered to be effective at minimizing emissions – both Ms. Hoover and Protestant's witness Mr. Tarr agreed to that principle.⁴⁴

RRMT counters that EOG's commitment to pave roads was made near the end of the hearing in an attempt to reduce the issue of road emissions. Protestant also notes that it is unclear whether EOG's commitment applies to all roads on the property, or only roads within the plant, and that even paved roads can generate dust emissions. Protestant claims that RG-25 and AP-42 both recognize a distinction between paved and unpaved roads.⁴⁵

EOG responds that even paved roads will be subject to the Draft Permit's requirement that Applicant use BMPs to clean and water the roads to prevent visible emissions. EOG contends that predicted emissions from roads will be minimized if not eliminated, such that the Applicant's air dispersion modeling analysis for the proposed plant produced results representative of expected off-site impacts from emissions.⁴⁶

Finally, EOG argues that the issue in this proceeding is not the potential for visible emissions from paved or unpaved roads, potential nuisance, or the efficacy of BMPs. Rather, the issue is that the application is subject to review under the TCAA's New Source Review Permit program, which specifically excludes roads from the definition of a covered facility. This exclusion was recognized by Applicant's air permitting consultant Ms. Hoover and the ED's

⁴³ Tr. at 986, 988.

⁴⁴ Tr. at 973, 974, 976, 977; Tr. at 686-87.

⁴⁵ Tr. at 972-77.

⁴⁶ App. Ex. 28 at 9; App. Ex. 29 at 4; Tr. at 374 –75.

regulatory expert, Mr. Buller.⁴⁷ EOG argues that Protestant's position on roads should be addressed by the legislature, not in the midst of a new source review process.

The ALJs find that the TCAA and Commission rules governing new source permits clearly exclude roads from the definition of a regulated facility. Roads are not considered to be a "facility that may emit air contaminants."⁴⁸ As a result, EOG was not required to model emissions from roads.

Nevertheless, RRMT established that roads will be a source of emissions. Having said that, the ALJs find that Protestant's evidence does not warrant additional emissions analysis. As noted above, there is evidence that road emissions are expected to be minimized or eliminated, such that Applicant's air dispersion modeling reasonably represents expected off-site impacts from plant emissions.⁴⁹ EOG also noted Mr. Cherry's testimony that the conservative background levels of particulate matter assumed in EOG's cumulative effects analysis compensate for emission impacts from roads.⁵⁰ In briefing, Protestant contested EOG's cite to Mr. Cherry's testimony claiming that he clarified he was only referring to existing roads.⁵¹ While Protestant's statement is accurate, immediately after Mr. Cherry's clarification, he also extended that conclusion to new roads, stating that he still believed it was a reasonable assumption based on conservative modeling of concentrations.⁵²

In any event, as argued by the ED and EOG, the background concentrations for PM_{2.5} NAAQS analysis were obtained from monitors in Dallas and Tarrant counties, not the area surrounding the project site. The ALJs agree with these parties that background concentrations

⁴⁷ Tr. at 57, 60, 421, 422.

⁴⁸ TCAA §§ 382.0518 and 382.003(6); 30 TAC § 116.10(4).

⁴⁹ App. Ex. 28 at 9; App. Ex. 29 at 4; Tr. at 374-75.

⁵⁰ Tr. at 516-20. A cumulative effects or full impacts analysis is required when the predicted concentration of a federal criteria contaminant exceeds the applicable Significant Impact Level (SIL) developed by the EPA, and requires an evaluation of surrounding sources including a representative background concentration for the proposed site. ED Ex. 36 at 15.

⁵¹ Protestant's Response at 10.

⁵² See specifically, Tr. 519:4-520:4.

were conservative and should compensate for road emissions, if any, because it is unlikely that any emissions generated from the proposed plant would be comparable to the background concentrations in Dallas or Tarrant counties.⁵³

As for Protestant's evidence, Mr. Tarr estimated that the maximum 24-hour off-site concentrations of PM₁₀ would be over 200 µg/m³, which exceeds the NAAQS value of 150.⁵⁴ However, RRMT acknowledged in briefing that Mr. Tarr's estimate reflects an upper boundary of the potential impact of road emissions. Ms. Hoover went further and opined that Mr. Tarr's calculations were not reliable. In reaching this conclusion, she noted that Mr. Tarr multiplied her calculated emission rates by 1,000% (applied to unpaved roads, as he did not model paved roads). Also, Mr. Tarr did not reduce his emission calculations to take into account BMPs, although they are required by the Draft Permit. As noted above, BMPs such as watering are estimated to reduce emissions by 75 to 95%. He also did not reduce emission calculations based on meteorological data such as rainfall averages, which AP-42 dictates should result in a 20% reduction in emissions. Finally, Ms. Hoover noted that Mr. Tarr's estimate doubled the number of truck trips from the overs/fines tank back to the quarry, that is allowed under the Draft Permit. That is, EOG made a binding representation in the application limiting the daily tonnage of waste that can be moved from the overs/fines tank back to the quarry to a *maximum* of half the number of tons Mr. Tarr used for his calculations. Mr. Tarr was unaware of this limitation.⁵⁵

Notwithstanding the problems Ms. Hoover identified with Mr. Tarr's estimates, EOG has committed to paving all in-plant roads. Although the ALJs recommend that EOG pave all roads on the property, even if only in-plant roads are paved, Mr. Tarr's calculations would have to be reduced accordingly, because his calculations were based on unpaved roads. Although Mr. Buller expressed doubts about the efficacy of paving roads, in reaching that conclusion, he also assumed they would be not be swept or cleaned.⁵⁶ In contrast, Mr. Tarr agreed that paving

⁵³ ED Ex. 15 at 207; App. Ex. 16 (ED's Response to Comment) at 26.

⁵⁴ Prot. Ex. JT-1 at 13 (referencing JT-9, JT-10, and JT-11); Tr. at 750.

⁵⁵ Tr. at 966-78.

⁵⁶ Tr. at 422-23.

roads is an effective means to reduce emissions. Ms. Hoover testified that under AP-42, the best way to control emissions for unpaved roads is to simply pave them.⁵⁷ Finally, under the Draft Permit, BMPs such as watering also apply to paved roads. Draft Permit Special Condition Number 19 reads:

All into plant roads, traffic areas, and active work areas shall be cleaned or sprayed with water upon detection of visible particulate matter emissions to maintain compliance with all applicable TCEQ rules and regulations.⁵⁸

The ALJs find that a road is not a regulated facility for purposes of a new source application. Although RRMT has expressed genuine concerns over road emissions, the ALJs find that RRMT's projections were inflated, and that Protestant's concerns will be adequately addressed by the Applicant's commitment to pave in-plant roads (at a minimum), which should be adopted.⁵⁹ Paving roads was identified by two competing experts as effective in controlling emissions and under AP-42 is the best control measure for unpaved roads. Paved roads are also subject to BMPs. In addition, the Draft Permit prohibits visible emissions crossing the property line or the creation of nuisance conditions. While Protestant raised concerns about the enforceability of these prohibitions at night, the ALJs have found that the TCEQ possesses adequate enforcement mechanisms to detect emissions at night (this issue is addressed below).

The ALJs conclude the Applicant was not required to model road emissions for the application.

⁵⁷ Tr. at 976-77.

⁵⁸ App. Ex. 3 at 3-4.

⁵⁹ Although the ALJs do not propose a method by which this recommendation can be enforced, the Findings of Fact regarding Draft Permit conditions specifically reference paved roads as a BMP.

2. Quarry

The Applicant did not model emissions from the quarry.⁶⁰ As with roads, EOG and the ED argue that quarries are specifically excluded from the statutory and regulatory definitions of a facility. That is, a quarry should be excluded from a new source review in the same manner as roads.⁶¹ As for expected emissions from the quarry, Applicant argues that moisture inherent in the material as it is mined will either prevent emissions or make them insignificant in the overall analysis.⁶² Further, just as it applies to the in-plant roads, the ED and the Applicant argue that the Draft Permit's prohibition on "visible emissions" beyond the property line and the prohibition against creating nuisance conditions affords effective control of any emissions from the quarry.⁶³ These parties argue that conservative background levels of particulate matter assumed in Applicant's analysis also serve to compensate for impacts, if any, from the quarry.⁶⁴

As with roads, Protestant acknowledges that a quarry alone is not a defined facility subject to new source review. Rather, Protestant argues that when a quarry is part of an integrated project, its emissions should be considered. Regardless of legal definitions, RRMT notes that the quarry will result in emissions of particulate matter, including silica. Operations at the quarry will include mining, material removal from the open pit, and deposits on a storage pile.⁶⁵ Protestant notes that RG-25 specifically references how to evaluate emissions from open pits or quarries, which establishes a quarry as a known source of emissions.⁶⁶ As a result, RRMT argues that to determine whether the project will result in a condition of air pollution prohibited by the TCAA, potential emissions from the quarry should have been evaluated along with all other emissions sources.

⁶⁰ Tr. at 72.

⁶¹ TCAA § 382.003(6); 30 TAC § 116.10(4); Tr. at 29, 72; Prot. Ex. CX-5.

⁶² Tr. at 145-46, 374-75; App. Ex. 2 at 21.

⁶³ App. Ex. 3 at 1 (Draft Permit Special Condition No. 5); 30 TAC § 101.4.

⁶⁴ Tr. at 518-20.

⁶⁵ Tr. at 72, 122-23.

⁶⁶ App. Ex. 13 at 57 (Bates 75).

The ED argues that the subsection of RG-25 dealing with quarries falls within a section aimed at characterizing a source as a “point,” “area,” or “volume.” The section, however, does not address whether or not the source is a regulated facility. The ED argues that the proper focus of the permitting inquiry is the rock crusher within the quarry, which is a regulated source and was modeled. Protestant responds that the quarry is an integral part of the operations and, because EOG evaluated specific quarry operations such as the load hopper, conveyor, and screen, the quarry should also have been evaluated as an integral component of the mining activities.

The ALJs’ analysis of whether the quarry should have been modeled is the same as for roads. The Protestant raises a valid point that the quarry is an integral part of the Applicant’s entire operation and it is expected to generate emissions. However, many of the same problems identified with Mr. Tarr’s estimation of emissions from roads also applies to quarries. Most important, the TCAA and the Commission’s rules specifically exclude quarries from the definition of a regulated facility for a new source application. As a result, it was appropriate for the Applicant not to include quarry emissions in its analysis.

3. Combined Water

There are a number of locations within the proposed project where water will be used as part of the process.⁶⁷ The TCEQ does not consider such water to be a source of emissions, and as a result, EOG did not model this water for emissions.

RRMT notes that the Commission’s definition of “particulate matter” specifically excludes “uncombined water,” so the definition necessarily includes “combined water.”⁶⁸ EOG and the ED dispute that the rule’s exclusion of “uncombined water” necessarily means that “combined water” meets the regulatory definition of particulate matter.⁶⁹

⁶⁷ Tr. at 67; Prot. Ex. CX-3.

⁶⁸ 30 TAC § 101.1(75).

⁶⁹ 30 TAC § 101.1(75).

Protestant next contends that the water used at the facility will either be recycled or brackish, that this should be considered combined water and a potential source of emissions.⁷⁰ RRMT points out that EOG has not yet determined how much water will be added during the processing of material. As a result, Protestant argues combined water may be a significant source of emissions, which should have been modeled by EOG.⁷¹

EOG and the ED argue that Protestant is erroneous in its conclusion that water used at the site will constitute combined water. They note that Mr. Tarr testified he did not know whether water used in the process will be combined water.⁷² EOG explained that the water used in sand operations will not be bound to the material it contains, such that it cannot be removed by physical means, which is the defining characteristic of combined water. That is, water with particles in it, like the water to be used at the proposed facilities, can be heated such that the water evaporates. As a result, the water at issue is uncombined water and is specifically excluded from the definition of "particulate matter."⁷³ In any event, EOG and the ED argue that even if the water used was combined water, Mr. Buller and Ms. Hoover testified that it does not become particulate matter as defined in the rule.⁷⁴

EOG and the ED argue that there is no precedent or basis to conduct the analysis that RRMT seeks. The ED notes that combined water is not defined by Commission or EPA rules. Because water sprays are intended to suppress emissions at an aggregate facility, the ED contends that they have never been considered a source of emissions. The ED also notes that, although Mr. Buller has reviewed 270 permit applications, he has never seen or conducted an evaluation of combined water as part of an air permit review.⁷⁵ In any event, EOG and the ED

⁷⁰ Tr. at 107, 109; Prot. Ex. JT-1 at 5.

⁷¹ Tr. at 111; Ex. JT-1 at 5.

⁷² Tr. at 684-85.

⁷³ Tr. at 1115-16.

⁷⁴ Tr. at 107-10, 421, 426.

⁷⁵ Tr. at 421, 423, 426; ED Ex. 35 at 672, 689-91.

argue that such analysis would be completely speculative, as RRMT provided no reliable authority or methodology for characterizing or estimating emissions from water.

The ALJs conclude that EOG was not required to include combined water in its modeling. Significantly, Mr. Tarr was equivocal at hearing as to whether water used at the site would even comprise combined water, while Mr. Buller and Ms. Hoover testified that it would not. If the water used at the facility is uncombined water, then it is specifically excluded from the definition of particulate matter.⁷⁶ Furthermore, the Commission has never required the analysis RRMT seeks to grant an air permit for a facility such as this. The ALJs find that it was appropriate for EOG to exclude water used at the site from its emissions analysis.

4. Background Levels

Protestant argues that, in order to evaluate the potential for the project to cause a condition of air pollution, all sources of emissions should have been accounted for in Applicant's analysis. This would include taking into account background concentrations for a full impact analysis.⁷⁷ Protestant argues that EOG failed to consider background concentrations of silica, neglected to conduct a full impact analysis for PM₁₀, and ignored appropriate modeling inputs, which in the full impacts analysis of PM_{2.5}, would have resulted in an exceedence of NAAQS.⁷⁸ The ALJs find that the background level concentrations of silica and other constituents were considered in the review conducted by the TCEQ Toxicology Division for silica and the modeling performed by Applicant for the presence of other pollutants, which included consideration of conservative background concentrations from Dallas and Tarrant Counties.

⁷⁶ 30 TAC § 101.1(75).

⁷⁷ Tr. at 157, 550, 1022-23.

⁷⁸ Tr. at 989-90, 1016-17, 1089.

a. Silica

As will be discussed more thoroughly in a subsequent section, silica is not one of the pollutants for which a NAAQS has been established. Therefore, an applicant's modeling of silica emissions is compared to the ESLs, which are guidelines established by TCEQ toxicologists to provide a high degree of certainty of protectiveness of the public health and welfare. If an ESL is exceeded, then a health impacts review is conducted by the TCEQ Toxicology Division using a three-tiered approach that factors in the quantity of exceedence and potential for public exposure. In this case, there was an ESL exceedence which triggered a Tier Three review, the most highly-scrutinized level of review, by a TCEQ toxicologist. Protestant asserts that background concentrations were not considered as part of the health impacts review. The ALJs determine that the silica background concentration was a component that was considered as part of the Tier Three review conducted in this case.

In particular, Protestant asserts that Applicant's air dispersion modeling for silica failed to include silica background concentrations.⁷⁹ Protestant points out that in assessing the potential impact on human health and welfare, the ED's toxicologist relied on Applicant's modeling result to determine the off-site silica concentration.⁸⁰ Protestant also argues that disregarding background concentrations is inconsistent with a full impact analysis to assess the potential for the project to cause or contribute to a condition of air pollution. Finally, Protestant points out that the Commission's Air Permit Reviewer Reference Guide, under Tier Three review criteria, requires the consideration of existing levels of the same constituent. Protestant notes that the guidance recommends establishing and evaluating off-site concentrations from proposed emissions to determine the potential for adverse health and welfare effects, which includes project emissions and existing exposure levels.⁸¹

⁷⁹ Tr. at 522-23, 564, 1089.

⁸⁰ Tr. at 581-83, 522-23.

⁸¹ App. Ex. 17 at 29; App. Ex. 30 at 15, 27.

Applicant and the ED respond that the ESLs used to evaluate potential health effects for silica are set conservatively in order to account for potential background sources, and, as a result, modeling would have taken background concentrations into account twice. These parties point out that silica was reviewed in accordance with TCEQ guidance.⁸² As a result, EOG and the ED argue that background levels of silica do not need to be considered in the health-effects evaluation, because the conservatism used by the TCEQ in setting the ESLs.⁸³

As more thoroughly discussed in a subsequent section (see section II.F), the ALJs agree that silica is a pollutant which does not require the inclusion of background concentration levels in an ESL evaluation.⁸⁴ Because the maximum predicted off-site silica concentration exceeded the ESL standard, a case-specific factor evaluation, or Tier Three review, was conducted by the TCEQ toxicology division to determine whether health or welfare effects would be expected as a result of exposure to a given constituent. One of the factors considered in the Tier Three review is whether the existing levels of the same constituent, i.e. silica, is present. Thus, the background concentrations of silica emission were considered when a Tier Three ESL evaluation of the potential health effects of silica was conducted by a TCEQ toxicologist.

b. PM₁₀

Because the Applicant's air dispersion modeling results showed that the SIL or de minimis level of PM₁₀ was not exceeded, EOG did not conduct a full impact analysis for PM₁₀.⁸⁵ Protestant argues, however, that air dispersion modeling results showed that by using more appropriate and updated meteorological data, the SIL would be exceeded and thus a full impact analysis would have been required.⁸⁶

⁸² ED Ex. 35 at 691; ED Ex. 37 at 738.

⁸³ Tr. at 1125.

⁸⁴ Tr. at 518.

⁸⁵ App. Ex. 29 at 6.

⁸⁶ Prot. Ex. JT-4a.

EOG argues that a full impact analysis was not required for PM_{10} , because the highest modeled concentration did not meet the SIL. Furthermore, EOG contends that the screening background concentrations for Cooke County (derived from heavily-populated Dallas and Tarrant Counties) are very conservative, indicating that there is no danger of exceeding NAAQS for PM_{10} . The Applicant notes that Mr. Tarr agreed with this conclusion, and testified that he knows of no significant background sources of PM_{10} or silica in the area surrounding the site.⁸⁷

As more thoroughly discussed in a subsequent section (see section II.E), the ALJs conclude that, even if a NAAQS full impact analysis was conducted, the full impact analysis for would not have resulted in a different outcome. Specifically, Mr. Zimmerman testified that, when he added the TCEQ's screening background concentration for Cooke County of $60 \mu\text{g}/\text{m}^3$ to the $5.8 \mu\text{g}/\text{m}^3$ maximum modeled concentration of PM_{10} modeled by Mr. Tarr, which included the most current Denton meteorological data, the result was $66 \mu\text{g}/\text{m}^3$.⁸⁸ The short-term (24-hour) PM_{10} NAAQS is $150 \mu\text{g}/\text{m}^3$, and $66 \mu\text{g}/\text{m}^3$ does not exceed this standard. Mr. Cherry also confirmed that Applicant would still be in compliance with NAAQS for PM_{10} even if Mr. Tarr's Denton meteorological data was used.⁸⁹ Therefore, the ALJs conclude that even if a NAAQS full impact analysis was required and performed, the result would not have demonstrated an exceedance of the NAAQS standard.

c. $PM_{2.5}$

EOG conducted a full impact analysis for $PM_{2.5}$, after the Applicant's air dispersion modeling results showed that the SIL or de minimis level for $PM_{2.5}$ would be exceeded.⁹⁰ Based on EOG's modeling results, which showed a value of $11.1 \mu\text{g}/\text{m}^3$, Mr. Cherry confirmed that the NAAQS for $PM_{2.5}$ of $12 \mu\text{g}/\text{m}^3$ would not be exceeded.⁹¹ Instead of the inputs EOG ultimately

⁸⁷ Tr. at 708.

⁸⁸ Prot. Ex. JT-4a.

⁸⁹ Tr. at 546.

⁹⁰ App. Ex. 29 at 7.

⁹¹ Tr. at 464; App. Ex. 12 at 362; App. Ex. 29 at 8.

used, Protestant argues that actual background information should have been obtained at the site and maximum predicted concentrations from the project added to those levels.

EOG argues that preconstruction monitoring to establish background levels is only required under the federal Prevention of Significant Deterioration (PSD) program, which only applies to facilities with more than 100 tons per year of emissions,⁹² a level much higher than the predicted emissions from the proposed project. Next, EOG notes that the proposed operation will be located in a rural area, where there are no TCEQ permitted operations, and no ambient monitoring sites.⁹³ To compensate for this lack of monitoring sites, Applicant used monitoring data from Dallas and Tarrant Counties to provide a background level to which PM_{2.5} emissions from the proposed facility could be added for Mr. Zimmermann's analysis. Noting that these are urban counties with substantially more emissions from both mobile and stationary sources than the project area, EOG argues the assumed background level of PM_{2.5} was conservative.⁹⁴

The ED agrees that the assumed PM_{2.5} background level was conservative, noting that the monitor with the highest background concentration for each averaging time was used to represent the background concentrations at Applicant's site. The ED points out that the Dallas and Tarrant County monitors are conservative because the populations and 2008 reported PM_{2.5} emissions in those counties were greater than the population and 2008 reported PM_{2.5} emissions in Cooke County.⁹⁵

The ALJs find that the monitors in Dallas and Tarrant Counties were appropriate to use as the background concentration at the Applicant's proposed project, rather than the actual background at the Cooke County site. The use of ambient air monitors in either Dallas or Tarrant Counties was conservative because the population and reported PM_{2.5} emissions are

⁹² 30 TAC § 116.160(c)(2)(B), incorporating 40 CFR §52.21(m) (requirement for preconstruction monitoring); 40 CFR § 51.166(b)(1)(definition of major source).

⁹³ App. Ex. 12 at 16; Prot. Ex. HB-3.

⁹⁴ App. Ex. 29 at 8; Tr. at 518-20; Tr. at 1038, 1087-88; ED Ex. 35 at 27, 28.

⁹⁵ ED Ex.15 at 207; ED Ex. 35 at 697-98; ED Ex. 36 at 716, 723, 725.

greater than the population and reported PM_{2.5} emissions for Cooke County. Specifically, Dallas County had a population of 2,368,139 and 2008 emissions of 7,089 tons of PM_{2.5}; Tarrant County had a population of 1,809,034 and 2008 emissions of 5,190 tons of PM_{2.5}; and Cooke County had a population of 38,437 and 2008 emissions of 961 tons of PM_{2.5}.⁹⁶ The evidence showed that the monitor with the highest background concentration in Dallas and Tarrant Counties for each averaging time was used to appropriately and conservatively represent the background concentrations for Cooke County. Further, Tarrant County and Dallas County have three years of complete data as required by recent EPA guidance documentation.⁹⁷ Thus, the ALJs conclude that EOG's use of data from the ambient air monitors in Dallas and Tarrant Counties was appropriate to determine whether the NAAQS for PM_{2.5} would be exceeded.

B. Emission calculations/estimates

1. AP-42 Factors

To develop estimated emissions from each emission source, EOG and the ED used emission factors from the EPA's AP-42 guidance document to calculate emission rates for the facilities represented in the application.⁹⁸ The ED explained that emission factors are representative values that relate an activity with a quantity of a pollutant released into the atmosphere. These factors facilitate estimation of emissions from various sources of air pollution. EOG used emission factors provided in AP-42 to estimate particulate matter emissions from all loading operations, screens, conveyance systems, and stockpiles, as well as products of combustion from the dryer.⁹⁹ Each AP-42 emission factor is given a rating from A through E, with A being the most reliable. Applicant and the ED applied D and E factors to a number of emission sources.¹⁰⁰

⁹⁶ ED Ex. 20 at 5.

⁹⁷ App. Ex. 16 at 26.

⁹⁸ Tr. at 80.

⁹⁹ ED Ex. 35 at 679-80.

¹⁰⁰ Prot. Ex. JT-3 at 8; Tr. at 95.

Protestant points out that, in the introduction to AP-42, the EPA states concerns about using the low-rated factors in an air permit analysis, which could be off by as much as an order of magnitude.¹⁰¹ As a result, when Mr. Tarr modeled emissions for roads, he increased the emission factors for sources having a rating of D or E by a factor of 10, which is an order of magnitude.¹⁰² Protestant argues that this adjustment is appropriate to estimate a “worst-case” scenario, and yet, Ms. Hoover, who stated that her analysis represented “worst-case” conditions, used AP-42 factors D and E without such an adjustment.¹⁰³

In response, the ED and EOG argue that even D and E emission factors are reliable. The ED points out that in the introduction to AP-42, the source of Protestant’s argument to increase the factors to such an extent, actually states that “some emission factors are *derived from tests* that may vary by an order of magnitude or more.”¹⁰⁴ That is, it is variation in source tests that may differ by an order of magnitude, but not the factors themselves, which use average test results.

The ED and the Applicant note that Mr. Tarr was the only expert witness to suggest that AP-42 factors are inappropriate for the project. Yet, he did not recall ever having worked on a permit for a sand or aggregate facility.¹⁰⁵ EOG and the ED also point out that the application of AP-42 is consistent with long-established use by the TCEQ. Ms. Hoover testified that Commission experience dating back decades over the history of the permit program supports the methodology employing these emission factors. These factors are also accepted in other states, as well as by the EPA, and the AP-42 factors are based on sampling at plants processing material with lower moisture content and more fines than are anticipated at the proposed plant.¹⁰⁶

¹⁰¹ Prot. Ex. JT-1 at 8; Prot. Ex. JT-3 at 8.

¹⁰² Tr. at 738-39.

¹⁰³ Tr. at 95.

¹⁰⁴ Prot. Ex. JT-3 at 3 (emphasis added).

¹⁰⁵ Tr. at 668-69.

¹⁰⁶ App. Ex. 28 at 4-5.

Mr. Buller reviewed EOG's emission calculation methodology and the emission factor values in accordance with established guidance for facilities in this industry. He stated that reliance on AP-42 emission factors is reasonable and a regularly accepted engineering practice.¹⁰⁷ Mr. Buller testified that every permit application he reviewed at the TCEQ has used AP-42 emission factors, as well as applications he has peer reviewed. He stated that even AP-42 factors with a rating of D or E are regularly relied on and used consistently throughout the State of Texas. Further, there is no documented basis for revising those factors up or down. He could not conclude that an E rated emissions factor suggested an order of magnitude variability and, in his experience, he has never seen AP-42 emission factors increased by an order of 10.¹⁰⁸

The ALJs are persuaded by the testimony of Mr. Buller and Ms. Hoover, who both indicated that AP-42 represents an industry standard sanctioned by the EPA, and used in a wide range of applications – the AP-42 Table of Contents lists over 150 industries.¹⁰⁹ Protestant's evidence and argument are insufficient to overcome what is an established industry and regulatory standard. The ALJs find that it was appropriate for EOG and the ED to apply and rely on AP-42 factors.

2. Dryer Baghouse

As part of the project, EOG proposes to use a dryer that will generate greater emissions than any other source at the site. AP-42 discusses how certain sources of emissions can be reduced by implementing certain control technologies. EOG proposes to use a baghouse at the dryer stack as such an emission control technology. EOG developed an emission factor for this source of emissions using the vendor's performance information and AP-42 factors.¹¹⁰

¹⁰⁷ ED Ex. 35 at 676-80; ED Ex. 4; ED Ex. 5; ED Ex. 6; ED Ex. 7; ED Ex. 8.

¹⁰⁸ Tr. at 411, 421, 424-25, 429-30, 948-49, 952, 954-55, 960-61.

¹⁰⁹ ED Ex. 35 at 676-80.

¹¹⁰ App. Ex. 28 at 3-4; Tr. at 80, 84.

As the dryer is the largest single source of emissions for the project, Protestant argues that EOG should have used a vendor performance guarantee, instead of simply relying on performance information and AP-42 factors. The basis of this argument is that the EPA considers emission information from an equipment vendor, particularly emission performance guarantees or actual test data from similar equipment, as a better source of information for permitting decisions than an AP-42 emission factor.¹¹¹ RRMT argues that for other baghouses at the site, Ms. Hoover obtained and used performance guarantees. She admitted that had she realized this early enough, she would have attempted to obtain such a guarantee for the dryer baghouse.¹¹²

EOG responds that there is no rule that requires the use of a vendor guarantee in addition to performance data. Nevertheless, EOG and the ED argue that there is extensive TCEQ and industry experience with baghouses for emission sources of this type. Ms. Hoover's calculations incorporated emission information provided by the vendor, was reviewed and approved by the ED's technical team, and incorporated commonly-accepted methodology. The ED notes that emission factors and calculation methodologies were taken from AP-42. Particulate matter emissions from the baghouse were based on the vendor's specifications for outlet grain loading. EOG argues that these calculations have proven effective at creating reasonable projections of emissions from this type of baghouse. Ms. Hoover compared dryer stack sampling for similar dryers installed at similar operations, and those sampling reports reasonably correlated to the emission rates she calculated for the dryer baghouse to be used here. Ms. Hoover testified that in her experience, the sampling results show that emissions from this type of dryer baghouse meet or are lower than what the vendor represents.¹¹³

EOG and the ED also argue that a vendor guarantee would be superfluous because EOG's representations in the application regarding emissions limits are binding. EOG must comply with the Draft Permit's general and special conditions, and the Maximum Allowable

¹¹¹ Prot. Ex. JT-3 at 3.

¹¹² Tr. at 80-81, 84-85, 1004-05; Prot. Ex. CX-4.

¹¹³ App. Ex. 28 at 3-4, 708; ED Ex. 35 at 680, 685; Tr. at 80, 134-37, 425, 964-66.

Emission Rate Table (MAERT).¹¹⁴ Both parties note that initial stack sampling is required within the first 180 days of operation to demonstrate compliance with emissions limits and federal NSPS.¹¹⁵ The ED notes that in offering his opinion on the matter, Mr. Tarr was unaware that initial stack testing was required under NSPS and the Draft Permit.¹¹⁶ If the sampling results show emissions beyond the permitted limit or the NSPS, Applicant will be required to bring the baghouse into compliance, while subject to TCEQ enforcement for a permit violation.¹¹⁷

The ALJs find that EOG's reliance on performance data and AP-42 factors was sufficient to estimate emissions from the dryer baghouse. Although a vendor guarantee would have provided useful information, sampling results from similar dryers correlated with Ms. Hoover's estimated emission rates for the proposed dryer baghouse. If actual emissions from the dryer baghouse exceed the MAERT, violate conditions in the Draft Permit, or cause an exceedance of the NSPS, EOG will be required to bring the baghouse into compliance.

3. Use of PM₄ for Silica

Protestant asserts that the emission rates used by Applicant in its modeling for silica are unreliable. Specifically, Protestant challenges Applicant's reliance on the TCEQ Toxicology Division's determination that the long-term (annual) impact of silica must be evaluated as smaller-sized particulate matter, or PM₄, and the short-term (hourly) impact of silica must be evaluated as the total concentration of larger-sized particulate matter, or PM₁₀.¹¹⁸ Protestant maintains that all of the sand at this plant should be assumed to be PM₁₀ for all modeling purposes, principally because PM₁₀ is a criteria pollutant, *e.g.* a pollutant for which a federal NAAQS standard has been established, unlike silica, which must be evaluated using TCEQ Toxicology Division guidelines only.

¹¹⁴ 30 TAC § 116.115.

¹¹⁵ Tr. at 964.

¹¹⁶ Tr. at 780.

¹¹⁷ Tr. at 964-66.

¹¹⁸ ED Ex. 35 at 19.

By way of background, the TCEQ Toxicology Division has determined that the respirable size of particulate matter is PM₄.¹¹⁹ Respirable means that the particulate matter is small enough to stay in the air and get inhaled into the lungs.¹²⁰ According to the TCEQ Toxicology Division guidelines, “particle size is a key determinate of silica toxicity.”¹²¹ Silica particles that range in size from 1-4 micrometers are small enough to enter the deeper regions of the respiratory tract and can lead to acute silicosis, a very rare and non-cancerous respiratory disease. America’s worst disaster with acute silica overexposure occurred during drilling of the Gauley Bridge hydroelectric tunnel in 1930-31 in West Virginia when 2,000 workers were sickened with silicosis. Another disaster occurred in Midland-Odessa, Texas, during drilling in the oil industry in the early 1990s when hundreds of sandblasters developed the disease.¹²² Although there were some silica dust measurements in the early 1990s, there were no reproducible levels of silica for analysis related to these disasters. Thus, because there are no human sources for the development of a human risk assessment for silica, rats have been used to develop the TCEQ ESLs, or health effects standards, for respirable silica.¹²³

Applicant points out that, pursuant to TCEQ guidance, it made the conservative assumption that 100% of the sand expected from the proposed facilities was respirable silica.¹²⁴ Because emissions were conservatively estimated and all of the PM₁₀ and PM₄ were assumed to be respirable silica for annual average modeling purposes, Applicant argues that its evaluation incorporated multiple and significant conservative emission projections, with the result that there was an exceedance of the ESL shown and a Tier Three evaluation of the risk of public exposure.

Protestant argues that it would be more conservative and more accurate to assume that the amount of silica at this site is 100% of the larger-size particle, PM₁₀, for both the short-term and

¹¹⁹ ED Ex. 35 at 19.

¹²⁰ App. Ex. 38 at 8-10.

¹²¹ App. Ex. 38 at 8.

¹²² App. Ex. 38 at 9.

¹²³ App. Ex. 38 at 8-9.

¹²⁴ App. Ex. 29 at 6.

long-term analysis.¹²⁵ According to Mr. Tarr, the use of PM₄ to model for silica originated from studies done in South African gold mines.¹²⁶ Mr. Tarr explained that the study was designed to quantify the particulate matter that gold miners were exposed to as the result of fracturing gold in the mining process. Mr. Tarr believed that relying on the study for the proposition that silica should be modeled at a smaller particulate size, or PM₄, for long-term exposure was flawed for two reasons: (1) the instrument, a Konimeter,¹²⁷ used to collect the samples in the gold mine study was faulty and either damaged or did not collect the larger particulate matter;¹²⁸ and (2) the gold mine was located 10,000 feet below the surface and the sample did not account for windblown emissions related to the size of the particulate matter.¹²⁹ He pointed out that focusing on PM₄ versus PM₁₀ substantially reduces the emission rate and decreases the calculated ambient air concentration based on that emission rate.

The ED pointed out that the EPA has not classified silica as a hazardous air pollutant or criteria pollutant and accordingly, the EPA does not provide specific emission factors or NAAQS for PM₄.¹³⁰ This was confirmed by Mr. Buller, who testified that it has been “an accepted TCEQ practice” to determine emission factors related to various size particles when evaluating silica emissions.¹³¹ The ED noted, however, that in order to evaluate PM₄, the TCEQ Toxicology Division has established ESL guidelines,¹³² which were developed by combining data from ten separate occupational studies to account for exposure to different forms of silica at different concentrations.¹³³ The ED agreed that Applicant appropriately modeled the amount of silica at

¹²⁵ Tr. at 768.

¹²⁶ Tr. at 767.

¹²⁷ A device for estimating the dust content of air. Merriam-Webster Dictionary 1254 (8th ed. 2008).

¹²⁸ Tr. at 766. The reason for the damage was not fully explained, just that the particulate matter was “physically affected” between the time it entered the instrument and the time it was analyzed.

¹²⁹ Tr. at 766.

¹³⁰ App. Ex. 38.

¹³¹ ED Ex. 35 at 680.

¹³² App. Ex. 16 at 26-27.

¹³³ App. Ex. 38 at 32, 36.

this site as smaller-sized respirable particulate matter rather than larger-sized non-respirable particulate matter.

The ALJs agree with Applicant and the ED that the Applicant conservatively modeled silica by assuming that all of the sand at the facility was silica for the short-term concentration evaluation. Protestant argues that all of the silica should have been modeled as PM₁₀ for short- and long-term evaluation, which would have necessitated adding the background concentrations for PM₁₀ from Tarrant and Dallas Counties (as discussed in a subsequent section). However, because studies show that silica is respirable smaller-sized particulate matter that could lead to silicosis with heavy exposure, TCEQ guidance properly evaluates long-term exposure to silica as an ESL, rather than as larger-size, minimally-respirable PM₁₀ subject to a NAAQS standard. Thus, the ALJs agree with Applicant and ED that Applicant properly modeled all the sand as silica and conservatively modeled the silica as 100% of PM₁₀ for the short-term analysis and 100% of PM₄ for the long-term analysis of emissions as provided by TCEQ guidance.

4. Point Source Emissions Reduced by 10% for Long-Term Analysis

The source of this controversy involves EOG's initial calculation of emission rates based on an operational schedule of 24 hours per day for 365 days per year, or 8,760 hours annually. Later, EOG revised the schedule to provide that the plant will operate 8,760 hours per year, except for various pieces of equipment, which will have a maximum operating schedule not to exceed 7,884 hours per year in any rolling 12-month period.¹³⁴ Based on the 10% reduction in operating hours for certain equipment, EOG reduced its emission rates by 10% to reflect the new operational schedule. It is undisputed that the equipment operating under the reduced schedule¹³⁵ will generate greater emissions than any other source at the site.

¹³⁴ ED Ex. 21 at 244 (Draft Permit Special Condition No. 8).

¹³⁵ The equipment is listed as: the dryer baghouse and associated dryer, the dry plant transfer dust collector baghouse and associated dry feed bins, dry screens and conveyors, the surge bin dust collector and the product silo dust collectors, and associated product load facilities.

Protestant argues that there was no specific testimony from an EOG employee concerning the hours or times that the facility would be operating. According to Protestant, without the information on which sources would not be operating and when, there was no way to calculate how the direction or speed of the wind would impact off-site areas. Protestant points out that Applicant just made a wholesale 10% reduction in emissions without identifying the specific equipment, times, or dates that the facility would be operating under a reduced schedule. Protestant argues that the emission rates should be calculated at 100%, without Applicant's specific operating schedule incorporated into the modeling.

Applicant counters that using the actual operating hours is standard methodology for modeling, as set out in TCEQ guidance.¹³⁶ Applicant refers to TCEQ's guidance which states that "the annualized average hourly emission rate based on the maximum ton-per-year rate [is used] to obtain annual concentrations."¹³⁷ Thus, Applicant argues that the operational schedule is the basis for the modeling and not the specifics of how and when the plant will operate.

The ED agrees that the proposed operating hours were accurately represented in the application.¹³⁸ The application was reviewed by Mr. Buller, who tracked throughput at the facilities to ensure that the hours of operation and hourly and annual throughput were consistent with the representations in the application. The ED concurred that the emissions represented in the modeling analysis is a function of the operating hours authorized by the draft permit.

The ALJs are persuaded that the operating hours properly correspond to the emission rates as authorized by the Draft Permit. The ALJs agree that testimony concerning exactly how and when Applicant planned to operate the plant would have been helpful, but it was not critical information. Because Mr. Buller testified persuasively that he thoroughly tracked throughput to ensure consistency with the application, and there was no contradictory evidence presented otherwise, the ALJs are convinced that, even with the 10% reduction due to the reduced

¹³⁶ App. Ex. 29 at 5 (corrected version).

¹³⁷ App. Ex.13.

¹³⁸ Tr. at 115.

operational schedule, the emission rates were properly calculated as represented in the application.

C. Air Dispersion Modeling/Results

Applicant has applied for a Preconstruction Permit to construct a new facility that may emit air contaminants as required by the TCAA.¹³⁹ Because the plant has not yet been constructed and new sources of pollution are not in operation at the time of the permit review process, actual air samples cannot be collected to evaluate whether the emissions will adversely impact public health. As a result, computerized air dispersion modeling is used to predict the off-property, ground-level air concentrations (GLCs) of constituents in order to determine compliance with NAAQS and Texas property line standards, and to ensure that non-criteria pollutants (silica) will not adversely impact human health and welfare.¹⁴⁰ In Texas, the ED may require an applicant to perform air dispersion modeling as part of the application.¹⁴¹

In this case, modeling was required to be completed by EOG and was audited by the TCEQ ADMT.¹⁴² The ADMT also required Applicant to use “refined modeling,” a more complex model with more detail and precise input data.¹⁴³ Typically, the input data comprises land-use information (urban or rural), topographical elevation data (flat or complex terrain), variable emission rates, building wake effects (downwash), emission point parameters (receptor grid locations, elevations, and spacing), and meteorological data (standard surface and upper-air observations).¹⁴⁴

¹³⁹ TCAA § 382.0518(a).

¹⁴⁰ Constituent generally refers to a contaminant, chemical, chemical compound, pollutant, or particulate matter. App. Ex. 13 at 12; App. Ex. 29 at 4.

¹⁴¹ 30 TAC § 116.111(j).

¹⁴² ED Ex. 35 at 23; App. Ex. 16 at 23.

¹⁴³ App. Ex. 13 at 31.

¹⁴⁴ App. Ex. 13 at 41-69.

Emission rates are an additional and integral input variable necessary to accurately model the projected concentrations of pollutants in the atmosphere resulting from the proposed facility. Once the emission rate is calculated, it is plugged into the model along with all other inputs, and the model calculates a total projected concentration in the atmosphere of each specific pollutant at each identified receptor. The Applicant's modeling encompassed receptors extending out to a range of 10,000 meters in all directions from the property line, known as a "receptor grid."

Criteria Pollutants. The EPA has set NAAQS for six principal pollutants, referred to as "criteria" pollutants, *i.e.* pollutants for which a standard exists: (1) particulate matter PM₁₀ and PM_{2.5}; (2) ozone (O₃); (3) sulfur dioxide (SO₂); (4) carbon monoxide (CO); (5) nitrogen dioxide (NO₂); and (6) lead (Pb).¹⁴⁵ The Clean Air Act identifies two types of NAAQS, primary and secondary. Primary NAAQS define levels of air quality that the EPA Administrator has determined are required to protect the public health.¹⁴⁶ Primary NAAQS are set to protect public health, including the health of sensitive populations such as asthmatics, children, and the elderly. Secondary NAAQS define levels of air quality that the EPA Administrator has determined are required to protect the public welfare from any known or anticipated adverse effects. Secondary NAAQS are designed to protect the public welfare against non-health-related effects, such as decreased visibility; effects to animals, crops, and vegetation; and damage to and deterioration of property.¹⁴⁷ As Dr. Dydek notes, ". . . when the EPA set the NAAQS for each Federal criteria contaminant, [the EPA] set them at protective and conservative levels, so that even the most sensitive subgroups of the population would not suffer adverse effects from ambient concentrations of the contaminant at or below the NAAQS levels."¹⁴⁸

Of the listed criteria pollutants, Applicant proposes to emit: PM₁₀ and PM_{2.5}, CO, NO₂, and SO₂.¹⁴⁹ In order to understand the modeling results for the criteria pollutants, there are a few

¹⁴⁵ 42 U.S.C. § 7409(a); 40 CFR § 50.

¹⁴⁶ 42 U.S.C. § 7409(b)(1); 40 CFR. § 50.2(b).

¹⁴⁷ 42 U.S.C. § 7409(b)(2).

¹⁴⁸ App. Ex. 30 at 9.

¹⁴⁹ App. Ex. 35, p. 18-19.

basic items to consider. First, the measurement for the modeled predicted concentrations is expressed as micrograms per cubic meter ($\mu\text{g}/\text{m}^3$). According to the ED, a microgram is the size of a dust mite and a cubic meter is the size of a washing machine.¹⁵⁰ Thus, for instance, in order for the projected facility's emissions to meet the PM_{10} NAAQS of $150 \mu\text{g}/\text{m}^3$, there must be no more exposure in an average 24-hour period than 150 dust mite-size particles per washing machine-size area.

Second, modeling predicts the maximum GLC beginning at the facility's nearest property line, expressed as maximum ground-level concentration or GLC_{max} . This is because the definition of "ambient air" only includes that portion of the atmosphere to which the general public has access, and it is assumed that the public does not have general access to the facility.¹⁵¹ Accordingly, air dispersion modeling starts at the applicant's property line.¹⁵²

Third, the "de minimis" SIL of air contaminant concentration is that value defined by the EPA as a concentration below which the air quality is not anticipated to degrade due to emissions. Thus, when a modeled impact is deemed insignificant, or de minimis, using the SIL as a threshold for significance, it is not necessary to incorporate background levels or emissions from other sources in the modeling.¹⁵³ In other words, if modeling shows that a pollutant is below the SIL, no further evaluation is necessary.¹⁵⁴ But, if the maximum modeled concentration of a pollutant for the project is greater than the SIL then a "full impact analysis" is performed, integrating the modeled background source with the appropriate averaging time.¹⁵⁵

¹⁵⁰ App. Ex. 16 at 26.

¹⁵¹ 30 TAC § 101.1(3).

¹⁵² App. Ex. 13 at 67.

¹⁵³ App. Ex. 29 at 6.

¹⁵⁴ ED Ex. 35 at 27.

¹⁵⁵ App. Ex. 29 at 7.

Fourth, receptors are an important element of capturing the GLC_{max} .¹⁵⁶ According to the Applicant's modeling report, receptor grids were placed at intervals of: 25 meters from the property line to 100 meters from the property line; 100 meters from 100-1,000 meters from the property line; 500 meters from 1,000-5,000 meters from the property line; and 1,000 meters from 5,000-10,000 meters from the property line.¹⁵⁷ Special discrete receptors were also modeled at "special locations of interest such as residences and commercial operations."¹⁵⁸ The receptor elevations were determined by use of the EPA AERMAP program.

Property Line Standards. Property line standards are used to regulate the air contaminant contributions of a particular facility.¹⁵⁹ Texas has a "state property line rule" governing sulfur dioxide, which is represented on the table below as SO_2 for a 30-minute averaging period. Specifically, the state property line rule provides that no person in Texas may allow or permit emissions of sulfur dioxide from a source operated on a property to exceed a net ground level concentration of 0.4 per million by volume averaged over any 30-minute period.¹⁶⁰ According to Mr. Zimmerman, the maximum modeled concentration for this project for sulfur dioxide was less than the TCEQ's standard for the property line rule.¹⁶¹

The modeling performed by Mr. Zimmerman and audited by Mr. Buller in regards to criteria pollutants and the property line standard for SO_2 predicted the following:¹⁶²

¹⁵⁶ App. Ex. 13 at 66.

¹⁵⁷ App. Ex. 12 at 67.

¹⁵⁸ App. Ex. 12 at 7.

¹⁵⁹ App. Ex. 30 at 5.

¹⁶⁰ 30 TAC § 112.4

¹⁶¹ App. Ex. 29 at 7.

¹⁶² ED Ex. 15 at 1-5; App. Ex. 12 at 49.

Air Pollutant	Averaging Period	GLC _{max} $\mu\text{g}/\text{m}^3$	Background $\mu\text{g}/\text{m}^3$	TOTAL (GLC _{max} + Background) $\mu\text{g}/\text{m}^3$	NAAQS Standard $\mu\text{g}/\text{m}^3$	De Minimis or SIL level $\mu\text{g}/\text{m}^3$
PM ₁₀	24-hr	2.2	N/A ¹⁶³	N/A	150	5
PM _{2.5}	24-hr	1.97	24.5	26.47	35	1.2
PM _{2.5}	annual	0.41	10.7	11.11	15	0.3
Nitrogen Dioxide (NO ₂)	1-hr	15.2	102.9	118.1	188	7.5
NO ₂	Annual	0.66	N/A	N/A	100	1
Sulfur Dioxide (SO ₂)	30-minutes	1.7	20.42		1021	N/A ¹⁶⁴
SO ₂	1-hr	1.7	N/A	N/A	196	7.8
SO ₂	3-hr	0.7	N/A	N/A	1,300	25
SO ₂	24-hr	0.4	N/A	N/A	365	5
SO ₂	annual	0.07	N/A	N/A	80	1
Carbon Monoxide (CO)	1-hr	10	N/A	N/A	2,000	2,000
CO	8-hr	3	N/A	N/A	500	500

¹⁶³ N/A denotes that the predicted concentration at ground level is below the SIL so no further evaluation of that contaminant was required or performed.

¹⁶⁴ ED Ex. 15 at 1-5; App. Ex. 12 at 49. The SIL was not included.

In sum, as pertains to the contested issues in this case including the performance of a full impact analysis, the following results were shown by Applicant's modeling:

1. **PM₁₀.** The SIL for PM₁₀ was not exceeded at any off-site location, for any period of time, either short-term or long-term, and thus no full impact analysis was required or performed.
2. **PM_{2.5}.** The SIL level for PM_{2.5} was exceeded at locations within one kilometer of the proposed facility for both short-term and long-term; therefore, a full impact analysis was required and performed.

The review concluded that for a 24-hour period, the maximum ground level concentration of PM_{2.5} was expected to be 26.47 $\mu\text{g}/\text{m}^3$ (1.97 $\mu\text{g}/\text{m}^3$ plus the background concentration of 24.5 $\mu\text{g}/\text{m}^3$), which fell below the 24-hour PM_{2.5} NAAQS of 35 $\mu\text{g}/\text{m}^3$.

The review also concluded that for an annual average period, the maximum ground level concentration of PM_{2.5} was expected to be 11.11 $\mu\text{g}/\text{m}^3$ (0.41 $\mu\text{g}/\text{m}^3$ plus the background concentration of 10.7 $\mu\text{g}/\text{m}^3$), which fell below the then-existing annual PM_{2.5} NAAQS of 15 $\mu\text{g}/\text{m}^3$ and the new annual PM_{2.5} NAAQS of 12 $\mu\text{g}/\text{m}^3$.¹⁶⁵

3. **Nitrogen Dioxide.** NO₂ was modeled and evaluated for the proposed facility. The SIL level for NO₂ was exceeded short-term (1-hour) but not long-term (annual). A full impact analysis was therefore required and performed for the 1-hour time period.

The SIL level of NO₂ is 1 $\mu\text{g}/\text{m}^3$ (annual). Modeling of this facility resulted in predicted air concentrations of 0.66 $\mu\text{g}/\text{m}^3$. Therefore, no full impact analysis was required or performed.

When TCEQ's screening background concentration for Cooke County (derived from Dallas and Tarrant Counties) of 102.9 $\mu\text{g}/\text{m}^3$ was added to the 15.2 $\mu\text{g}/\text{m}^3$ maximum modeled concentration of NO₂, the result was 118.11 $\mu\text{g}/\text{m}^3$. The short-term (1-hour) NAAQS for NO₂ is 188 $\mu\text{g}/\text{m}^3$, and 118.11 $\mu\text{g}/\text{m}^3$ does not exceed the NAAQS.

4. **Sulfur Dioxide.** SO₂ was modeled and evaluated for the proposed facility. The de minimis or SIL level of SO₂ is 7.8 $\mu\text{g}/\text{m}^3$ (1-hour), 25 $\mu\text{g}/\text{m}^3$ (3-hour), 5 $\mu\text{g}/\text{m}^3$ (24-hour), and 1 $\mu\text{g}/\text{m}^3$ (annual). Modeling of this facility resulted in predicted air concentrations of SO₂ of 1.7 $\mu\text{g}/\text{m}^3$ (1-hour), 0.7 $\mu\text{g}/\text{m}^3$ (3-hour), 0.4 $\mu\text{g}/\text{m}^3$ (24-hour), and 0.07 $\mu\text{g}/\text{m}^3$ (annual). Thus, a full impact analysis was not required or performed.

¹⁶⁵ On January 15, 2013, a new annual average PM_{2.5} NAAQS was published in the Federal Register (Vol. 78, No. 10, January 15, 2013). The new annual average is effective March 18, 2013. App. Ex. 29 at 8.

5. **Carbon Monoxide.** CO was modeled and evaluated for the proposed facility. The SIL level of CO is 2,000 $\mu\text{g}/\text{m}^3$ (1-hour) and 500 $\mu\text{g}/\text{m}^3$ (8 hour). Modeling of this facility resulted in predicted air concentrations of CO to be 10 $\mu\text{g}/\text{m}^3$ (1-hour) and 3 $\mu\text{g}/\text{m}^3$ (8-hour). Therefore, no full impact analysis was required or performed.

Non-Criteria Pollutants. Although Applicant proposes to emit silica, the EPA has not designated silica as a criteria pollutant or a hazardous air pollutant.¹⁶⁶ The TCEQ toxicologists developed ESLs, or guidelines, for non-criteria pollutants, based on data concerning health effects, odor/nuisance potential, and effects on vegetation.¹⁶⁷ The ESLs are set at levels lower than those reported to produce adverse health effects, and are set to protect the general public, including sensitive subgroups such as children, the elderly, or people with existing respiratory conditions.¹⁶⁸ If a predicted or measured airborne level of a constituent does not exceed the ESL, adverse health or welfare would not be expected to result. If ambient levels of constituents in the air exceed the ESL, a more in-depth review is required and conducted in order to assess whether a health issue is presented.¹⁶⁹

The objective of a Toxicology Effects Evaluation is to establish off-property GLCs and to evaluate these GLCs for the potential to cause adverse health or welfare effects.¹⁷⁰ According to the Toxicology Effects Evaluation Procedure, the “worst-case scenario emissions” must be modeled in order to predict maximum potential exposure levels. The GLC_{max} is evaluated first, and if needed, the GLC at the maximally affected non-industrial receptor (GLC_{ni}) is evaluated next. “Non-industrial” property (where a receptor is located) is defined as residential, recreational, commercial, business, agricultural; or a school, hospital, day-care center, or church; or a right-of-way, waterways, or the like.¹⁷¹ Further, if the property with a receptor is located in an unzoned or undeveloped area, it is treated as non-industrial.¹⁷²

¹⁶⁶ App. Ex. 29 at 5.

¹⁶⁷ App. Ex. 29 at 7.

¹⁶⁸ App. Ex. 13 at 13.

¹⁶⁹ App. Ex. 13 at 13.

¹⁷⁰ App. Ex. 33 at 27.

¹⁷¹ App. Ex. 17 at 21.

¹⁷² App. Ex. 17 at 21.

The parties agree that the sole major emission from Applicant's proposed project is particulate matter containing crystalline silica.¹⁷³ The modeling performed by Mr. Zimmerman and audited by Mr. Buller in regards to crystalline silica predicted the following:¹⁷⁴

Air Pollutant	Averaging Period	GLC _{max} µg/m ³	ESL µg/m ³	Frequency > 1x ESL @ GLC _{max}	GLC _{ni} µg/m ³	Frequency > 1x ESL @ GLC _{ni}
Silica (PM ₁₀)	1-hr	16.4	14	5 hours per year on FM373 Road	15.0	1 hour/year at GLC _{ni}
Silica (PM ₄)	Annual	0.44	0.27	Conc. > 1 x ESL only on FM 373	0.19	N/A

The modeling report also included specific residential and commercial special receptors to determine the silica maximum concentration at that location.¹⁷⁵ The special receptors R1-R2 and R4-R10 are residential (Res), while receptor R3 is the Red Bull Barn and R11 is Red River Cycles, which are both commercial (Comm):

Pollutant µg/m ³	R1 Res	R2 Res	R3 Comm	R4 Res	R5 Res	R6 Res	R7 Res	R8 Res	R9 Res	R10 Res	R11 Comm
Silica (PM ₁₀) 1-hr	2.9	2.4	6.8	1.5	1.1	1.0	1.1	1.1	1.6	2.0	3.74
% of ESL	21%	17%	49%	11%	8%	7%	8%	8%	11%	14%	26%
Silica (PM ₄) annual	0.006	0.007	0.023	0.017	0.016	0.014	0.013	0.012	0.014	0.021	0.054
% of ESL	2%	3%	8%	6%	6%	5%	5%	4%	5%	8%	20%

¹⁷³ App. Ex. 30 at 6.

¹⁷⁴ ED Ex. 15 at 1-5 and App. Ex. 12 at 49.

¹⁷⁵ App. Ex. 12 at 51.

Thus, as pertains to the contested issues in this case, Applicant's modeling analysis of silica concluded the following:

The ESL level for silica was exceeded at off-site locations, for both periods of time—short-term (24-hour) and long-term (annual)—and therefore, a review by TCEQ's Toxicology Division was required and performed.

The ESL levels for silica of $0.27 \mu\text{g}/\text{m}^3$ for long-term exposure and $14 \mu\text{g}/\text{m}^3$ for short-term exposure were exceeded. The modeling predicted a maximum annual (long-term) average silica concentration of $0.44 \mu\text{g}/\text{m}^3$. The modeling also predicted a maximum 1-hour (short-term) average silica concentration off-site as $16.4 \mu\text{g}/\text{m}^3$.

The parties identified several issues in regards to the air dispersion modeling performed by Applicant: whether worse case conditions were modeled; whether the correct number of years was used for the analysis; and whether the source of meteorological data (DFW/Denton) was appropriate. The ALJs will analyze these issues as pertains to the modeling results.

1. Worst-Case Conditions

The ADMT developed guidelines to suggest a minimum level of analysis so that modeling results reliably predict whether the public's health, welfare, and property are protected. As part of that guidance, the ADMT's goal is to "use worst-case assumptions and conditions to conduct the minimum amount of modeling necessary to demonstrate that the modeled sources should not cause or contribute to air pollution."¹⁷⁶

Protestant contends that Mr. Zimmerman's modeling did not reflect worst-case conditions for a number of reasons: the modeling did not include all sources of pollutants such as roads and the quarry; appropriate emission rates for certain sources, such as the dryer baghouse and the poorly-rated AP-42 factors for the volume sources, were not modeled; and the meteorological data did not represent worst-case meteorological conditions at the site, as

¹⁷⁶ ED Ex. 13 at 22.

discussed in the next section. Further, Protestant argues that its witness, Mr. Tarr, ran the same model using different assumptions and conditions, which more closely resembled reasonable worst-case conditions. Mr. Tarr's model indicated that a full-impact analysis would be required for PM_{10} for the annual average period, and that the ESLs for silica were exceeded by 3.0 to 4.0 times, using updated meteorological data and higher receptor heights of five feet rather than ground level.¹⁷⁷

Applicant responded that ADMT found in its review that Applicant's modeling looked at worst-case assumptions and conditions to demonstrate that the emissions will not contribute to air pollution. Applicant points to Mr. Zimmerman's and Mr. Cherry's testimony that the AERMOD modeling program predicts a higher concentration than will actually occur at any particular off-site point.¹⁷⁸

The ED agreed with Applicant that AERMOD provides a reasonable worst-case representation of potential impacts to demonstrate that the facility will not exceed NAAQS, a state property line standard, or will adversely affect human health or welfare. The model is designed to be conservative, according to the ED.

Based on the evidence and testimony, the ALJs are persuaded that appropriate worst-case conditions were used in the modeling as required and performed. The Applicant used the EPA-approved AERMOD air modeling program to provide a reasonable worst-case representation of potential impacts from the proposed facility. The evaluation incorporated the proposed hours and operating schedule as outlined in the application, applied the emissions authorized by the permit at the maximum throughput on an hourly and annual basis, analyzed the control efficiencies, and considered appropriate background and meteorological data. Proper procedures and guidelines were followed and the results were reviewed by the ADMT and determined to be acceptable. Therefore, the ALJs conclude that Applicant used proper worst-case assumptions and conditions to conduct the modeling.

¹⁷⁷ Prot. Ex. JT-4a, Prot. Ex. JT-6a, Prot. Ex. JT-8, Prot. Ex. JT-5a, Prot. Ex. JT-7.

¹⁷⁸ Tr. at 162; ED Ex. 36 at 9.

2. Number of Years for Analyses

Protestants assert that the 1988 surface meteorological data (met data) used in Applicant's model from the Dallas/Fort Worth and Stephenville, Texas area was out-of-date, not representative of the most current data available on TCEQ's website, and did not replicate the worst-case meteorological conditions for the EOG facility. Specifically, Mr. Zimmerman used the National Weather Service (NWS) surface met data for 1988 from Dallas/Fort Worth and NWS upper air met data from Stephenville for both the short-term and long-term modeling. Meteorological conditions are relevant to modeling because it helps predict where airborne particles will disperse in the atmosphere, influenced by wind speed, wind direction, temperature, humidity, station pressure, amount of incoming solar radiation, and insulating cloud cover.¹⁷⁹

Mr. Zimmerman testified that he used one year of met data, 1988, because that was what was agreed to by the ADMT team (Mr. Buller and ADMT team-member Daniel Jamison) at the meeting required to discuss the modeling protocol.¹⁸⁰ Although there were five years of met data available on the TCEQ website, Mr. Zimmerman testified that he used 1988 out of the five-year block of data from 1985 to 1990, after he was directed to use that year because that year had "the most [weather] stations that had complete datasets."¹⁸¹

Mr. Zimmerman confirmed, however, that he is aware that there is a new set of met data from the NWS.¹⁸² He agreed that the new met data was: (1) gathered at the airport in Denton, Texas, which is 32 miles from Gainesville; (2) for the years 2006 to 2010; (3) processed with the 2011 version of AERMET; and (4) currently posted on the TCEQ website.¹⁸³ Mr. Zimmerman testified that in January 2012 at the ADMT protocol meeting, he was told by Mr. Buller that the Denton meteorological data (Denton met data) was not ready for publication on the TCEQ

¹⁷⁹ Tr. at 309.

¹⁸⁰ Tr. at 197.

¹⁸¹ Tr. at 209-11.

¹⁸² App. Ex. 1 at 6.

¹⁸³ Tr. at 198-99.

website.¹⁸⁴ Besides, Mr. Zimmerman noted that he completed and submitted his modeling report on February 14, 2012, while the Denton met data was not available on the TCEQ website until months later, on December 20, 2012.¹⁸⁵

The Applicant and ED agreed that the modeling was compliant with then-current guidelines published by TCEQ. In particular, the following information was published in the Air Quality Modeling Guidelines prepared by the TCEQ New Source Permits Division and dated February 1999: “Short Term Meteorological Data. For state permit applications, *use data for 1988 or 1989 as specified in Appendix C.*”¹⁸⁶ Appendix C of the Guidelines states “the required year for short-term modeling is currently 1988 (1989 for Shreveport data sets),” and contains a listing of meteorological stations and counties in order to “standardize the selection of met data for Texas permit applications.”¹⁸⁷ A table is also provided in Appendix C for NWS upper-air stations. According to Appendix C, for Cooke County, the surface data to use is Dallas/Fort Worth, while the upper air data is Stephenville, Texas.¹⁸⁸

The Guidelines also provide that for long-term modeling the “required years for long-term state modeling are currently 1985 through 1989 (1985-1987, 1989-1990 for Shreveport).”¹⁸⁹ Protestant argues that even if the ADMT team did agree on the use of 1988 for short-term modeling, the guidelines specifically state that for long-term analysis, five years of met data is to be evaluated. Protestant contends that the updated Denton met data was available (but not on the TCEQ website), in August 2011, when Mr. Zimmerman started working on his model. Further, when Mr. Tarr used the updated data in his modeled results, he found that different years produced different results. For instance, Mr. Tarr found that the highest computed concentration

¹⁸⁴ Tr. at 205.

¹⁸⁵ App. Ex. 12.

¹⁸⁶ ED Ex. 22 at 52. (emphasis added).

¹⁸⁷ ED Ex. 22 at C-1.

¹⁸⁸ ED Ex. 22 at C-3.

¹⁸⁹ ED Ex. 22 at C-1.

off-site at one location did not necessarily occur the same year at another location.¹⁹⁰ Therefore, Applicant's modeling should have analyzed at least five meteorological years, according to Protestant.

TCEQ ADMT Project Leader Mr. Cherry testified that the Applicant properly used the 1988 data recommended by TCEQ for modeling short- and long-term exposure. He explained that for "federal reviews,"¹⁹¹ e.g. a "major source review," five years of met data is required for modeling, but for "state reviews" such as the EOG project, only one year of data is required for both long-term and short-term modeling.¹⁹² According to Mr. Cherry, the year 1988 was chosen because 1988 was a leap year and therefore, there was an extra 24-hour period for the model to determine the worst-case conditions.¹⁹³ He also testified that daily weather conditions can vary within a given year but the worst-case conditions that occur during a year are typically the same as other years.¹⁹⁴ Mr. Cherry stated that with 8,700 hourly samples gathered for 1988 and used for analysis, "the worst-case meteorological conditions have been sufficiently represented in the dataset."¹⁹⁵ Lastly, according to Mr. Cherry, it is still the current practice at TCEQ to require only one year of data for short- and long-term meteorological modeling.¹⁹⁶

The ALJs find that the Applicant used the acceptable met data recommended by TCEQ ADMT team for a minor source: a single year, 1988, of met data for Cooke County. The ALJs note that the last time the TCEQ Air Modeling Guidance document was revised was in February 1999, and it is still being used today. The ALJs find the testimony persuasive that the reason that a standard date and location is chosen, such as directed by Appendix C of the

¹⁹⁰ Prot. Ex. JT-4, Prot. Ex. JT-5, Prot. Ex. JT-6.

¹⁹¹ A federal review refers to a "major source," defined as any source belonging to a list of 28 source categories found in 40 CFR § 52.21(b)(1) which emits or has the potential to emit 100 tons-per-year of any regulated pollutant. Tr. at 501, ED Ex. 22 at xvi (page 271).

¹⁹² ED Ex. 36 at 8.

¹⁹³ ED Ex. 36 at 8.

¹⁹⁴ ED Ex. 36 at 9.

¹⁹⁵ ED Ex. 36 at 9.

¹⁹⁶ Tr. at 503, 509.

Guidelines, is that it provides uniformity to have all applicants use the same met data so that Staff has an opportunity to review and compare the modeling. Hence, when Applicant's modeling was submitted on February 14, 2012, nearly all other required modeling from 1999 to 2012 submitted by other applicants had used the same met data (adjusted for location, but not year), allowing the ADMT some standardization in evaluating the results. Further, the ALJs are persuaded by ADMT team leader Mr. Cherry's assurance that with 8,700 met samples per year, he is reasonably certain that the worst-case conditions that occur during a year are typically the same as other years, and therefore, adequately represented in the data. Lastly, it was shown that Applicant followed the protocol prescribed by the ADMT team, which ostensibly has the expertise to direct the modeling process. Accordingly, the ALJs conclude that Applicant's use of the year 1988 acceptably represented meteorological "worst-case" conditions for short- and long-term modeling, as directed by TCEQ ADMT and its Guidelines.

3. Source of Meteorological data (DFW/Denton)

Applicant maintained that, although there is a new set of met data from the NWS station at the Denton airport covering 2006 to 2010, it should not have been required to apply untested methodologies to replace or supplement its modeling. Applicant points out that at the time of completion of the modeling, the Denton met data was neither published on the TCEQ website, nor discussed at the protocol meeting with the ADMT team. Furthermore, Mr. Zimmerman testified that he did not believe that using the met data from Dallas (Dallas met data) presented any different weather conditions than the Denton met data, given that Dallas and Denton are only 30 miles apart.¹⁹⁷

Protestant disputed that there was no significant difference between using the 1988 Dallas met data and the 2006-2010 Denton met data. Protestant pointed out that the Denton met data benefited from the use of current technology. Specifically, in a March 8, 2013 memoranda authored by EPA Air Quality Modeling Group Leader Tyler Fox, Mr. Fox discusses the use of

¹⁹⁷ Tr. at 308-09.

the Automated Surface Observing System (ASOS) to record hourly meteorological observations.¹⁹⁸ Mr. Fox provided a brief history of the evolution of the met data gathering processing. According to the memo, prior to the early 1990s, standard hourly NWS meteorological observations were human-observer-based. Beginning in 1991, NWS began using ASOS to record hourly observations.¹⁹⁹ Then, in 2011, the EPA began using AERMINUTE to “minimize data gaps by substituting [AERMINUTE data] for hours that were calm or missing due to variable or missing winds”²⁰⁰

The memo also explains the difficulties inherent in the transition to automated weather gathering devices, termed the “issues and challenges with the use of airport data for purposes of dispersion modeling.”²⁰¹ In particular, unlike human observers, ASOS was not as proficient at distinguishing degrees of cloud cover, recording cloud height over 12,000 feet, taking instantaneous temperature readings versus 30-second samples, or replicating the 1-minute average wind speeds that were previously used as the standard for wind speed and direction.²⁰² Thus, the memo states that “limitations associated with ASOS [have] raised concerns within the dispersion modeling community regarding the adequacy of ASOS data for such [modeling] purposes.”²⁰³ In response to the “modeling community” concerns, the EPA memo recommends that lower wind speeds recorded at 0.5 meters per second or below be eliminated (treated as calms) so that the revised datasets using ASOS and AERMINUTE would be consistent with past datasets which had a threshold of 1.0 to 1.5 meters per second wind speeds recorded.²⁰⁴

To address the March 2013 EPA memo, Mr. Cherry testified that the inclusion of very low wind speeds of 0.5 meters or below, termed a “calm wind bias,” in the new met data, such as

¹⁹⁸ App. Ex. 26 at 1.

¹⁹⁹ App. Ex. 26 at 1-2.

²⁰⁰ App. Ex. 26 at 9.

²⁰¹ App. Ex. 26 at 1.

²⁰² App. Ex. 26 at 2.

²⁰³ App. Ex. 26.

²⁰⁴ App. Ex. 26 at 13; Tr. at 310 and 523-26.

the Denton met data, is presently being reviewed and revised by the ADMT team. According to Mr. Cherry, new met data will be published soon on the TCEQ website in accordance with the March 2013 EPA recommendation to remove the calm wind bias.²⁰⁵ He testified that when the revisions are made, he would expect that the 1988 Dallas met data and the 2010 Denton met data would be consistent again.²⁰⁶

Protestant's modeling expert, Mr. Tarr, used the updated Denton met data, which includes the very low wind speeds, and he re-ran Applicant's model with all the other input data used by Mr. Zimmerman in his modeling. The results of Mr. Tarr's modeling were as follows:

- (1) The de minimis or SIL level for PM_{10} of $5.0 \mu\text{g}/\text{m}^3$ was exceeded. The modeling predicted a maximum 24-hour concentration off-site of $5.8 \mu\text{g}/\text{m}^3$ as compared to Applicant's $2.2 \mu\text{g}/\text{m}^3$ finding. Therefore, a full impact analysis would be required.²⁰⁷
- (2) The ESL levels for silica of $0.27 \mu\text{g}/\text{m}^3$ for long-term exposure and $14 \mu\text{g}/\text{m}^3$ for short-term exposure were exceeded. The modeling predicted a maximum annual (long-term) average silica concentration off-site as $0.74 \mu\text{g}/\text{m}^3$ as compared to Applicant's GLC_{max} value of $0.44 \mu\text{g}/\text{m}^3$. The modeling also predicted a maximum 1-hour (short-term) average silica concentration off-site as $50 \mu\text{g}/\text{m}^3$ as compared to Applicant's GLC_{max} value of $16.4 \mu\text{g}/\text{m}^3$.²⁰⁸

The ALJs are cognizant that there is met data that is much more site-specific and current than the met data from Dallas used by Applicant. Based on the evidence and argument, however, the ALJs conclude: (1) the Applicant used the data that was available on the TCEQ website and as directed by the ADMT team; (2) the Denton met data was not available to Applicant at the time of the modeling and any modeling done with the Denton met data would not have complied with TCEQ protocol and published guidelines; (3) the Denton met data as posted on the TCEQ website contains the calm wind bias, or wind speeds recorded of 0.5 meters

²⁰⁵ ED Ex. 36 at 9.

²⁰⁶ ED Ex. 36 at 9.

²⁰⁷ Prot. Ex. JT-1 at 11. A full impact analysis does not show a NAAQS exceedance for PM_{10} (see section IIE.).

²⁰⁸ Prot. Ex. JT-1 at 12; JT-8, JT-7.

per second or below, that is the subject of a March 2013 EPA memo recommending removal of this data from ASOS-AERMINUTE-generated met data; (4) the calm wind bias has raised concerns in the modeling community because the new met data is largely inconsistent with historical datasets; (5) without the calm wind bias, the Denton and Dallas met data should be compatible with the 30-mile distance between the two cities and consistent with historical data that has been gathered at the Dallas airport for decades; and (6) the current Denton met data will soon be obsolete as the TCEQ revises the Denton met data to remove the calm wind bias as recommended by the EPA memo.

Further, even if the ALJs were to suggest that a remand would be appropriate to consider the more current Denton met data in the modeling, the March 2013 EPA memo indicates that the Denton met data is flawed, has caused concern with the modeling community, and will shortly be obsolete as the calm wind bias is removed. The Applicant could then be subjected to even more rounds of modeling to comply with the newly-revised met data. With the upcoming revisions to the met data, the 1988 data provides a reliable and uniform methodology to determine worst-case conditions, without the uncertainty caused by the inclusion of the very low-speed winds. Further, the ALJs are persuaded that a 30-mile distance from Dallas to Denton should provide little difference in weather conditions, in light of the 8,700 hourly readings that compose the 1988 met data sample. Thus, the ALJs conclude that the Applicant properly used the 1988 Dallas met data, which did not contain the calm wind bias, in its modeling.

D. BACT (trucks vs. conveyors)

As noted in the previous discussion of roads, EOG proposes to construct an enclosed conveyor system to transport material from the quarry to the processing plant. Waste material will be returned to the quarry by trucks. EOG acknowledges that the conveyor system will generate fewer emissions than trucks over roads.²⁰⁹

²⁰⁹ App. Ex. 28 at 2, 8, 10; Tr. at 32-35, 56, 59-60.

Protestant argues that EOG's use of trucks represents a failure to apply BACT to the project, because conveyors generate lower emissions than roads. EOG and the ED argue that there is no requirement that the company use a conveyor system at all – EOG could have used trucks and roads for the entire operation.²¹⁰

As applied to the application, BACT is defined in the Commission's rules as a control method that only applies to a facility:

An air pollution control method for a new or modified facility that, through experience and research, has proven to be operational, obtainable and capable of reducing or eliminating emissions from the facility.²¹¹

As previously discussed, roads are specifically excluded from the definition of facility by the TCAA and the Commission's rules. As a result, the ED and EOG argue that BACT does not apply to roads.²¹² For RRMT, the idea that roads are not subject to BACT review, exacerbates the fact that roads also produce greater emissions than conveyors. RRMT argues that this is another example of how EOG is attempting to circumvent the intent of the TCAA, which is to minimize emissions from a project to protect the health and welfare of the public.

The ALJs' analysis here is the same as for roads and the quarry – the definition of facility governs this issue. Under the TCAA and the Commission's rules, BACT only applies to facilities, and a road is excluded from the definition of a facility. The ALJs conclude that BACT does not apply to roads at the proposed plant.

E. NAAQS for PM₁₀ (full impact analysis)

Protestant argues that the use of the Denton met data by Applicant would have resulted in a maximum modeled concentration that exceeded the SIL/de minimis level for the 24-hour PM₁₀

²¹⁰ Tr. at 398-99.

²¹¹ 30 TAC § 116.10(1).

²¹² Tr. at 60.

and would have necessitated a full impact analysis. A full impact analysis would require that the TCEQ's screening background concentrations for Cooke County of $60 \mu\text{g}/\text{m}^3$ be added to the maximum modeled concentrations for PM_{10} to determine if the NAAQS standard was violated.²¹³ Applicant and the ED, however, assert that the Applicant correctly used the 1988 Dallas met data to predict a PM_{10} level of $2.2 \mu\text{g}/\text{m}^3$, which is below the SIL of $5 \mu\text{g}/\text{m}^3$, and therefore no full impact analysis was necessary.

The ALJs conclude that a NAAQS full impact analysis would not have resulted in a different outcome: Even assuming that a full impact analysis was required, the evidence shows that the concentration of PM_{10} would not exceed the NAAQS Standard.²¹⁴ Mr. Tarr's maximum modeled concentration of PM_{10} was $5.8 \mu\text{g}/\text{m}^3$, using the new Denton met data, and with no other input adjustments. When TCEQ's screening background concentration for Cooke County of $60 \mu\text{g}/\text{m}^3$ is added to the $5.8 \mu\text{g}/\text{m}^3$ maximum modeled concentration of PM_{10} , the result is $66 \mu\text{g}/\text{m}^3$. The short-term (24-hour) PM_{10} NAAQS standard is $150 \mu\text{g}/\text{m}^3$, and $66 \mu\text{g}/\text{m}^3$ does not exceed this standard. Therefore, the ALJs conclude that even if a NAAQS full impact analysis was required when the Denton met data was modeled, the result would not have demonstrated an exceedance of the NAAQS.

F. Silica Evaluation

ESLs are used and published by the TCEQ Toxicology Division to evaluate the potential for effects to occur as a result of exposure to non-criteria constituents in the air.²¹⁵ Of the contaminants for which there are ESLs, only one will be emitted by Applicant in significant quantities: crystalline silica. According to the Toxicology Division guidelines, exposure to crystalline silica (composed of respirable quartz) occurs primarily in the workplace,²¹⁶ and is

²¹³ App. Ex. 30 at 14.

²¹⁴ PM_{10} does not have an annual NAAQS.

²¹⁵ ED Ex. 37.

²¹⁶ App. Ex. 8 at 8.

present in 255 industries, including mining, foundries, metallurgical operations, ceramics, cement, glass industries, construction, sandblasting, agriculture, and denture manufacturing.²¹⁷

TCEQ staff has published an air permit reviewer reference guide entitled “Modeling and Effects Review Applicability: How to Determine the Scope of Modeling and Effects Review for Air Permits” (MERA).²¹⁸ According to MERA, there are three tiers available to evaluate the health and welfare effects of emissions:²¹⁹

Tier One review is required only if all off-property short- and long-term maximum ground level concentration, or GLC_{max} , are below the ESLs for the constituent under review;

Tier Two review is only required if the GLC_{max} occurs on industrial property only and does not exceed the ESL by more than 2 fold; and

Tier Three review occurs if the GLC_{max} occurs in a non-industrial area, i.e. residential or commercial area, and/or the ESL is exceeded by more than 2 times.

Because EOG’s modeling showed that an ESL was exceeded at a non-industrial area (the exceedance for silica occurred along the Applicant’s property line adjacent to undeveloped land and surrounded by the Applicant’s property), a Tier Three review was required to be performed by the Toxicology Division in this case.²²⁰ A Tier Three review requires analysis of case-specific factors that have a bearing on exposure: surrounding land use, magnitude of the concentration, the frequency of exceedance, the type of toxic effect (acute or chronic), the margin of safety between the toxicity value and known effects levels, degree of confidence in toxicity database, and acceptable reductions from existing ground level concentrations.²²¹

²¹⁷ App. Ex. 8 at 8.

²¹⁸ ED Ex. 33.

²¹⁹ ED Ex. 33 at 29.

²²⁰ As described in the MERA, and used in the Tier Three analysis, “non-industrial” property is defined as residential, recreational, commercial, business, agricultural; or a school, hospital, day-care center, or church; or a right-of-way, waterways, or the like. Further, if the property with a receptor is located in an unzoned or undeveloped area, it is treated as non-industrial.

²²¹ ED Ex. 33 at 29-30.

TCEQ Senior Toxicologist Angela Curry evaluated the potential adverse health effects of silica beginning at the property line of the proposed plant based on the assumption that all of the sand, gravel, and soil mined at the facility were 100% crystalline silica. She predicted the short-term (1-hour) maximum ground level concentration, (GLC_{max}) modeled for silica would be $16.4 \mu\text{g}/\text{m}^3$, while the short-term non-industrial maximum ground level concentration (GLC_{ni}) would be $15 \mu\text{g}/\text{m}^3$. Because the short-term ESL for silica is $14 \mu\text{g}/\text{m}^3$, Ms. Curry concluded that the short-term ESL for silica was exceeded at the GLC_{max} by 1.17 times (or the ratio of the GLC_{max} of $16.4 \mu\text{g}/\text{m}^3$ to the ESL of $14 \mu\text{g}/\text{m}^3$) and exceeded at the GLC_{ni} by 1.07 times (or the ratio of the GLC_{max} of $15 \mu\text{g}/\text{m}^3$ to the ESL of $14 \mu\text{g}/\text{m}^3$).

Ms. Curry also predicted the long-term (annual) GLC_{max} would be $0.44 \mu\text{g}/\text{m}^3$, while the long-term GLC_{ni} would be $0.19 \mu\text{g}/\text{m}^3$. Ms. Curry concluded that the annual ESL for silica, which is $0.27 \mu\text{g}/\text{m}^3$, was therefore exceeded at the GLC_{max} by 1.63 times (or the ratio of the annual GLC_{max} of $0.44 \mu\text{g}/\text{m}^3$ to the annual ESL of $0.27 \mu\text{g}/\text{m}^3$). Ms. Curry noted that the GLC_{max} ESL exceedances for both the 1-hour and annual times were found to be on FM 373 that cuts through the northeast section of the property. The GLC_{ni} values for both the 1-hour and annual times occurred at the north property line of the privately owned land, which is inset within the site.²²²

Ms. Curry testified that she considered all the factors in her Tier Three review and arrived at the conclusion that the predicted silica concentrations are “allowable.”²²³ The term “allowable” means that the predicted ground level concentrations are not “acceptable” but the permit engineer has provided justification to the Toxicologist Division that the predicted GLCs are not likely to occur or that they occur in a location where public access is limited.²²⁴ “Acceptable” denotes that adverse health or welfare effects would not be expected as a result of

²²² App. Ex. 16 at 28. A map shows the inset property surrounded by EOG property.

²²³ ED Ex. 37 at 13-15.

²²⁴ ED Ex. 33 at 28. The term “permit engineer” refers to EOG’s engineer.

exposure to a given constituent.²²⁵ “Unacceptable” means that there may be a potential for adverse effects to occur as a result of exposure to a given constituent concentration.²²⁶

In arriving at her result that the silica concentrations are allowable, or “not expected to cause adverse health effects,” Ms. Curry testified that she analyzed the following factors:²²⁷

Surrounding Land Use. The terrain was described as sparsely populated rolling hills with a mix of pastureland, hardwoods, cultivated land, and uncultivated land. Because the maximum concentration occurs along the Applicant’s property line adjacent to undeveloped land and surrounded by the Applicant’s property, it was conservatively reviewed as non-industrial property, (or GLC_{ni}). The off-road motorcycle park was also considered as non-industrial property.²²⁸

The magnitude and frequency of the ESL exceedence. The magnitudes for the short-term ESL exceedances showed that the GLC_{max} was exceeded by 1.17 times and exceeded at the GLC_{ni} by 1.07 times. Additionally, the predicted frequency of the short-term ESL exceedance at the GLC_{max} is 5 hours per year and 1 hour per year at the GLC_{ni} . According to Ms. Curry, adverse health effects would not be expected from the exposure to these small magnitudes and frequencies.

The type of toxic effect caused by the constituent. The primary health concern for silica results from long-term exposure. Silicosis is the most sensitive health effect resulting from exposure to crystalline silica. TCEQ considers silica to be carcinogenic to humans via inhalation and set its risk goal for the long-term ESL at a “no significant risk level” of 1×10^5 (1 in 100,000) or 1 cancer death per 100,000 population, which is

²²⁵ ED Ex. 33 at 28.

²²⁶ ED Ex. 33 at 28.

²²⁷ ED Ex. 37 at 13-15.

²²⁸ Red River Motorcycles was modeled as special receptor 11, and showed that the modeling predicted a maximum annual average silica concentration of 0.054, which did not exceed the 0.27 ESL level for long-term exposure to silica. The predicted exposure of 0.054 was 20% of the ESL. App. Ex. 12 at 51.

within the range of what the EPA has designated as an acceptable risk range of 1×10^4 (1 in 10,000) to 1×10^6 (1 in 1,000,000).²²⁹ According to Ms. Curry, the exceedances at the GLC_{max} occur in an area where public exposure is unlikely, and the long-term ESL is not exceeded at the GLC_{ni} . Additionally, the long-term ESL derived by the TCEQ Toxicology Division for silica is protective of a 70-year, 24-hour, 7-day a week exposure; the likelihood of the general public being exposed for this length of time is very low.²³⁰

The margin of safety between the toxicity value and known effects. The lowest observed adverse effect level as a result of exposure to silica occurred at $10,000 \mu\text{g}/\text{m}^3$, according to Ms. Curry. Ms. Curry concludes that, because the short-term ESL is $14 \mu\text{g}/\text{m}^3$, the ESLs are set at levels well below health effects levels and are set to protect against adverse health and welfare effects for all members of the general public, including sensitive subgroups.

Degree of confidence in the database. According to Ms. Curry, the TCEQ guidelines for developing ESLs were peer-reviewed outside of TCEQ by experts in inhalation toxicology and risk assessment. She concludes that the guidelines and the ESLs calculated from them are scientifically-sound assessments of a chemical's potential for adverse health effects.

Existing levels of the same constituent. Ms. Curry reviewed an aerial map of the proposed plant and confirmed that there were no other industrial facilities in the area. Therefore, she determined that there was no other facility with silica emissions, and that existing levels of the same constituent were unlikely.

Acceptable reductions from existing ground level concentrations. Because this was a new facility, Ms. Curry found there were no existing GLCs to review.

²²⁹ ED Ex. 37 at 13.

²³⁰ ED Ex. 37 at 13.

Ms. Curry concluded, therefore, that based on her Tier Three review, the silica concentrations are not expected to cause adverse health effects.

1. Worst-Case Scenario/Conditions

Protestant argues that because all of the sources of silica were not incorporated in the modeling and the met data did not represent the “worst-case” conditions, the health effects evaluation by both Ms. Curry and Dr. Dydek were unreliable and cannot support the permit. For instance, Protestant argues that 5 years of met data should have been analyzed rather than just a single year. Protestant also argues that background concentrations should have been considered, as it is with the evaluation of PM_{10} .

OPIC argued that *all* potential sources should be considered for a complete Tier Three ESL evaluation, rather than just those sources arising from the “facility,” which excludes the mine, quarry, well test, or road. OPIC points out that “source” is defined as “a point of origin of air contaminants, whether privately or publicly owned or operated,” while “air contaminants” is defined as “particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor, including any combination of those items, produced by processes other than natural.”²³¹ Thus, the definition of “source” does not have the exclusions found in the definition of “facility.”

OPIC points out that Ms. Curry only considered the emission sources provided by the modeling, which did not include roads or the quarry. Therefore, in order to evaluate the potential effects of silica, the worst-case scenario should include all sources, including the roads and the quarry, and not just facility sources.

Applicant responded that Mr. Zimmerman made very conservative assumptions in his modeling: that 100% of the PM_{10} and PM_4 was silica and that all sources at the proposed plant

²³¹ Tex. Health & Safety Code § 382.003 (2), (12).

were operating simultaneously at their maximum proposed rates. Further, the silica emission calculations were accepted by TCEQ as a conservative estimate of the silica emission rate.

The ED argues that the air modeling conducted by Applicant and audited by Mr. Cherry demonstrated reasonable worst-case assumptions and conditions in the modeling demonstration.

The ALJs conclude that the worst-case conditions were considered in the Tier Three review. According to MERA, emissions of any emitted constituents must be evaluated and *modeled impacts* must be compared to existing ESLs to evaluate potential health effects. Accordingly, MERA recognizes and requires that the Applicant must submit modeled results for an ESL evaluation. Because roads and the quarry are not considered in the modeling (as discussed in a previous section), the Applicant was in compliance with MERA in submission of the modeling to evaluate silica emissions from the facility only.

The ALJs also find that Applicant used worst-case conditions in the modeling. For instance, although silica is assumed to be that portion of emissions which is 4 microns or less, or PM₄, the modeling performed by Applicant assumed that all PM₁₀ particulate matter (or 2.2 µg/m³) was silica and included this in the ESL evaluation, which created an extra layer of safety in the Tier Three evaluation. Also, Applicant modeled all sand as silica, although sand could be made of several types of particulate matter such as rocks, soil, or other materials. As to the met data, Applicant used the Dallas met data, which the ALJs have determined to be reliable, given the uncertainty created by the recent EPA recommendation to revise the data once more. Thus, the ALJs are persuaded that the worst-case conditions were considered in the Tier Three review conducted by the TCEQ Toxicology Division.

2. Exceedance of ESL

Applicant presented the testimony of Dr. Dydek, who agreed that there will be no adverse human health or welfare effects caused by silica emissions from the facility. Dr. Dydek pointed out that ESLs are set at extremely low levels designed to protect the most sensitive members of

the population, including children, the elderly, and people with pre-existing disease.²³² According to Dr. Dydek, ESLs are also set at levels that are 100 to 1,000 times lower than exposure levels that are designed to be safe in an occupational setting. Dr. Dydek testified that background concentrations are not needed because ESLs are set at sufficiently conservative levels so that there will be no adverse health or welfare effects even if there are background contributions from nearby sources.

Dr. Dydek opined that, based on the 1 hour per year potential exceedance of an ESL on vacant land surrounded by Applicant's property, and the 5 hours per year potential ESL exceedance on the road or its right-of-way, there is very little chance that the general public would spend any significant amount of time of the road, its right-of-way, or the vacant land during the few hours in a year when the maximum impacts could exceed the ESL.²³³ Further, he pointed out that the modeling did not show any exceedances of the 1-hour ESL at any residential or commercial location near the site, including the Red River Motorcycle Trails.

Lastly, Dr. Dydek distinguished between "freshly fractured" and "aged" silica particles.²³⁴ He pointed out that studies have shown that freshly fractured silica particles are more likely to cause lung damage than aged silica particles and that the TCEQ ESLs are based on studies of mine workers who have been exposed to significant amounts of freshly-fractured silica. According to Dr. Dydek, the operations at the proposed EOG facility (extraction of sand but no crushing) are not energetic enough to cause much, if any, fracturing of silica particles, according to the National Institute for Occupational Safety and Health. Thus, Dr. Dydek concludes that the ESLs are more health-protective than the types of silica emissions that will occur at the facility.

Protestant presented the testimony of Dr. Kleinman, who analyzed Mr. Tarr's modeling results. In particular, Mr. Tarr used the updated Denton met data and also set the receptors at a

²³² App Ex. 30 at 18.

²³³ App Ex. 30 at 20.

²³⁴ App Ex. 30 at 23.

5-foot height to emulate a person's nose and mouth height (rather than using the ground level concentration standards pursuant to TCEQ guidelines). Using these modeling parameters, Dr. Kleinman noted that Mr. Tarr found that the short-term (1-hour) maximum off-site concentration was computed to be over 3 times the ESL, or $50 \mu\text{g}/\text{m}^3$ compared to the ESL of $14 \mu\text{g}/\text{m}^3$. Similarly, the annual maximum off-site concentration was calculated to exceed the ESL by threefold, or $0.74 \mu\text{g}/\text{m}^3$ compared to $0.27 \mu\text{g}/\text{m}^3$.²³⁵

Dr. Kleinman testified that he had several concerns with the ESL review procedures, particularly when considering Mr. Tarr's modeling results. Dr. Kleinman testified that the ESLs are based on sampling methods that have a bias towards larger particles.²³⁶ He pointed out that there are more modern methods available to accurately measure silica exposure, particularly when smaller particles are more toxic. Dr. Kleinman also testified that the unit risk factors, or human cancer risk level, evaluated for chronic silica exposure are based on rat experimental data. He testified that body surface is not taken into account with the ESLs in considering the risk to humans.²³⁷

Dr. Kleinman also explained that the ESLs were developed by applying safety factors to existing standards that are used for regulating workplace exposures.²³⁸ He noted that residents can be exposed 24 hours per day, while workers are only exposed 8 hours per day. Lastly, Dr. Kleinman disagreed with Dr. Dydek and testified that operations at a sand and gravel plant can break down larger materials and release fresh silica.²³⁹

The ALJs conclude that the evidence supports a finding that the health effects review was properly conducted and that the proposed facility will not adversely impact health, welfare, or physical property. Because the maximum predicted off-site silica concentration occurred on

²³⁵ Prot. Ex. MK-1 at 7.

²³⁶ Prot. Ex. MK-1 at 9-10.

²³⁷ Prot. Ex. MK-1 at 23-24.

²³⁸ Prot. Ex. MK-1 at 23.

²³⁹ Prot. Ex. MK-1 at 6.

non-industrial property, the MERA Tier Three case-specific factors for determining whether the exceedances are allowable were triggered. The evidence showed that there is no long-term ESL exceedance at the GLC_{ni} and the long-term GLC_{max} is predicted to occur in a location where prolonged exposure by the general public is unlikely and in short duration, if it does occur. Members of the public at most could be exposed for just a few hours per year at a location that is generally not accessible or used by the public. With the infrequency of the event and the conservative modeling, the ALJs conclude that adverse health effects are very unlikely to occur.

The ALJs are also persuaded that TCEQ uses a conservative methodology in its evaluation of silica. Specifically, the TCEQ Toxicology Division has set its risk goal for the long-term ESL at a no significant risk level of 1×10^5 (1 in 100,000) or 1 cancer death per every 100,000 exposed, which is within the range of what the EPA has designated as an acceptable risk range of 1×10^4 (1 in 10,000) to 1×10^6 (1 in 1,000,000). This lifetime cancer risk of 1 in 100,000 is ten times more stringent than the highest level that the EPA deems acceptable. Thus, the predicted long-term ESL of $0.27 \mu\text{g}/\text{m}^3$ could be exceeded by 10 times (or $2.7 \mu\text{g}/\text{m}^3$) and still be within the acceptable range as determined by EPA.

The ALJs find that there is no guideline or precedent for setting the receptors heights at 5 feet as modeled by Mr. Tarr, and which yielded the result of a three-fold exceedance of the ESL for silica. Instead, the standard for evaluating health effects is to compare the ground level concentrations for this constituent.

Lastly, the ALJs are convinced of the accuracy of Dr. Dydek's assessment that there will be minimal freshly-fractured silica at the sand processing plant. Dr. Dydek testified that, according to the National Institute for Occupational Safety and Health, the extraction of sand, with no crushing, would cause minimal fracturing of silica particles. Although the magnitude of the ESL exceedance or the type of toxic effect caused by the constituent must be considered in the Tier Three review, Ms. Curry did not raise the issue of fractured silica particles in her evaluation of these issues. Moreover, Dr. Kleinman did not provide any specific information about the operation that contradicted the application, which does not show any crushing

equipment is used in the sand processing operation. The ALJs are thus persuaded that the plant should not result in any health consequence to the general public due to the presence of freshly-fractured silica.

Thus, based on the evidence, the ALJs agree with the assessment made by the TCEQ toxicologist that the evidence supports a finding that no adverse health effects are anticipated from the expected concentrations of silica.

G. Special Conditions in the Draft Permit

Special conditions in the Draft Permit require EOG to take corrective action if “visible emissions” are detected leaving the site.²⁴⁰ RRMT argues that such special conditions will be ineffective in controlling emissions, because there was testimony that it would be difficult, if not impossible, to detect such emissions at night.²⁴¹

Protestant’s claim regarding emissions at night is based on the testimony of Mr. Buller. Under cross-examination, Mr. Buller testified that emissions cannot be monitored at night, and there is no permit provision that applies to emissions at night.²⁴² The ED points out, however, that Mr. Buller has not been trained as, nor is he an expert in, environmental investigations or enforcement procedures. Instead, his expertise is in the review of engineering aspects of state air quality permit applications.²⁴³

The ED and EOG assert that the best witness to discuss whether TCEQ investigators can detect emissions at night was Alyssa Taylor, the TCEQ’s DFW Regional Air Section Manager. Ms. Taylor has thirteen years of experience, including monitoring visible emissions at night. She explained that if a complainant alleges violations or nuisance conditions are occurring at night,

²⁴⁰ App. Ex. 3 at 1-3.

²⁴¹ Tr. at 403.

²⁴² Tr. at 403.

²⁴³ ED Ex. 35 at 675-76.

the region will conduct a nighttime investigation, and Commission investigators have the authority to enter a regulated plant at night. She stated that all TCEQ investigators attend Smoke School, where they learn how to read opacity. While it may be more difficult to monitor visible emissions at night, Ms. Taylor stated it is possible. For example, she testified that lights at the facility would enable an investigator to see visible emissions at night. She noted it is unlikely that any company would operate a facility in complete darkness.²⁴⁴

The ED reiterates that representations in the application are enforceable and an applicant must comply with permit general and special conditions.²⁴⁵ In addition, the Draft Permit and special conditions were provided to the TCEQ Region 4 office for comment. Although Neal Penny, a TCEQ regional investigator, suggested changes to the Draft Permit, those suggested changes were unrelated to permit enforceability at night.²⁴⁶

Mr. Buller's testimony that emissions cannot be monitored at night and there is no permit provision that applies to emissions at night, is not within his area of expertise. The ALJs find that Ms. Taylor possesses the expertise to opine on whether emissions at night are detectable. She clearly testified that TCEQ investigators have the experience, training, and means to detect emissions at night, despite some difficulties. Ms. Taylor noted that TCEQ investigators conduct investigations at night and on weekends. If emissions are detected, then they have the option of requesting monitoring by the Commission's mobile response team, which can deploy extremely sensitive equipment. Based on the evidence, the ALJs find that the conditions in the Draft Permit are enforceable, including the Commission's ability to detect particulate matter and silica emissions at night.²⁴⁷

²⁴⁴ Tr. at 908, 922-23, 931.

²⁴⁵ 30 TAC § 116.115.

²⁴⁶ Tr. at 436-38; ED Ex. 35 at 703-04; ED Ex. 18 (Response to Request for Comments -- Draft Conditions).

²⁴⁷ Tr. at 915-20, 922-23.

III. ANALYSIS OF CONTESTED STATUTORY AND REGULATORY REQUIREMENTS

In accordance with the parties' agreed briefing outline, the ALJs now turn to an analysis of the contested statutory and regulatory requirements. It should be noted that some of the issues dealt with below have been addressed in Section II, above.

A. Whether the permit application demonstrates that emissions from the proposed facilities will be protective of public health and welfare in accordance with 30 TAC § 116.111(a)(2)(A), including NAAQS.

In order to be granted a permit, the application must include information which demonstrates that emissions from the facility will be protective of public health and welfare and comply with all TCEQ rules and the TCAA, in accordance with 30 TAC § 116.111(a)(2)(A), including NAAQS.

EOG contends that the application shows that emissions would be protective of public health and welfare because it identified all facilities to be permitted, applied BACT, committed to BMPs for emission sources not subject to regulation, and used emission factors and rates approved and recommended by TCEQ. Dr. Dydek reviewed the modeling and emission information, conducted an independent toxicological analysis, and concluded that the predicted emissions would not cause any adverse health or welfare effects to any potentially affected individuals. Furthermore, the public would only be exposed for a short period on a road, right-of-way, or unimproved land, and the NAAQS for PM₁₀ and PM_{2.5} would not be exceeded even with the full impact analysis, according to Applicant.

Protestant asserts that Applicant has failed to consider all sources of emissions, including the road and quarry. Further, Applicant's failure to use the Denton met data and apply appropriate emissions factors in the modeling obscures the fact that PM₁₀ SIL and ESLs for silica will far exceed Applicant's modeled results.

The ED points out that the TCEQ permit reviewer was satisfied that the Draft Permit was protective of human health according to applicable standards; the TCEQ modeling auditor determined that the modeling was acceptable for all review types and pollutants; and that the TCEQ toxicologist concluded that the proposed plant would not adversely affect human health or welfare, animal life, or vegetation, or interfere with the normal use and enjoyment of animal life, or vegetation.

The ALJs find that evidence demonstrates that emissions from the proposed facility will be protective of public health and welfare in accordance with 30 TAC § 116.111(a)(2)(A), including NAAQS. Specifically, the application meets the requirements of 30 TAC § 116.111(a)(2)(A) because it includes information which demonstrates that emissions from the facility will be protective of public health and welfare and comply with all rules and regulations of the commission and the TCAA.

Further, the ALJs conclude that the Applicant has shown by a preponderance of the evidence that Applicant's air dispersion modeling of proposed particulate matter emissions is compliant with TCEQ directives and guidelines and produced appropriate results. The ALJs are persuaded that Applicant applied correct emission factors, applicable background concentrations, and valid meteorological data. Applicant also accurately considered road emissions and silica concentrations in its calculations. Accordingly, the ALJs find that the potential air emissions from the proposed facility will not adversely affect air quality, and the draft permit complies with the Texas Clean Air Act and other applicable state and federal requirements.

Accordingly, the ALJs conclude that the Applicant has demonstrated by a preponderance of the evidence that Applicant's air dispersion modeling of proposed particulate matter emissions was accurate and appropriate and will be protective of public health and welfare in accordance with 30 TAC § 116.111(a)(2)(A), including NAAQS.

B. Whether the permit application demonstrates that the proposed facilities will utilize best available control technology in accordance with 30 TAC § 116.111(a)(2)(C).

BACT must be evaluated for and applied to all facilities subject to the TCAA.²⁴⁸ Specifically, 30 TAC § 116.111(a)(2)(C) states:

Best available control technology (BACT) must be evaluated for and applied to all facilities subject to the TCAA. Prior to evaluation of BACT under the TCAA, all facilities with pollutants subject to regulation under Title I Part C of the Federal Clean Air Act (FCAA) shall evaluate and apply BACT as defined in § 116.160(c)(1)(A) of this title (relating to Prevention of Significant Deterioration Requirements).²⁴⁹

BACT is “an air pollution control method for a new or modified facility that through experience and research, has proven to be operational, obtainable, and capable of reducing or eliminating emissions from the facility,²⁵⁰ and is considered technically practical and economically reasonable for the facility.”²⁵¹

The Applicant and the ED contend that the controls proposed by EOG meet or exceed BACT requirements as applied to operations of this type. These parties explain that BACT review mandates at least a 70% reduction in uncontrolled emissions. They contend that this will be achieved by permanently mounted water spray bars installed at the inlet and outlet of all shaker screens and at all material transfer points, and an outlet grain loading of any baghouse or bin vent filter stack of no greater than 0.01 grains per dry standards cubic feet of air flow (gr/dscf).²⁵² The Applicant also notes that the fabric filter is designed such that the emissions will be lower than the typical BACT level. The ED and EOG note that water spray used to achieve particulate matter control is a well-established control method, which is promoted by the TCEQ. In order to minimize emissions, EOG also points out that the longest conveyor at the

²⁴⁸ TCAA § 382.003(6); 30 TAC §§ 116.10(4), 116.111(a)(2)(C).

²⁴⁹ 30 TAC § 116.111(a)(2)(C).

²⁵⁰ TCAA § 382.003(6); 30 TAC § 116.10(4).

²⁵¹ 30 TAC § 116.10(1); ED Ex. 35 at 681.

²⁵² ED Ex. 35 at 685.

plant will be enclosed, and the largest storage pile at the plant will sit over funnels and gravity-feed to a tunnel conveyor, which exceeds BACT used at similar operations. The dryer will also be natural-gas fired and thus meets BACT for CO, PM, SO₂, and VOC. As a result of these measures, Ms. Hoover testified that the controls proposed by EOG meet or exceed BACT requirements as applied to other sand operations.²⁵³

The ED and the Applicant note that the Draft Permit also requires EOG to implement BMPs, which require that all in-plant roads, traffic areas, stock piles and active work areas be cleaned or sprayed with water upon detection of visible emissions to maintain compliance with all applicable Commission rules.²⁵⁴ Spillage of any aggregate material, silica sand, and/or industrial sand shall also be cleaned up immediately to minimize emissions and maintain compliance with Commission rules.²⁵⁵

The ED notes that Mr. Buller conducted a Tier One BACT evaluation for all facilities proposed by EOG in accordance with Texas statutes, Commission rules, and guidance documents.²⁵⁶ Mr. Buller concluded that the application meets or exceeds BACT requirements. As a result of Mr. Buller's review, the ED asserts that the application includes all controls that have been accepted in recent permit reviews for similar facilities, and because there are no new technical developments associated with BACT for industries of this type, a Tier One BACT review met current BACT requirements.²⁵⁷

²⁵³ App. Ex. 28 at 10.

²⁵⁴ ED Ex. 21 at 246 (Draft Permit Special Conditions Nos. 19, 20, and 21); ED Ex. 35 at 685.

²⁵⁵ ED Ex. 21 at 246 (Draft Permit Special Condition No. 21).

²⁵⁶ ED Ex. 35 at 681-86. Mr. Buller relied on the following TCEQ guidance documents: "TCEQ Air Permit Reviewer Reference Guide," APDG 6110 (ED Ex. 9); "TCEQ Mechanical Sources, Current Best Available Control Technology Guidelines: Rock Crushing Facilities (NSPS OOO)" (ED Ex. 10); "TCEQ Mechanical Sources, Current Best Available Control Technology (BACT) Guidelines: Concrete Batch Plants" (Ex. ED 11); and "TCEQ Mechanical Sources, Current Best Available Control Technology Guidelines: Material and Coal Handling" (ED Ex. 12).

²⁵⁷ ED Ex. 35 at 15-16; ED Ex. 20.

RRMT acknowledges that BACT will be applied to the permitted facilities. However, Protestant argues that EOG is attempting to circumvent BACT by proposing to use a conveyor to move sand from the quarry to the processing facility, but to return waste using roads and trucks, when it is uncontested that conveyors result in lower emissions than roads. RRMT points out the conveyor system represents BACT for movement of sand from the quarry to the processing plant. But because roads are not defined as facilities, BACT does not apply to roads. RRMT argues that this is illogical – EOG should not be allowed to decide whether to use BACT by opting out of a loophole; if the conveyor system is BACT for the transport of material in one direction, it should be considered BACT for transport of material in the other direction.

Protestant does not contest Applicant's and the ED's assertions that the proposed controls will meet or exceed BACT requirements as they apply to the EOG's facilities, as defined in the TCAA and the Commission's rules. Instead, Protestant argues that, despite the regulatory definition of facility, BACT should require the use of conveyors instead of roads. The ALJs have already addressed the matter of roads above. Although RRMT presents a credible argument that roads will be a source of emissions, the ED and EOG are correct that BACT only applies to facilities and roads are not defined as facilities.²⁵⁸ It is uncontested that no rule requires the use of conveyors, and EOG could have used either roads or conveyors to and from the quarry.²⁵⁹ The ALJs find that the application demonstrates the proposed facilities will use BACT in accordance with the Commission's rules.

C. Whether the permit application includes information demonstrating that the emissions from the facility will meet the requirements of the New Source Performance Standards in 30 TAC § 116.111(a)(2)(D).

Texas is the delegated administrator for NSPS and National Emissions Standards for Hazardous Air Pollutants "NESHAP."²⁶⁰ Specifically, 30 TAC § 116.111(a)(2)(D), states:

²⁵⁸ TCAA § 382.003(6); 30 TAC § 116.10(4).

²⁵⁹ Tr. at 688-90.

²⁶⁰ 44 Fed. Reg. 7869 (Feb. 7, 1979) (Delegation of Authority to State of Texas) (Sections 111(c) and 112(d) of the CAA, direct the Administrator to delegate authority to implement and enforce NSPS and NESHAPS to any state which has submitted adequate procedures.).

New Source Performance Standards. The emissions from the proposed facility will meet the requirements of any applicable NSPS as listed under 40 Code of Federal Regulations (CFR) Part 60²⁶¹

RRMT only challenges Applicant's representations to the extent that EOG did not receive a manufacturer's guarantee for the dryer baghouse, the single largest emissions source within the facility. The manufacturer only provided performance information. Protestant acknowledges that if this were the only problem with the application, it would not justify denial. However, in the context of the other alleged shortcomings, RRMT argues that the lack of a guarantee is another indication of EOG's lack of diligence to support the application. As a result, Protestant argues that this factor should be considered among the issues for which the Applicant failed to meet its burden of proof.

The ED and EOG respond that compliance with the Draft Permit is mandatory, and Special Condition Number 4 mandates that the facilities "shall comply with all applicable requirements of the EPA's regulation on Standards of Performance for New Stationary Sources"²⁶² The only NSPS federal regulations that apply to the facilities is Calciners and Dryers in Mineral Industries (NSPS Subpart UUU). Under the Draft Permit, Applicant will be required to demonstrate compliance with the regulations and stated emission rates stated, by conducting initial stack testing of the dryer baghouse within 180 days after operation begins. Ms. Hoover testified that the facility will comply with NSPS UUU, which requires initial performance testing to demonstrate compliance with the regulations and emission rates stated in the Draft Permit.²⁶³ An Applicant is bound by the representations made in an application and must comply with all permit general and special conditions.²⁶⁴ Finally, Applicant and the ED argue that initial stack

²⁶¹ 30 TAC § 116.111(a)(2)(D), referencing 40 CFR Part 60, promulgated by the EPA under FCAA, § 111, as amended.

²⁶² ED Ex. 21 at 243 (Draft Permit Special Condition No. 4), referencing 40 CFR Part 60.

²⁶³ ED Ex. 21 at 243 (Draft Permit Special Condition No. 4); 30 TAC § 116.111(a)(2)(D); 40 CFR §§ 60.730-737 (Subparts A – General Provisions and UUU – Standards of Performance for Calciners and Dryers in Mineral Industries).

²⁶⁴ 30 TAC § 116.115.

testing required by the Draft Permit and NSPS provides a greater assurance of dryer baghouse performance than a manufacturer's guarantee.²⁶⁵

The ALJs agree with the ED and the Applicant that initial testing provides adequate assurance of the dryer's compliance with NSPS. While it may have been better for the Applicant to initially rely on a vendor guarantee rather than performance information, the initial testing will establish actual performance of the dryer baghouse. As a result, the Draft Permit provides adequate assurance that dryer emissions will meet NSPS. The ALJs find that the application includes information demonstrating that facility emissions will meet NSPS in compliance with 30 TAC § 116.111(a)(2)(D).

D. Whether the permit application demonstrates that the proposed facilities will achieve the performance specified in the application in accordance with 30 TAC § 116.111(a)(2)(G).

Under Commission rules, a proposed facility must achieve the performance specified in the application. Specifically, 30 TAC § 116.111(a)(2)(G) states:

Performance demonstration. The proposed facility will achieve the performance specified in the permit application. The applicant may be required to submit additional engineering data after a permit has been issued in order to demonstrate further that the proposed facility will achieve the performance specified in the permit application. In addition, dispersion modeling, monitoring, or stack testing may be required.²⁶⁶

The Applicant contends that the proposed plant will use conventional, well-established dust control equipment, and BMPs to meet the requirements of this rule. EOG notes that the Draft Permit also requires extensive monitoring. Recordkeeping is required to show that the production rates on a daily, monthly, and annual basis stay within the bounds of the Draft Permit.

²⁶⁵ Tr. at 135-37.

²⁶⁶ 30 TAC § 116.111(a)(2)(G).

NSPS Subpart UUU requires initial performance testing to demonstrate compliance with the regulations and emission rates stated in the Draft Permit.²⁶⁷

Both the ED and EOG note that the Applicant is bound by the representations made in the application and must comply with permit general and special conditions. EOG must also comply with all sampling requirements in the Draft Permit and the MAERT. Ms. Hoover testified that, based on her experience with numerous other similar plants, which operate under similar requirements, the proposed plant will operate in accordance with the performance specified in both the application and the Draft Permit.²⁶⁸

Protestant argues that because this rule requires facilities to achieve the performance represented in the application, there are still concerns over whether the emissions from the proposed facilities are correctly estimated in the application. Specifically, RRMT questions whether AP-42 factors are sufficiently reliable to offer dependable estimates and whether the absence of a vendor guarantee for the dryer baghouse renders Applicant's estimates unreliable.

RRMT contends that public health impacts and NAAQS and ESL compliance representations are an even greater issue. For instance, RRMT reiterates that all known emission sources should have been included in Applicant's analysis. Protestant also argues that Mr. Tarr's modeling showed that the SIL performance for PM₁₀ cannot be achieved and should have been subject to a full impact analysis.

Regarding RRMT's concerns over whether emissions from the proposed facilities are correctly estimated in the application, as stated above, the ALJs find that AP-42 factors represent an industry and regulatory standard and are reliable without revision as proposed by the Protestant. As for the absence of a vendor's guarantee for the dryer baghouse, Protestant's

²⁶⁷ App. Ex. 28 at 11-14; 30 TAC § 116.115; 40 CFR §§ 60.730-737 (Subpart UUU – Standards of Performance for Calciners and Dryers in Mineral Industries).

²⁶⁸ App. Ex. 28 at 11-14; 30 TAC § 116.115; 40 CFR §§ 60.730-737 (Subpart UUU – Standards of Performance for Calciners and Dryers in Mineral Industries).

concerns over Applicant's estimates are adequately addressed by the reliability of AP-42 factors, vendor information, and the initial performance testing required under the NSPS, Commission rules, and the Draft Permit. Consistent with this analysis, the ALJs highlight that 30 TAC § 116.111(G) specifically references the ability to require EOG "to submit additional engineering data after a permit has been issued in order to demonstrate further that the proposed facility will achieve the performance specified in the permit application [and] dispersion modeling, monitoring, or stack testing . . ."²⁶⁹

The ALJs further conclude that there are several special conditions in the permit that assure adequate monitoring, reporting, and recordkeeping to ensure performance compliance as specified in the application. Specifically, Special Condition Number 5 contains the following requirements: no visible fugitive emissions from the property; quarterly testing on the downwind property line for a minimum of 6 minutes; and testing standards and a corrective action deadline of 24 business hours.²⁷⁰ Special Condition Number 6 provides that the opacity of particulate matter emissions from various enumerated equipment pieces must not exceed 5% by observation from a distance of at least 15 feet to no more than 0.25 miles from the emission point. Also, the opacity of emissions from the screen and transfer points on belt conveyors must not exceed 7% for a 6-minute period. The condition additionally requires that compliance analyses must be performed and recorded quarterly.²⁷¹

The Draft Permit also includes "Determination of Compliance" Special Conditions 22-24, which provides that Applicant must: (1) comply with the TCEQ Sampling Procedure Manual; (2) perform stack sampling and other testing as required to establish the actual pattern and quantities of air contaminants emitted into the atmosphere; and (3) operate the equipment in accordance with the manufacturers' recommendations, including calibration, maintenance, and replacement as necessary.

²⁶⁹ 30 TAC § 116.111(a)(2)(G).

²⁷⁰ App. Ex. 21 at 243-44.

²⁷¹ App. Ex. 21 at 244.

In addition, Special Condition Number 34 provides an extensive list of recordkeeping requirements. The records to be maintained are quarterly observation reports; daily, monthly, and annual amounts of material processed; actual hours of operations of certain enumerated equipment; records of road cleaning, application of road dust control, or road maintenance; daily pressure drop readings; numerous calibration records; inspection, repair, and maintenance records, and copies of the manufacturers' cleaning and maintenance schedules.

The ALJs, therefore, conclude that the Draft Permit conditions demonstrate that the proposed facilities will achieve the performance specified in the application in accordance with 30 TAC 116.111(a)(2)(G).

E. Whether the permit application includes information demonstrating that the emissions from the facility will meet the requirements for Air Dispersion Modeling in 30 TAC § 116.111(a)(2)(J).

Computerized air dispersion modeling may be required by the ED to determine air quality impacts from a proposed new facility pursuant to 30 TAC § 116.111(a)(2)(J). In this case, air dispersion modeling was required by the ED to be completed by Applicant and audited by the TCEQ ADMT. Thus, the issue is whether the application demonstrates air modeling was properly performed in order to determine air quality impacts.

Protestant points out that the guidelines set by the TCEQ include incorporating "worst-case" assumptions into the modeling, which should incorporate the best localized met data and all sources considered. Protestant notes that when the Denton met data is used, the SIL and silica ESL were exceeded significantly, and if all sources (quarries and roads) were modeled, the results would be even higher. Applicant responds that the long-established modeling practice of using TCEQ guidelines and procedures for met data and modeled sources should be followed to give the process uniformity and rationality.

The ED asserts that as long as the met data is representative and meets the completeness criteria set by the EPA, then it is acceptable for modeling. Here, the ED points out that the EPA

and TCEQ have recognized that AERMOD tends to over predict emission concentrations at very low wind speeds and in response, TCEQ ADMT is currently reprocessing the Denton met data used by Mr. Tarr to incorporate a 0.5 mile per second threshold consistent with the EPA's recommendation.

The ALJs find that the permit application included information demonstrating that the emissions from the facility will meet the requirements for air dispersion modeling in accordance with 30 TAC § 116.111(a)(2)(J). Based on the evidence and testimony, the ALJs are convinced that appropriate air modeling was required and performed. The Applicant used the EPA-approved AERMOD air modeling program to provide a reasonable worst-case representation of potential impacts from the proposed facility. The evaluation incorporated the proposed hours and operating schedule as outlined in the application, applied all emissions authorized by the permit, and considered all appropriate background and met data. Proper procedures and guidelines were followed and the results were reviewed by the TCEQ ADMT and determined to be acceptable. Thus, the ALJs conclude that the Applicant met the requirements for air dispersion modeling in accordance with 30 TAC § 116.111(a)(2)(J).

F. Whether the permit application includes information demonstrating that the emissions from the facility will meet the requirements of 30 TAC § 116.115.

The Commission's rule at 30 TAC § 116.115 deals with general and special conditions in permits. The ED argues that this rule does not mandate requirements for an application but rather grants the ED authority to require certain permit conditions and contains directives that all permit holders must follow. However, Section 116.115 does mandate compliance with permit general and special conditions, sampling requirements, recordkeeping requirements, emissions equipment maintenance requirements, and compliance with the MAERT. Furthermore, Section 116.115(a)(2)(H) mandates compliance with all Commission rules and states "[a]cceptance of a permit by an applicant constitutes an acknowledgment and agreement that the

permit holder will comply with all rules, regulations, and orders of the commission issued in conformity with the [TCAA] and the conditions precedent to the granting of the permit.”²⁷²

Protestant argues that the Draft Permit prohibits EOG from creating a nuisance condition, yet the evidence does not support a finding that nuisance conditions will not be created by the Applicant. RRMT notes that while multiple emission sources exist at the quarry and in the processing plant, Applicant’s estimates, modeling, and toxicological evidence failed to include all sources. RRMT argues that EOG has attempted to omit known sources and yet represent that “worst-case” analyses were conducted.

Somewhat consistent with the ED’s position, EOG responds that this rule merely sets out a ministerial requirement that the agency include general conditions in each new source review permit. Applicant also argues that the special conditions in the Draft Permit are consistent with long-established agency practice for similar operations.

As for Protestant’s substantive arguments, the ALJs have previously found that the Applicant analyzed for emissions sources required by the TCAA and the Commission’s rules. The ALJs’ analysis of RRMT’s nuisance argument is set out in Section III.H below. Based on the ALJs’ analysis of the matters raised by RRMT, the ALJs agree with the ED and EOG that 30 TAC § 116.115 merely grants the ED authority to require certain permit conditions and contains directives that all permit holders must follow.

G. Whether the permit application includes information demonstrating that the requirements of 30 TAC § 101.3 regarding circumvention are met.

Commission rules prevent circumvention of the TCAA or Commission rules. Specifically, 30 TAC § 101.3 states:

No person shall use any plan, activity, device or contrivance which the executive director determines will, without resulting in an actual reduction of air

²⁷² 30 TAC § 116.115(a)(2)(H).

contaminants, conceal or appear to minimize the effects of an emission which would otherwise constitute a violation of the [TCAA] or regulations. Air introduced for dilution purposes only is considered a circumvention of the regulations.²⁷³

As an extension of Protestant's other arguments regarding roads, RRMT argues that EOG circumvented BACT by failing to use a conveyor system to return waste materials to the quarry site. That is, by using roads and trucks, EOG avoided a comprehensive analysis of air pollution impacts because roads are excluded from the definition of facility. RRMT does not challenge that roads are not within the definition of a facility. Instead, Protestant challenges that an activity can be regulated and subject to BACT when the flow of materials is from the quarry to the plant (the regulated conveyor) and yet not be subject to BACT or even air dispersion analysis when the flow of materials is in the opposite direction. RRMT posits that this is illogical and represents circumvention of BACT, represented here by the use of a conveyor system to return material to the quarry, with the knowledge that such a system produces fewer emissions than roads.

The ED argues that Section 101.3 is not a requirement but rather a prohibition. Consistent with the rule, the ED points out that he has not determined that EOG has proposed any plan, activity, device or contrivance that will conceal or appear to minimize the effects of an emission which would otherwise constitute a violation of the TCAA or Commission rules, as evidenced by the ED's preliminary decision to issue the permit.²⁷⁴

The Applicant notes that Section 101.3 is a general air quality rule constituting a prohibition on an existing operation, not a required showing for a preconstruction new source review permit, as sought here. EOG repeats that neither trucks nor roads are permitted facilities subject to BACT requirements set forth in the Commission's rules and the TCAA. EOG argues there is no concealment or attempt to minimize the effects of any emissions, which is the only substantive element of this air quality rule.

²⁷³ 30 TAC § 101.3.

²⁷⁴ ED Ex. A.

The ALJs have previously found that roads do not meet the definition of facility in the Commission's rules and the TCAA. As a result, EOG was not required to model road emissions, nor does BACT apply to roads. As stated throughout this PFD, EOG could have exclusively used roads to and from the quarry, as it has at another sand plant.²⁷⁵ There is no circumvention of a TCEQ requirement.

As for the language of the rule, it requires a determination by the ED of some form of circumvention or concealment. There has been no such determination. There is no evidence that EOG's choice to use roads is an attempt to "conceal or . . . to minimize the effects of an emission which would otherwise constitute a violation of the [TCAA] or regulations."²⁷⁶ Although the Applicant did not analyze road emissions as part of the application, this was legally proper under Commission rules and the TCAA. The ALJs understand that Protestant's point is that roads are still expected to be a source of emissions. There are, however, mitigation and enforcement mechanisms in the Draft Permit to limit those emissions, which the ALJs find to be adequate and which have been addressed above. The ALJs find that Applicant's use of roads to return waste material to the quarry does not constitute circumvention of the Commission's rules or the TCAA as prohibited by 30 TAC § 101.3.

H. Whether the permit application includes information demonstrating that the requirements of 30 TAC § 101.4 regarding nuisance are met.

Commission rules prohibit EOG from creating a nuisance condition through its operations at the proposed plant. Specifically, 30 TAC § 101.4 states:

No person shall discharge from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property.

²⁷⁵ Tr. at 386-87.

²⁷⁶ 30 TAC § 101.3.

Protestants note that, unlike preconstruction rules regarding new sources, the nuisance rule is not limited to a source that is a defined facility. RRMT argues that under this rule, no person may discharge from any source whatsoever one or more pollutants that cause health problems. RRMT points out that there will be emissions from roads and the quarry during plant operations, which will add to background air pollution levels surrounding the site. Protestant contends that, despite this prohibition applicable to all sources, the Applicant never evaluated the combined effects of these sources on the surrounding land uses including the Red River Motorcycle Park, a family recreational facility.

RRMT also acknowledges the Draft Permit's prohibition on nuisance conditions. Protestant argues, however, that the mere placement of such a provision in the Draft Permit means nothing, because a possible nuisance condition (and related health issues) would have to arise to compel a comprehensive evaluation of all emission sources such as roads and the quarry. Instead, RRMT asserts that under 30 TAC § 101.4, an assessment of the concentrations and health-related issues of all sources should have been required.

EOG and the ED argue that Section 101.4 is not a preconstruction requirement for a new source review permit, but rather a prohibition on creating a nuisance once the plant is in operation. EOG asserts that there is no objective threshold or standard for nuisance with which to compare the predicted emission from the proposed facilities for preconstruction review purposes.²⁷⁷ EOG points out that, based on EOG's air dispersion modeling analysis, EOG's permit engineer, modeler, and the toxicologist all testified that nuisance conditions are not expected to occur at the plant.²⁷⁸ Mr. Buller concurred, opining that the use of BMPs as required by the Draft Permit will be adequate to prevent nuisance conditions.²⁷⁹

As the ALJs have noted throughout this PFD, roads and the quarry are expected to generate some emissions. Nevertheless, the Commission's rules and the TCAA do not require

²⁷⁷ Tr. at 125; App. Ex. 28 at 15; App. Ex. 29 at 11.

²⁷⁸ Tr. at 124-26; App. Ex. 28 at 15; App. Ex. 29 at 11.

²⁷⁹ Tr. at 423.

the modeling of these emission sources for a new source permit review. As a result, the ALJs do not find that it was necessary for EOG to establish the non-existence of nuisance conditions at the proposed plant as part of the application process. While EOG may be correct that there is no objective threshold for nuisance with which to compare the predicted emissions from the proposed facilities for preconstruction review purposes, the Applicant's and the ED's experts concluded that operations at the plant are not expected to create such conditions. The ALJs agree with the ED and the Applicant that, so long as the proposed plant is operated within the bounds of the Draft Permit, and the Applicant uses BACT and BMPs, nuisance conditions are not expected to arise at the plant. Finally, in the event that a complainant reports suspected nuisance conditions at the plant, the TCEQ has the means to monitor and prohibit such emissions as reflected in the testimony of Ms. Taylor, the language of the Draft Permit, and 30 TAC § 101.4. The ALJs conclude that the preponderance of the evidence shows that operations at the proposed plant will comply with 30 TAC § 101.4.

I. Whether the permit application includes information demonstrating that the requirements of 30 TAC § 101.20 regarding New Source Performance Standards are met.

Regarding NSPS, 30 TAC § 101.20 mandates compliance with EPA standards, including NSPS. Here, Protestant repeats the argument that the application should have included a manufacturer's guarantee for the dryer baghouse, and no such guarantee was provided. Therefore, according to Protestant, there is no demonstration that the technology can meet NSPS requirements.

In response, the ED and EOG note that initial performance testing is required by 40 CFR Part 60, Subpart UUU to demonstrate compliance with the regulations and the emission rates stated in the Draft Permit. These parties point out that Special Condition 4 mandates that the facilities "shall comply with all applicable requirements of the [EPA] regulation on Standards of Performance for New Stationary Sources (NSPS) . . ." and specifically, Subpart A – General

Provisions and Subpart UUU – Calciners and Dryers in Mineral Industries.²⁸⁰ The Applicant acknowledges that it is bound by the representations made in the application and must comply with permit general and special conditions.²⁸¹

As the ALJs found in Sections III.C and III.D above, Protestant's concerns over the absence of a vendor's guarantee for the dryer baghouse are adequately addressed by the reliability of AP-42 standards, vendor information, and the initial performance testing required under the NSPS, Commission rules, and the Draft Permit. The ALJs find that the application includes information demonstrating that the requirements of 30 TAC § 101.20 will be met.

J. Whether the permit application includes information demonstrating that the requirements of 30 TAC § 101.21 regarding NAAQS are met.

NAAQS are enforced by TCEQ throughout Texas, pursuant to 30 TAC § 101.21. Therefore, an applicant must demonstrate to the Commission by a preponderance of evidence that there is “no indication that the emissions from the facility will contravene the intent of [the TCAA], including protection of the public's health and physical property.”

The Applicant contends that its modeling is accurate and shows no adverse effects to the environment, public health, or to the use and enjoyment of property around the proposed site. Protestant disagrees, however, contending that accurate modeling would show there is a potential for harm to the environment, the health of the public, and the use and enjoyment of property around the site. The ED points out that his witnesses have determined based on their independent reviews of the application, that an exceedance of the NAAQS is not expected to occur.

The ALJs find that the permit application included information demonstrating that the requirements of 30 TAC § 101.21 regarding NAAQS are met, as outlined in a previous

²⁸⁰ ED Ex. 21 (Draft Permit Special Condition No. 4).

²⁸¹ 30 TAC § 116.115.

section. Given the protective limitations expressed in the draft permit and the requirement to implement various technologies and BMPs to control emissions, the Applicant has demonstrated that the permit properly controls for emissions as represented in the application. Further, the modeling demonstrates that when the facility is operated in compliance with all terms and conditions of the proposed permit, no NAAQS exceedances are expected.

In sum, the ALJs conclude that the preponderant evidence supports a finding that Applicant has properly demonstrated that it has complied with primary and secondary NAAQS and therefore, demonstrated that the requirements of 30 TAC § 101.21 are met.

K. Whether the permit application includes information demonstrating that the requirements of the TCAA are met.

The Applicant has applied for an authorization under Texas Health and Safety Code § 382.0518, which states that “[b]efore work is begun on the construction of a new facility or a modification of an existing facility that may emit air contaminant, the person planning the construction or modification must obtain a permit or permit amendment from the commission.” Section 382.0518 further states that:

[T]he commission shall grant within a reasonable time a permit or permit amendment to construct or modify a facility if, from the information available to the commission, including information presented at any hearing . . . the commission finds:

1. The proposed facility for which a permit . . . is sought will use at least best available control technology . . . and
2. No indication that the emissions from the facility will contravene the intent of [the TCAA] including the protection of the public’s health and physical property.

Protestants argue that, based on the modeling completed by Mr. Tarr, the evidence shows that the requirements of the TCAA will not be met.

Applicant responds that the evidence meets the burden of proof to show that the predicted emissions from the proposed facilities will be protective of public health and welfare given that the emissions of all federal criteria pollutants met the NAAQS, and that the health effects reviews performed by Applicant and the ED found no adverse health effects are expected from the predicted silica emissions.

The ED points out that a BACT evaluation was conducted by Mr. Buller for all the proposed facilities. Mr. Buller concluded that the application meets or exceeds BACT requirements. The ED also points out that the application is not expected to cause an exceedance of NAAQS and a toxicology review was conducted with the conclusion that no adverse health or welfare effects would be expected.

Because the ALJs have addressed the BACT and NAAQS arguments, the ALJs will consider whether the requirements of the TCAA are met in regards to the ESLs. Of the contaminants for which there are ESLs, only silica will be emitted by Applicant in significant quantity. Silica was modeled by assuming the sand mined at the site contains up to 100% silica, although there may be rocks, soil, or other substances mixed in with the sand. As applicable, the short-term ESL for silica is $14 \mu\text{g}/\text{m}^3$, while the long-term silica ESL is $0.27 \mu\text{g}/\text{m}^3$.

As pertains to the contested issues in this case, Applicant's modeling analysis of silica concluded the following: (1) the ESL level for silica was exceeded at off-site locations, for both short-term (24-hours) and long-term (annual) and a review by TCEQ's toxicology division was required and performed; and (2) the ESL levels for silica of $0.27 \mu\text{g}/\text{m}^3$ for long-term exposure and $14 \mu\text{g}/\text{m}^3$ for short-term exposure were exceeded. The modeling predicted a maximum annual (long-term) average silica concentration of $0.44 \mu\text{g}/\text{m}^3$. The modeling also predicted a maximum 1-hour (short-term) average silica concentration off-site as $16.4 \mu\text{g}/\text{m}^3$.

TCEQ Toxicologist Angela Curry evaluated the potential adverse health effects of silica beginning at the property line of the proposed plant. She considered all the factors required for a case-by-case Tier Three review in arriving at her conclusion that the predicted silica

concentrations are “allowable.” The term “allowable” means that the predicted ground level concentrations are not “acceptable” but the permit engineer has provided justification to the Toxicologist Division that the predicted GLCs are not likely to occur or that they occur in a location where public access is limited.

The ALJs find that the GLC_{max} will occur at the Applicant’s property line adjacent to undeveloped land, and it was conservatively reviewed as non-industrial property. There is no long-term ESL exceedance at the GLC_{ni} and the long-term GLC_{max} is predicted to occur in a location where prolonged exposure to the general public is unlikely and in short duration, if it does occur. The long-term ESL is set to be protective for a lifetime exposure, which is considered to be exposure of 24 hours a day, 7 days a week for 70 years. Members of the public at most could be exposed for just a few hours per year at a location that is generally not accessible or used by the public.

Accordingly, the ALJs are convinced that the permit application includes information demonstrating that the requirements of the TCAA are met in compliance with 30 TAC § 101.21.

L. Whether the permit application includes information demonstrating that the requirements of Texas Water Code § 5.130 are met.

Texas Water Code Section 5.130 states that the Commission shall:

1. develop and implement policies, by specific environmental media, to protect the public from cumulative risks in areas of concentrated operations; and
2. give priority to monitoring and enforcement in areas in which regulated facilities are concentrated.

RRMT asserts that the project presents cumulative risks associated with several different emissions sources combining to cause a violation or an exceedance. RRMT contends that, despite the presence of cumulative risks, Applicant chose not to evaluate sources such as roads and the quarry and failed to include background concentrations in its analysis of PM_{10} or silica.

As a result, Protestant argues that EOG failed to conduct a cumulative impacts analysis of all sources, and without a full consideration of background concentrations and all sources, the Commission cannot meet the requirements of Section 5.130 to protect the public from cumulative risks in areas of concentrated operations.

The ED and EOG argue that Water Code Section 5.130 is not a requirement for an air authorization and is therefore outside the scope of issues to be determined in this contested case. Rather, this provision is a directive to the Commission to develop policies to protect the public from cumulative risks in areas of concentrated operations – a directive the ED contends the Commission has met. The Applicant and the ED argue that this provision is inapplicable to individual permit applications and has no bearing on an application for facilities at a rural site with no other identified sources of relevant emissions.

Even if Water Code Section 5.130 applied to the application, the ED argues that conservatism in modeling subsumes cumulative risk. The ED explained that cumulative exposure is exposure to multiple airborne chemicals. Aggregate exposure is exposure to a single airborne chemical multiple times or from multiple sources. Cumulative risk combines consideration for both cumulative and aggregate exposure.²⁸² While the PM NAAQS are set by the EPA, the ED points out that the Commission's method for deriving ESLs addresses both cumulative and aggregate exposures. For noncancer-causing chemicals (i.e. short-term silica ESL), the ED asserts that the TCEQ derives a scientifically sound, safe level, then reduces that number by 70% for evaluating air permit applications to account for cumulative and aggregate exposures. The risk-management goal for cancer-causing chemicals (long-term silica ESL) is 1 in 100,000, which is the theoretical added cancer risk that a chemical may cause over a lifetime of exposure in the most sensitive portions of the population.

The ED and EOG both note Ms. Curry's testimony that the long-term cancer-based ESL could be increased by a factor of 10 and still be within the risk range deemed acceptable by the

²⁸² App Ex. 37 at 6 (TCEQ Guidelines to Develop Toxicity Factors).

EPA.²⁸³ Ms. Curry stated that ESLs have a built-in safety factor to account for possible aggregate exposures.²⁸⁴ Even if the ESL was increased by a factor of 10, the ED argues that ESLs are only guidelines and are not standards that may not be exceeded. The ED contends there is a high degree of conservatism in the ESL and layers of conservative assumptions are made in the worst-case modeling analysis. Additionally, each facility the TCEQ Toxicology Division staff reviews is evaluated against the same criterion, so multiple facilities in areas of concentration have all been reviewed to the same level of protectiveness.²⁸⁵

Having addressed cumulative risk, Applicant points out that Protestant offered no evidence that the proposed plant is in an area of concentrated operations. Instead, Applicant notes that there are no other industrial operations in the vicinity of the proposed plant.²⁸⁶ EOG argues that, not only is Water Code Section 5.310 outside the scope of issues to be determined in this particular case but the evidence in the record demonstrates that the Applicant has not proposed to construct its plant in an area of concentrated operations.

The ALJs find that Water Code Section 5.130 is not relevant to the application in this matter. The provision requires the Commission to “develop and implement *policies . . . to protect the public from cumulative risks in areas of concentrated operations.*”²⁸⁷ It is the Commission’s prerogative to create and institute such policies as evidenced by its rules and guidelines. This provision does not create grounds to deny a minor source application that has otherwise met the legal and regulatory requirements. Furthermore, there is no evidence that the project will operate in an area of concentrated regulated facilities. Although Water Code Section 5.130 deals with the Commission’s authority to protect the public from environmental risks through monitoring and enforcement, this provision falls outside the scope of this air authorization review.

²⁸³ ED Ex. 37 at 743.

²⁸⁴ ED Ex. 37 at 10; App. Ex. 18 at 16-17; Tr. at 845-846.

²⁸⁵ ED Ex. 37 at 738.

²⁸⁶ ED Ex. 37 at 740-42; Tr. at 596.

²⁸⁷ 30 TAC § 5.130(1) (emphasis added).

IV. OTHER ISSUES

The parties presented no additional issues to be addressed in this proceeding.²⁸⁸

V. ASSESSMENT OF TRANSCRIPT COSTS

A certified court reporter must make a verbatim record and transcript of any contested case hearing.²⁸⁹ The Commission may assess reporting and transcription costs to one or more of the parties participating in the proceeding. However, under the Commission's rules, transcription costs may not be assessed against the ED or OPIC.²⁹⁰ The Commission shall consider the following factors in assessing reporting and transcription costs:

- (A) the party who requested the transcript;
- (B) the financial ability of the party to pay the costs;
- (C) the extent to which the party participated in the hearing;
- (D) the relative benefits to the various parties of having a transcript;
- (E) the budgetary constraints of a state or federal administrative agency participating in the proceeding;
- (F) in rate proceedings, the extent to which the expense of the rate proceeding is included in the utility's allowable expenses; and
- (G) any other factor which is relevant to a just and reasonable assessment of costs.²⁹¹

²⁸⁸ Protestant Initial Brief at 51-52, Protestant Response at 20; ED Initial Brief at 24, ED Response at 17; and Applicant Initial Brief at 41, Applicant Response at 20.

²⁸⁹ 30 TAC § 80.23(a).

²⁹⁰ 30 TAC § 80.23(d)(2).

²⁹¹ 30 TAC § 80.23(d)(1).

While the Applicant only requested in briefing that transcription costs be assessed pursuant to the Commission's rules, it does not appear to oppose assuming all transcription costs.²⁹² The ED takes no position on the assessment of transcription costs.²⁹³

Protestant requests that the Commission assess all transcript costs to the Applicant. Regarding financial ability to pay costs, RRMT argues that EOG is one of the largest independent oil and gas companies in the United States, and has the financial ability to pay all costs of this transcript. RRMT, on the other hand, is a small recreation area in North Texas, without the resources of EOG. RRMT also notes it has already paid for its own copy of the transcript.

Regarding the extent to which the parties participated in the hearing, RRMT argues that participation by all parties was appropriate, and none of the parties burdened the transcript with frivolous arguments or unnecessary questioning of witnesses.

As for the relative benefits to the various parties of having a transcript, RRMT argues that EOG stands to benefit most from the ability to cite to the transcript, and the record in their briefs. Protestant notes that a favorable ruling on the application will benefit EOG to a much greater extent than a favorable ruling for RRMT. In other words, a favorable ruling for RRMT will mean that RRMT may return to normal but there is no way to recover funds expended in opposition to the application. EOG, on the other hand, will gain a significant financial benefit by receiving a permit to operate the plant.

In considering the factors and what is just and reasonable, the ALJs recommend that the Commission assess all transcript costs to EOG. The Applicant bears the burden of proof, participated in the hearing extensively, used the transcript throughout its briefing, has the financial resources to bear the costs, and, considering that the ALJs recommend approval of the application, stands to benefit most from the transcript.

²⁹² Applicant Response at 20.

²⁹³ ED Initial Brief at 24, ED Response at 17.

The ALJs do not recommend that Protestant should be allocated any share of transcription costs. RRMT has already sustained substantial litigation costs throughout the course of this proceeding. As noted in Section I.B of this PFD, a fair number of individuals, groups, and local entities requested party status at the initial prehearing. Although some of these parties participated during the prehearing stage of this matter, RRMT was the only Protestant that participated in the hearing and post-hearing briefing. As a result, RRMT bore all of the costs and burden of litigating a case against the granting of this application – in which a fair number of local parties had an interest.

During the portion of the hearing that occurred in Gainesville, significant local interest was evident, as reflected in attendance by the public and the local press. As a result, the ALJs believe that holding a portion of the hearing in Gainesville was a worthy endeavor and was appreciated by all local interested persons. However, were it not for RRMT's continued participation throughout the course of this litigation, the public benefit of this hearing may not have been realized.

Finally, although the ALJs have found in favor of the Applicant on every major contested issue, the ALJs note that Protestant presented a reasonable case with clear presentations of evidence and cross-examination, well-organized arguments, expressed valid concerns, and openly acknowledged weaknesses, while making reasonable legal arguments. The Applicant prevailed through the presentation of solid and substantial evidence that its analysis was reliable through extensive expert testimony and backup documentation. This does not mean that Protestant did not succeed in raising issues regarding Applicant's evidence at hearing and in briefing. Rather, upon full consideration of the evidence, those issues resolved in favor of the Applicant. The ALJs' disagreement with Protestant on substantive arguments should not detract from its efforts.

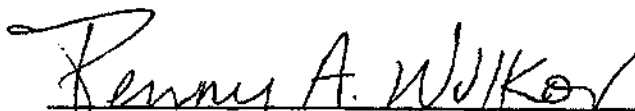
Although Applicant has not openly stated that it is unopposed to assuming all transcription costs, it did not argue for any particular outcome on this issue, and it offered a proposed Conclusion of Law assessing all such costs to itself. Considering all of the factors in

30 TAC § 80.23(d), the ALJs find that it would be just and reasonable to allocate all transcription costs to the Applicant.


VI. SUMMARY AND CONCLUSION

The ALJs propose that the Commission adopt the attached order granting EOG's application and allocating all transcript costs to Applicant. Based on the reasons stated in this PFD, the ALJs reject all proposed Findings of Fact and Conclusions of Law not included in the proposed order.

SIGNED October 18, 2013.



PENNY A. WILKOV
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



TRAVIS VICKERY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER Approving the Application of
EOG RESOURCES, INC. for a New Air Quality Permit Number 95412
in Cooke County, Texas
TCEQ Docket No. 2012-0971-AIR
SOAH Docket No. 582-12-6347**

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the application of EOG Resources Inc. (EOG or Applicant) for a new Air Quality Permit No. 95412, in Cooke County, Texas. Administrative Law Judges (ALJs) Penny A. Wilkov and Travis Vickery of the State Office of Administrative Hearings (SOAH) presented a Proposal for Decision (PFD) recommending that the Commission approve the application. After considering the PFD, the Commission adopts the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

General and Procedural Findings

1. On March 25, 2011, Applicant filed an application with the Commission requesting an air quality permit to construct and operate multiple facilities as part of a sand processing plant at 14596 N. FM 373 in rural southwest Cooke County, Texas (Application).
2. Amendments to and correspondence regarding the Application were subsequently submitted to TCEQ on July 8, 2011, September 27, 2011, December 9, 2011, and January 11, 2012.
3. The TCEQ Executive Director (ED) declared the Application administratively complete on April 7, 2011. The ED also issued a draft air quality permit (Draft Permit).
4. The Notice of Receipt and Intent to Obtain an Air Quality Permit was published in the *Muenster Enterprise* on April 15, 2011, and in the *Saint Jo Tribune* on May 27, 2011, both newspapers of general circulation in Cooke County, Texas. In addition, Applicant arranged for placement of the completed Application for inspection and copying at the Bettie M. Luke Muenster Public Library beginning April 15, 2011.

5. Signs were posted on April 15, 2011, along the fence line of the property where the proposed plant would be constructed and operated.
6. In response to requests from the public, the TCEQ Chief Clerk held a public meeting to discuss the Application on August 23, 2011, at the Muenster Independent School District cafeteria.
7. On January 18, 2012, Applicant submitted a request to the TCEQ Chief Clerk for direct referral of the Application to SOAH for a hearing.
8. Applicant's Air Quality Modeling Report was submitted to TCEQ's Air Permit Division on February 14, 2012, as part of the Application.
9. On May 31, 2012, the TCEQ Chief Clerk notified Applicant that the ED had completed a technical review of the Application and made a preliminary decision to issue the permit based on demonstrated compliance with all applicable rules and regulations.
10. On June 8, 2012, a combined Notice of Application and Preliminary Decision for an Air Quality Permit and Notice of Hearing was published in three newspapers (*Saint Jo Tribune*, *Muenster Enterprise* and *Gainesville Daily Register*), informing the public of the ED's decision and scheduling the preliminary hearing for July 12, 2012.
11. The TCEQ Chief Clerk scheduled a second public meeting regarding the Application, which was held on July 11, 2012, at the Gainesville Civic Center.
12. On July 12, 2012, ALJs Penny A. Wilkov and Travis Vickery assumed SOAH jurisdiction over this case without objection, and the parties were aligned. At the preliminary hearing, the following were made parties:
 - a. Applicant;
 - b. ED;
 - c. Office of Public Interest Counsel (OPIC);
 - d. Protestants Red River Motorcycle Trails, Inc., Rebecca Harris and Holly Harris-Bayer (RRMT);
 - e. Protestant Save the Trinity Aquifer (STA);
 - f. Protestant Red River Tourism and Wildlife;
 - g. Protestant Kathy Neilsen; and
 - h. Protestant Cooke County Commissioners' Court.
13. On November 6, 2012, the ED issued a Response to Public Comment.
14. On February 8, 2013, Protestant Save the Trinity Aquifer sought to withdraw as a party. On February 21, 2013, Order No. 7 granted Save the Trinity Aquifer's Motion to Withdraw all members of the group from this case.

15. On April 9, 2013, the Cooke County Commissioners' Court sought to withdraw as a party; a request that was granted by Order No. 10 issued on April 11, 2013.
16. On April 15-17, 2013, the hearing on the merits convened in Austin, Texas; recessed and reconvened in Gainesville, Texas, on April 22-23, 2013; and recessed and reconvened for a final day on April 25, 2013, in Austin, Texas, with ALJs Penny A. Wilkov and Travis Vickery presiding. The record closed on August 23, 2013.
17. All parties appeared at the hearing on the merits, with the exception of Red River Tourism and Wildlife and Kathy Neilsen, who retained party status but did not attend. RRMT was the only protestant to enter an appearance and participate in the hearing and post-hearing briefing.

Description of the Proposed Facilities

18. The proposed facilities will be located at 14596 N. FM 373 in rural southwest Cooke County, Texas, on approximately 1445 acres. The permitted facilities will consist of hoppers, belt conveyors, bucket elevators, screens, stockpiles, a dryer with a baghouse and truck-load out bins, which will be used to supply sand for oil and gas well operations.
19. Wet sand will be mined on the property and will be transported by a conveying system to a stockpile, and then to the sand processing plant. This conveying system includes hoppers, belt conveyors, and a screen. The screen will remove larger material, which is temporarily stored in a stockpile and ultimately returned to the quarry. The smaller material will be sent to the sand processing plant for cleaning, screening, and drying.
20. The sand processing plant will consist of a wet processing operation and a dry processing operation. The wet processing operation will screen, wash, and separate the material. Hoppers and belt conveyors will be used to transfer the material up to and through the scalping screen. At that point, the material will be in slurry form and will be pumped in enclosed piping through the washing, separation, and dewatering process, and then conveyed to a surge bin. From the surge bin, the material will be conveyed to the dry processing operation where it will be dried and screened into product sizes, stored in silos, and loaded into trucks. Hoppers, belt conveyors, and bucket elevators will be used to transfer the material throughout the dry processing operation.
21. Waste material will be returned to the sand quarry by trucks over paved roads.

New Source Review Air Quality Permits

22. The Draft Permit authorizes the emission of particulate matter (PM), particulate matter equal to or less than 10 micrometers in diameter (PM₁₀), and particulate matter equal to or less than 2.5 micrometers in diameter (PM_{2.5}), as well as ozone (O₃); sulfur dioxide (SO₂); carbon monoxide (CO); nitrogen dioxide (NO₂); and lead (Pb).

23. Predicted off-property concentrations of CO, SO₂, NO₂, PM₁₀ and PM_{2.5} due to emissions from the proposed facilities are evaluated using National Ambient Air Quality Standards (NAAQS) set by the United States Environmental Protection Agency (EPA). The NAAQS for each of these air contaminants are set at levels protective of public health, welfare, and the environment with an adequate margin of safety.
24. Predicted off-property concentrations of silica due to emissions from the proposed facilities are evaluated using Effects Screening Levels (ESLs). ESLs are established by the TCEQ for evaluation of potential impacts of air contaminants for which no NAAQS has been established by the EPA, and to trigger case-by-case review when appropriate to ensure the protection of public health and welfare.
25. Applicant employed appropriate emission factors and methodology to calculate the estimated emission rates for CO, SO₂, NO₂, volatile organic compounds (VOC), PM₁₀, PM₄, and PM_{2.5} that will be emitted from the proposed facilities.
26. Using applicable TCEQ guidance and current TCEQ practices, including the EPA's guidance on air pollutant emission factors (AP-42) in calculating emission rates, Applicant applied standardized and acceptable emission factors in calculating emissions from the proposed facilities.
27. Using the Application's description of emission points at the proposed plant, the calculated emission rates from those points and other relevant information from the Application, and conducting a site investigation to assess the surrounding terrain, Applicant performed an air dispersion modeling analysis at the ED's request to predict maximum off-property concentrations of air contaminant emissions from the facilities at the proposed plant.

Best Available Control Technology (BACT)

28. Applicant has proposed, and the Draft Permit requires the following controls at the proposed plant:
 - a. No visible fugitive emissions may leave the property that exceed a cumulative 30 seconds in duration in any 6-minute period;
 - b. An opacity limit of 5% applies to the dryer baghouse stack, including the surge bin dust collector baghouse, the Tank 250 dust collector baghouse, the product silo dust collector baghouse stacks, and the dry plant transfer dust collector baghouse;
 - c. Opacity of emissions from the screen and from any transfer point on belt conveyors is limited to 7% over a 6-minute period, under most conditions;
 - d. No visible emissions, except for water vapor or fog, are allowed from the wet plant screen or the saturated processes including cyclones, attrition cells, density separators, dewatering tanks, and associated pumps and conveyors;

- e. Partial enclosures will be installed on all material transfer points with complete enclosure of the vibrating scalping screen, except for openings for material entry and exit;
 - f. Permanently mounted water spray bars will be installed at the vibrating scalping screen and all material transfer points prior to the dryer, except for the saturated processes;
 - g. The dryer baghouse, the dry plant transfer dust collector baghouse, the surge bin dust collector, and the product silo dust collectors will be designed to meet outlet grain loading specifications;
 - h. All hoppers will be partially enclosed with extended sides, and no material will be dropped into a hopper at a height above the partial enclosures;
 - i. As a best management practice (BMP), on-property roads will be paved and cleaned or sprayed with water upon detection of visible particulate matter emissions; and
 - j. The cumulative area and height of stockpiles at the proposed plant will be limited, and stockpiles will be sprayed with water upon detection of visible particulate matter emissions.
29. Applicant's proposed control measures meet or exceed BACT requirements for facilities of the type proposed by the Application.
30. The emission controls represented in the Application have been accepted by TCEQ as BACT in recent permit reviews for similar operations, and there have been no recent technical developments associated with BACT for materials handling industries.
31. The dryer baghouse fabric filter proposed in the Application is designed such that the emissions from the dryer will be lower than those resulting from the application of the typical BACT at comparable facilities.
32. Water sprays will be used to achieve particulate matter control, which is a well-established control method commonly prescribed and accepted by the TCEQ for comparable operations.
33. The longest conveyor at the proposed plant will be enclosed, and the largest storage pile at the plant will sit over funnels and gravity-feed to a tunnel conveyor in order to minimize emissions, which exceeds BACT accepted at similar operations.
34. The dryer will be natural-gas fired, and thus meet BACT for CO, PM, SO₂, and VOC.

New Source Performance Standards (NSPS)

35. The Application incorporates emissions information obtained from the vendor of the dryer. This information was used to calculate the predicted emission rates, using commonly-accepted methodology recommended, reviewed, and approved by the ED.

36. Sampling results have shown that emissions from the type of dryer represented in the Application met or were lower than those originally represented by the vendor or manufacturer.
37. Pursuant to the Draft Permit, Applicant will be required to conduct initial stack testing from the dryer within 180 days of startup to demonstrate compliance.
38. Applicant has reasonably demonstrated that the proposed plant will operate in accordance with the performance specified in both the Application and the Draft Permit.
39. The Application demonstrates that the proposed plant will employ conventional, well-established control equipment and techniques, which are consistently prescribed and accepted by the TCEQ. Applicant will also apply TCEQ-established BMPs, including watering and/or cleaning of stockpiles, work areas, in-plant roads and other traffic areas.

Circumvention

40. The Application does not improperly conceal or appear to minimize the effect of emissions from the proposed facilities.

Nuisance

41. The ED has the ability to monitor emissions from the plant and enforce the conditions of the Draft Permit, including the ability to monitor for emissions at night.
42. The facilities will not create nuisance conditions if operated pursuant to the representations in the application in accordance with the Draft Permit.

Emission Sources

Roads

43. The BMPs in the Draft Permit are effective in controlling and minimizing potential road dust emissions.
44. The Draft Permit's protections against prohibited off-property emission impacts have been used historically by the TCEQ for materials handling facilities, and include well-established BMPs to minimize road emissions and a "no visible emissions" limitation at the property line.
45. The conservative background levels of particulate matter assumed in the analysis performed by Applicant account for emission impacts, if there are any, from the roads.
46. EOG will pave all in-plant roads, as authorized under the Draft Permit BMPs for minimizing emissions from plant roads.
47. Paved roads are considered the best BMP for minimizing emissions.

48. Because the roads at the proposed plant will be paved and given the Draft Permit requirement that Applicant use BMPs for washing and cleaning the roads to prevent visible emissions, emissions from in-plant roads will be minimized if not eliminated.

Quarries

49. The significant moisture inherent in the material at the site serves to prevent emissions from the quarry, or will render them insignificant.
50. With the protective limitations expressed in the Draft Permit, including the enforceable "no visible emissions" limitation at the property line set forth in Special Condition No. 5 of the Draft Permit, along with the requirement to implement BMPs, the Applicant has demonstrated that the permit properly controls for potential quarry emissions.
51. The conservative background levels of particulate matter assumed in Applicant's analysis account for emission impacts, if any, from the quarry.

Combined Water

52. The water to be used for emission control for the proposed facilities will not constitute particulate matter.

Background Levels

53. There are no significant or permitted facilities in the area near the proposed facilities.
54. There are no ambient monitoring sites in the area surrounding the proposed facilities.
55. Ambient air monitors located in Dallas and Tarrant Counties were appropriate to represent the background concentration at the Applicant's proposed project.
56. The use of ambient air monitors in Dallas and Tarrant Counties was conservative because the population and reported emissions from those counties are greater than the population and reported emissions for Cooke County.
57. The monitor with the highest background concentration in Dallas and Tarrant Counties for each averaging time was used to sufficiently and conservatively represent the background concentrations for Cooke County.
58. Dallas and Tarrant Counties have three years of complete data as required by recent EPA guidance documentation.
59. Background levels of silica were considered in the Applicant's health effects evaluation.

Emission Estimates/Calculations

AP-42 Factors

60. The EPA's AP-42 emission factors represent a regulatory and industry standard for calculating emissions.
61. TCEQ experience over the history of the air quality permit program supports the Applicant's use of AP-42 emission factors in its emission rate calculations.
62. The D and E emission factors from AP-42 used by the Applicant are reasonably reliable, both as characterized in AP-42 and as historically used by the TCEQ, and there is no basis for revising those factors up or down.
63. The AP-42 emission factors used by Applicant are based on sampling at plants processing material with lower moisture content and containing more fines than are anticipated at the proposed plant, making emission estimates in the Application conservative.
64. The use of AP-42 emission factors to determine emission rates for the type of facilities proposed in the Application is a common engineering practice and is the accepted method for TCEQ engineers when evaluating a permit application of this type.

Dryer Baghouse

65. As part of the project, Applicant proposes to use a dryer that will generate significant emissions. Applicant proposes to use a baghouse at the dryer stack as an AP-42 approved form of emissions control.
66. The calculations used by Applicant incorporating performance information provided by the vendor created reasonable projections of emissions from the baghouse.
67. Historical sampling reports for this type of dryer reasonably confirm the emission rates Applicant calculated for the dryer proposed in the Application.
68. Emissions from the proposed dryer were calculated using methodology recommended, accepted, and approved by the ED.
69. The Draft Permit requires initial stack testing of the dryer and baghouse within 180 days of the start of operations at the plant in order to confirm compliance with emission limits and NSPS.
70. If the sampling results in emissions beyond the permitted limit or NSPS, Applicant will be required to bring the baghouse into compliance and may be subject to a TCEQ enforcement proceeding.

Use of PM₄ for Silica

71. The TCEQ Toxicology Division has determined that the long-term (annual) impact of silica must be evaluated as smaller-sized particulate matter, or PM₄, and the short-term (hourly) impact of silica must be evaluated as the total concentration of larger-sized particulate matter, or PM₁₀.
72. Silica particles that range in size from 1-4 micrometers are small enough to enter the deeper regions of the respiratory tract and can lead to acute silicosis, a very rare and non-cancerous respiratory disease.
73. Under the long-term ESL for silica and accepted toxicological analysis, the respirable size of particulate matter is PM₄.
74. TCEQ guidance properly evaluates long-term exposure to silica as an ESL.
75. The Application made the conservative assumption that 100% of the PM₁₀ and PM₄ emissions expected from the proposed facilities were respirable silica.
76. Applicant modeled all of the PM₁₀ and PM₄ emissions as respirable silica in order to compare the maximum modeled off-property concentrations to the long-term annual average ESL.
77. Applicant properly modeled all the sand as silica and conservatively modeled the silica as 100% of PM₁₀ for the short-term analysis and 100% of PM₄ for the long-term analysis of emissions, as provided by TCEQ guidance.

Point Source Emissions Reduced by 10% for Long-Term Analysis

78. EOG's initial calculation of emission rates was based on an operational schedule of 24 hours per day for 365 days per year, or 8,760 hours annually.
79. Later, EOG revised the schedule to provide that the plant will operate 8,760 hours per year, except for various pieces of equipment which will have a maximum operating schedule not to exceed 7,884 hours per year in any rolling 12-month period.
80. The equipment operating under the reduced schedule (such as the dryer baghouse and associated dryer, the dry plant transfer dust collector baghouse and associated dry feed bins, and dry screens and conveyors) will generate greater emissions than any other source at the site.
81. Based on the reduced operating hours of certain equipment, the emission rates were reduced by 10% to reflect the new operational schedule.
82. The application was reviewed by a TCEQ air permit engineer, who tracked throughput at the facilities to ensure that the hours of operation and hourly and annual throughput were consistent with the representations in the application.

83. Even with the 10% reduction due to the reduced operational schedule, the emission rates were properly calculated as represented in the application

Air Dispersion Modeling/Results

84. Air dispersion modeling is used to predict whether the off-property ground-level air concentrations (GLCs) of constituents will comply with NAAQS and the Texas property line standards, and whether non-criteria pollutants (silica) will adversely impact human health and welfare.
85. The ED required Modeling to be completed by EOG and audited by the TCEQ Air Dispersion Modeling Team (ADMT).
86. The ADMT also required that Applicant use “refined modeling,” a more complex model with more detail and precise input data.
87. The input data used in the modeling was land-use information (urban or rural), topographical elevation data (flat or complex terrain), variable emission rates, building wake effects (downwash), emission point parameters (receptor grid locations, elevations, and spacing), and meteorological data (standard surface and upper-air observations).
88. Modeling predicts the maximum ground-level concentration beginning at the facility’s nearest property line, expressed as maximum ground-level concentration or GLC_{max} , expressed in micrograms per cubic meter ($\mu g/m^3$).
89. The “de minimis,” or significant impact level (SIL), of air contaminant concentration is a concentration below which the air quality is not anticipated to be affected.
90. When a modeled impact is deemed insignificant, or de minimis, using the NAAQS SIL as a threshold for significance, it is not necessary to incorporate background levels or emissions from other sources in the analysis.
91. If the modeled concentration of a pollutant for the project is greater than the NAAQS SIL then a “full impact analysis” is performed.
92. Receptors are an important element of capturing the GLC_{max} . The receptor elevations were determined by use of the EPA AERMAP program.

Criteria Pollutants

93. The following results were shown by Applicant’s modeling of criteria pollutants:
- a. **PM₁₀.** The SIL for PM₁₀ was not exceeded at any off-site location for any period of time, either short-term or long-term, and thus no full impact analysis was required or performed.

- b. **PM_{2.5}.** The SIL level for PM_{2.5} was exceeded at locations within one kilometer of the proposed facility for both short-term and long-term; therefore, a full impact analysis was required and performed.
 1. The full impact analysis concluded that for a 24-hour period, the maximum ground level concentration of PM_{2.5} was expected to be 26.47 µg/m³, which fell below the 24-hour NAAQS of 35 µg/m³.
 2. The full impact analysis concluded that for an annual average period, the maximum ground level concentration of PM_{2.5} was expected to be 11.11 µg/m³, which fell below the then-existing annual PM_{2.5} NAAQS of 15 µg/m³, and the new annual PM_{2.5} NAAQS of 12 µg/m³.
- c. **Carbon Monoxide.** Carbon monoxide was modeled and evaluated for the proposed facility. The SIL level of carbon monoxide is 2,000 µg/m³ (1-hour) and 500 µg/m³ (8-hour). Modeling of this facility resulted in predicted air concentrations of carbon monoxide to be 10 µg/m³ (1-hour) and 3 µg/m³ (8-hour). Therefore, no full impact analysis was required or performed.
- d. **Nitrogen Dioxide.** Nitrogen dioxide was modeled and evaluated for the proposed facility. The SIL level for nitrogen dioxide was exceeded short-term (1-hour) but not long-term (annual). A full impact analysis was therefore required and performed for the 1-hour time period.
 1. The SIL level of nitrogen dioxide is 1 µg/m³ (annual). Modeling of this facility resulted in predicted air concentrations of 0.66 µg/m³. Therefore, no full impact analysis of nitrogen dioxide was required or performed.
 2. The full impact analysis showed that when TCEQ's screening background concentration for Cooke County (derived from Dallas and Tarrant Counties) of 102.9 µg/m³ was added to the 15.2 µg/m³ maximum modeled concentration of nitrogen dioxide, the result was 118.11 µg/m³. The short-term (1-hour) nitrogen dioxide NAAQS is 188 µg/m³, and 118.11 µg/m³ does not exceed this NAAQS.
- e. **Sulfur Dioxide.** Sulfur dioxide was modeled and evaluated for the proposed facility. The de minimis or SIL level of sulfur dioxide is 7.8 µg/m³ (1-hour), 25 µg/m³ (3-hour), 5 µg/m³ (24-hour), and 1 µg/m³ (annual). Modeling of this facility resulted in predicted air concentrations of sulfur dioxide of 1.7 µg/m³ (1-hour), 0.7 µg/m³ (3-hour), 0.4 µg/m³ (24-hour), and 0.07 µg/m³ (annual). Thus, a full impact analysis was not required or performed.

Non-criteria Pollutants

94. Silica has not been designated as a criteria pollutant or a hazardous air pollutant.

95. The TCEQ's ESLs are guidelines developed by TCEQ toxicologists for non-criteria pollutants, based on data concerning health effects, odor/nuisance potential, and effects on vegetation.
96. The ESLs are set at levels lower than those reported to produce adverse health effects, and are set to protect the general public, including sensitive subgroups such as children, the elderly, or people with existing respiratory conditions.
97. If a predicted or measured airborne level of a constituent does not exceed the ESL, adverse health or welfare would not be expected to result.
98. If ambient levels of constituents in the air exceed the ESL, a health effect evaluation is required to assess whether a health issue is presented.
99. The objective of a health effect evaluation is to evaluate GLCs for the potential to cause adverse health or welfare effects; and to consider the "worst-case scenario emissions" in order to predict maximum potential exposure levels.
100. The GLC_{max} is evaluated first, and if needed, the GLC at the maximally affected non-industrial receptor (GLC_{ni}) is evaluated next.
101. Applicant's modeling analysis of silica, as reviewed by ADMT, concluded the following:
 - a. The ESL for silica was exceeded at off-site locations, for both periods of time—short-term (24-hour) and long-term (annual)—and therefore, a review by TCEQ's Toxicology Division was required and performed.
 - b. The ESL for silica of $0.27 \mu\text{g}/\text{m}^3$ for long-term exposure and $14 \mu\text{g}/\text{m}^3$ for short-term exposure were exceeded. The modeling predicted a maximum annual (long-term) average silica concentration of $0.44 \mu\text{g}/\text{m}^3$. The modeling also predicted a maximum 1-hour (short-term) average silica concentration off-site as $16.4 \mu\text{g}/\text{m}^3$.

Worst-Case Conditions for Modeling

102. The Application's maximum operational conditions, evaluated in accordance with TCEQ practice and guidance, represent a reasonable worst-case for air dispersion modeling purposes.
103. The AERMOD model used by Applicant for the air dispersion modeling analysis is known to produce results that are conservative and over-predictive.

Number of Years for Analyses

104. Applicant used the National Weather Service (NWS) surface meteorological data (met data) for 1988 from Dallas/Fort Worth, Texas and NWS upper air met data from Stephenville, Texas for both the short-term and long-term modeling.

105. Meteorological conditions affect where airborne particles disperse in the atmosphere, as influenced by wind speed, wind direction, temperature, humidity, station pressure, amount of incoming solar radiation, and insulating cloud cover.
106. The modeling conducted by Applicant was compliant with Air Quality Modeling Guidelines (guidelines), which direct modelers to use data for 1988 and to use Appendix C, a table of meteorological stations and counties for selection.
107. According to Appendix C, for Cooke County the surface air met data to use is Dallas/Fort Worth, while the upper air data is Stephenville.
108. Daily weather conditions can vary within a given year but the worst-case conditions that occur during a year are typically the same as other years, particularly with 8,700 hourly samples gathered for the year and used for analysis.

Source of Meteorological Data (DFW/Denton)

109. A new set of met data from the NWS station at the Denton airport (Denton met data), covering 2006 to 2010 was published on the TCEQ website on December 20, 2012.
110. The Denton met data was not available for modeling when Applicant submitted its modeling report on February 14, 2012.
111. The Denton met data incorporates the use of the Automated Surface Observing System (ASOS) to record hourly meteorological observation and AERMINUTE to minimize data gaps due to calm or missing winds.
112. A March 8, 2013, EPA memoranda recommends that lower wind speeds recorded of 0.5 meters-per-second or below, or "calm wind bias," be eliminated so that the revised datasets using ASOS and AERMINUTE are consistent with past datasets which had a threshold of 1- 1.5 meters-per-second wind speeds recorded.
113. The Denton met data is presently being reviewed and revised by the ADMT team in accordance with the March 2013 EPA recommendation to remove the calm wind bias.
114. The use of Dallas/Ft. Worth met data in Applicant's air dispersion modeling analysis was reasonable, appropriate, and acceptable.
115. The differences between the meteorological conditions at the DFW and Denton locations would not be considered significant in the overall analysis since they are 30 miles apart.

BACT

116. Applicant will use an enclosed conveyor system to transport sand from the quarry to the processing facilities.
117. Unusable and unmarketable material will be returned from the processing area to the quarry via trucks.

118. Applicant may use either roads or conveyors to transport sand to the processing facilities or to transport unusable/unmarketable material from the processing facility to the quarry.

NAAQS for PM₁₀ (full impact analysis)

119. Applying the Denton met data with no other input adjustments, the maximum modeled concentration of PM₁₀ is 5.8 µg/m³.
120. When TCEQ's screening background concentration for Cooke County of 60 µg/m³ is added to the 5.8 µg/m³ maximum modeled concentration of PM₁₀, the result is 66 µg/m³; which does not exceed the short-term (24-hour) PM₁₀ NAAQS of 150 µg/m³.
121. The Application reasonably demonstrated that a full impact analysis was not required for PM₁₀.

Silica Evaluation

122. The TCEQ effects review guideline provides for a three tier review to evaluate the health and welfare effects: Tier One occurs only if all off-property short- and long-term GLC_{max} are below the ESLs; Tier Two proceeds if the GLC_{max} occurs on industrial property only and does not exceed the ESL by more than two-fold; and Tier Three ensues if the GLC_{max} occurs in a non-industrial area or the ESL is exceeded by more than twice.
123. Because an ESL was exceeded at a non-industrial area, a Tier Three review was performed by the Toxicology Division.
124. A Tier Three review requires analysis of case-specific factors that have a bearing on exposure: surrounding land use; magnitude of the concentration; the frequency of exceedence; the type of toxic effect (acute or chronic); the margin of safety between the toxicity value and known effects levels; degree of confidence in the toxicity database; and acceptable reductions from existing ground level concentrations.

Worst-Case Scenario/Conditions

125. The air dispersion modeling performed by Applicant predicted the maximum silica concentrations of the facility at various points off-property under reasonable worst-case conditions.
126. The silica ESLs are set sufficiently low that they account for potential silica in the background either naturally occurring, or as a result of other nearby sources.
127. It was assumed that 100% of PM₁₀ emissions from the proposed facilities would be silica, which overestimated the off-property silica impacts.
128. The silica emission rates used in the Application to conduct the air dispersion modeling analysis were reasonable.

129. The maximum off-property silica concentrations predicted by Applicant's modeling analysis are overestimated.

Exceedance of ESL

130. The magnitudes for the short-term ESL exceedances showed that the GLC_{max} was exceeded by 1.17 times (or the ratio of the GLC_{max} of $16.4 \mu g/m^3$ to the ESL of $14 \mu g/m^3$) and exceeded at the GLC_{ni} by 1.07 times (or the ratio of the GLC_{max} of $15 \mu g/m^3$ to the ESL of $14 \mu g/m^3$).
131. The predicted frequency of the short-term ESL exceedance at the GLC_{max} is 5 hours per year and 1 hour per year at the GLC_{ni} .
132. Adverse health effects would not be expected from the exposure to these small magnitudes and frequencies of silica.
133. The risk-goal for the long-term silica ESL is set at "no significant risk level" of 1×10^5 (1 in 100,000) or 1 cancer death per 100,000 population, which is within the range of what the EPA has designated as an acceptable risk range of 1×10^4 (1 in 10,000) to 1×10^6 (1 in 1,000,000).
134. The exceedances at the GLC_{max} occur in an area where public exposure is unlikely, and the long-term ESL is not exceeded at the GLC_{ni} .
135. ESLs are set at extremely low levels in order to protect even the most sensitive members of the general public. Most health-based ESLs are set at levels between 100 to 1,000 times lower than exposure levels that are safe for workers exposed to the air contaminant in an occupational setting.
136. The ESLs were peer-reviewed outside of TCEQ by experts in inhalation toxicology and risk assessment.
137. There are no other industrial facilities with silica emissions near the Applicant's proposed facilities.
138. No adverse health or welfare effects are expected to occur as a result of the predicted silica concentrations, based on the amount, frequency, and location of the ESL exceedances.
139. The Application and supporting evidence demonstrates that emissions from the proposed facilities at the proposed sand processing plant will be protective of the public's health, welfare, and property.
140. The Application and supporting evidence demonstrate that operation of the proposed facilities in accordance with the Draft Permit will not adversely affect human health or welfare, animal life, vegetation, or property or as to interfere with normal use and enjoyment of animal life, vegetation, or property.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction to consider the Applicant's application pursuant to Tex. Health & Safety Code §§ 382.011, 392.051, and 382.0518.
2. SOAH has jurisdiction to conduct a hearing and to prepare a Proposal for Decision in this matter. Tex. Gov't Code § 2003.047.
3. Proper notice was given as required by Tex. Health & Safety Code § 382.056, Tex. Gov't Code §§ 2001.051 and 2004.052; 30 Tex. Admin. Code (TAC) § 39.601, *et seq.*
4. The Commission has the authority to issue a permit to construct a new facility or modify an existing facility that may emit air contaminants. Tex. Health & Safety Code § 382.051(a)(1).
5. Air contaminants are defined to include particulate matter, dust, fumes, smoke, vapor, or odor. Tex. Health & Safety Code § 382.003(2).
6. Air pollution is defined as the discharge of air contaminants in such concentration and such duration as may be injurious or adversely affect human health or welfare, animal life, vegetation, or property. Tex. Health & Safety Code § 382.003(3).
7. A project that meets the applicable requirements is entitled to an air quality permit. Tex. Health & Safety Code § 382.0518(b) and 30 TAC § 116.111.
8. The burden is on the Applicant to prove by a preponderance of the evidence that the Application complies with all applicable statutory and regulatory requirements. 30 TAC §§ 55.210(b) and 80.17(a).
9. The Commission may not issue an air quality permit unless the permit is protective of public health and welfare. 30 TAC § 116.111(a)(2)(A).
10. A facility is a "discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not considered to be a facility." Tex. Health & Safety Code § 382.003(6) and 30 TAC § 116.10(4).
11. Before issuing a permit for a facility, the Commission must find that the facility will employ "at least the best available control technology (BACT), considering the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility . . . and there is no indication that the emissions from the facility will contravene the intent of [the TCAA], including protection of the public's health and physical property." Tex. Health & Safety Code § 382.0518.
12. BACT represents the best technology available, within technical practicability and economic reasonableness, to reduce or eliminate emissions from the facility. 30 TAC § 116.10(3).

13. The Applicant will apply BACT to the facilities at the plant and there is no indication that emissions from the facilities will contravene the intent of the TCCA. Tex. Health & Safety Code § 382.0518(b)(1); 30 TAC § 116.111(a)(2)(B)-(C).
14. The roads and the quarry are not facilities, and the BACT requirements do not apply to the roads and quarries. Tex. Health & Safety Code §§ 382.003 and 382.0578
15. All representations in the Application with regard to construction plans, operating procedures and maximum emission rates become conditions on which the proposed plant must be constructed and operated. The Applicant's representations in the Application are legally binding requirements under which the proposed plant must be operated. 30 TAC § 116.116.
16. One NSPS is applicable to the facilities proposed in the Application. Subpart UUU of 40 Code of Federal Regulations (CFR) Part 60, as amended September 28, 1992, relating to Calciners and Dryers in Mineral Industries, applies to dryers installed in sand processing plants, including Applicant's proposed dryer.
17. Emissions from the baghouse dryer will meet 40 CFR Part 60, Subpart UUU. 30 TAC §§ 101.20 and 116.111(a)(2)(D).
18. Applicant demonstrated that the proposed plant will operate in accordance with the performance specified in the Application and the Draft Permit. 30 TAC § 116.111(a)(2)(G).
19. Section 5.130 of the Texas Water Code does not apply to the Application.
20. NAAQS are enforced by TCEQ throughout all parts of Texas. 30 TAC § 101.21.
21. NAAQS are set for six principal pollutants, which are referred to as "criteria" pollutants, i.e. pollutants for which a standard exists: (1) particulate matter less than or equal to 10 microns in diameter (PM₁₀); (2) particulate matter less than or equal to 2.5 microns in diameter (PM_{2.5}); (3) ozone (O₃); (4) sulfur dioxide (SO₂); (5) carbon monoxide (CO); (6) nitrogen dioxide (NO₂); and (7) lead (Pb). 42 United States Code (U.S.C.) § 7409(a); 40 CFR § 50.
22. Primary NAAQS define levels of air quality that the EPA Administrator has determined are necessary to protect the public health. Primary NAAQS are set to protect public health, including the health of sensitive populations such as asthmatics, children, and the elderly. 42 U.S.C. § 7409(b)(1); 40 CFR § 50.2(b).
23. Secondary NAAQS define levels of air quality that the EPA Administrator has determined are requisite to protect the public welfare from any known or anticipated adverse effects. Secondary NAAQS are designed to protect the public welfare against non-health-related effects such as decreased visibility; effects to animals, crops, and vegetation; and damage to and deterioration of property. 42 U.S.C. § 7409(b)(2).

24. No person in Texas may allow or permit emissions of SO₂ from a source operated on a property to exceed a net ground level concentration of 0.4 per million by volume averaged over any 30-minute period. 30 TAC § 112.4.
25. Computerized air dispersion modeling may be required by the ED to determine air quality impacts from a proposed new facility or source modification. 30 TAC § 116.111(J).
26. The Commission's rules provide a list of factors to be considered when determining a proper allocation of transcript costs. 30 TAC § 80.23(d).
27. Based on the above Findings of Fact and Conclusions of Law, the proposed industrial sand processing facility will not have adverse effects on air quality or cause violations of the TCAA or other applicable state or federal requirements.
28. Based on the above Findings of Fact and Conclusions of Law, the Draft Permit conditions will fully comply with applicable air quality regulations, including BACT, enforceability, and consideration of emission sources and emission rates.
29. Based on the above Findings of Fact and Conclusions of Law, the Draft Permit conditions contain adequate monitoring, reporting, and recordkeeping requirements to ensure Applicant's compliance with the permit.
30. Based on the above Findings of Fact and Conclusions of Law, the Applicant's air dispersion modeling of proposed particulate matter emissions was accurate and appropriate including proper use of emission factors, met data, and background concentrations.
31. Based on the above Findings of Fact and Conclusions of Law, the proposed facility's predicted emissions do not exceed the NAAQS and are allowable.
32. Based on the above Findings of Fact and Conclusions of Law, the proposed facility's emissions of silica will not adversely impact the public health, welfare, or physical property.
33. Based on the above Findings of Fact and Conclusions of Law, the proposed facility's emissions will not adversely affect livestock, wildlife, including endangered species, or vegetation, including agricultural activities of the public.
34. Based on the above Findings of Fact and Conclusions of Law, emissions from the proposed facility will not cause or contribute to nuisance conditions.
35. Based on the above Findings of Fact and Conclusions of Law, the potential air emissions from the proposed facility will not adversely affect air quality, and the Draft Permit complies with the TCAA and other applicable state and federal requirements.
36. Based on the above Findings of Fact and Conclusions of Law, the Applicant has met its burden of proof.

37. Based on the above Findings of Fact and Conclusions of Law, the Application complies with all statutory and regulatory requirements.
38. Based on the above Findings of Fact and Conclusions of Law, the Application is approved and the Draft Permit issued.
39. Based on the above Findings of Fact and Conclusions of Law, and based on factors established in 30 TAC § 80.23, it would be just to allocate 100% of the transcript costs to Applicant.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY THAT:

1. The application of EOG Resources, Inc. is granted and the attached permit is issued.
2. EOG Resources, Inc. shall pay all of the transcript costs.
3. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
4. The effective date of this Order is the date the Order is final, as provided by 30 TAC § 80.273 and Tex. Gov't Code § 2001.144.
5. The Commission's Chief Clerk shall forward a copy of this Order to all Parties.
6. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

Issue Date:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman
For the Commission

**SOAH DOCKET NO. 582-12-6347
TCEQ DOCKET NO. 2012-0971-AIR**

APPLICATION BY EOG RESOURCES, INC. FOR PROPOSED AIR QUALITY PERMIT NO. 95412	§ § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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ATTACHMENT A

Acronyms and Abbreviations

ADMT	TCEQ Air Dispersion Modeling Team
AER	allowable emission rate
AERMOD	American Meteorological Society (AMS)/Environmental Protection Agency (EPA)/Regulatory Model (Air Modeling Program)
AERMET	AERMOD Meteorological Preprocessor
ALJ	Administrative Law Judge
AOI	area of impact
AP-42	compilation of air pollutant emission factors
APD	Air Permits Division
APWL	Air Pollutant Watch List
BACT	best available control technology
BLLC	Bartush Land and Cattle Company
BMP	Best Management Practice (usually plural BMPs)
CAA	Clean Air Act, <i>see also</i> FCAA, TCAA
CAMS	continuous air monitoring station
CCH	contested case hearing
CFR	Code of Federal Regulations
CID	Commissioners' Integrated Database
CN	Customer Number, <i>see also</i> RN
CO	carbon monoxide
COL	Conclusion of Law, <i>see also</i> FOF
DFW	Dallas-Fort Worth (TCEQ Regional Office – Region 4)
ED	TCEQ Executive Director
EI	emissions inventory
EOG	EOG Resources, Inc.
EPA	U.S. Environmental Protection Agency; <i>see also</i> USEPA
EPN	emission point number
ESL	effects screening level

FCAA	Federal Clean Air Act <i>see also</i> CAA, TCAA
FM	farm-to-market highway
FOF	Finding of fact, <i>see also</i> COL
GLC	ground-level concentration
GLC _{max}	maximum ground-level concentration
GLC _{ni}	maximum non-industrial ground-level concentration
HAP	hazardous air pollutant
lb/hr	pounds per hour
LOAEL	Lowest observed adverse effect level
µg/m ³	micrograms per cubic meter
MAERT	Maximum Allowable Emission Rate Table
m/s	meters per second
MSS	Maintenance, start-up, and shut-down
MSL	Modeling significance level
NAAQS	National Ambient Air Quality Standards
NAPD	Notice of Application and Preliminary Decision (second public notice), <i>see also</i> NORI
NESHAP	National Emissions Standards for Hazardous Air Pollutants
NIOSH	National Institute of Occupational Health and Safety
NO _x	nitrogen oxides
NO ₂	nitrogen dioxide
NOAEL	No observed adverse effect level
NOE	Notice of Enforcement, <i>see also</i> NOV
NORI	Notice of Receipt of Application and Intent to Obtain Permit (first public notice), <i>see also</i> NAPD
NOV	Notice of Violation, <i>see also</i> NOE
NSPS	New Source Performance Standards
NSR	New Source Review
NWS	National Weather Service
OCC	TCEQ Office of the Chief Clerk (<i>also</i> CCO)
OCE	TCEQ Office of Compliance and Enforcement
OGC	TCEQ Office of General Counsel
OPIC	TCEQ Office of Public Interest Counsel, <i>see also</i> PIC
OSHA	Occupational Safety & Health Administration
PBR	Permit by Rule
P.E.	Professional Engineer
PFD	Proposal for Decision
PIC	Public Interest Counsel, <i>see also</i> OPIC
PM	particulate matter
PM ₁₀	Particulate matter with an aerodynamic diameter less than or equal to 10 micrometers
PM ₄	Particulate matter with an aerodynamic diameter less than or equal to 4 micrometers/ (Silica)
PM _{2.5}	Particulate matter with an aerodynamic

	diameter less than or equal to 2.5 micrometers
ppb	parts per billion
ppm	parts per million
PSD	Prevention of significant deterioration
QA/QC	quality assurance/ quality control
ReV	Reference Value
RFC	Request for Comments
RG-25	TCEQ Air Quality Modeling Guidelines
RN	Regulated Entity Number, <i>see also</i> CN/Facility Number
RRMT	Red River Motorcycle Trails, Inc.
RTC	Response to Comments or Response to Public Comments
SIL	significance impact level
SIP	State Implementation Plan
SO ₂	sulfur dioxide
SOAH	State Office of Administrative Hearings
TAC	Texas Administrative Code
TBPE	Texas Board of Professional Engineers
TCAA	Texas Clean Air Act, <i>see also</i> CAA, FCAA
TCEQ	Texas Commission on Environmental Quality, <i>formerly</i> TNRCC
tph	tons per hour
tpy	tons per year
TSP	total suspended particulate
URF	Unit Risk Factor
USEPA	U.S. Environmental Protection Agency, <i>see also</i> EPA
VOC	volatile organic compound

**SOAH DOCKET NO. 582-12-6347
TCEQ DOCKET NO. 2012-0971-AIR**

APPLICATION BY EOG	§	BEFORE THE STATE OFFICE
	§	
RESOURCES, INC., FOR AIR	§	OF
	§	
QUALITY PERMIT NUMBER 95412	§	ADMINISTRATIVE HEARINGS

DRAFT PERMIT

Special Conditions
Permit Number 95412

THE STATE OF TEXAS
COUNTY OF TARRANT
JUL - 9 2012
OFFICE OF THE EXECUTIVE DIRECTOR
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
1000 RICE STREET, SUITE 1000
HOUSTON, TEXAS 77001
713/696-7000
www.tceq.state.tx.us

Emission Limitations

1. This permit covers only those sources of emissions listed in the attached table entitled "Emission Sources - Maximum Allowable Emission Rates," and those sources are limited to the emission limits and other conditions specified in the table.

Fuel Specifications

2. This permit does not authorize the operation of an internal combustion engine in conjunction with this facility. The holder of this permit shall obtain prior authorization for any internal combustion engine that remains at a single point or location for more than 12 consecutive months. Any engine that remains at a single point or location for less than or equal to 12 consecutive months is not considered a stationary source and therefore no authorization is required.
3. Fuel for the Dryer (Emission Point No. [EPN] DR150) shall be pipeline-quality sweet natural gas. Use of any other fuel will require prior approval of the Executive Director of the Texas Commission on Environmental Quality (TCEQ).

Upon request by the Executive Director of the TCEQ or the TCEQ Regional Director or any local air pollution control program having jurisdiction, the holder of this permit shall provide a sample and/or an analysis of the fuel used in these facilities or shall allow air pollution control program representatives to obtain a sample for analysis.

Federal Applicability

4. These facilities shall comply with all applicable requirements of the U.S. Environmental Protection Agency (EPA) regulations on Standards of Performance for New Stationary Sources (NSPS) promulgated in Title 40 Code of Federal Regulations (40 CFR) Part 60, specifically the following:
 - A. Subpart A - General Provisions; and
 - B. Subpart UUU - Calciners and Dryers in Mineral Industries.

Opacity/Visible Emission Limitations

5. There shall be no visible fugitive emissions leaving the property. Observations for visible emissions shall be performed and recorded quarterly. The visible emissions determination shall be made during normal plant operations. Observations shall be made on the downwind property line for a minimum of six minutes. If visible emissions are observed, an evaluation must be accomplished in accordance with EPA 40 CFR Part 60, Appendix A, Test Method (TM) 22, using the criteria that visible emissions shall not exceed a cumulative 30 seconds in duration in any six-minute period. If visible emissions exceed the TM 22 criteria, immediate action shall be taken to eliminate the excessive visible

emissions. The corrective action shall be documented within 24 business hours of completion.

6. Opacity of particulate matter emissions from the Dryer Baghouse Stack (EPN DR150), the Surge Bin Dust Collector Baghouse (EPN BV90), the Tank 250 Dust Collector Baghouse (EPN BV350), the Product Silo Dust Collector Baghouse Stacks (EPNs BV400, BV310, BV320, and BV330) and from the Dry Plant Transfer Dust Collector Baghouse (EPN DC100) shall not exceed five percent. Determination of compliance with this requirement shall be made first by observing for visible emissions during normal plant operations. Observations shall be made at least 15 feet and no more than 0.25 mile from the emission point. If visible emissions are observed from the emission point, opacity shall be determined by 40 CFR Part 60, Appendix A, TM 9. Determination of compliance with this requirement shall be performed and the results recorded quarterly.

In accordance with 40 CFR Part 60, Appendix A, TM 9 or equivalent, and except for those periods described in Title 30 Texas Administrative Code (30 TAC) §§ 101.201 and § 101.211, opacity of emissions from the screen (EPN SCRNMINE) and from any transfer point on belt conveyors shall not exceed seven percent over a six-minute period.

7. There shall be no visible emissions, except for visible water vapor or fog, from the saturated Wet Plant Screen (EPN SCREEN) nor from the saturated processes consisting of the Cyclones, Attrition Cells, Density Separators, Dewatering Tanks and associated pumps and conveyors.

Operational Limitations, Work Practices, and Plant Design

8. The facility shall be limited to the following hourly and annual throughput rates:

Source	Tons per hour	Tons per year in any rolling 12-month period
Vibrating Scalping Screen (EPN SCRNMINE)	500	4,380,000
Wash Screen (EPN SCREEN)	300	2,628,000
Dryer Throughput	158	1,182,600

9. All facilities are authorized to operate up to 8,760 hours per year except the Dryer Baghouse (EPN DR150) and associated Dryer, the Dry Plant Transfer Dust Collector Baghouse (EPN DC100) and associated dry feed bins, dry screens and conveyors, the Surge Bin Dust Collector (EPN BV90), and the Product Silo Dust Collectors (EPNs BV250, BV300, BV310, BV320 and BV330) and associated product load facilities which shall each be limited to a maximum operating schedule not to exceed 7,884 hours per year in any rolling 12-month period.
10. All material transfer points prior to the dryer shall be partially enclosed and the Vibrating Scalping Screen (EPN SCRNMINE) shall be completely enclosed except for openings to allow material to enter and exit the screen. Additionally, permanently mounted spray bars shall be installed at the Vibrating Scalping Screen (EPN SCRNMINE) and at all material

transfer points prior to the dryer, except for those processes defined as being saturated in the section above on Opacity/Visible Emission Limitations. All spray bars shall be operated as necessary to minimize emissions and maintain compliance with TCEQ rules and regulations.

11. The Wet Plant Screen (EPN SCREEN) shall operate under saturated conditions at all times.
12. The Dryer (EPN 150) shall be vented to the Dryer Baghouse (EPN DR150) designed to meet an outlet grain loading of no greater than 0.005 grain per dry standard cubic feet of air flow (gr/dscf) and exhaust vertically uninhibited (without a rain cap) through a stack at least 95 feet above ground level.
13. All screening and material handling operations after the dryer and prior to the product storage silos shall be enclosed and vented to the Dry Plant Transfer Dust Collector Baghouse (EPN DC100) designed to meet an outlet grain loading of no greater than 0.001 gr/dscf and exhaust vertically uninhibited (without a rain cap) through a stack at least 28 feet above ground level.
14. The Surge Bin (EPN 90) shall be vented to the Surge Bin Dust Collector (EPN BV90) designed to meet an outlet grain loading of no greater than 0.001 gr/dscf and exhaust vertically uninhibited (without a rain cap) through a stack at least 51 feet above ground level.
15. The Overs/Fines Tank (EPN TK250) shall be vented to the Product Silo Dust Collector (EPN BV250) designed to meet an outlet grain loading of no greater than 0.001 gr/dscf and exhaust vertically uninhibited (without a rain cap) through a stack at least 87.5 feet above ground level.
16. All Product Silos (EPN TK300, TK310, TK320 and TK330) shall be vented to the Product Silo Dust Collector (EPN BV250, BV310, BV320 and BV330 respectively) designed to each meet an outlet grain loading of no greater than 0.001 gr/dscf and each exhaust vertically uninhibited (without a rain cap) through individual stacks at least 100 feet above ground level.
17. A visible and/or audible warning device shall be installed on each silo to warn operators when the silos are full so that silos are not overloaded. The silos shall not be overloaded at any time.
18. All hoppers shall be partially enclosed with extended sides. No material shall be dropped into a hopper at a height above the partial enclosures. Loading of material into open bed trucks (EPN TS250) for returning material to the mine shall be controlled with water sprays operated as necessary to minimize emissions and maintain compliance with TCEQ rules and regulations. Loading of product trucks (EPNs TS300, TS310, TS320 and TS330) shall be via enclosed chutes with emissions vented to the respective silo baghouses.
19. All in-plant roads, traffic areas and active work areas shall be cleaned or sprayed with water upon detection of visible particulate matter emissions to maintain compliance with

all applicable TCEQ rules and regulations.

20. Stockpiles shall not exceed a cumulative area of 2.1 acres. Stockpiles shall be constructed and controlled as represented in the application and shall not exceed 50 feet in height unless approved by the TCEQ Regional Director or any local air pollution control program having jurisdiction. All stockpiles shall be sprayed with water upon detection of visible particulate matter emissions to maintain compliance with all applicable TCEQ rules and regulations.
21. Spillage of any aggregate material, silica sand and/or industrial sand shall be cleaned up immediately to minimize emissions and maintain compliance with TCEQ rules and regulations.

Determination of Compliance

22. To demonstrate compliance with the maximum allowable emission rates table (MAERT) and with emission performance levels as specified in the special conditions, the holder of this permit shall comply with the NSPS Subpart A and UUU requirements within the specified time frame. Sampling must be conducted in accordance with the TCEQ Sampling Procedures Manual or in accordance with the applicable EPA 40 CFR procedures. Any deviations from those procedures must be approved by the TCEQ Executive director prior to sampling.
23. Upon request by the TCEQ Executive Director or the TCEQ Regional Director having jurisdiction, the holder of this permit shall perform stack sampling and/or other testing as required to establish the actual pattern and quantities of air contaminants being emitted into the atmosphere to demonstrate compliance with the MAERT and with emission performance levels as specified in the special conditions and/or otherwise prove satisfactory equipment performance. Sampling must be conducted in accordance with the TCEQ Sampling Procedures Manual or in accordance with the applicable EPA 40 CFR procedures. Any deviations from those procedures must be approved by the TCEQ Executive Director or the appropriate TCEQ Regional Director prior to conduction sampling.
24. The capture and control system of the Dryer Baghouse (EPN DR150) and the Dry Plant Transfer Dust Collector Baghouse (EPN DC100) shall be operated and maintained in accordance with the manufacturers' recommendations as to assure that the minimum control efficiency is met at all times when the system is required to be operated. A pressure drop gauge shall be installed across the filter bank showing differential pressure, in inches water column, or equivalent pressure drop scale. The monitoring device for each system shall be calibrated at least annually in accordance with the manufacturer's specifications. Pressure drop reading shall be recorded at least once per day that the system is required to be operated. Filters shall be replaced whenever the pressure drop across the filter no longer meets the manufacturer's recommendation. Records of maintenance performed, including dates of filter replacement, shall be included in a log as they occur. If the filter system operating performance parameters are outside of the manufacturer's recommended operating range, the affected facility shall not be in operation until the abatement equipment is repaired.

Sampling Requirements

25. The holder of this permit is responsible for providing sampling and testing facilities and conducting the sampling and testing operations at their own expense. Sampling ports and platforms shall be incorporated into the design of the stacks according to the specifications set forth in the attachment entitled "Chapter 2, Stack Sampling Facilities" prior to stack sampling. Alternate sampling facility designs may be submitted for approval by the TCEQ Regional Office with jurisdiction.
26. All sampling shall be conducted in accordance with the Special Conditions listed below except for sampling conducted for demonstration of compliance with the Opacity/Visible Emissions Limitations section of this permit.
27. Sampling shall be conducted in accordance with the TCEQ Sampling Procedures Manual and EPA TMs.
28. A pretest meeting shall be held with personnel from the TCEQ before the required tests are performed. The TCEQ Regional Office with jurisdiction shall be notified not less than 45 days prior to sampling to schedule a pretest meeting. The notice shall include:
 - (A) Date for pretest meeting;
 - (B) Date sampling will occur;
 - (C) Points or sources to be sampled;
 - (D) Name of firm conducting sampling;
 - (E) Type of sampling equipment to be used; and
 - (F) Method or procedure to be used in sampling.

The purpose of the pretest meeting is to review the necessary sampling and testing procedures, to provide the proper data forms for recording pertinent data, and to review the format procedures for submitting the test results.

29. Alternate sampling methods and representative unit testing may be proposed by the permit holder. A written proposed description of any deviation from sampling procedures or emission sources specified in permit conditions or TCEQ or EPA sampling procedures shall be made available to the TCEQ prior to the pretest meeting. Such a proposal must be approved, in writing, by the TCEQ Regional Office with jurisdiction at least two weeks prior to sampling.
30. Requests to waive testing for any pollutant specified shall be submitted, in writing, for approval to the TCEQ Office of Air, Air Permits Division in Austin.
31. During stack sampling emission testing, the facilities shall operate at maximum represented throughput rates. Primary operating parameters that enable determination of throughput rates shall be monitored and recorded during the stack test. These parameters

are to be determined at the pretest meeting.

If the plant is unable to operate at the maximum represented throughput rates during testing, then additional stack testing shall be required when the throughput rate exceeds the previous stack test throughput rate by +10 percent unless otherwise determined, in writing, by the TCEQ Executive Director.

32. Requests for additional time to perform sampling shall be submitted to the TCEQ Regional Office with jurisdiction.
33. Copies of the final sampling report shall be forwarded to the TCEQ within 60 days after sampling is completed. Sampling reports shall comply with the attached provisions of Chapter 14 of the TCEQ Sampling Procedures Manual. The reports shall be distributed as follows:

One copy to the TCEQ Regional Office with jurisdiction.

One copy to each appropriate local air pollution control program with jurisdiction.

One copy to the TCEQ Office of Air, Air Permits Division in Austin.

Recordkeeping Requirements

34. In addition to the recordkeeping requirements specified in General Condition No. 7 and 40 CFR Part 60, Subparts A and UUU, the following records shall be maintained at this facility site and made available at the request of personnel from the TCEQ or any other air pollution control program having jurisdiction to demonstrate compliance with permit limitations. These records shall be totaled for each calendar month, retained for a rolling 24-month period, and include the following:
 - A. Quarterly observations for visible emissions and opacity observations as specified in Opacity/Visible Emission Limitations;
 - B. Daily, monthly, and annual amounts of materials processed, summarized in tons per hour, tons per month, and tons per year;
 - C. Actual hours of operation of the Dryer Baghouse (EPN DR150), the Dry Plant Transfer Dust Collector Baghouse (EPN DC100), the Surge Bin Dust Collector (EPN BV90), and the Product Silo Dust Collectors (EPNs BV250, BV300, BV310, BV320 and BV330);
 - D. Records of road cleaning, application of road dust control, or road maintenance for dust control;
 - E. Records of daily pressure drop readings for the Dryer Baghouse (EPN DR150) and the Dry Plant Transfer Dust Collector Baghouse (EPN);
 - F. Records of manufacturer's recommended calibration specifications and records of calibration of the monitoring devices as required in Determination of Compliance;

- G. Inspections, malfunctions, repairs, and maintenance of abatement equipment, which includes the manufacturer's suggested cleaning and maintenance schedule; and
- H. A copy of the manufacturer's suggested cleaning and maintenance schedule for abatement equipment.

Date: _____

Emission Sources - Maximum Allowable Emission Rates

Permit Number 95412

This table lists the maximum allowable emission rates and all sources of air contaminants on the applicant's property covered by this permit. The emission rates shown are those derived from information submitted as part of the application for permit and are the maximum rates allowed for these facilities, sources, and related activities. Any proposed increase in emission rates may require an application for a modification of the facilities covered by this permit.

Air Contaminants Data

Emission Point No. (1)	Source Name (2)	Air Contaminant Name (3)	Emission Rates	
			lbs/hour	TPY (4)
SCRNMINE	Vibrating Scalping Screen (5)	PM	0.18	0.79
		PM ₁₀	0.11	0.48
		PM _{2.5}	0.03	0.14
SCREEN	Wet Plant Screen 100 (5)	PM	0.09	0.39
		PM ₁₀	0.02	0.09
		PM _{2.5}	0.01	0.03
TRSFMINE	Mine Area Material Handling Fugitives (5), (6)	PM	0.50	2.21
		PM ₁₀	0.17	0.73
		PM _{2.5}	0.05	0.21
CONVEY	Overland Belt Conveyors (5), (7)	PM	0.40	1.76
		PM ₁₀	0.15	0.64
		PM _{2.5}	0.04	0.18
TRSFRR	Raw Sand Area Material Handling Fugitives (5), (8)	PM	0.09	0.41
		PM ₁₀	0.03	0.13
		PM _{2.5}	0.01	0.04
TRSFDRY	Product Sand Area Material Handling Fugitives (5), (9)	PM	0.01	0.03
		PM ₁₀	<0.01	0.01
		PM _{2.5}	<0.01	<0.01
LOADOUT	Loadout Material Handling Fugitives (5), (10)	PM	0.07	0.10
		PM ₁₀	0.03	0.04
		PM _{2.5}	0.01	0.01

Emission Sources - Maximum Allowable Emission Rates

Emission Point No. (1)	Source Name (2)	Air Contaminant Name (3)	Emission Rates	
			lbs/hour	TPY (4)
LOAD	Hoppers Loading Operations (5), (11)	PM	0.02	0.07
		PM ₁₀	0.01	0.02
		PM _{2.5}	<0.01	0.01
PILES	Stockpile Fugitives (5)	PM	---	1.46
		PM ₁₀	---	0.73
		PM _{2.5}	---	0.21
DR150	Dryer Baghouse Stack	PM	2.04	8.04
		PM ₁₀	2.04	8.04
		PM _{2.5}	2.04	8.04
		NO _x	6.01	26.32
		CO	3.13	13.71
		VOC	0.20	0.90
		SO ₂	0.53	2.33
BV90	TK90 Dust Collector Stack	PM	<0.01	0.02
		PM ₁₀	<0.01	0.02
		PM _{2.5}	<0.01	0.02
BV250	Tank 250 Dust Collector Stack	PM	<0.01	0.02
		PM ₁₀	<0.01	0.02
		PM _{2.5}	<0.01	0.02
BV300	Product Silo 300 Dust Collector Stack	PM	<0.01	0.02
		PM ₁₀	<0.01	0.02
		PM _{2.5}	<0.01	0.02
BV310	Product Silo 310 Dust Collector Stack	PM	<0.01	0.02
		PM ₁₀	<0.01	0.02
		PM _{2.5}	<0.01	0.02

Emission Sources - Maximum Allowable Emission Rates

Emission Point No. (1)	Source Name (2)	Air Contaminant Name (3)	Emission Rates	
			lbs/hour	TPY (4)
BV320	Product Silo 320 Dust Collector Stack	PM	<0.01	0.02
		PM ₁₀	<0.01	0.02
		PM _{2.5}	<0.01	0.02
BV330	Product Silo 330 Dust Collector Stack	PM	<0.01	0.02
		PM ₁₀	<0.01	0.02
		PM _{2.5}	<0.01	0.02
DC100	Dry Plant Transfer Dust Collector Stack	PM	0.09	0.37
		PM ₁₀	0.09	0.37
		PM _{2.5}	0.09	0.37

(1) Emission point identification - either specific equipment designation or emission point number from plot plan.

(2) Specific point source name. For fugitive sources, use area name or fugitive source name.

(3) PM - total particulate matter, suspended in the atmosphere, including PM₁₀ and PM_{2.5}, as represented
 PM₁₀ - total particulate matter equal to or less than 10 microns in diameter, including PM_{2.5}, as represented

PM_{2.5} - particulate matter equal to or less than 2.5 microns in diameter

NO_x - total oxides of nitrogen

CO - carbon monoxide

VOC - volatile organic compounds as defined in Title 30 Texas Administrative Code § 101.1

SO₂ - sulfur dioxide

(4) Compliance with annual emission limits (tons per year) is based on a 12 month rolling period.

(5) Emission rate is an estimate and is enforceable through compliance with the applicable special condition(s) and permit application representations.

(6) Includes EPNs TRANS1 through TRANS10

(7) Includes EPNs CONVEY1 and CONVEY2.

(8) Includes EPNs TRANS11 through TRANS19.

(9) Includes EPNs TRANS 20 through TRANS22.

(10) Includes EPNs TS250, TS300, TS310, TS320 and TS330 loading operations as defined in the applicable Special Conditions.

(11) Includes EPNs FH100, FH103, LOADHOPR.

Date: _____

Construction Permit Source Analysis & Technical Review

Company	EOG Resources, Inc.	Permit Number	95412
City	Saint Jo	Project Number	164348
County	Cooke	Account Number	N/A
Project Type	Initial	Regulated Entity Number	RN106078322
Project Reviewer	Mr. Larry Buller, P.E.	Customer Reference Number	CN600564520
Site Name	Industrial Sand Processing Plant		

Project Overview

EOG Resources, Inc. has submitted an application requesting authorization to construct and operate an Industrial Sand Processing Plant to be located in Cooke County near Saint Jo, Texas, to supply sand for oil and gas well service operations. The original application was received on March 25, 2011 and revised on September 2011, December 2011 and January 2011.

The proposed plant will consist of a wet plant area where sand is mined, screened, and washed, a natural gas fired dryer, and a dry plant area where the final product is further screened and loaded into product trucks. Plant wide throughput is expected to be 500 tons per hour with an annual throughput of 4,380,000 tons per year. Production through the dryer would be limited to 158 tons per hour producing a final product output of 1,182,600 tons per year of industrial sand. The plant would operate 8,760 hours per year with the dryer and associated conveyors, screens and loading facilities following the dryer limited to an operating schedule not to exceed 7,884 hours per year in any rolling 12 month period. The expected emissions from this plant, based on the proposed throughput and operating schedule, are shown in the table below.

At the time of this draft, there have been 526 public comments received with 159 requests for a hearing and 190 requests for a public meeting. Due to the interest from the public, a public meeting was held in Muenster, Cook County, Texas on August 23, 2011. The applicant has requested the direct referral of this application to the State Office of Administrative Hearings (SOAH).

Emission Summary

Air Contaminant	Current Allowable Emission Rates (tpy)	Proposed Allowable Emission Rates (tpy)	Change in Allowable Emission Rates (tpy)
PM	0.00	17.49	17.49
PM ₁₀	0.00	12.04	12.04
PM _{2.5}	0.00	9.55	9.55
VOC	0.00	0.90	0.90
NO _x	0.00	26.23	26.23
CO	0.00	13.71	13.71
SO ₂	0.00	2.33	2.33

Compliance History Evaluation - 30 TAC Chapter 60 Rules

A compliance history report was reviewed on:

April 2, 2012

Compliance period:

March 26, 2006 through March 25, 2011

Site rating & classification:

3.01 [Average by Default]

Company rating & classification:

2.90 [Average]

If the rating is 40<RATING<45, what was the outcome, if any, based on the findings in the formal report:

NA

Has the permit changed on the basis of the compliance history or rating?

No

Public Notice Information - 30 TAC Chapter 39 Rules

Rule Citation

Requirement

39.403

Date Application Received:

March 25, 2011

Date Administratively Complete:

April 7, 2011

Construction Permit Source Analysis & Technical Review

Permit No. 95412
Page 2

Regulated Entity No. RN106078322

Rule Citation	Requirement
39.603	Small Business Source? No
	Date Leg Letters mailed: April 7, 2011
	Date Published: April 15, 2011 and May 27, 2011
	Publication Name: Originally published in Cooke County in the <i>Muenster Enterprise</i> . Subsequently published in the nearest municipality, Montague County's <i>Saint Jo Tribune</i>
	Pollutants: organic compounds, nitrogen dioxides, sulfur dioxide, carbon monoxide and particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less
39.604	Date Affidavits/Copies Received: April 19, 2011 and June 1, 2011
	Is bilingual notice required? No, the company certifies that students who attend the nearest elementary school (St. Jn Elementary) or middle school (St. Jo Middle School) are not eligible to be enrolled in a bilingual program provided by the district.
	Date Certification of Sign Posting / Application Availability Received: May 23, 2011 and June 30, 2011
	Public Comments Received? Yes (526)
	Hearing Requested? Yes (159)
	Meeting Request? Yes (190)
	Date Meeting Held: August 23, 2011
	Date Response to Comments sent to OCC: TBD
	Request(s) withdrawn? No
	Date Withdrawn: NA
	Consideration of Comments:
	Is 2nd Public Notice required? Yes
39.419	Date 2nd Public Notice/Preliminary Decision Letter Mailed:
39.603	Date Published:
	Publication Name:
	Pollutants:
	Date Affidavits/Copies Received:
	Is bilingual notice required?
	Language:
	Date Published:
	Publication Name:
	Date Affidavits/Copies Received:
	Date Certification of Sign Posting / Application Availability Received:
	Public Comments Received?
	Meeting Request?
	Date Meeting Held:
	Hearing Request?
	Date Hearing Held:
	Request(s) withdrawn?

Construction Permit Source Analysis & Technical Review

Permit No. 95412
Page 3

Regulated Entity No. RN106078322

Rule Citation	Requirement
	Date Withdrawn:
	Consideration of Comments:
39.421	Date RTC, Technical Review & Draft Permit Conditions sent to OCC:
	Request for Reconsideration Received?
	Final Action:
	Are letters Enclosed?

Construction Permit & Amendment Requirements - 30 TAC Chapter 116 Rules

Rule Citation	Requirement	
116.111(a)(2)(G)	Is the facility expected to perform as represented in the application?	Yes
116.111(a)(2)(A)(i)	Are emissions from this facility expected to comply with all TCEQ air quality Rules & Regulations, and the intent of the Texas Clean Air Act?	Yes
116.111(a)(2)(B)	Emissions will be measured using the following method: Comments on emission verification:	Stack sampling, record keeping, and applicable NSPS requirements Stack sampling may be used to verify emissions from stacks. Records will be kept of hourly and annual throughput from which fugitive emissions can be calculated
116.111(a)(2)(D)	Subject to NSPS?	Yes
	Subparts A& UUU [Standards of Performance for Calciners and Dryers in Mineral Industries]	
116.111(a)(2)(E)	Subject to NESHAP?	No
	The facility does not trigger any of the requirements for hazardous air pollutants as listed under Title 40 CFR Part 61, promulgated by the EPA under the authority of the Federal Clean Air Act (FCAA), §112, as amended.	
116.111(a)(2)(F)	Subject to NESHAP (MACT) for source categories?	No
	This facility does not trigger any of the requirements of any applicable maximum achievable control technology standard as listed under 40 CFR Part 63, promulgated by the EPA under the FCAA, §112, or as listed under Title 30 TAC §113, Subchapter C relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR 63).	
116.111(a)(2)(H)	Nonattainment review applicability: The site is located in Cooke County, which is not a nonattainment county. Therefore, nonattainment review does not apply.	
116.111(a)(2)(I)	PSD review applicability: The facility is not a named source and has allowable emissions of less than 100 tons per year of regulated pollutants. Since the facility is not a major source and the project is not major, PSD does not apply.	
116.111(a)(2)(L)	Is Mass Emissions Cap and Trade applicable to the new or modified facilities?	No
	This site is not located in the Houston-Galveston-Brazoria ozone nonattainment area.	
116.140 - 141	Permit Fee: \$75,000.00	Fee certification: R120088

Construction Permit Source Analysis & Technical Review

Permit No. 95412
Page 4

Regulated Entity No. RN106078322

Title V Applicability - 30 TAC Chapter 122 Rules

Rule Citation	Requirement
122.10(13)	Title V applicability: The site is not located in a nonattainment county and has less than 100 tons per year of regulated pollutants (not a major source). The site does not emit hazardous air pollutants listed under the FCAA §112(b). Thus, Title V is not applicable.
122.602	Periodic Monitoring (PM) applicability: The site is not subject to the Federal Operating Permits Program, therefore the site is not subject to Periodic Monitoring.
122.604	Compliance Assurance Monitoring (CAM) applicability: The site is not subject to the Federal Operating Permits Program, therefore the site is not subject to Compliance Assurance Monitoring.

Request for Comments

Received From	Program/Area Name	Reviewed By	Comments
Region:	4	Mr. Neal Penney	Added record keeping requirements for calibration of baghouse pressure drop monitoring devices.
Toxicology:	TCEQ Toxicology Division	Ms. Angela Curry, M.S.	No adverse health effects are expected to occur among the general public as a result of exposure to the described emissions.

Process/Project Description

Wet sand from the mine area will be dropped into a mobile hopper equipped with side walls and then transported to an enclosed vibrating scalping screen by a conveyor system. From the screen, the material will be transferred by a conveyor system onto the main stockpile. The screen may also transfer materials to a secondary screen pile. The material from the screen pile will be returned to the mine.

Material from the stockpile will sit on top of funnels which will drop the sand onto a conveyor below grade, thereby eliminating any heavy equipment work in the stockpile. From the tunnel belt conveyor the wet sand will be transferred to another belt conveyor and then into the flood hopper and into a flood screen where water is added to form a slurry. Should the mine conveying system be out of service, front-end loaders will transfer sand to a hopper which will then be dropped onto a belt conveyor and transported to the flood hopper.

The screen will send oversized material to the "overs storage" pile which is located in a 3-sided bunker. The slurried undersized material will be pumped to the wet plant where the sand will be sent to cyclones, attrition cells, density separators and a dewatering operation where excess water will be drawn off and sent to the thickener tank. The attrition cells also send water to the thickener tank. After dewatering, belt conveyors will transport the sand to a surge bin. Also from the wet plant, wet cake material (saturated) from the thickener's belt filter press will be conveyed to the "cake stockpile" and returned to the mine.

From the surge bin, the sand will be transported to the dry plant and to the dryer. Alternatively, the sand can be diverted to the bypass stockpile which is located in a building. When necessary, front-end loaders will take sand from the bypass pile and load the sand into the alternate feed hopper which transfers the sand back to the surge bin via belt conveyors.

After being dried, the sand will be fed to screens for product sizing and then to the final product storage silos. From the storage silos, sand will be loaded into transport trucks for off-site delivery.

Pollution Prevention, Sources, Controls and BACT- [30 TAC 116.111(a)(2)(C)]

The two conveyors from the mine are over 300 ft. long and both are covered. Additionally, they will [1] be designed with a 31° trough, [2] handle material with an expected moisture content of 3% or greater, and [3] will have water sprays located at every material drop point and used as necessary to control emissions.

All transfer emissions at this plant will be minimized by wet suppression measures (spray bars), enclosures, or dust collection systems. Particulate matter emissions from the dry plant transfers will be controlled by enclosures venting to a dryer plant dust collector system achieving an outlet grain loading of no greater than 0.001 grain per dry standard cubic foot of air flow (gr/dscf).

All hoppers used at this site will have extended sides to shield drops from wind. All drops into hoppers will be from a distance no higher than the extended sides.

Construction Permit Source Analysis & Technical Review

Permit No. 95412
Page 5

Regulated Entity No. RN106078322

Emissions from vibrating screening operations in the mine area will be controlled by permanently mounted spray bars and by enclosures. The sand transferring in the wet plant screen will first be flooded with water at the flood hopper and then transferred to the flood screen. Additional water will be added to ensure that a slurry is formed. The screen will be enclosed as well. The remaining wet plant sand processing equipment will be hard piped together resulting in a completely enclosed system. The dry plant screens will all be enclosed units and vented to the dry plant dust collector.

Two storage piles will be located within three sided bunkers. One storage pile will be in an enclosed building. With the exception of the storage pile in the building, water sprays will be implemented at all stock piles to control emissions.

Particulate matter emissions from the dryer will be controlled by a baghouse capable of meeting an outlet grain loading of no greater than 0.005 gr/dscf. The dryer will be fired by natural gas with a sulfur content not to exceed 0.0015 percent by weight.

Storage silos and the surge bin prior to the dryer will each be controlled by a baghouse or cartridge filter system which will meet and outlet grain loading of no more than 0.001 gr/dscf. Enclosed truck loading will also be controlled with bin vent filter that will control emissions with an efficiency of at least 99.7%. When loading into an open top truck, the emissions will be controlled with a water spray.

These controls meet BACT for a plant of this type with consideration given to the technical practicability and economic reasonableness of reducing emissions from the facility.

Impacts Evaluation - 30 TAC 116.111(a)(2)(J)

Was modeling conducted? Yes	Type of Modeling: AERMOD (Version 11353)
Will GLC of any air contaminant cause violation of NAAQS?	No
Is this a sensitive location with respect to nuisance?	Low, per site review conducted by Region 4
[§ 116.111(a)(2)(A)(ii)] Is the site within 3000 feet of any school?	No
Additional site/land use information: Open ranchland within 2,000 ft. in all directions with widely scattered oil and gas wells (per Region 4 site review). A recreational area - an off-road motorcycle park used for various outdoor activities - is located on adjacent property.	

Summary of Modeling Results

The EPA's approved AERMOD (Version 11353) used in refined screening mode was utilized by the applicant to evaluate site wide contaminant dispersion. The modeling methodology and results were audited by the TCEQ Air Dispersion Modeling Team (ADMT). Of all State and Federal regulated contaminants applicable to this plant, only PM_{2.5} (24-hour and annual time averaging periods) and NO₂ (1 hour time averaging period) were found to be above the *de minimis* levels. The *de minimis* level is defined as a quantity of contaminant concentration below which the air quality is not anticipated to degrade due to these emissions.

The table below provides the total maximum ground level concentrations (GLCmax) in micrograms per cubic meter (µg/m³) for each pollutant found to be above the *de minimis* levels over the respective time averaging period. The table also gives the background concentration used which, when added to the GLCmax concentration, results in the total concentration for that contaminant for that time period. These results are compared to the NAAQS standard provided in the last column.

Pollutant	Averaging Time	GLCmax (µg/m ³)	Background Concentration (µg/m ³)	Total Concentration (µg/m ³)	NAAQS Standard (µg/m ³)
PM _{2.5}	24-hour	1.97	24.5	26.47	35
PM _{2.5}	Annual	0.41	10.7	11.11	15
NO ₂	1-hour	15.2	102.9	118.10	188

For PM_{2.5} concentrations the applicant reviewed monitors in Dallas and Tarrant Counties that had three years of complete data. The monitor with the highest background concentration for each averaging time was used to represent the background concentration at the applicant's site. The use of monitors in either Dallas or Tarrant Counties is conservative since the populations and 2008 reported PM_{2.5} emissions in Dallas County (population of 2,368,139 and emissions of 7,089 tons of PM_{2.5}) and Tarrant County (population of 1,809,034 with emissions of 5,190 tons of PM_{2.5}) are greater than the population and 2008 reported PM_{2.5} emissions in Cooke County (population of 38,437 with emissions of 961 tons). Thus, the 24-hour PM_{2.5} background concentration was obtained from the EPA AIRS monitor 484391006 located at 600 1/2 Congress Street in Fort Worth, Tarrant County. The annual PM_{2.5} concentration was obtained from the EPA AIRS monitor 481130050 located at 717 South Akard in Dallas, Dallas County. The ADMT reviewed more recent monitoring data for each time averaging period and determined that it would not change the overall result.

**Construction Permit
Source Analysis & Technical Review**

Permit No. 95412
Page 6

Regulated Entity No. RN106078322

For the NO₂ concentrations at the one hour time averaging period, the applicant also reviewed the monitors in Dallas and Tarrant Counties for the reasons given above. In this instance, the one hour NO₂ concentration was obtained from the EPA AIRS monitor 481130069 located at 1415 Hinton Street in Dallas, Dallas County. The ADMT reviewed more recent monitoring data for this contaminant and time averaging period and determined that it would not change the overall result.

As shown in the table above, the maximum ground level concentration of PM_{2.5} and NO₂ over the time periods specified, when combined with the appropriate (and conservative) background concentrations, do not exceed the respective NAAQS limitations.

To determine any potential effects of silica emissions it was conservatively assumed for this evaluation that 100% of the particulate matter being emitted from this site would be silica. For the one hour and annual averaging time periods required, the modeling evaluation provided the maximum ground level concentration in micrograms per cubic meter as well as the maximum concentration at the closest non-industrial location (GLCni). These values were compared to the Effects Screening Level (ESL) value determined by the Toxicology Division and defined as the potential for effects to occur as a result of exposure to concentrations of constituents in the air. ESLs are based on data concerning health effects, the potential for odors to be a nuisance, and effects on vegetation. If predicted ambient levels of constituents in air exceed the screening levels, it does not necessarily indicate a problem but rather triggers a review in more depth. Results of this analysis are shown in the table below.

Pollutant & CAS No.	Averaging Time	GLCmax (µg/m ³)	GLCni (µg/m ³)	ESL (µg/m ³)
Silica, Crystalline (Quartz) CAS No. 14808-60-7	1-hour (PM ₁₀)	16.4	15.0	14
Silica, Crystalline (Quartz) CAS No. 14808-60-	Annual (PM ₄)	0.44	0.19	0.27

The modeling evaluation indicated that the GLCmax location would occur along the property line adjacent to vacant land. Therefore, these values were used by the Toxicology Division to assess any potential affects at a non industrial receptor.

As depicted in the table above, the short term ESL is exceeded at the GLCmax location by 1.17 times. The modeling report shows that this will happen with a frequency of exceedance of five hours per year. The predicted long term ESL is exceeded at the GLCmax location by 1.63 times. After a review of this data, considering the magnitude and frequency of the ESL exceedances, the Toxicology Division determined that the silica concentrations and frequency of occurrence are allowable and no adverse health effects are expected to occur among the general public.

Permit Concurrence and Related Authorization Actions

Is the applicant in agreement with special conditions?	Yes
Company representative(s):	Ms. Lisa A. Hoover, P.E., Waid Environmental
Contacted Via:	e-mail
Date of contact:	April 24, 2012
Other permit(s) or permits by rule affected by this action:	None
List permit and/or PBR number(s) and actions required or taken:	NA

Project Reviewer	Date	Team Leader/Section Manager/Backup	Date
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Appendix 4

Order Granting the Application of EOG
Resources Inc. for Air Quality Permit No.
95412; TCEQ Docket No. 2012-0971-AIR;
SOAH Docket No. 582-12-6347

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER Granting the Application of EOG Resources, Inc. for Air Quality Permit No. 95412; TCEQ Docket No. 2012-0971-AIR; SOAH Docket No. 582-12-6347

On February 12, 2014, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the application of EOG Resources Inc. (EOG or Applicant) for a new Air Quality Permit No. 95412, in Cooke County, Texas. Administrative Law Judges (ALJs) Penny A. Wilkov and Travis Vickery of the State Office of Administrative Hearings (SOAH) presented a Proposal for Decision (PFD) recommending that the Commission approve the application. After considering the PFD, the Commission adopts the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

General and Procedural Findings

1. On March 25, 2011, Applicant filed an application with the Commission requesting an air quality permit to construct and operate multiple facilities as part of a sand processing plant at 14596 N. FM 373 in rural northwest Cooke County, Texas (Application).
2. Amendments to and correspondence regarding the Application were subsequently submitted to TCEQ on July 8, 2011, September 27, 2011, December 9, 2011, and January 11, 2012.
3. The TCEQ Executive Director (ED) declared the Application administratively complete on April 7, 2011. The ED also issued a draft air quality permit (Draft Permit).
4. The Notice of Receipt of Application and Intent to Obtain Permit was published in the *Muenster Enterprise* on April 15, 2011, and in the *Saint Jo Tribune* on May 27, 2011, both newspapers of general circulation in Cooke County, Texas. In addition, Applicant arranged for placement of the completed Application for inspection and copying at the Bettie M. Luke Muenster Public Library beginning April 15, 2011.

5. Signs were posted on April 15, 2011, along the fence line of the property where the proposed plant would be constructed and operated.
6. In response to requests from the public, the TCEQ Chief Clerk held a public meeting to discuss the Application on August 23, 2011, at the Muenster Independent School District cafeteria.
7. On January 18, 2012, Applicant submitted a request to the TCEQ Chief Clerk for direct referral of the Application to SOAH for a hearing.
8. Applicant's Air Quality Modeling Report was submitted to TCEQ's Air Permit Division on February 14, 2012, as part of the Application.
9. On May 31, 2012, the TCEQ Chief Clerk notified Applicant that the ED had completed a technical review of the Application and made a preliminary decision to issue the permit based on demonstrated compliance with all applicable rules and regulations.
10. On June 8, 2012, a combined Notice of Application and Preliminary Decision for an Air Quality Permit and Notice of Hearing was published in three newspapers (*Saint Jo Tribune*, *Muenster Enterprise* and *Gainesville Daily Register*), informing the public of the ED's decision and scheduling the preliminary hearing for July 12, 2012.
11. The TCEQ Chief Clerk scheduled a second public meeting regarding the Application, which was held on July 11, 2012, at the Gainesville Civic Center.
12. On July 12, 2012, ALJs Penny A. Wilkov and Travis Vickery assumed SOAH jurisdiction over this case without objection, and the parties were aligned. At the preliminary hearing, the following were made parties:
 - a. Applicant;
 - b. ED;
 - c. Office of Public Interest Counsel (OPIC);
 - d. Protestants Red River Motorcycle Trails, Inc., Rebecca Harris and Holly Harris-Bayer (RRMT);
 - e. Protestant Save the Trinity Aquifer (STA);
 - f. Protestant Red River Tourism and Wildlife;
 - g. Protestant Kathy Neilsen; and
 - h. Protestant Cooke County Commissioners' Court.
13. On November 6, 2012, the ED issued a Response to Public Comment.
14. On February 8, 2013, Protestant Save the Trinity Aquifer sought to withdraw as a party. On February 21, 2013, Order No. 7 granted Save the Trinity Aquifer's Motion to Withdraw all members of the group from this case.

15. On April 9, 2013, the Cooke County Commissioners' Court sought to withdraw as a party; a request that was granted by Order No. 10 issued on April 11, 2013.
16. On April 15-17, 2013, the hearing on the merits convened in Austin, Texas; recessed and reconvened in Gainesville, Texas, on April 22-23, 2013; and recessed and reconvened for a final day on April 25, 2013, in Austin, Texas, with ALJs Penny A. Wilkov and Travis Vickery presiding. The record closed on August 23, 2013.
17. All parties appeared at the hearing on the merits, with the exception of Red River Tourism and Wildlife and Kathy Neilsen, who retained party status but did not attend. RRMT was the only protestant to enter an appearance and participate in the hearing and post-hearing briefing.

Description of the Proposed Facilities

18. The proposed facilities will be located at 14596 N. FM 373 in rural northwest Cooke County, Texas, on approximately 1445 acres. The permitted facilities will consist of hoppers, belt conveyors, bucket elevators, screens, stockpiles, a dryer with a baghouse and truck-load out bins, which will be used to supply sand for oil and gas well operations.
19. Wet sand will be mined on the property and will be transported by a conveying system to a stockpile, and then to the sand processing plant. This conveying system includes hoppers, belt conveyors, and a screen. The screen will remove larger material, which is temporarily stored in a stockpile and ultimately returned to the quarry. The smaller material will be sent to the sand processing plant for cleaning, screening, and drying.
20. The sand processing plant will consist of a wet processing operation and a dry processing operation. The wet processing operation will screen, wash, and separate the material. Hoppers and belt conveyors will be used to transfer the material up to and through the scalping screen. At that point, the material will be in slurry form and will be pumped in enclosed piping through the washing, separation, and dewatering process, and then conveyed to a surge bin. From the surge bin, the material will be conveyed to the dry processing operation where it will be dried and screened into product sizes, stored in silos, and loaded into trucks. Hoppers, belt conveyors, and bucket elevators will be used to transfer the material throughout the dry processing operation.
21. Waste material will be returned to the sand quarry by trucks.

New Source Review Air Quality Permits

22. The Draft Permit authorizes the emission of particulate matter (PM), particulate matter equal to or less than 10 micrometers in diameter (PM₁₀), and particulate matter equal to or less than 2.5 micrometers in diameter (PM_{2.5}), as well as sulfur dioxide (SO₂); carbon monoxide (CO); nitrogen oxides (NO_x); and organic compounds (VOCs).

23. Predicted off-property concentrations of CO, SO₂, NO₂, PM₁₀ and PM_{2.5} due to emissions from the proposed facilities are evaluated using National Ambient Air Quality Standards (NAAQS) set by the United States Environmental Protection Agency (EPA). The NAAQS for each of these air contaminants are set at levels protective of public health, welfare, and the environment with an adequate margin of safety.
24. Predicted off-property concentrations of silica due to emissions from the proposed facilities are evaluated using Effects Screening Levels (ESLs). ESLs are established by the TCEQ for evaluation of potential impacts of air contaminants for which no NAAQS has been established by the EPA, and to trigger case-by-case review when appropriate to ensure the protection of public health and welfare.
25. Applicant employed appropriate emission factors and methodology to calculate the estimated emission rates for CO, SO₂, NO₂, volatile organic compounds (VOC), PM₁₀, PM₄, and PM_{2.5} that will be emitted from the proposed facilities.
26. Using applicable TCEQ guidance and current TCEQ practices, including the EPA's guidance on air pollutant emission factors (AP-42) in calculating emission rates, Applicant applied standardized and acceptable emission factors in calculating emissions from the proposed facilities.
27. Using the Application's description of emission points at the proposed plant, the calculated emission rates from those points and other relevant information from the Application, and conducting a site investigation to assess the surrounding terrain, Applicant performed an air dispersion modeling analysis at the ED's request to predict maximum off-property concentrations of air contaminant emissions from the facilities at the proposed plant.

Best Available Control Technology (BACT)

28. Applicant has proposed, and the Draft Permit requires the following controls at the proposed plant:
 - a. No visible fugitive emissions may leave the property that exceed a cumulative 30 seconds in duration in any 6-minute period;
 - b. An opacity limit of 5% applies to the dryer baghouse stack, including the surge bin dust collector baghouse, the Tank 250 dust collector baghouse, the product silo dust collector baghouse stacks, and the dry plant transfer dust collector baghouse;
 - c. Opacity of emissions from the screen and from any transfer point on belt conveyors is limited to 7% over a 6-minute period, under most conditions;
 - d. No visible emissions, except for water vapor or fog, are allowed from the wet plant screen or the saturated processes including cyclones, attrition cells, density separators, dewatering tanks, and associated pumps and conveyors;

- e. Partial enclosures will be installed on all material transfer points with complete enclosure of the vibrating scalping screen, except for openings for material entry and exit;
 - f. Permanently mounted water spray bars will be installed at the vibrating scalping screen and all material transfer points prior to the dryer, except for the saturated processes;
 - g. The dryer baghouse, the dry plant transfer dust collector baghouse, the surge bin dust collector, and the product silo dust collectors will be designed to meet outlet grain loading specifications;
 - h. All hoppers will be partially enclosed with extended sides, and no material will be dropped into a hopper at a height above the partial enclosures;
 - i. As a best management practice (BMP), in-plant roads will be cleaned or sprayed with water upon detection of visible particulate matter emissions; and
 - j. The cumulative area and height of stockpiles at the proposed plant will be limited, and stockpiles will be sprayed with water upon detection of visible particulate matter emissions.
29. Applicant's proposed control measures meet or exceed BACT requirements for facilities of the type proposed by the Application.
30. The emission controls represented in the Application have been accepted by TCEQ as BACT in recent permit reviews for similar operations, and there have been no recent technical developments associated with BACT for materials handling industries.
31. The dryer baghouse fabric filter proposed in the Application is designed such that the emissions from the dryer will be lower than those resulting from the application of the typical BACT at comparable facilities.
32. Water sprays will be used to achieve particulate matter control, which is a well-established control method commonly prescribed and accepted by the TCEQ for comparable operations.
33. The longest conveyor at the proposed plant will be enclosed, and the largest storage pile at the plant will sit over funnels and gravity-feed to a tunnel conveyor in order to minimize emissions, which exceeds BACT accepted at similar operations.
34. The dryer will be natural-gas fired, and thus meet BACT for CO, PM, SO₂, and VOC. The dryer will also meet BACT for NO_x.

New Source Performance Standards (NSPS)

35. The Application incorporates emissions information obtained from the vendor of the dryer baghouse. This information was used to calculate the predicted emission rates, using commonly-accepted methodology recommended, reviewed, and approved by the ED.

36. Sampling results have shown that emissions from the type of dryer represented in the Application met or were lower than those originally represented by the vendor or manufacturer.
37. Pursuant to the Draft Permit, Applicant will be required to conduct initial stack testing from the dryer within 180 days of startup to demonstrate compliance.
38. Applicant has reasonably demonstrated that the proposed plant will operate in accordance with the performance specified in both the Application and the Draft Permit.
39. The Application demonstrates that the proposed plant will employ conventional, well-established control equipment and techniques, which are consistently prescribed and accepted by the TCEQ. Applicant will also apply TCEQ-established BMPs, including watering and/or cleaning of stockpiles, work areas, in-plant roads and other traffic areas.

Circumvention

40. The Application does not improperly conceal or appear to minimize the effect of emissions from the proposed facilities.

Nuisance

41. The ED has the ability to monitor emissions from the plant and enforce the conditions of the Draft Permit, including the ability to monitor for emissions at night.
42. The facilities will not create nuisance conditions if operated pursuant to the representations in the application in accordance with the Draft Permit.

Emission Sources

Roads

43. The BMPs in the Draft Permit are effective in controlling and minimizing potential road dust emissions.
44. The Draft Permit's protections against prohibited off-property emission impacts have been used historically by the TCEQ for materials handling facilities, and include well-established BMPs to minimize road emissions and a "no visible emissions" limitation at the property line.
45. The conservative background levels of particulate matter assumed in the analysis performed by Applicant account for emission impacts, if there are any, from the roads.
46. Given the Draft Permit requirement that the Applicant use BMPs for washing and cleaning the roads to prevent visible emissions, emissions from in-plant roads will be minimized if not eliminated.

Quarries

47. The significant moisture inherent in the material at the site serves to prevent emissions from the quarry, or will render them insignificant.
48. With the protective limitations expressed in the Draft Permit, including the enforceable "no visible emissions" limitation at the property line set forth in Special Condition No. 5 of the Draft Permit, along with the requirement to implement BMPs, the Applicant has demonstrated that the permit properly controls for potential quarry emissions.
49. The conservative background levels of particulate matter assumed in Applicant's analysis account for emission impacts, if any, from the quarry.

Combined Water

50. The water to be used for emission control for the proposed facilities will not constitute particulate matter.

Background Levels

51. There are no significant or permitted facilities in the area near the proposed facilities.
52. There are no ambient monitoring sites in the area surrounding the proposed facilities.
53. Ambient air monitors located in Dallas and Tarrant Counties were appropriate to represent the background concentration at the Applicant's proposed project.
54. The use of ambient air monitors in Dallas and Tarrant Counties was conservative because the population and reported emissions from those counties are greater than the population and reported emissions for Cooke County.
55. The monitor with the highest background concentration in Dallas and Tarrant Counties for each averaging time was used to sufficiently and conservatively represent the background concentrations for Cooke County.
56. Dallas and Tarrant Counties have three years of complete data as required by recent EPA guidance documentation.
57. Background levels of silica were considered in the Applicant's health effects evaluation.

Emission Estimates/Calculations

AP-42 Factors

58. The EPA's AP-42 emission factors represent a regulatory and industry standard for calculating emissions.
59. TCEQ experience over the history of the air quality permit program supports the Applicant's use of AP-42 emission factors in its emission rate calculations.

60. The D and E emission factors from AP-42 used by the Applicant are reasonably reliable, both as characterized in AP-42 and as historically used by the TCEQ, and there is no basis for revising those factors up or down.
61. The AP-42 emission factors used by Applicant are based on sampling at plants processing material with lower moisture content and containing more fines than are anticipated at the proposed plant, making emission estimates in the Application conservative.
62. The use of AP-42 emission factors to determine emission rates for the type of facilities proposed in the Application is a common engineering practice and is the accepted method for TCEQ engineers when evaluating a permit application of this type.

Dryer Baghouse

63. As part of the project, Applicant proposes to use a dryer that will generate significant emissions. Applicant proposes to use a baghouse at the dryer stack as an AP-42 approved form of emissions control.
64. The calculations used by Applicant incorporating performance information provided by the vendor created reasonable projections of emissions from the baghouse.
65. Historical sampling reports for this type of dryer reasonably confirm the emission rates Applicant calculated for the dryer proposed in the Application.
66. Emissions from the proposed dryer baghouse were calculated using methodology recommended, accepted, and approved by the ED.
67. The Draft Permit requires initial stack testing of the dryer and baghouse within 180 days of the start of operations at the plant in order to confirm compliance with emission limits and NSPS.
68. If the sampling results in emissions beyond the permitted limit or NSPS, Applicant will be required to bring the baghouse into compliance and may be subject to a TCEQ enforcement proceeding.

Use of PM₄ for Silica

69. The TCEQ Toxicology Division has determined that the long-term (annual) impact of silica must be evaluated as smaller-sized particulate matter, or PM₄, and the short-term (hourly) impact of silica must be evaluated as the total concentration of larger-sized particulate matter, or PM₁₀.
70. Silica particles that range in size from 1-4 micrometers are small enough to enter the deeper regions of the respiratory tract and can lead to acute silicosis, a very rare and non-cancerous respiratory disease.
71. Under the long-term ESL for silica and accepted toxicological analysis, the respirable size of particulate matter is PM₄.
72. TCEQ guidance properly evaluates long-term exposure to silica as an ESL.
73. The Application made the conservative assumption that 100% of the PM₁₀ and PM₄ emissions expected from the proposed facilities were silica.
74. Applicant modeled all of the PM₄ emissions as respirable silica in order to compare the maximum modeled off-property concentrations to the long-term annual average ESL.
75. Applicant properly modeled all the sand as silica and conservatively modeled the silica as 100% of PM₁₀ for the short-term analysis and 100% of PM₄ for the long-term analysis of emissions, as provided by TCEQ guidance.

Point Source Emissions Reduced by 10% for Long-Term Analysis

76. EOG's initial calculation of emission rates was based on an operational schedule of 24 hours per day for 365 days per year, or 8,760 hours annually.
77. Later, EOG revised the schedule to provide that the plant will operate 8,760 hours per year, except for various pieces of equipment which will have a maximum operating schedule not to exceed 7,884 hours per year in any rolling 12-month period.
78. The equipment operating under the reduced schedule (such as the dryer baghouse and associated dryer, the dry plant transfer dust collector baghouse and associated dry feed bins, and dry screens and conveyors) will generate greater emissions than any other source at the site.
79. Based on the reduced operating hours of certain equipment, the emission rates were reduced by 10% to reflect the new operational schedule.
80. The application was reviewed by a TCEQ air permit engineer, who tracked throughput at the facilities to ensure that the hours of operation and hourly and annual throughput were consistent with the representations in the application.

81. Even with the 10% reduction due to the reduced operational schedule, the emission rates were properly calculated as represented in the application

Air Dispersion Modeling/Results

82. Air dispersion modeling is used to predict whether the off-property ground-level air concentrations (GLCs) of constituents will comply with NAAQS and the Texas property line standards, and whether non-criteria pollutants (silica) will adversely impact human health and welfare.
83. EOG completed modeling, and it was audited by the TCEQ Air Dispersion Modeling Team (ADMT).
84. Applicant used “refined modeling,” a more complex model with more detail and precise input data.
85. The input data used in the modeling was land-use information and surface roughness parameter, topographical elevation data (flat or complex terrain), variable emission rates, building wake effects (downwash), emission point parameters, receptor grid information (receptor locations, elevations, and spacing), and meteorological data (standard surface and upper-air observations).
86. Modeling predicts the maximum ground-level concentration beginning at the facility’s nearest property line, expressed as maximum ground-level concentration or GLC_{max} , expressed in micrograms per cubic meter ($\mu g/m^3$).
87. The “de minimis,” or significant impact level (SIL), of air contaminant concentration is a concentration below which the air quality is not anticipated to be affected.
88. When a modeled impact is deemed insignificant, or de minimis, using the NAAQS SIL as a threshold for significance, it is not necessary to incorporate background levels or emissions from other sources in the analysis.
89. If the modeled concentration of a pollutant for the project is greater than the NAAQS SIL then a “full impact analysis” is performed.
90. Receptors are an important element of capturing the GLC_{max} . The receptor elevations were determined by use of the EPA AERMAP program.

Criteria Pollutants

91. The following results were shown by Applicant’s modeling of criteria pollutants:
- a. **PM₁₀.** The SIL for PM₁₀ was not exceeded at any off-site location for any period of time, either short-term or long-term, and thus no full impact analysis was required or performed.

- b. **PM_{2.5}.** The SIL level for PM_{2.5} was exceeded at locations within one kilometer of the proposed facility for both short-term and long-term; therefore, a full impact analysis was required and performed.
1. The full impact analysis concluded that for a 24-hour period, the maximum ground level concentration of PM_{2.5} was expected to be 26.47 $\mu\text{g}/\text{m}^3$, which fell below the 24-hour NAAQS of 35 $\mu\text{g}/\text{m}^3$.
 2. The full impact analysis concluded that for an annual average period, the maximum ground level concentration of PM_{2.5} was expected to be 11.11 $\mu\text{g}/\text{m}^3$, which fell below the then-existing annual PM_{2.5} NAAQS of 15 $\mu\text{g}/\text{m}^3$, and the new annual PM_{2.5} NAAQS of 12 $\mu\text{g}/\text{m}^3$.
- c. **Carbon Monoxide.** Carbon monoxide was modeled and evaluated for the proposed facility. The SIL level of carbon monoxide is 2,000 $\mu\text{g}/\text{m}^3$ (1-hour) and 500 $\mu\text{g}/\text{m}^3$ (8-hour). Modeling of this facility resulted in predicted air concentrations of carbon monoxide to be 10 $\mu\text{g}/\text{m}^3$ (1-hour) and 3 $\mu\text{g}/\text{m}^3$ (8-hour). Therefore, no full impact analysis was required or performed.
- d. **Nitrogen Dioxide.** Nitrogen dioxide was modeled and evaluated for the proposed facility. The SIL level for nitrogen dioxide was exceeded short-term (1-hour) but not long-term (annual). A full impact analysis was therefore required and performed for the 1-hour time period.
1. The SIL level of nitrogen dioxide is 1 $\mu\text{g}/\text{m}^3$ (annual). Modeling of this facility resulted in predicted air concentrations of 0.66 $\mu\text{g}/\text{m}^3$. Therefore, no full impact analysis of nitrogen dioxide was required or performed.
 2. The full impact analysis showed that when TCEQ's screening background concentration for Cooke County (derived from Dallas and Tarrant Counties) of 102.9 $\mu\text{g}/\text{m}^3$ was added to the 15.2 $\mu\text{g}/\text{m}^3$ maximum modeled concentration of nitrogen dioxide, the result was 118.11 $\mu\text{g}/\text{m}^3$. The short-term (1-hour) nitrogen dioxide NAAQS is 188 $\mu\text{g}/\text{m}^3$, and 118.11 $\mu\text{g}/\text{m}^3$ does not exceed this NAAQS.
- e. **Sulfur Dioxide.** Sulfur dioxide was modeled and evaluated for the proposed facility. The de minimis or SIL level of sulfur dioxide is 7.8 $\mu\text{g}/\text{m}^3$ (1-hour), 25 $\mu\text{g}/\text{m}^3$ (3-hour), 5 $\mu\text{g}/\text{m}^3$ (24-hour), and 1 $\mu\text{g}/\text{m}^3$ (annual). Modeling of this facility resulted in predicted air concentrations of sulfur dioxide of 1.7 $\mu\text{g}/\text{m}^3$ (1-hour), 0.7 $\mu\text{g}/\text{m}^3$ (3-hour), 0.4 $\mu\text{g}/\text{m}^3$ (24-hour), and 0.07 $\mu\text{g}/\text{m}^3$ (annual). Thus, a full impact analysis was not required or performed.

Non-criteria Pollutants

92. Silica has not been designated as a criteria pollutant or a hazardous air pollutant.

93. The TCEQ's ESLs are guidelines developed by TCEQ toxicologists for non-criteria pollutants, based on data concerning health effects, odor/nuisance potential, and effects on vegetation.
94. The ESLs are set at levels lower than those reported to produce adverse health effects, and are set to protect the general public, including sensitive subgroups such as children, the elderly, or people with existing respiratory conditions.
95. If a predicted or measured airborne level of a constituent does not exceed the ESL, adverse health or welfare would not be expected to result.
96. If ambient levels of constituents in the air exceed the ESL, a health effect evaluation is required to assess whether a health issue is presented.
97. The objective of a health effect evaluation is to evaluate GLCs for the potential to cause adverse health or welfare effects; and to consider the "worst-case scenario emissions" in order to predict maximum potential exposure levels.
98. The GLC_{max} is evaluated first, and if needed, the GLC at the maximally affected non-industrial receptor (GLC_{ni}) is evaluated next.
99. Applicant's modeling analysis of silica, as reviewed by ADMT, concluded the following:
 - a. The ESL for silica was exceeded at off-site locations, for both periods of time—short-term (1-hour) and long-term (annual)—and therefore, a review by TCEQ's Toxicology Division was required and performed.
 - b. The ESL for silica of $0.27 \mu g/m^3$ for long-term exposure and $14 \mu g/m^3$ for short-term exposure were exceeded. The modeling predicted a maximum annual (long-term) average silica concentration of $0.44 \mu g/m^3$ at the GLC_{max} . The modeling also predicted a maximum 1-hour (short-term) average silica concentration off-site as $16.4 \mu g/m^3$ at the GLC_{max} .

Worst-Case Conditions for Modeling

100. The Application's maximum operational conditions, evaluated in accordance with TCEQ practice and guidance, represent a reasonable worst-case for air dispersion modeling purposes.
101. The AERMOD model used by Applicant for the air dispersion modeling analysis is known to produce results that are conservative and over-predictive.

Number of Years for Analyses

102. Applicant used the National Weather Service (NWS) surface meteorological data (met data) for 1988 from Dallas/Fort Worth, Texas and NWS upper air met data from Stephenville, Texas for both the short-term and long-term modeling.

103. Meteorological conditions affect where airborne particles disperse in the atmosphere, as influenced by wind speed, wind direction, temperature, humidity, station pressure, amount of incoming solar radiation, and insulating cloud cover.
104. The modeling conducted by Applicant was compliant with Air Quality Modeling Guidelines (guidelines), which direct modelers to use data for 1988 and to use Appendix C, a table of meteorological stations and counties for selection.
105. According to Appendix C, for Cooke County the surface air met data to use is Dallas/Fort Worth, while the upper air data is Stephenville.
106. Daily weather conditions can vary within a given year but the worst-case conditions that occur during a year are typically the same as other years, particularly with 8,700 hourly samples gathered for the year and used for analysis.

Source of Meteorological Data (DFW/Denton)

107. A new set of met data from the NWS station at the Denton airport (Denton met data), covering 2006 to 2010 was published on the TCEQ website on December 20, 2012.
108. The Denton met data was not available for modeling when Applicant submitted its modeling report on February 14, 2012.
109. The Denton met data incorporates the use of the Automated Surface Observing System (ASOS) to record hourly meteorological observation and AERMINUTE to minimize data gaps due to calm or missing winds.
110. A March 8, 2013, EPA memoranda recommends that lower wind speeds recorded of 0.5 meters-per-second or below, or "calm wind bias," be eliminated so that the revised datasets using ASOS and AERMINUTE are consistent with past datasets which had a threshold of 1- 1.5 meters-per-second wind speeds recorded.
111. The Denton met data is presently being reviewed and revised by the ADMT team in accordance with the March 2013 EPA recommendation to remove the calm wind bias.
112. The use of Dallas/Ft. Worth met data in Applicant's air dispersion modeling analysis was reasonable, appropriate, and acceptable.
113. The differences between the meteorological conditions at the DFW and Denton locations would not be considered significant in the overall analysis since they are 30 miles apart.

BACT

114. Applicant will use an enclosed conveyor system to transport sand from the quarry to the processing facilities.
115. Unusable and unmarketable material will be returned from the processing area to the quarry via trucks.

116. Applicant may use either roads or conveyors to transport sand to the processing facilities or to transport unusable/unmarketable material from the processing facility to the quarry.

NAAQS for PM₁₀ (full impact analysis)

117. Applying the Denton met data with no other input adjustments, the maximum modeled concentration of PM₁₀ is 5.8 µg/m³.
118. When TCEQ's screening background concentration for Cooke County of 60 µg/m³ is added to the 5.8 µg/m³ maximum modeled concentration of PM₁₀, the result is 66 µg/m³; which does not exceed the short-term (24-hour) PM₁₀ NAAQS of 150 µg/m³.
119. The Application reasonably demonstrated that a full impact analysis was not required for PM₁₀.

Silica Evaluation

120. The TCEQ effects review guideline provides for a three tier review to evaluate the health and welfare effects: Tier One occurs only if all off-property short- and long-term GLC_{max} are below the ESLs; Tier Two proceeds if the GLC_{max} occurs on industrial property only and does not exceed the ESL by more than two-fold and the non-industrial GLC does not exceed the ESL; and Tier Three ensues if the GLC_{max} occurs in a non-industrial area or the ESL is exceeded by more than twice.
121. Because an ESL was exceeded at a non-industrial area, a Tier Three review was performed by the Toxicology Division.
122. A Tier Three review requires analysis of case-specific factors that have a bearing on exposure: surrounding land use; magnitude of the concentration; the frequency of exceedence; the type of toxic effect (acute or chronic); the margin of safety between the toxicity value and known effects levels; degree of confidence in the toxicity database existing levels of the same constituent; and acceptable reductions from existing ground level concentrations.

Worst-Case Scenario/Conditions

123. The air dispersion modeling performed by Applicant predicted the maximum silica concentrations of the facility at various points off-property under reasonable worst-case conditions.
124. The silica ESLs are set sufficiently low that they account for potential silica in the background either naturally occurring, or as a result of other nearby sources.
125. It was assumed that 100% of PM₁₀ emissions from the proposed facilities would be silica, which overestimated the off-property silica impacts.
126. The silica emission rates used in the Application to conduct the air dispersion modeling analysis were reasonable.

127. The maximum off-property silica concentrations predicted by Applicant's modeling analysis are overestimated.

Exceedance of ESL

128. The magnitudes for the short-term ESL exceedances showed that the ESL was exceeded at the GLC_{max} by 1.17 times (or the ratio of the GLC_{max} of $16.4 \mu g/m^3$ to the ESL of $14 \mu g/m^3$) and exceeded at the GLC_{ni} by 1.07 times (or the ratio of the GLC_{ni} of $15 \mu g/m^3$ to the ESL of $14 \mu g/m^3$).
129. The predicted frequency of the short-term ESL exceedance at the GLC_{max} is 5 hours per year and 1 hour per year at the GLC_{ni} .
130. Adverse health effects would not be expected from the exposure to these small magnitudes and frequencies of silica ESL exceedances.
131. The risk-goal for the long-term silica ESL is set at "no significant risk level" of 1×10^5 (1 in 100,000) or 1 cancer death per 100,000 population, which is within the range of what the EPA has designated as an acceptable risk range of 1×10^4 (1 in 10,000) to 1×10^6 (1 in 1,000,000).
132. The exceedances at the GLC_{max} occur in an area where public exposure is unlikely, and the long-term ESL is not exceeded at the GLC_{ni} .
133. ESLs are set at extremely low levels in order to protect even the most sensitive members of the general public. Most health-based ESLs are set at levels between 100 to 1,000 times lower than exposure levels that are safe for workers exposed to the air contaminant in an occupational setting.
134. The ESLs were peer-reviewed outside of TCEQ by experts in inhalation toxicology and risk assessment.
135. There are no other industrial facilities with silica emissions near the Applicant's proposed facilities.
136. No adverse health or welfare effects are expected to occur as a result of the predicted silica concentrations, based on the amount, frequency, and location of the ESL exceedances.
137. The Application and supporting evidence demonstrates that emissions from the proposed facilities at the proposed sand processing plant will be protective of the public's health, welfare, and property.
138. The Application and supporting evidence demonstrate that operation of the proposed facilities in accordance with the Draft Permit will not adversely affect human health or welfare, animal life, vegetation, or property or as to interfere with normal use and enjoyment of animal life, vegetation, or property.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction to consider the Applicant's application pursuant to Tex. Health & Safety Code §§ 382.011, 382.051, and 382.0518.
2. SOAH has jurisdiction to conduct a hearing and to prepare a Proposal for Decision in this matter. Tex. Gov't Code § 2003.047.
3. Proper notice was given as required by Tex. Health & Safety Code § 382.056, Tex. Gov't Code §§ 2001.051 and 2001.052; 30 Tex. Admin. Code (TAC) § 39.601, *et seq.*
4. The Commission has the authority to issue a permit to construct a new facility or modify an existing facility that may emit air contaminants. Tex. Health & Safety Code § 382.051(a)(1).
5. Air contaminants are defined to include particulate matter, dust, fumes, smoke, vapor, or odor. Tex. Health & Safety Code § 382.003(2).
6. Air pollution is defined as the discharge of air contaminants in such concentration and such duration as may be injurious or adversely affect human health or welfare, animal life, vegetation, or property. Tex. Health & Safety Code § 382.003(3).
7. A project that meets the applicable requirements is entitled to an air quality permit. Tex. Health & Safety Code § 382.0518(b) and 30 TAC § 116.111.
8. The burden is on the Applicant to prove by a preponderance of the evidence that the Application complies with all applicable statutory and regulatory requirements. 30 TAC §§ 55.210(b) and 80.17(a).
9. The Commission may not issue an air quality permit unless the permit is protective of public health and welfare. 30 TAC § 116.111(a)(2)(A).
10. A facility is a "discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not considered to be a facility." Tex. Health & Safety Code § 382.003(6) and 30 TAC § 116.10(4).
11. Before issuing a permit for a facility, the Commission must find that the facility will employ "at least the best available control technology (BACT), considering the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility . . . and there is no indication that the emissions from the facility will contravene the intent of [the TCAA], including protection of the public's health and physical property." Tex. Health & Safety Code § 382.0518.
12. BACT represents the best technology available, within technical practicability and economic reasonableness, to reduce or eliminate emissions from the facility. 30 TAC § 116.10(1).

13. The Applicant will apply BACT to the facilities at the plant and there is no indication that emissions from the facilities will contravene the intent of the TCCA. Tex. Health & Safety Code § 382.0518(b)(1); 30 TAC § 116.111(a)(2)(B)-(C).
14. The roads and the quarry are not facilities, and the BACT requirements do not apply to the roads and quarries. Tex. Health & Safety Code §§ 382.003 and 382.0518.
15. All representations in the Application with regard to construction plans, operating procedures and maximum emission rates become conditions on which the proposed plant must be constructed and operated. The Applicant's representations in the Application are legally binding requirements under which the proposed plant must be operated. 30 TAC § 116.116.
16. One NSPS is applicable to the facilities proposed in the Application. Subpart UUU of 40 Code of Federal Regulations (CFR) Part 60, as amended September 28, 1992, relating to Calciners and Dryers in Mineral Industries, applies to dryers installed in sand processing plants, including Applicant's proposed dryer.
17. Emissions from the baghouse dryer will meet 40 CFR Part 60, Subpart UUU. 30 TAC §§ 101.20 and 116.111(a)(2)(D).
18. Applicant demonstrated that the proposed plant will operate in accordance with the performance specified in the Application and the Draft Permit. 30 TAC § 116.111(a)(2)(G).
19. Section 5.130 of the Texas Water Code does not apply to the Application.
20. NAAQS are enforced by TCEQ throughout all parts of Texas. 30 TAC § 101.21.
21. NAAQS are set for six principal pollutants, which are referred to as "criteria" pollutants, i.e. pollutants for which a standard exists: (1) particulate matter less than or equal to 10 microns in diameter (PM₁₀); (2) particulate matter less than or equal to 2.5 microns in diameter (PM_{2.5}); (3) ozone (O₃); (4) sulfur dioxide (SO₂); (5) carbon monoxide (CO); (6) nitrogen dioxide (NO₂); and (7) lead (Pb). 42 United States Code (U.S.C.) § 7409(a); 40 CFR § 50.
22. Primary NAAQS define levels of air quality that the EPA Administrator has determined are necessary to protect the public health. Primary NAAQS are set to protect public health, including the health of sensitive populations such as asthmatics, children, and the elderly. 42 U.S.C. § 7409(b)(1); 40 CFR § 50.2(b).
23. Secondary NAAQS define levels of air quality that the EPA Administrator has determined are requisite to protect the public welfare from any known or anticipated adverse effects. Secondary NAAQS are designed to protect the public welfare against non-health-related effects such as decreased visibility; effects to animals, crops, and vegetation; and damage to and deterioration of property. 42 U.S.C. § 7409(b)(2).

24. No person in Texas may allow or permit emissions of SO₂ from a source operated on a property to exceed a net ground level concentration of 0.4 part per million by volume averaged over any 30-minute period. 30 TAC § 112.3.
25. Computerized air dispersion modeling may be required by the ED to determine air quality impacts from a proposed new facility or source modification. 30 TAC § 116.111(J).
26. The Commission's rules provide a list of factors to be considered when determining a proper allocation of transcript costs. 30 TAC § 80.23(d).
27. Based on the above Findings of Fact and Conclusions of Law, the proposed industrial sand processing facility will not have adverse effects on air quality or cause violations of the TCAA or other applicable state or federal requirements.
28. Based on the above Findings of Fact and Conclusions of Law, the Draft Permit conditions will fully comply with applicable air quality regulations, including BACT, enforceability, and consideration of emission sources and emission rates.
29. Based on the above Findings of Fact and Conclusions of Law, the Draft Permit conditions contain adequate monitoring, reporting, and recordkeeping requirements to ensure Applicant's compliance with the permit.
30. Based on the above Findings of Fact and Conclusions of Law, the Applicant's air dispersion modeling of proposed particulate matter emissions was accurate and appropriate including proper use of emission factors, met data, and background concentrations.
31. Based on the above Findings of Fact and Conclusions of Law, the proposed facility's predicted emissions do not exceed the NAAQS and are allowable.
32. Based on the above Findings of Fact and Conclusions of Law, the proposed facility's emissions of silica will not adversely impact the public health, welfare, or physical property.
33. Based on the above Findings of Fact and Conclusions of Law, the proposed facility's emissions will not adversely affect livestock, wildlife, including endangered species, or vegetation, including agricultural activities of the public.
34. Based on the above Findings of Fact and Conclusions of Law, emissions from the proposed facility will not cause or contribute to nuisance conditions.
35. Based on the above Findings of Fact and Conclusions of Law, the potential air emissions from the proposed facility will not adversely affect air quality, and the Draft Permit complies with the TCAA and other applicable state and federal requirements.
36. Based on the above Findings of Fact and Conclusions of Law, the Applicant has met its burden of proof.

37. Based on the above Findings of Fact and Conclusions of Law, the Application complies with all statutory and regulatory requirements.
38. Based on the above Findings of Fact and Conclusions of Law, the Application is approved and the Draft Permit issued.
39. Based on the above Findings of Fact and Conclusions of Law, and based on factors established in 30 TAC § 80.23, it would be just to allocate 100% of the transcript costs to Applicant.

EXPLANATION OF CHANGES

1. During its February 13, 2014 open meeting, the Commission adopted all of the revisions to the proposed Order recommended by the ALJs in their December 12, 2013 letter with the following changes: a) modify Finding of Fact No. 21 to read: "Waste material will be returned to the sand quarry by trucks;" b) modify Finding of Fact No. 28(i) to read: "As a best management practice, in-plant roads will be cleaned or sprayed with water upon detection of visible particulate matter emissions;" c) modify Finding of Fact No. 48 to read: "Given the Draft Permit requirement that the Applicant use BMPs for washing and cleaning the roads to prevent visible emissions, emissions from in-plant roads will be minimized if not eliminated;" and d) delete Findings of Fact Nos. 46 and 47, and renumber the remaining Findings of Fact accordingly. These changes were based, in part, on discussion at the February 12, 2014 open meeting indicating that: 1) the Executive Director typically requires applicants to control particulate matter emissions from roads by cleaning or spraying roads with water upon the detection of visible emissions; and 2) paving a road is not always the most effective method of controlling particulate matter emissions. Therefore, this Order contains modified Findings of Fact Nos. 21, 28(i), and 48, and deletes Findings of Fact Nos. 46 and 47 and renumbers the remaining Findings of Fact accordingly.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY THAT:

1. The application of EOG Resources, Inc. is granted and the attached permit is issued.
2. EOG Resources, Inc. shall pay all of the transcript costs.
3. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
4. The effective date of this Order is the date the Order is final, as provided by 30 TAC § 80.273 and Tex. Gov't Code § 2001.144.
5. The Commission's Chief Clerk shall forward a copy of this Order to all Parties.

6. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

Issue Date: FEB 18 2014

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

A handwritten signature in black ink that reads "Bryan W. Shaw". The signature is written in a cursive style with a horizontal line extending from the end of the name.

Bryan W. Shaw, Ph.D., P.E., Chairman
For the Commission

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Zak Covar, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

MR GORDON GOODMAN
DIRECTOR SAFETY ENVIRONMENT & PIPELINE INTEGRITY
EOG RESOURCES INC
421 W 3RD ST STE 150
FORT WORTH TX 76102-3760

Re: Permit Application
Permit Number: 95412
Industrial Sand Processing Plant
Saint Jo, Cooke County
Regulated Entity Number: RN106078322
Customer Reference Number: CN600564520

Dear Mr. Goodman:

This is in response to your Form PI-1 (General Application for Air Preconstruction Permits and Amendments) concerning the above-referenced project. Also, this will acknowledge that your application for the above-referenced permit was technically complete as of February 14, 2012.

In accordance with Title 30 Texas Administrative Code Chapter 116, and based on our review, your permit is enclosed. This information will be incorporated into the permit files. Enclosed are general conditions, special conditions, and a maximum allowable emission rates table (MAERT). We appreciate your careful review of the permit and assuring that all requirements are consistently met. In addition, the construction and operation of the facilities must be as represented in the application.

Planned startup and shutdown or the sources identified on the MAERT have been reviewed and included in the MAERT. Maintenance activities are not authorized by this permit and will need separate authorization, unless the activity can meet the conditions of Title 30 Texas Administrative Code § 116.119 [30 TAC § 116.119] (De Minimis Facilities and Sources).

This permit will be automatically void upon the occurrence of any of the following, as indicated in Title 30 Texas Administrative Code § 116.120(a) [30 TAC § 116.120(a)]:

1. Failure to begin construction within 18 months of the date of issuance,
2. Discontinuance of construction for more than 18 months prior to completion, or
3. Failure to complete construction within a reasonable time.

Upon request, the executive director may grant extensions as allowed in 30 TAC § 116.120(b).

Mr. Gordon Goodman
Page 2

Re: Permit Number: 95412

This permit is effective as of the date of this letter and will be in effect for ten years from the date of approval.

In addition, you may be interested in taking advantage of free and voluntary technical assistance available through the Small Business and Environmental Assistance (SBEA) Division, by calling 1-800-447-2827. The SBEA offers confidential and non-regulatory assistance for applicants with technical, compliance, and environmental management needs; and may be able to help you reduce pollution and costs.

Thank you for your cooperation and interest in air pollution control. If you need further information or have any questions, please contact Mr. Larry Buller, P.E. at (512) 239-1890 or write to the Texas Commission on Environmental Quality, Office of Air, Air Permits Division, MC-163, P.O. Box 13087, Austin, Texas 78711-3087.

Sincerely,

Bryan W. Shaw, Ph.D., P.E., Chairman
For the Texas Commission on Environmental Quality

BWS/lb

Enclosure

cc: Ms. Miranda Cheatham, P.E., Waid Environmental, Austin
Air Section Manager, Region 4 - Fort Worth

Project Number: 164348



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AIR QUALITY PERMIT



A Permit Is Hereby Issued To
EOG Resources, Inc.
Authorizing the Construction and Operation of
Industrial Sand Processing Plant
Located at Saint Jo, Cooke County, Texas
Latitude 33° 48' 00" Longitude -97° 27' 04"

Permit: 95412

Issuance Date : _____

Renewal Date: _____

For the Commission

1. **Facilities** covered by this permit shall be constructed and operated as specified in the application for the permit. All representations regarding construction plans and operation procedures contained in the permit application shall be conditions upon which the permit is issued. Variations from these representations shall be unlawful unless the permit holder first makes application to the Texas Commission on Environmental Quality (commission) Executive Director to amend this permit in that regard and such amendment is approved. [Title 30 Texas Administrative Code 116.116 (30 TAC 116.116)]
2. **Voiding of Permit.** A permit or permit amendment is automatically void if the holder fails to begin construction within 18 months of the date of issuance, discontinues construction for more than 18 months prior to completion, or fails to complete construction within a reasonable time. Upon request, the executive director may grant an 18-month extension. Before the extension is granted the permit may be subject to revision based on best available control technology, lowest achievable emission rate, and netting or offsets as applicable. One additional extension of up to 18 months may be granted if the permit holder demonstrates that emissions from the facility will comply with all rules and regulations of the commission, the intent of the Texas Clean Air Act (TCAA), including protection of the public's health and physical property; and (b)(1) the permit holder is a party to litigation not of the permit holder's initiation regarding the issuance of the permit; or (b)(2) the permit holder has spent, or committed to spend, at least 10 percent of the estimated total cost of the project up to a maximum of \$5 million. A permit holder granted an extension under subsection (b)(1) of this section may receive one subsequent extension if the permit holder meets the conditions of subsection (b)(2) of this section. [30 TAC 116.120(a), (b) and (c)]
3. **Construction Progress.** Start of construction, construction interruptions exceeding 45 days, and completion of construction shall be reported to the appropriate regional office of the commission not later than 15 working days after occurrence of the event. [30 TAC 116.115(b)(2)(A)]
4. **Start-up Notification.** The appropriate air program regional office shall be notified prior to the commencement of operations of the facilities authorized by the permit in such a manner that a representative of the commission may be present. The permit holder shall provide a separate notification for the commencement of operations for each unit of phased construction, which may involve a series of units commencing operations at different times. Prior to operation of the facilities authorized by the permit, the permit holder shall identify the source or sources of allowances to be utilized for compliance with Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program). [30 TAC 116.115(b)(2)(B)(iii)]
5. **Sampling Requirements.** If sampling is required, the permit holder shall contact the commission's Office of Compliance and Enforcement prior to sampling to obtain the proper data forms and procedures. All sampling and testing procedures must be approved by the executive director and coordinated with the regional representatives of the commission. The permit holder is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant. [30 TAC 116.115(b)(2)(C)]

6. **Equivalency of Methods.** The permit holder must demonstrate or otherwise justify the equivalency of emission control methods, sampling or other emission testing methods, and monitoring methods proposed as alternatives to methods indicated in the conditions of the permit. Alternative methods shall be applied for in writing and must be reviewed and approved by the executive director prior to their use in fulfilling any requirements of the permit. [30 TAC 116.115(b)(2)(D)]
7. **Recordkeeping.** The permit holder shall maintain a copy of the permit along with records containing the information and data sufficient to demonstrate compliance with the permit, including production records and operating hours; keep all required records in a file at the plant site. If, however, the facility normally operates unattended, records shall be maintained at the nearest staffed location within Texas specified in the application; make the records available at the request of personnel from the commission or any air pollution control program having jurisdiction; comply with any additional recordkeeping requirements specified in special conditions attached to the permit; and retain information in the file for at least two years following the date that the information or data is obtained. [30 TAC 116.115(b)(2)(E)]
8. **Maximum Allowable Emission Rates.** The total emissions of air contaminants from any of the sources of emissions must not exceed the values stated on the table attached to the permit entitled "Emission Sources--Maximum Allowable Emission Rates." [30 TAC 116.115(b)(2)(F)]
9. **Maintenance of Emission Control.** The permitted facilities shall not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations. The permit holder shall provide notification for upsets and maintenance in accordance with 30 TAC 101.201, 101.211, and 101.221 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements; Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements; and Operational Requirements). [30 TAC 116.115(b)(2)(G)]
10. **Compliance with Rules.** Acceptance of a permit by an applicant constitutes an acknowledgment and agreement that the permit holder will comply with all rules, regulations, and orders of the commission issued in conformity with the TCAA and the conditions precedent to the granting of the permit. If more than one state or federal rule or regulation or permit condition is applicable, the most stringent limit or condition shall govern and be the standard by which compliance shall be demonstrated. Acceptance includes consent to the entrance of commission employees and agents into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the permit. [30 TAC 116.115(b)(2)(H)]
11. **This** permit may not be transferred, assigned, or conveyed by the holder except as provided by rule. [30 TAC 116.110(e)]
12. **There** may be additional special conditions attached to a permit upon issuance or modification of the permit. Such conditions in a permit may be more restrictive than the requirements of Title 30 of the Texas Administrative Code. [30 TAC 116.115(c)]
13. **Emissions** from this facility must not cause or contribute to a condition of "air pollution" as defined in Texas Health and Safety Code (THSC) 382.003(3) or violate THSC 382.085. If the executive director determines that such a condition or violation occurs, the holder shall implement additional abatement measures as necessary to control or prevent the condition or violation.
14. **The** permit holder shall comply with all the requirements of this permit. Emissions that exceed the limits of this permit are not authorized and are violations of this permit.

Special Conditions

Permit Number 95412

Emission Limitations

1. This permit covers only those sources of emissions listed in the attached table entitled "Emission Sources - Maximum Allowable Emission Rates," and those sources are limited to the emission limits and other conditions specified in the table. In addition, this permit authorizes all emissions from planned startup and shutdown activities associated with facilities or groups of facilities that are authorized by this permit.

Fuel Specifications

2. This permit does not authorize the operation of an internal combustion engine in conjunction with this facility. The holder of this permit shall obtain prior authorization for any internal combustion engine that remains at a single point or location for more than 12 consecutive months. Any engine that remains at a single point or location for less than or equal to 12 consecutive months is not considered a stationary source and therefore no authorization is required.
3. Fuel for the Dryer (Emission Point No. [EPN] DR150) shall be pipeline-quality sweet natural gas. Use of any other fuel will require prior approval of the Executive Director of the Texas Commission on Environmental Quality (TCEQ).

Upon request by the Executive Director of the TCEQ or the TCEQ Regional Director or any local air pollution control program having jurisdiction, the holder of this permit shall provide a sample and/or an analysis of the fuel used in these facilities or shall allow air pollution control program representatives to obtain a sample for analysis.

Federal Applicability

4. These facilities shall comply with all applicable requirements of the U.S. Environmental Protection Agency (EPA) regulations on Standards of Performance for New Stationary Sources (NSPS) promulgated in Title 40 Code of Federal Regulations (40 CFR) Part 60, specifically the following:
 - A. Subpart A - General Provisions; and
 - B. Subpart UUU - Calciners and Dryers in Mineral Industries.

Opacity/Visible Emission Limitations

5. There shall be no visible fugitive emissions leaving the property. Observations for visible emissions shall be performed and recorded quarterly. The visible emissions determination shall be made during normal plant operations. Observations shall be made on the downwind property line for a minimum of six minutes. If visible emissions are observed, an evaluation must be accomplished in accordance with EPA 40 CFR Part 60, Appendix A, Test Method (TM) 22, using the criteria that visible emissions shall not exceed a cumulative 30 seconds in duration in any six-minute period. If visible emissions exceed

the TM 22 criteria, immediate action shall be taken to eliminate the excessive visible emissions. The corrective action shall be documented within 24 business hours of completion.

6. Opacity of particulate matter emissions from the Dryer Baghouse Stack (EPN DR150), the Surge Bin Dust Collector Baghouse (EPN BV90), the Tank 250 Dust Collector Baghouse (EPN BV350), the Product Silo Dust Collector Baghouse Stacks (EPNs BV400, BV310, BV320, and BV330) and from the Dry Plant Transfer Dust Collector Baghouse (EPN DC100) shall not exceed five percent. Determination of compliance with this requirement shall be made first by observing for visible emissions during normal plant operations. Observations shall be made at least 15 feet and no more than 0.25 mile from the emission point. If visible emissions are observed from the emission point, opacity shall be determined by 40 CFR Part 60, Appendix A, TM 9. Determination of compliance with this requirement shall be performed and the results recorded quarterly.

In accordance with 40 CFR Part 60, Appendix A, TM 9 or equivalent, and except for those periods described in Title 30 Texas Administrative Code (30 TAC) §§ 101.201 and 101.211, opacity of emissions from the screen (EPN SCRNMINE) and from any transfer point on belt conveyors shall not exceed seven percent over a six-minute period.

7. There shall be no visible emissions, except for visible water vapor or fog, from the saturated Wet Plant Screen (EPN SCREEN) nor from the saturated processes consisting of the Cyclones, Attrition Cells, Density Separators, Dewatering Tanks and associated pumps and conveyors.

Operational Limitations, Work Practices, and Plant Design

8. The facility shall be limited to the following hourly and annual throughput rates:

Table 1: Hourly and Annual Throughput Limits

Source	Tons per hour	Tons per year in any rolling 12-month period
Vibrating Scalping Screen (EPN SCRNMINE)	500	4,380,000
Wash Screen (EPN SCREEN)	300	2,628,000
Dryer Throughput	158	1,182,600

9. All facilities are authorized to operate up to 8,760 hours per year except the Dryer Baghouse (EPN DR150) and associated Dryer, the Dry Plant Transfer Dust Collector Baghouse (EPN DC100) and associated dry feed bins, dry screens and conveyors, the Surge Bin Dust Collector (EPN BV90), and the Product Silo Dust Collectors (EPNs BV250, BV300, BV310 , BV320 and BV330)and associated product load facilities which shall each

be limited to a maximum operating schedule not to exceed 7,884 hours per year in any rolling 12-month period.

10. All material transfer points prior to the dryer shall be partially enclosed and the Vibrating Scalping Screen (EPN SCRNMINE) shall be completely enclosed except for openings to allow material to enter and exit the screen. Additionally, permanently mounted spray bars shall be installed at the Vibrating Scalping Screen (EPN SCRNMINE) and at all material transfer points prior to the dryer, except for those processes defined as being saturated in the section above on Opacity/Visible Emission Limitations. All spray bars shall be operated as necessary to minimize emissions and maintain compliance with TCEQ rules and regulations.
11. The Wet Plant Screen (EPN SCREEN) shall operate under saturated conditions at all times.
12. The Dryer (EPN 150) shall be vented to the Dryer Baghouse (EPN DR150) designed to meet an outlet grain loading of no greater than 0.005 grain per dry standard cubic feet of air flow (gr/dscf) and exhaust vertically uninhibited (without a rain cap) through a stack at least 95 feet above ground level.
13. All screening and material handling operations after the dryer and prior to the product storage silos shall be enclosed and vented to the Dry Plant Transfer Dust Collector Baghouse (EPN DC100) designed to meet an outlet grain loading of no greater than 0.001 gr/dscf and exhaust vertically uninhibited (without a rain cap) through a stack at least 28 feet above ground level.
14. The Surge Bin (EPN 90) shall be vented to the Surge Bin Dust Collector (EPN BV90) designed to meet an outlet grain loading of no greater than 0.001 gr/dscf and exhaust vertically uninhibited (without a rain cap) through a stack at least 51 feet above ground level.
15. The Overs/Fines Tank (EPN TK250) shall be vented to the Product Silo Dust Collector (EPN BV250) designed to meet an outlet grain loading of no greater than 0.001 gr/dscf and exhaust vertically uninhibited (without a rain cap) through a stack at least 87.5 feet above ground level.
16. All Product Silos (EPN TK300, TK310, TK320 and TK330) shall be vented to the Product Silo Dust Collector (EPN BV250, BV310, BV320 and BV330 respectively) designed to each meet an outlet grain loading of no greater than 0.001 gr/dscf and each exhaust vertically uninhibited (without a rain cap) through individual stacks at least 100 feet above ground level.
17. A visible and/or audible warning device shall be installed on each silo) to warn operators when the silos are full so that silos are not overloaded. The silos shall not be overloaded at any time.

18. All hoppers will be partially enclosed with extended sides. No material will be dropped into a hopper at a height above the partial enclosures. Loading of material into open bed trucks (EPN TS250) for returning material to the mine will be controlled with water sprays operated as necessary to minimize emissions and maintain compliance with TCEQ rules and regulations. Loading of product trucks (EPNs TS300, TS310, TS320 and TS330) will be via enclosed chutes with emissions vented to the respective silo baghouses
19. All in-plant roads, traffic areas and active work areas shall be cleaned or sprayed with water upon detection of visible particulate matter emissions to maintain compliance with all applicable TCEQ rules and regulations.
20. Stockpiles shall not exceed a cumulative area of 2.1 acres. Stockpiles shall be constructed and controlled as represented in the application and shall not exceed 50 feet in height unless approved by the TCEQ Regional Director or any local air pollution control program having jurisdiction. All stockpiles shall be sprayed with water upon detection of visible particulate matter emissions to maintain compliance with all applicable TCEQ rules and regulations.
21. Spillage of any aggregate material, silica sand and/or industrial sand shall be cleaned up immediately to minimize emissions and maintain compliance with TCEQ rules and regulations.

Determination of Compliance

22. To demonstrate compliance with the maximum allowable emission rates table (MAERT) and with emission performance levels as specified in the special conditions, the holder of this permit shall comply with the NSPS Subpart A and UUU requirements within the specified time frame. Sampling must be conducted in accordance with the TCEQ Sampling Procedures Manual or in accordance with the applicable EPA 40 CFR procedures. Any deviations from those procedures must be approved by the TCEQ Executive director prior to sampling.
23. Upon request by the TCEQ Executive Director or the TCEQ Regional Director having jurisdiction, the holder of this permit shall perform stack sampling and/or other testing as required to establish the actual pattern and quantities of air contaminants being emitted into the atmosphere to demonstrate compliance with the MAERT and with emission performance levels as specified in the special conditions and/or otherwise prove satisfactory equipment performance. Sampling must be conducted in accordance with the TCEQ Sampling Procedures Manual or in accordance with the applicable EPA 40 CFR procedures. Any deviations from those procedures must be approved by the TCEQ Executive Director or the appropriate TCEQ Regional Director prior to conduction sampling.
24. The capture and control system of the Dryer Baghouse (EPN DR150) and the Dry Plant Transfer Dust Collector Baghouse (EPN DC100) shall be operated and maintained in accordance with the manufacturers' recommendations as to assure that the minimum

control efficiency is met at all times when the system is required to be operated. A pressure drop gauge shall be installed across the filter bank showing differential pressure, in inches water column, or equivalent pressure drop scale. The monitoring device for each system shall be calibrated at least annually in accordance with the manufacturer's specifications. Pressure drop reading shall be recorded at least once per day that the system is required to be operated. Filters shall be replaced whenever the pressure drop across the filter no longer meets the manufacturer's recommendation. Records of maintenance performed, including dates of filter replacement, shall be included in a log as they occur. If the filter system operating performance parameters are outside of the manufacturer's recommended operating range, the affected facility shall not be in operation until the abatement equipment is repaired.

Sampling Requirements

25. The holder of this permit is responsible for providing sampling and testing facilities and conducting the sampling and testing operations at their own expense. Sampling ports and platforms shall be incorporated into the design of the stacks according to the specifications set forth in the attachment entitled "Chapter 2, Stack Sampling Facilities" prior to stack sampling. Alternate sampling facility designs may be submitted for approval by the TCEQ Regional Office with jurisdiction.
26. All sampling shall be conducted in accordance with the Special Conditions listed below except for sampling conducted for demonstration of compliance with the Opacity/Visible Emissions Limitations section of this permit.
27. Sampling shall be conducted in accordance with the TCEQ Sampling Procedures Manual and EPA TMs.
28. A pretest meeting shall be held with personnel from the TCEQ before the required tests are performed. The TCEQ Regional Office with jurisdiction shall be notified not less than 45 days prior to sampling to schedule a pretest meeting. The notice shall include:
 - (A) Date for pretest meeting;
 - (B) Date sampling will occur;
 - (C) Points or sources to be sampled;
 - (D) Name of firm conducting sampling;
 - (E) Type of sampling equipment to be used; and
 - (F) Method or procedure to be used in sampling.

The purpose of the pretest meeting is to review the necessary sampling and testing procedures, to provide the proper data forms for recording pertinent data, and to review the format procedures for submitting the test results.

29. Alternate sampling methods and representative unit testing may be proposed by the permit holder. A written proposed description of any deviation from sampling procedures or emission sources specified in permit conditions or TCEQ or EPA sampling procedures shall be made available to the TCEQ prior to the pretest meeting. Such a proposal must be approved, in writing, by the TCEQ Regional Office with jurisdiction at least two weeks prior to sampling.
30. Requests to waive testing for any pollutant specified shall be submitted, in writing, for approval to the TCEQ Office of Air, Air Permits Division in Austin.
31. During stack sampling emission testing, the facilities shall operate at maximum represented throughput rates. Primary operating parameters that enable determination of throughput rates shall be monitored and recorded during the stack test. These parameters are to be determined at the pretest meeting.

If the plant is unable to operate at the maximum represented throughput rates during testing, then additional stack testing shall be required when the throughput rate exceeds the previous stack test throughput rate by +10 percent unless otherwise determined, in writing, by the TCEQ Executive Director.

32. Requests for additional time to perform sampling shall be submitted to the TCEQ Regional Office with jurisdiction.
33. Copies of the final sampling report shall be forwarded to the TCEQ within 60 days after sampling is completed. Sampling reports shall comply with the attached provisions of Chapter 14 of the TCEQ Sampling Procedures Manual. The reports shall be distributed as follows:

One copy to the TCEQ Regional Office with jurisdiction.

One copy to each appropriate local air pollution control program with jurisdiction.

One copy to the TCEQ Office of Air, Air Permits Division in Austin.

Recordkeeping Requirements

34. In addition to the recordkeeping requirements specified in General Condition No. 7 and 40 CFR Part 60, Subparts A and UUU, the following records shall be maintained at this facility site and made available at the request of personnel from the TCEQ or any other air pollution control program having jurisdiction to demonstrate compliance with permit limitations. These records shall be totaled for each calendar month, retained for a rolling 24-month period, and include the following:

- A. Quarterly observations for visible emissions and opacity observations as specified in Opacity/Visible Emission Limitations;
- B. Daily, monthly, and annual amounts of materials processed, summarized in tons per hour, tons per month, and tons per year as determined by conveyor belt scales;
- C. Actual hours of operation of the Dryer Baghouse (EPN DR150), the Dry Plant Transfer Dust Collector Baghouse (EPN DC100), the Surge Bin Dust Collector (EPN BV90), and the Product Silo Dust Collectors (EPNs BV250, BV300, BV310 , BV320 and BV330);
- D. Records of road cleaning, application of road dust control, or road maintenance for dust control;
- E. Records of daily pressure drop readings for the Dryer Baghouse (EPN DR150) and the Dry Plant Transfer Dust Collector Baghouse (EPN);
- F. Records of manufacture's recommended calibration specifications and records of calibration of the monitoring devices as required in Determination of Compliance;
- G. Inspection, malfunctions, repairs, and maintenance of abatement equipment, which includes the manufacturer's suggested cleaning and maintenance schedule; and
- H. A copy of the manufacturer's suggested cleaning and maintenance schedule for abatement equipment.

Date: _____

Emission Sources - Maximum Allowable Emission Rates

Permit Number 95412

This table lists the maximum allowable emission rates and all sources of air contaminants on the applicant's property covered by this permit. The emission rates shown are those derived from information submitted as part of the application for permit and are the maximum rates allowed for these facilities, sources, and related activities. Any proposed increase in emission rates may require an application for a modification of the facilities covered by this permit.

Air Contaminants Data

Emission Point No. (1)	Source Name (2)	Air Contaminant Name (3)	Emission Rates (6)	
			lbs/hour	TPY (4)
SCRNMINE	Vibrating Scalping Screen (5)	PM	0.18	0.79
		PM ₁₀	0.11	0.48
		PM _{2.5}	0.03	0.14
SCREEN	Wet Plant Screen 100 (5)	PM	0.09	0.39
		PM ₁₀	0.02	0.09
		PM _{2.5}	0.01	0.03
TRSFMINE	Mine Area Material Handling Fugitives (5), (7)	PM	0.50	2.21
		PM ₁₀	0.17	0.73
		PM _{2.5}	0.05	0.21
CONVEY	Overland Belt Conveyors (5), (8)	PM	0.40	1.76
		PM ₁₀	0.15	0.64
		PM _{2.5}	0.04	0.18
TRSFRR	Raw Sand Area Material Handling Fugitives (5), (9)	PM	0.09	0.41
		PM ₁₀	0.03	0.13
		PM _{2.5}	0.01	0.04
TRSFDRY	Product Sand Area Material Handling Fugitives (5), (10)	PM	0.01	0.03
		PM ₁₀	<0.01	0.01
		PM _{2.5}	<0.01	<0.01
LOADOUT	Loadout Material Handling Fugitives (5), (11)	PM	0.07	0.10
		PM ₁₀	0.03	0.04
		PM _{2.5}	0.01	0.01

Emission Sources - Maximum Allowable Emission Rates

Emission Point No. (1)	Source Name (2)	Air Contaminant Name (3)	Emission Rates (6)	
			lbs/hour	TPY (4)
LOAD	Hoppers Loading Operations (5), (12)	PM	0.02	0.07
		PM ₁₀	0.01	0.02
		PM _{2.5}	<0.01	0.01
PILES	Stockpile Fugitives (5)	PM	---	1.46
		PM ₁₀	---	0.73
		PM _{2.5}	---	0.21
DR150	Dryer Baghouse Stack	PM	2.04	8.04
		PM ₁₀	2.04	8.04
		PM _{2.5}	2.04	8.04
		NO _x	6.01	26.32
		CO	3.13	13.71
		VOC	0.20	0.90
		SO ₂	0.53	2.33
BV90	TK90 Dust Collector Stack	PM	<0.01	0.02
		PM ₁₀	<0.01	0.02
		PM _{2.5}	<0.01	0.02
BV250	Tank 250 Dust Collector Stack	PM	<0.01	0.02
		PM ₁₀	<0.01	0.02
		PM _{2.5}	<0.01	0.02
BV300	Product Silo 300 Dust Collector Stack	PM	<0.01	0.02
		PM ₁₀	<0.01	0.02
		PM _{2.5}	<0.01	0.02
BV310	Product Silo 310 Dust Collector Stack	PM	<0.01	0.02
		PM ₁₀	<0.01	0.02
		PM _{2.5}	<0.01	0.02

Emission Sources - Maximum Allowable Emission Rates

Emission Point No. (1)	Source Name (2)	Air Contaminant Name (3)	Emission Rates (6)	
			lbs/hour	TPY (4)
BV320	Product Silo 320 Dust Collector Stack	PM	<0.01	0.02
		PM ₁₀	<0.01	0.02
		PM _{2.5}	<0.01	0.02
BV330	Product Silo 330 Dust Collector Stack	PM	<0.01	0.02
		PM ₁₀	<0.01	0.02
		PM _{2.5}	<0.01	0.02
DC100	Dry Plant Transfer Dust Collector Stack	PM	0.09	0.37
		PM ₁₀	0.09	0.37
		PM _{2.5}	0.09	0.37

- (1) Emission point identification - either specific equipment designation or emission point number from plot plan.
- (2) Specific point source name. For fugitive sources, use area name or fugitive source name.
- (3) PM - total particulate matter, suspended in the atmosphere, including PM₁₀ and PM_{2.5}, as represented
- PM₁₀ - total particulate matter equal to or less than 10 microns in diameter, including PM_{2.5}, as represented
- PM_{2.5} - particulate matter equal to or less than 2.5 microns in diameter
- NO_x - total oxides of nitrogen
- CO - carbon monoxide
- VOC - volatile organic compounds as defined in Title 30 Texas Administrative Code § 101.1
- SO₂ - sulfur dioxide
- (4) Compliance with annual emission limits (tons per year) is based on a 12 month rolling period.
- (5) Emission rate is an estimate and is enforceable through compliance with the applicable special condition(s) and permit application representations.
- (6) Planned startup and shutdown emissions are included. Maintenance activities are not authorized by this permit.
- (7) Includes FINS TRANS1 through TRANS10
- (8) Includes FINS CONVEY1 and CONVEY2.
- (9) Includes FINS TRANS11 through TRANS19.
- (10) Includes FINS TRANS 20 through TRANS22.
- (11) Includes FINS TS250, TS300, TS310, TS320 and TS330 loading operations as defined in the applicable Special Conditions.
- (12) Includes FINS FH100, FH103, LOADHOPR.

Date: _____

Appendix 5

42 U.S.C. ch. 85

United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 85. Air Pollution Prevention and Control (Refs & Annos)

Subchapter I. Programs and Activities

Part A. Air Quality and Emissions Limitations (Refs & Annos)

42 U.S.C.A. § 7407

§ 7407. Air quality control regions

Effective: January 23, 2004

[Currentness](#)

(a) Responsibility of each State for air quality; submission of implementation plan

Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State by submitting an implementation plan for such State which will specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in such State.

(b) Designated regions

For purposes of developing and carrying out implementation plans under [section 7410](#) of this title--

(1) an air quality control region designated under this section before December 31, 1970, or a region designated after such date under subsection (c), shall be an air quality control region; and

(2) the portion of such State which is not part of any such designated region shall be an air quality control region, but such portion may be subdivided by the State into two or more air quality control regions with the approval of the Administrator.

(c) Authority of Administrator to designate regions; notification of Governors of affected States

The Administrator shall, within 90 days after December 31, 1970, after consultation with appropriate State and local authorities, designate as an air quality control region any interstate area or major intrastate area which he deems necessary or appropriate for the attainment and maintenance of ambient air quality standards. The Administrator shall immediately notify the Governors of the affected States of any designation made under this subsection.

(d) Designations

(1) Designations generally

(A) Submission by Governors of initial designations following promulgation of new or revised standards

By such date as the Administrator may reasonably require, but not later than 1 year after promulgation of a new or revised national ambient air quality standard for any pollutant under [section 7409](#) of this title, the Governor of each State shall (and at any other time the Governor of a State deems appropriate the Governor may) submit to the Administrator a list of all areas (or portions thereof) in the State, designating as--

- (i) nonattainment, any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant,
- (ii) attainment, any area (other than an area identified in clause (i)) that meets the national primary or secondary ambient air quality standard for the pollutant, or
- (iii) unclassifiable, any area that cannot be classified on the basis of available information as meeting or not meeting the national primary or secondary ambient air quality standard for the pollutant.

The Administrator may not require the Governor to submit the required list sooner than 120 days after promulgating a new or revised national ambient air quality standard.

(B) Promulgation by EPA of designations

(i) Upon promulgation or revision of a national ambient air quality standard, the Administrator shall promulgate the designations of all areas (or portions thereof) submitted under subparagraph (A) as expeditiously as practicable, but in no case later than 2 years from the date of promulgation of the new or revised national ambient air quality standard. Such period may be extended for up to one year in the event the Administrator has insufficient information to promulgate the designations.

(ii) In making the promulgations required under clause (i), the Administrator may make such modifications as the Administrator deems necessary to the designations of the areas (or portions thereof) submitted under subparagraph (A) (including to the boundaries of such areas or portions thereof). Whenever the Administrator intends to make a modification, the Administrator shall notify the State and provide such State with an opportunity to demonstrate why any proposed modification is inappropriate. The Administrator shall give such notification no later than 120 days before the date the Administrator promulgates the designation, including any modification thereto. If the Governor fails to submit the list in whole or in part, as required under subparagraph (A), the Administrator shall promulgate the designation that the Administrator deems appropriate for any area (or portion thereof) not designated by the State.

(iii) If the Governor of any State, on the Governor's own motion, under subparagraph (A), submits a list of areas (or portions thereof) in the State designated as nonattainment, attainment, or unclassifiable, the Administrator shall act on such designations in accordance with the procedures under paragraph (3) (relating to redesignation).

(iv) A designation for an area (or portion thereof) made pursuant to this subsection shall remain in effect until the area (or portion thereof) is redesignated pursuant to paragraph (3) or (4).

(C) Designations by operation of law

(i) Any area designated with respect to any air pollutant under the provisions of paragraph (1)(A), (B), or (C) of this subsection (as in effect immediately before November 15, 1990) is designated, by operation of law, as a nonattainment area for such pollutant within the meaning of subparagraph (A)(i).

(ii) Any area designated with respect to any air pollutant under the provisions of paragraph (1)(E) (as in effect immediately before November 15, 1990) is designated by operation of law, as an attainment area for such pollutant within the meaning of subparagraph (A)(ii).

(iii) Any area designated with respect to any air pollutant under the provisions of paragraph (1)(D) (as in effect immediately before November 15, 1990) is designated, by operation of law, as an unclassifiable area for such pollutant within the meaning of subparagraph (A)(iii).

(2) Publication of designations and redesignations

(A) The Administrator shall publish a notice in the Federal Register promulgating any designation under paragraph (1) or (5), or announcing any designation under paragraph (4), or promulgating any redesignation under paragraph (3).

(B) Promulgation or announcement of a designation under paragraph (1), (4) or (5) shall not be subject to the provisions of [sections 553 through 557 of Title 5](#) (relating to notice and comment), except nothing herein shall be construed as precluding such public notice and comment whenever possible.

(3) Redesignation

(A) Subject to the requirements of subparagraph (E), and on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate, the Administrator may at any time notify the Governor of any State that available information indicates that the designation of any area or portion of an area within the State or interstate area should be revised. In issuing such notification, which shall be public, to the Governor, the Administrator shall provide such information as the Administrator may have available explaining the basis for the notice.

(B) No later than 120 days after receiving a notification under subparagraph (A), the Governor shall submit to the Administrator such redesignation, if any, of the appropriate area (or areas) or portion thereof within the State or interstate area, as the Governor considers appropriate.

(C) No later than 120 days after the date described in subparagraph (B) (or paragraph (1)(B)(iii)), the Administrator shall promulgate the redesignation, if any, of the area or portion thereof, submitted by the Governor in accordance with subparagraph (B), making such modifications as the Administrator may deem necessary, in the same manner and under the same procedure as is applicable under clause (ii) of paragraph (1)(B), except that the phrase “60 days” shall be substituted for the phrase “120 days” in that clause. If the Governor does not submit, in accordance with subparagraph (B), a redesignation for an area (or portion thereof) identified by the Administrator under subparagraph (A), the Administrator shall promulgate such redesignation, if any, that the Administrator deems appropriate.

(D) The Governor of any State may, on the Governor's own motion, submit to the Administrator a revised designation of any area or portion thereof within the State. Within 18 months of receipt of a complete State redesignation submittal, the Administrator shall approve or deny such redesignation. The submission of a redesignation by a Governor shall not affect the effectiveness or enforceability of the applicable implementation plan for the State.

(E) The Administrator may not promulgate a redesignation of a nonattainment area (or portion thereof) to attainment unless--

(i) the Administrator determines that the area has attained the national ambient air quality standard;

(ii) the Administrator has fully approved the applicable implementation plan for the area under [section 7410\(k\)](#) of this title;

(iii) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(iv) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of [section 7505a](#) of this title; and

(v) the State containing such area has met all requirements applicable to the area under [section 7410](#) of this title and part D.

(F) The Administrator shall not promulgate any redesignation of any area (or portion thereof) from nonattainment to unclassifiable.

(4) Nonattainment designations for ozone, carbon monoxide and particulate matter (PM-10)

(A) Ozone and carbon monoxide

(i) Within 120 days after November 15, 1990, each Governor of each State shall submit to the Administrator a list that designates, affirms or reaffirms the designation of, or redesignates (as the case may be), all areas (or portions thereof) of the Governor's State as attainment, nonattainment, or unclassifiable with respect to the national ambient air quality standards for ozone and carbon monoxide.

(ii) No later than 120 days after the date the Governor is required to submit the list of areas (or portions thereof) required under clause (i) of this subparagraph, the Administrator shall promulgate such designations, making such modifications as the Administrator may deem necessary, in the same manner, and under the same procedure, as is applicable under clause (ii) of paragraph (1)(B), except that the phrase "60 days" shall be substituted for the phrase "120 days" in that clause. If the Governor does not submit, in accordance with clause (i) of this subparagraph, a designation for an area (or portion thereof), the Administrator shall promulgate the designation that the Administrator deems appropriate.

(iii) No nonattainment area may be redesignated as an attainment area under this subparagraph.

(iv) Notwithstanding paragraph (1)(C)(ii) of this subsection, if an ozone or carbon monoxide nonattainment area located within a metropolitan statistical area or consolidated metropolitan statistical area (as established by the Bureau of the Census) is classified under part D of this subchapter as a Serious, Severe, or Extreme Area, the boundaries of such area are hereby revised (on the date 45 days after such classification) by operation of law to include the entire metropolitan statistical area or consolidated metropolitan statistical area, as the case may be, unless within such 45-day period the Governor (in consultation with State and local air pollution control agencies) notifies the Administrator that additional time is necessary to evaluate the application of clause (v). Whenever a Governor has submitted such a notice to the Administrator, such boundary revision shall occur on the later of the date 8 months after such classification or 14 months after November 15, 1990, unless the Governor makes the finding referred to in clause (v), and the Administrator concurs in such finding, within such period. Except as otherwise provided in this paragraph, a boundary revision under this clause or clause (v) shall apply for purposes of any State implementation plan revision required to be submitted after November 15, 1990.

(v) Whenever the Governor of a State has submitted a notice under clause (iv), the Governor, in consultation with State and local air pollution control agencies, shall undertake a study to evaluate whether the entire metropolitan statistical area or consolidated metropolitan statistical area should be included within the nonattainment area. Whenever a Governor finds and demonstrates to the satisfaction of the Administrator, and the Administrator concurs in such finding, that with respect to a portion of a metropolitan statistical area or consolidated metropolitan statistical area, sources in the portion do not contribute significantly to violation of the national ambient air quality standard, the Administrator shall approve the Governor's request to exclude such portion from the nonattainment area. In making such finding, the Governor and the Administrator shall consider factors such as population density, traffic congestion, commercial development, industrial development, meteorological conditions, and pollution transport.

(B) PM-10 designations

By operation of law, until redesignation by the Administrator pursuant to paragraph (3)--

(i) each area identified in [52 Federal Register 29383 \(Aug. 7, 1987\)](#) as a Group I area (except to the extent that such identification was modified by the Administrator before November 15, 1990) is designated nonattainment for PM-10;

(ii) any area containing a site for which air quality monitoring data show a violation of the national ambient air quality standard for PM-10 before January 1, 1989 (as determined under [part 50, appendix K of title 40 of the Code of Federal Regulations](#)) is hereby designated nonattainment for PM-10; and

(iii) each area not described in clause (i) or (ii) is hereby designated unclassifiable for PM-10.

Any designation for particulate matter (measured in terms of total suspended particulates) that the Administrator promulgated pursuant to this subsection (as in effect immediately before November 15, 1990) shall remain in effect for purposes of implementing the maximum allowable increases in concentrations of particulate matter (measured in terms of total suspended particulates) pursuant to [section 7473\(b\)](#) of this title, until the Administrator determines that such designation is no longer necessary for that purpose.

(5) Designations for lead

The Administrator may, in the Administrator's discretion at any time the Administrator deems appropriate, require a State to designate areas (or portions thereof) with respect to the national ambient air quality standard for lead in effect as of November 15, 1990, in accordance with the procedures under subparagraphs (A) and (B) of paragraph (1), except that in applying subparagraph (B)(i) of paragraph (1) the phrase “2 years from the date of promulgation of the new or revised national ambient air quality standard” shall be replaced by the phrase “1 year from the date the Administrator notifies the State of the requirement to designate areas with respect to the standard for lead”.

(6) Designations

(A) Submission

Notwithstanding any other provision of law, not later than February 15, 2004, the Governor of each State shall submit designations referred to in paragraph (1) for the July 1997 PM_{2.5} national ambient air quality standards for each area within the State, based on air quality monitoring data collected in accordance with any applicable Federal reference methods for the relevant areas.

(B) Promulgation

Notwithstanding any other provision of law, not later than December 31, 2004, the Administrator shall, consistent with paragraph (1), promulgate the designations referred to in subparagraph (A) for each area of each State for the July 1997 PM_{2.5} national ambient air quality standards.

(7) Implementation plan for regional haze

(A) In general

Notwithstanding any other provision of law, not later than 3 years after the date on which the Administrator promulgates the designations referred to in paragraph (6)(B) for a State, the State shall submit, for the entire State, the State implementation plan revisions to meet the requirements promulgated by the Administrator under [section 7492\(e\)\(1\)](#) of this title (referred to in this paragraph as “regional haze requirements”).

(B) No preclusion of other provisions

Nothing in this paragraph precludes the implementation of the agreements and recommendations stemming from the Grand Canyon Visibility Transport Commission Report dated June 1996, including the submission of State implementation plan revisions by the States of Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, or Wyoming by December 31, 2003, for implementation of regional haze requirements applicable to those States.

(e) Redesignation of air quality control regions

(1) Except as otherwise provided in paragraph (2), the Governor of each State is authorized, with the approval of the Administrator, to redesignate from time to time the air quality control regions within such State for purposes of efficient and effective air quality management. Upon such redesignation, the list under subsection (d) shall be modified accordingly.

(2) In the case of an air quality control region in a State, or part of such region, which the Administrator finds may significantly affect air pollution concentrations in another State, the Governor of the State in which such region, or part of a region, is located may redesignate from time to time the boundaries of so much of such air quality control region as is located within such State only with the approval of the Administrator and with the consent of all Governors of all States which the Administrator determines may be significantly affected.

(3) No compliance date extension granted under [section 7413\(d\)\(5\)](#) of this title (relating to coal conversion) shall cease to be effective by reason of the regional limitation provided in [section 7413\(d\)\(5\)](#) of this title if the violation of such limitation is due solely to a redesignation of a region under this subsection.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 107, as added [Pub.L. 91-604](#), § 4(a), Dec. 31, 1970, 84 Stat. 1678; amended [Pub.L. 95-95](#), Title I, § 103, Aug. 7, 1977, 91 Stat. 687; [Pub.L. 101-549](#), Title I, § 101(a), Nov. 15, 1990, 104 Stat. 2399; [Pub.L. 108-199](#), Div. G, Title IV, § 425(a), Jan. 23, 2004, 118 Stat. 417.)

[Notes of Decisions \(66\)](#)

42 U.S.C.A. § 7407, 42 USCA § 7407

Current through PL 117-26 with the exception of PL 116-283, Div. A, Title XVIII, which takes effect January 1, 2022.

United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 85. Air Pollution Prevention and Control (Refs & Annos)

Subchapter I. Programs and Activities

Part A. Air Quality and Emissions Limitations (Refs & Annos)

42 U.S.C.A. § 7408

§ 7408. Air quality criteria and control techniques

Effective: November 10, 1998

[Currentness](#)

(a) Air pollutant list; publication and revision by Administrator; issuance of air quality criteria for air pollutants

(1) For the purpose of establishing national primary and secondary ambient air quality standards, the Administrator shall within 30 days after December 31, 1970, publish, and shall from time to time thereafter revise, a list which includes each air pollutant--

(A) emissions of which, in his judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare;

(B) the presence of which in the ambient air results from numerous or diverse mobile or stationary sources; and

(C) for which air quality criteria had not been issued before December 31, 1970 but for which he plans to issue air quality criteria under this section.

(2) The Administrator shall issue air quality criteria for an air pollutant within 12 months after he has included such pollutant in a list under paragraph (1). Air quality criteria for an air pollutant shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air, in varying quantities. The criteria for an air pollutant, to the extent practicable, shall include information on--

(A) those variable factors (including atmospheric conditions) which of themselves or in combination with other factors may alter the effects on public health or welfare of such air pollutant;

(B) the types of air pollutants which, when present in the atmosphere, may interact with such pollutant to produce an adverse effect on public health or welfare; and

(C) any known or anticipated adverse effects on welfare.

(b) Issuance by Administrator of information on air pollution control techniques; standing consulting committees for air pollutants; establishment; membership

(1) Simultaneously with the issuance of criteria under subsection (a), the Administrator shall, after consultation with appropriate advisory committees and Federal departments and agencies, issue to the States and appropriate air pollution control agencies information on air pollution control techniques, which information shall include data relating to the cost of installation and operation, energy requirements, emission reduction benefits, and environmental impact of the emission control technology. Such information shall include such data as are available on available technology and alternative methods of prevention and control of air pollution. Such information shall also include data on alternative fuels, processes, and operating methods which will result in elimination or significant reduction of emissions.

(2) In order to assist in the development of information on pollution control techniques, the Administrator may establish a standing consulting committee for each air pollutant included in a list published pursuant to subsection (a)(1), which shall be comprised of technically qualified individuals representative of State and local governments, industry, and the academic community. Each such committee shall submit, as appropriate, to the Administrator information related to that required by paragraph (1).

(c) Review, modification, and reissuance of criteria or information

The Administrator shall from time to time review, and, as appropriate, modify, and reissue any criteria or information on control techniques issued pursuant to this section. Not later than six months after August 7, 1977, the Administrator shall revise and reissue criteria relating to concentrations of NO₂ over such period (not more than three hours) as he deems appropriate. Such criteria shall include a discussion of nitric and nitrous acids, nitrites, nitrates, nitrosamines, and other carcinogenic and potentially carcinogenic derivatives of oxides of nitrogen.

(d) Publication in Federal Register; availability of copies for general public

The issuance of air quality criteria and information on air pollution control techniques shall be announced in the Federal Register and copies shall be made available to the general public.

(e) Transportation planning and guidelines

The Administrator shall, after consultation with the Secretary of Transportation, and after providing public notice and opportunity for comment, and with State and local officials, within nine months after November 15, 1990, and periodically thereafter as necessary to maintain a continuous transportation-air quality planning process, update the June 1978 Transportation-Air Quality Planning Guidelines and publish guidance on the development and implementation of transportation and other measures necessary to demonstrate and maintain attainment of national ambient air quality standards. Such guidelines shall include information on--

(1) methods to identify and evaluate alternative planning and control activities;

(2) methods of reviewing plans on a regular basis as conditions change or new information is presented;

(3) identification of funds and other resources necessary to implement the plan, including interagency agreements on providing such funds and resources;

(4) methods to assure participation by the public in all phases of the planning process; and

(5) such other methods as the Administrator determines necessary to carry out a continuous planning process.

(f) Information regarding processes, procedures, and methods to reduce or control pollutants in transportation; reduction of mobile source related pollutants; reduction of impact on public health

(1) The Administrator shall publish and make available to appropriate Federal, State, and local environmental and transportation agencies not later than one year after November 15, 1990, and from time to time thereafter--

(A) information prepared, as appropriate, in consultation with the Secretary of Transportation, and after providing public notice and opportunity for comment, regarding the formulation and emission reduction potential of transportation control measures related to criteria pollutants and their precursors, including, but not limited to--

(i) programs for improved public transit;

(ii) restriction of certain roads or lanes to, or construction of such roads or lanes for use by, passenger buses or high occupancy vehicles;

(iii) employer-based transportation management plans, including incentives;

(iv) trip-reduction ordinances;

(v) traffic flow improvement programs that achieve emission reductions;

(vi) fringe and transportation corridor parking facilities serving multiple occupancy vehicle programs or transit service;

(vii) programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration particularly during periods of peak use;

(viii) programs for the provision of all forms of high-occupancy, shared-ride services;

(ix) programs to limit portions of road surfaces or certain sections of the metropolitan area to the use of non-motorized vehicles or pedestrian use, both as to time and place;

(x) programs for secure bicycle storage facilities and other facilities, including bicycle lanes, for the convenience and protection of bicyclists, in both public and private areas;

(xi) programs to control extended idling of vehicles;

(xii) programs to reduce motor vehicle emissions, consistent with subchapter II, which are caused by extreme cold start conditions;

(xiii) employer-sponsored programs to permit flexible work schedules;

(xiv) programs and ordinances to facilitate non-automobile travel, provision and utilization of mass transit, and to generally reduce the need for single-occupant vehicle travel, as part of transportation planning and development efforts of a locality, including programs and ordinances applicable to new shopping centers, special events, and other centers of vehicle activity;

(xv) programs for new construction and major reconstructions of paths, tracks or areas solely for the use by pedestrian or other non-motorized means of transportation when economically feasible and in the public interest. For purposes of this clause, the Administrator shall also consult with the Secretary of the Interior; and

(xvi) program to encourage the voluntary removal from use and the marketplace of pre-1980 model year light duty vehicles and pre-1980 model light duty trucks.¹

(B) information on additional methods or strategies that will contribute to the reduction of mobile source related pollutants during periods in which any primary ambient air quality standard will be exceeded and during episodes for which an air pollution alert, warning, or emergency has been declared;

(C) information on other measures which may be employed to reduce the impact on public health or protect the health of sensitive or susceptible individuals or groups; and

(D) information on the extent to which any process, procedure, or method to reduce or control such air pollutant may cause an increase in the emissions or formation of any other pollutant.

(2) In publishing such information the Administrator shall also include an assessment of--

(A) the relative effectiveness of such processes, procedures, and methods;

(B) the potential effect of such processes, procedures, and methods on transportation systems and the provision of transportation services; and

(C) the environmental, energy, and economic impact of such processes, procedures, and methods.

(g) Assessment of risks to ecosystems

The Administrator may assess the risks to ecosystems from exposure to criteria air pollutants (as identified by the Administrator in the Administrator's sole discretion).

(h) RACT/BACT/LAER clearinghouse

The Administrator shall make information regarding emission control technology available to the States and to the general public through a central database. Such information shall include all control technology information received pursuant to State plan provisions requiring permits for sources, including operating permits for existing sources.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 108, as added [Pub.L. 91-604](#), § 4(a), Dec. 31, 1970, 84 Stat. 1678; amended [Pub.L. 95-95](#), Title I, §§ 104, 105, Title IV, § 401(a), Aug. 7, 1977, 91 Stat. 689, 790; [Pub.L. 101-549](#), Title I, §§ 108(a) to (c), (o), 111, Nov. 15, 1990, 104 Stat. 2465, 2466, 2469, 2470; [Pub.L. 105-362](#), Title XV, § 1501(b), Nov. 10, 1998, 112 Stat. 3294.)

[Notes of Decisions \(23\)](#)

Footnotes

¹ So in original. The period probably should be a semicolon.

42 U.S.C.A. § 7408, 42 USCA § 7408

Current through PL 117-26 with the exception of PL 116-283, Div. A, Title XVIII, which takes effect January 1, 2022.

United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 85. Air Pollution Prevention and Control (Refs & Annos)

Subchapter I. Programs and Activities

Part A. Air Quality and Emissions Limitations (Refs & Annos)

42 U.S.C.A. § 7409

§ 7409. National primary and secondary ambient air quality standards

Currentness

(a) Promulgation

(1) The Administrator--

(A) within 30 days after December 31, 1970, shall publish proposed regulations prescribing a national primary ambient air quality standard and a national secondary ambient air quality standard for each air pollutant for which air quality criteria have been issued prior to such date; and

(B) after a reasonable time for interested persons to submit written comments thereon (but no later than 90 days after the initial publication of such proposed standards) shall by regulation promulgate such proposed national primary and secondary ambient air quality standards with such modifications as he deems appropriate.

(2) With respect to any air pollutant for which air quality criteria are issued after December 31, 1970, the Administrator shall publish, simultaneously with the issuance of such criteria and information, proposed national primary and secondary ambient air quality standards for any such pollutant. The procedure provided for in paragraph (1)(B) of this subsection shall apply to the promulgation of such standards.

(b) Protection of public health and welfare

(1) National primary ambient air quality standards, prescribed under subsection (a) shall be ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health. Such primary standards may be revised in the same manner as promulgated.

(2) Any national secondary ambient air quality standard prescribed under subsection (a) shall specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. Such secondary standards may be revised in the same manner as promulgated.

(c) National primary ambient air quality standard for nitrogen dioxide

The Administrator shall, not later than one year after August 7, 1977, promulgate a national primary ambient air quality standard for NO₂ concentrations over a period of not more than 3 hours unless, based on the criteria issued under [section 7408\(c\)](#) of this title, he finds that there is no significant evidence that such a standard for such a period is requisite to protect public health.

(d) Review and revision of criteria and standards; independent scientific review committee; appointment; advisory functions

(1) Not later than December 31, 1980, and at five-year intervals thereafter, the Administrator shall complete a thorough review of the criteria published under [section 7408](#) of this title and the national ambient air quality standards promulgated under this section and shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with [section 7408](#) of this title and subsection (b) of this section. The Administrator may review and revise criteria or promulgate new standards earlier or more frequently than required under this paragraph.

(2)(A) The Administrator shall appoint an independent scientific review committee composed of seven members including at least one member of the National Academy of Sciences, one physician, and one person representing State air pollution control agencies.

(B) Not later than January 1, 1980, and at five-year intervals thereafter, the committee referred to in subparagraph (A) shall complete a review of the criteria published under [section 7408](#) of this title and the national primary and secondary ambient air quality standards promulgated under this section and shall recommend to the Administrator any new national ambient air quality standards and revisions of existing criteria and standards as may be appropriate under [section 7408](#) of this title and subsection (b) of this section.

(C) Such committee shall also (i) advise the Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised national ambient air quality standards, (ii) describe the research efforts necessary to provide the required information, (iii) advise the Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity, and (iv) advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 109, as added [Pub.L. 91-604](#), § 4(a), Dec. 31, 1970, 84 Stat. 1679; amended [Pub.L. 95-95](#), Title I, § 106, Aug. 7, 1977, 91 Stat. 691.)

[Notes of Decisions \(89\)](#)

42 U.S.C.A. § 7409, 42 USCA § 7409

Current through PL 117-26 with the exception of PL 116-283, Div. A, Title XVIII, which takes effect January 1, 2022.

United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 85. Air Pollution Prevention and Control (Refs & Annos)

Subchapter I. Programs and Activities

Part A. Air Quality and Emissions Limitations (Refs & Annos)

42 U.S.C.A. § 7410

§ 7410. State implementation plans for national primary and secondary ambient air quality standards

Currentness

(a) Adoption of plan by State; submission to Administrator; content of plan; revision; new sources; indirect source review program; supplemental or intermittent control systems

(1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof) under [section 7409](#) of this title for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the first sentence of this paragraph.

(2) Each implementation plan submitted by a State under this chapter shall be adopted by the State after reasonable notice and public hearing. Each such plan shall--

(A) include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter;

(B) provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to--

(i) monitor, compile, and analyze data on ambient air quality, and

(ii) upon request, make such data available to the Administrator;

(C) include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D;

(D) contain adequate provisions--

(i) prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will--

(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or

(II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility,

(ii) insuring compliance with the applicable requirements of [sections 7426](#) and [7415](#) of this title (relating to interstate and international pollution abatement);

(E) provide (i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with the requirements respecting State boards under [section 7428](#) of this title, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision;

(F) require, as may be prescribed by the Administrator--

(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,

(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and

(iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection;

(G) provide for authority comparable to that in [section 7603](#) of this title and adequate contingency plans to implement such authority;

(H) provide for revision of such plan--

(i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and

(ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this chapter;

(I) in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D (relating to nonattainment areas);

(J) meet the applicable requirements of [section 7421](#) of this title (relating to consultation), [section 7427](#) of this title (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection);

(K) provide for--

(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and

(ii) the submission, upon request, of data related to such air quality modeling to the Administrator;

(L) require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this chapter, a fee sufficient to cover--

(i) the reasonable costs of reviewing and acting upon any application for such a permit, and

(ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),

until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under subchapter V; and

(M) provide for consultation and participation by local political subdivisions affected by the plan.

(3)(A) Repealed. [Pub.L. 101-549, Title I, § 101\(d\)\(1\)](#), Nov. 15, 1990, 104 Stat. 2409

(B) As soon as practicable, the Administrator shall, consistent with the purposes of this chapter and the Energy Supply and Environmental Coordination Act of 1974, review each State's applicable implementation plans and report to the State on whether such plans can be revised in relation to fuel burning stationary sources (or persons supplying fuel to such sources) without interfering with the attainment and maintenance of any national ambient air quality standard within the period permitted in this

section. If the Administrator determines that any such plan can be revised, he shall notify the State that a plan revision may be submitted by the State. Any plan revision which is submitted by the State shall, after public notice and opportunity for public hearing, be approved by the Administrator if the revision relates only to fuel burning stationary sources (or persons supplying fuel to such sources), and the plan as revised complies with paragraph (2) of this subsection. The Administrator shall approve or disapprove any revision no later than three months after its submission.

(C) Neither the State, in the case of a plan (or portion thereof) approved under this subsection, nor the Administrator, in the case of a plan (or portion thereof) promulgated under subsection (c), shall be required to revise an applicable implementation plan because one or more exemptions under [section 7418](#) of this title (relating to Federal facilities), enforcement orders under [section 7413\(d\)](#) of this title, suspensions under subsection (f) or (g) (relating to temporary energy or economic authority), orders under [section 7419](#) of this title (relating to primary nonferrous smelters), or extensions of compliance in decrees entered under [section 7413\(e\)](#) of this title (relating to iron- and steel-producing operations) have been granted, if such plan would have met the requirements of this section if no such exemptions, orders, or extensions had been granted.

(4) Repealed. [Pub.L. 101-549, Title I, § 101\(d\)\(2\)](#), Nov. 15, 1990, 104 Stat. 2409

(5)(A)(i) Any State may include in a State implementation plan, but the Administrator may not require as a condition of approval of such plan under this section, any indirect source review program. The Administrator may approve and enforce, as part of an applicable implementation plan, an indirect source review program which the State chooses to adopt and submit as part of its plan.

(ii) Except as provided in subparagraph (B), no plan promulgated by the Administrator shall include any indirect source review program for any air quality control region, or portion thereof.

(iii) Any State may revise an applicable implementation plan approved under this subsection to suspend or revoke any such program included in such plan, provided that such plan meets the requirements of this section.

(B) The Administrator shall have the authority to promulgate, implement and enforce regulations under subsection (c) respecting indirect source review programs which apply only to federally assisted highways, airports, and other major federally assisted indirect sources and federally owned or operated indirect sources.

(C) For purposes of this paragraph, the term “indirect source” means a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution. Such term includes parking lots, parking garages, and other facilities subject to any measure for management of parking supply (within the meaning of subsection (c)(2)(D)(ii)), including regulation of existing off-street parking but such term does not include new or existing on-street parking. Direct emissions sources or facilities at, within, or associated with, any indirect source shall not be deemed indirect sources for the purpose of this paragraph.

(D) For purposes of this paragraph the term “indirect source review program” means the facility-by-facility review of indirect sources of air pollution, including such measures as are necessary to assure, or assist in assuring, that a new or modified indirect source will not attract mobile sources of air pollution, the emissions from which would cause or contribute to air pollution concentrations--

(i) exceeding any national primary ambient air quality standard for a mobile source-related air pollutant after the primary standard attainment date, or

(ii) preventing maintenance of any such standard after such date.

(E) For purposes of this paragraph and paragraph (2)(B), the term “transportation control measure” does not include any measure which is an “indirect source review program”.

(6) No State plan shall be treated as meeting the requirements of this section unless such plan provides that in the case of any source which uses a supplemental, or intermittent control system for purposes of meeting the requirements of an order under [section 7413\(d\)](#) of this title or [section 7419](#) of this title (relating to primary nonferrous smelter orders), the owner or operator of such source may not temporarily reduce the pay of any employee by reason of the use of such supplemental or intermittent or other dispersion dependent control system.

(b) Extension of period for submission of plans

The Administrator may, wherever he determines necessary, extend the period for submission of any plan or portion thereof which implements a national secondary ambient air quality standard for a period not to exceed 18 months from the date otherwise required for submission of such plan.

(c) Preparation and publication by Administrator of proposed regulations setting forth implementation plan; transportation regulations study and report; parking surcharge; suspension authority; plan implementation

(1) The Administrator shall promulgate a Federal implementation plan at any time within 2 years after the Administrator--

(A) finds that a State has failed to make a required submission or finds that the plan or plan revision submitted by the State does not satisfy the minimum criteria established under subsection (k)(1)(A), or

(B) disapproves a State implementation plan submission in whole or in part,

unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such Federal implementation plan.

(2)(A) Repealed. [Pub.L. 101-549, Title I, § 101\(d\)\(3\)\(A\)](#), Nov. 15, 1990, 104 Stat. 2409

(B) No parking surcharge regulation may be required by the Administrator under paragraph (1) of this subsection as a part of an applicable implementation plan. All parking surcharge regulations previously required by the Administrator shall be void upon June 22, 1974. This subparagraph shall not prevent the Administrator from approving parking surcharges if they are adopted and submitted by a State as part of an applicable implementation plan. The Administrator may not condition approval of any implementation plan submitted by a State on such plan's including a parking surcharge regulation.

(C) Repealed. [Pub.L. 101-549, Title I, § 101\(d\)\(3\)\(B\)](#), Nov. 15, 1990, 104 Stat. 2409

(D) For purposes of this paragraph--

(i) The term “parking surcharge regulation” means a regulation imposing or requiring the imposition of any tax, surcharge, fee, or other charge on parking spaces, or any other area used for the temporary storage of motor vehicles.

(ii) The term “management of parking supply” shall include any requirement providing that any new facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations.

(iii) The term “preferential bus/carpool lane” shall include any requirement for the setting aside of one or more lanes of a street or highway on a permanent or temporary basis for the exclusive use of buses or carpools, or both.

(E) No standard, plan, or requirement, relating to management of parking supply or preferential bus/carpool lanes shall be promulgated after June 22, 1974, by the Administrator pursuant to this section, unless such promulgation has been subjected to at least one public hearing which has been held in the area affected and for which reasonable notice has been given in such area. If substantial changes are made following public hearings, one or more additional hearings shall be held in such area after such notice.

(3) Upon application of the chief executive officer of any general purpose unit of local government, if the Administrator determines that such unit has adequate authority under State or local law, the Administrator may delegate to such unit the authority to implement and enforce within the jurisdiction of such unit any part of a plan promulgated under this subsection. Nothing in this paragraph shall prevent the Administrator from implementing or enforcing any applicable provision of a plan promulgated under this subsection.

(4) Repealed. [Pub.L. 101-549, Title I, § 101\(d\)\(3\)\(C\)](#), Nov. 15, 1990, 104 Stat. 2409

(5)(A) Any measure in an applicable implementation plan which requires a toll or other charge for the use of a bridge located entirely within one city shall be eliminated from such plan by the Administrator upon application by the Governor of the State, which application shall include a certification by the Governor that he will revise such plan in accordance with subparagraph (B).

(B) In the case of any applicable implementation plan with respect to which a measure has been eliminated under subparagraph (A), such plan shall, not later than one year after August 7, 1977, be revised to include comprehensive measures to:

(i) establish, expand, or improve public transportation measures to meet basic transportation needs, as expeditiously as is practicable; and

(ii) implement transportation control measures necessary to attain and maintain national ambient air quality standards,

and such revised plan shall, for the purpose of implementing such comprehensive public transportation measures, include requirements to use (insofar as is necessary) Federal grants, State or local funds, or any combination of such grants and funds as may be consistent with the terms of the legislation providing such grants and funds. Such measures shall, as a substitute for the tolls or charges eliminated under subparagraph (A), provide for emissions reductions equivalent to the reductions which may reasonably be expected to be achieved through the use of the tolls or charges eliminated.

(C) Any revision of an implementation plan for purposes of meeting the requirements of subparagraph (B) shall be submitted in coordination with any plan revision required under part D.

(d), (e) Repealed. Pub.L. 101-549, Title I, § 101(d)(4), (5), Nov. 15, 1990, 104 Stat. 2409

(f) National or regional energy emergencies; determination by President

(1) Upon application by the owner or operator of a fuel burning stationary source, and after notice and opportunity for public hearing, the Governor of the State in which such source is located may petition the President to determine that a national or regional energy emergency exists of such severity that--

(A) a temporary suspension of any part of the applicable implementation plan or of any requirement under [section 7651j](#) of this title (concerning excess emissions penalties or offsets) may be necessary, and

(B) other means of responding to the energy emergency may be inadequate.

Such determination shall not be delegable by the President to any other person. If the President determines that a national or regional energy emergency of such severity exists, a temporary emergency suspension of any part of an applicable implementation plan or of any requirement under [section 7651j](#) of this title (concerning excess emissions penalties or offsets) adopted by the State may be issued by the Governor of any State covered by the President's determination under the condition specified in paragraph (2) and may take effect immediately.

(2) A temporary emergency suspension under this subsection shall be issued to a source only if the Governor of such State finds that--

(A) there exists in the vicinity of such source a temporary energy emergency involving high levels of unemployment or loss of necessary energy supplies for residential dwellings; and

(B) such unemployment or loss can be totally or partially alleviated by such emergency suspension.

Not more than one such suspension may be issued for any source on the basis of the same set of circumstances or on the basis of the same emergency.

(3) A temporary emergency suspension issued by a Governor under this subsection shall remain in effect for a maximum of four months or such lesser period as may be specified in a disapproval order of the Administrator, if any. The Administrator may disapprove such suspension if he determines that it does not meet the requirements of paragraph (2).

(4) This subsection shall not apply in the case of a plan provision or requirement promulgated by the Administrator under subsection (c) of this section, but in any such case the President may grant a temporary emergency suspension for a four month period of any such provision or requirement if he makes the determinations and findings specified in paragraphs (1) and (2).

(5) The Governor may include in any temporary emergency suspension issued under this subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under [section 1857c-10](#) of this title, as in effect before August 7, 1977, or [section 7413\(d\)](#) of this title, upon a finding that such source is unable to comply with such schedule (or increment) solely because of the conditions on the basis of which a suspension was issued under this subsection.

(g) Governor's authority to issue temporary emergency suspensions

(1) In the case of any State which has adopted and submitted to the Administrator a proposed plan revision which the State determines--

(A) meets the requirements of this section, and

(B) is necessary (i) to prevent the closing for one year or more of any source of air pollution, and (ii) to prevent substantial increases in unemployment which would result from such closing, and

which the Administrator has not approved or disapproved under this section within 12 months of submission of the proposed plan revision, the Governor may issue a temporary emergency suspension of the part of the applicable implementation plan for such State which is proposed to be revised with respect to such source. The determination under subparagraph (B) may not be made with respect to a source which would close without regard to whether or not the proposed plan revision is approved.

(2) A temporary emergency suspension issued by a Governor under this subsection shall remain in effect for a maximum of four months or such lesser period as may be specified in a disapproval order of the Administrator. The Administrator may disapprove such suspension if he determines that it does not meet the requirements of this subsection.

(3) The Governor may include in any temporary emergency suspension issued under this subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under [section 1857c-10](#) of this title as in effect before August 7, 1977, or under [section 7413\(d\)](#) of this title upon a finding that such source is unable to comply with such schedule (or increment) solely because of the conditions on the basis of which a suspension was issued under this subsection.

(h) Publication of comprehensive document for each State setting forth requirements of applicable implementation plan

(1) Not later than 5 years after November 15, 1990, and every 3 years thereafter, the Administrator shall assemble and publish a comprehensive document for each State setting forth all requirements of the applicable implementation plan for such State and shall publish notice in the Federal Register of the availability of such documents.

(2) The Administrator may promulgate such regulations as may be reasonably necessary to carry out the purpose of this subsection.

(i) Modification of requirements prohibited

Except for a primary nonferrous smelter order under [section 7419](#) of this title, a suspension under subsection (f) or (g) (relating to emergency suspensions), an exemption under [section 7418](#) of this title (relating to certain Federal facilities), an order under [section 7413\(d\)](#) of this title (relating to compliance orders), a plan promulgation under subsection (c), or a plan revision under subsection (a)(3), no order, suspension, plan revision, or other action modifying any requirement of an applicable implementation plan may be taken with respect to any stationary source by the State or by the Administrator.

(j) Technological systems of continuous emission reduction on new or modified stationary sources; compliance with performance standards

As a condition for issuance of any permit required under this subchapter, the owner or operator of each new or modified stationary source which is required to obtain such a permit must show to the satisfaction of the permitting authority that the technological system of continuous emission reduction which is to be used at such source will enable it to comply with the standards of performance which are to apply to such source and that the construction or modification and operation of such source will be in compliance with all other requirements of this chapter.

(k) Environmental Protection Agency action on plan submissions

(1) Completeness of plan submissions

(A) Completeness criteria

Within 9 months after November 15, 1990, the Administrator shall promulgate minimum criteria that any plan submission must meet before the Administrator is required to act on such submission under this subsection. The criteria shall be limited to the information necessary to enable the Administrator to determine whether the plan submission complies with the provisions of this chapter.

(B) Completeness finding

Within 60 days of the Administrator's receipt of a plan or plan revision, but no later than 6 months after the date, if any, by which a State is required to submit the plan or revision, the Administrator shall determine whether the minimum criteria established pursuant to subparagraph (A) have been met. Any plan or plan revision that a State submits to the Administrator, and that has not been determined by the Administrator (by the date 6 months after receipt of the submission) to have failed to meet the minimum criteria established pursuant to subparagraph (A), shall on that date be deemed by operation of law to meet such minimum criteria.

(C) Effect of finding of incompleteness

Where the Administrator determines that a plan submission (or part thereof) does not meet the minimum criteria established pursuant to subparagraph (A), the State shall be treated as not having made the submission (or, in the Administrator's discretion, part thereof).

(2) Deadline for action

Within 12 months of a determination by the Administrator (or a determination deemed by operation of law) under paragraph (1) that a State has submitted a plan or plan revision (or, in the Administrator's discretion, part thereof) that meets the minimum criteria established pursuant to paragraph (1), if applicable (or, if those criteria are not applicable, within 12 months of submission of the plan or revision), the Administrator shall act on the submission in accordance with paragraph (3).

(3) Full and partial approval and disapproval

In the case of any submittal on which the Administrator is required to act under paragraph (2), the Administrator shall approve such submittal as a whole if it meets all of the applicable requirements of this chapter. If a portion of the plan revision meets all the applicable requirements of this chapter, the Administrator may approve the plan revision in part and disapprove the plan revision in part. The plan revision shall not be treated as meeting the requirements of this chapter until the Administrator approves the entire plan revision as complying with the applicable requirements of this chapter.

(4) Conditional approval

The Administrator may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision. Any such conditional approval shall be treated as a disapproval if the State fails to comply with such commitment.

(5) Calls for plan revisions

Whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant national ambient air quality standard, to mitigate adequately the interstate pollutant transport described in [section 7506a](#) of this title or [section 7511c](#) of this title, or to otherwise comply with any requirement of this chapter, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies. The Administrator shall notify the State of the inadequacies, and may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions. Such findings and notice shall be public. Any finding under this paragraph shall, to the extent the Administrator deems appropriate, subject the State to the requirements of this chapter to which the State was subject when it developed and submitted the plan for which such finding was made, except that the Administrator may adjust any dates applicable under such requirements as appropriate (except that the Administrator may not adjust any attainment date prescribed under part D, unless such date has elapsed).

(6) Corrections

Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

(l) Plan revisions

Each revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in [section 7501](#) of this title), or any other applicable requirement of this chapter.

(m) Sanctions

The Administrator may apply any of the sanctions listed in [section 7509\(b\)](#) of this title at any time (or at any time after) the Administrator makes a finding, disapproval, or determination under paragraphs (1) through (4), respectively, of [section 7509\(a\)](#) of this title in relation to any plan or plan item (as that term is defined by the Administrator) required under this chapter, with respect to any portion of the State the Administrator determines reasonable and appropriate, for the purpose of ensuring that the requirements of this chapter relating to such plan or plan item are met. The Administrator shall, by rule, establish criteria for exercising his authority under the previous sentence with respect to any deficiency referred to in [section 7509\(a\)](#) of this title to ensure that, during the 24-month period following the finding, disapproval, or determination referred to in [section 7509\(a\)](#) of this title, such sanctions are not applied on a statewide basis where one or more political subdivisions covered by the applicable implementation plan are principally responsible for such deficiency.

(n) Savings clauses

(1) Existing plan provisions

Any provision of any applicable implementation plan that was approved or promulgated by the Administrator pursuant to this section as in effect before November 15, 1990, shall remain in effect as part of such applicable implementation plan, except to the extent that a revision to such provision is approved or promulgated by the Administrator pursuant to this chapter.

(2) Attainment dates

For any area not designated nonattainment, any plan or plan revision submitted or required to be submitted by a State--

(A) in response to the promulgation or revision of a national primary ambient air quality standard in effect on November 15, 1990, or

(B) in response to a finding of substantial inadequacy under subsection (a)(2) (as in effect immediately before November 15, 1990),

shall provide for attainment of the national primary ambient air quality standards within 3 years of November 15, 1990, or within 5 years of issuance of such finding of substantial inadequacy, whichever is later.

(3) Retention of construction moratorium in certain areas

In the case of an area to which, immediately before November 15, 1990, the prohibition on construction or modification of major stationary sources prescribed in subsection (a)(2)(I) (as in effect immediately before November 15, 1990) applied by virtue of a finding of the Administrator that the State containing such area had not submitted an implementation plan meeting the requirements of [section 7502\(b\)\(6\)](#) of this title (relating to establishment of a permit program) (as in effect immediately before November 15, 1990) or 7502(a)(1) of this title (to the extent such requirements relate to provision for attainment of the primary national ambient air quality standard for sulfur oxides by December 31, 1982) as in effect immediately before November 15, 1990, no major stationary source of the relevant air pollutant or pollutants shall be constructed or modified in such area until the Administrator finds that the plan for such area meets the applicable requirements of [section 7502\(c\)\(5\)](#) of this title (relating to permit programs) or subpart 5 of part D (relating to attainment of the primary national ambient air quality standard for sulfur dioxide), respectively.

(o) Indian tribes

If an Indian tribe submits an implementation plan to the Administrator pursuant to [section 7601\(d\)](#) of this title, the plan shall be reviewed in accordance with the provisions for review set forth in this section for State plans, except as otherwise provided by regulation promulgated pursuant to [section 7601\(d\)\(2\)](#) of this title. When such plan becomes effective in accordance with the regulations promulgated under [section 7601\(d\)](#) of this title, the plan shall become applicable to all areas (except as expressly provided otherwise in the plan) located within the exterior boundaries of the reservation, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.

(p) Reports

Any State shall submit, according to such schedule as the Administrator may prescribe, such reports as the Administrator may require relating to emission reductions, vehicle miles traveled, congestion levels, and any other information the Administrator may deem necessary to assess the development¹ effectiveness, need for revision, or implementation of any plan or plan revision required under this chapter.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 110, as added [Pub.L. 91-604](#), § 4(a), Dec. 31, 1970, 84 Stat. 1680; amended [Pub.L. 93-319](#), § 4, June 22, 1974, 88 Stat. 256; S.Res. 4, Feb. 4, 1977; [Pub.L. 95-95](#), Title I, §§ 107, 108, Aug. 7, 1977, 91 Stat. 691, 693; [Pub.L. 95-190](#), § 14(a)(1) to (6), Nov. 16, 1977, 91 Stat. 1399; [Pub.L. 97-23](#), § 3, July 17, 1981, 95 Stat. 142; [Pub.L. 101-549](#), Title I, §§ 101(b) to (d), 102(h), 107(c), 108(d), Title IV, § 412, Nov. 15, 1990, 104 Stat. 2404 to 2408, 2422, 2464, 2466, 2634.)

Notes of Decisions (386)

Footnotes

¹ So in original. Probably should be followed by a comma.

42 U.S.C.A. § 7410, 42 USCA § 7410

Current through PL 117-26 with the exception of PL 116-283, Div. A, Title XVIII, which takes effect January 1, 2022.

United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 85. Air Pollution Prevention and Control (Refs & Annos)

Subchapter I. Programs and Activities

Part C. Prevention of Significant Deterioration of Air Quality

Subpart I. Clean Air (Refs & Annos)

42 U.S.C.A. § 7479

§ 7479. Definitions

Currentness

For purposes of this part--

(1) The term “major emitting facility” means any of the following stationary sources of air pollutants which emit, or have the potential to emit, one hundred tons per year or more of any air pollutant from the following types of stationary sources: fossil-fuel fired steam electric plants of more than two hundred and fifty million British thermal units per hour heat input, coal cleaning plants (thermal dryers), kraft pulp mills, Portland Cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than fifty tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production facilities, chemical process plants, fossil-fuel boilers of more than two hundred and fifty million British thermal units per hour heat input, petroleum storage and transfer facilities with a capacity exceeding three hundred thousand barrels, taconite ore processing facilities, glass fiber processing plants, charcoal production facilities. Such term also includes any other source with the potential to emit two hundred and fifty tons per year or more of any air pollutant. This term shall not include new or modified facilities which are nonprofit health or education institutions which have been exempted by the State.

(2)(A) The term “commenced” as applied to construction of a major emitting facility means that the owner or operator has obtained all necessary preconstruction approvals or permits required by Federal, State, or local air pollution emissions and air quality laws or regulations and either has (i) begun, or caused to begin, a continuous program of physical on-site construction of the facility or (ii) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the facility to be completed within a reasonable time.

(B) The term “necessary preconstruction approvals or permits” means those permits or approvals, required by the permitting authority as a precondition to undertaking any activity under clauses (i) or (ii) of subparagraph (A) of this paragraph.

(C) The term “construction” when used in connection with any source or facility, includes the modification (as defined in [section 7411\(a\)](#) of this title) of any source or facility.

(3) The term “best available control technology” means an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this chapter emitted from or which results from any major emitting facility, which

the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of “best available control technology” result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to [section 7411](#) or [7412](#) of this title. Emissions from any source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under this paragraph as it existed prior to November 15, 1990.

(4) The term “baseline concentration” means, with respect to a pollutant, the ambient concentration levels which exist at the time of the first application for a permit in an area subject to this part, based on air quality data available in the Environmental Protection Agency or a State air pollution control agency and on such monitoring data as the permit applicant is required to submit. Such ambient concentration levels shall take into account all projected emissions in, or which may affect, such area from any major emitting facility on which construction commenced prior to January 6, 1975, but which has not begun operation by the date of the baseline air quality concentration determination. Emissions of sulfur oxides and particulate matter from any major emitting facility on which construction commenced after January 6, 1975, shall not be included in the baseline and shall be counted against the maximum allowable increases in pollutant concentrations established under this part.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 169, as added [Pub.L. 95-95, Title I, § 127\(a\)](#), Aug. 7, 1977, 91 Stat. 740; amended [Pub.L. 95-190, § 14\(a\)\(54\)](#), Nov. 16, 1977, 91 Stat. 1402; [Pub.L. 101-549, Title III, § 305\(b\)](#), [Title IV, § 403\(d\)](#), Nov. 15, 1990, 104 Stat. 2583, 2631.)

[Notes of Decisions \(34\)](#)

42 U.S.C.A. § 7479, 42 USCA § 7479

Current through PL 117-26 with the exception of PL 116-283, Div. A, Title XVIII, which takes effect January 1, 2022.

Appendix 6

Tex. Gov't Code ch. 2001

Vernon's Texas Statutes and Codes Annotated
Government Code (Refs & Annos)
Title 10. General Government (Refs & Annos)
Subtitle A. Administrative Procedure and Practice
Chapter 2001. Administrative Procedure (Refs & Annos)
Subchapter C. Contested Cases: General Rights and Procedures

V.T.C.A., Government Code § 2001.058

§ 2001.058. Hearing Conducted by State Office of Administrative Hearings

Effective: September 1, 2019

[Currentness](#)

- (a) This section applies only to an administrative law judge employed by the State Office of Administrative Hearings.
- (b) An administrative law judge who conducts a contested case hearing shall consider applicable agency rules or policies in conducting the hearing, but the state agency deciding the case may not supervise the administrative law judge.
- (c) A state agency shall provide the administrative law judge with a written statement of applicable rules or policies.
- (d) A state agency may not attempt to influence the finding of facts or the administrative law judge's application of the law in a contested case except by proper evidence and legal argument.
- (d-1) On making a finding that a party to a contested case has defaulted under the rules of the State Office of Administrative Hearings, the administrative law judge may dismiss the case from the docket of the State Office of Administrative Hearings and remand it to the referring agency for informal disposition under [Section 2001.056](#). After the case is dismissed and remanded, the agency may informally dispose of the case by applying its own rules or the procedural rules of the State Office of Administrative Hearings relating to default proceedings. This subsection does not apply to a contested case in which the administrative law judge is authorized to render a final decision.
- (e) A state agency may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the agency determines:
- (1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies provided under Subsection (c), or prior administrative decisions;
 - (2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or
 - (3) that a technical error in a finding of fact should be changed.

The agency shall state in writing the specific reason and legal basis for a change made under this subsection.

(e-1) Notwithstanding Subsection (e), a state agency may not vacate or modify an order of an administrative law judge that awards attorney's fees and costs under [Section 2001.903](#).

(f) A state agency by rule may provide that, in a contested case before the agency that concerns licensing in relation to an occupational license and that is not disposed of by stipulation, agreed settlement, or consent order, the administrative law judge shall render the final decision in the contested case. If a state agency adopts such a rule, the following provisions apply to contested cases covered by the rule:

(1) the administrative law judge shall render the decision that may become final under [Section 2001.144](#) not later than the 60th day after the latter of the date on which the hearing is finally closed or the date by which the judge has ordered all briefs, reply briefs, and other posthearing documents to be filed, and the 60-day period may be extended only with the consent of all parties, including the occupational licensing agency;

(2) the administrative law judge shall include in the findings of fact and conclusions of law a determination whether the license at issue is primarily a license to engage in an occupation;

(3) the State Office of Administrative Hearings is the state agency with which a motion for rehearing or a reply to a motion for rehearing is filed under [Section 2001.146](#) and is the state agency that acts on the motion or extends a time period under [Section 2001.146](#);

(4) the State Office of Administrative Hearings is the state agency responsible for sending a copy of the decision that may become final under [Section 2001.144](#) or an order ruling on a motion for rehearing to the parties, including the occupational licensing agency, in accordance with [Section 2001.142](#); and

(5) the occupational licensing agency and any other party to the contested case is entitled to obtain judicial review of the final decision in accordance with this chapter.

Credits

Added by [Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993](#). Amended by [Acts 1997, 75th Leg., ch. 1167, § 1, eff. Sept. 1, 1997](#); [Acts 2015, 84th Leg., ch. 228 \(H.B. 2154\), § 1, eff. Sept. 1, 2015](#); [Acts 2019, 86th Leg., ch. 504 \(S.B. 27\), § 5, eff. Sept. 1, 2019](#).

[Notes of Decisions \(45\)](#)

V. T. C. A., Government Code § 2001.058, TX GOVT § 2001.058

Current through legislation effective June 18, 2021, of the 2021 Regular Session of the 87th Legislature. Some statute sections may be more current, but not necessarily complete through the whole Session. See credits for details.

Vernon's Texas Statutes and Codes Annotated
Government Code (Refs & Annos)
Title 10. General Government (Refs & Annos)
Subtitle A. Administrative Procedure and Practice
Chapter 2001. Administrative Procedure (Refs & Annos)
Subchapter G. Contested Cases: Judicial Review

V.T.C.A., Government Code § 2001.174

§ 2001.174. Review Under Substantial Evidence Rule or Undefined Scope of Review

[Currentness](#)

If the law authorizes review of a decision in a contested case under the substantial evidence rule or if the law does not define the scope of judicial review, a court may not substitute its judgment for the judgment of the state agency on the weight of the evidence on questions committed to agency discretion but:

- (1) may affirm the agency decision in whole or in part; and
- (2) shall reverse or remand the case for further proceedings if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
 - (A) in violation of a constitutional or statutory provision;
 - (B) in excess of the agency's statutory authority;
 - (C) made through unlawful procedure;
 - (D) affected by other error of law;
 - (E) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or
 - (F) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Credits

Added by [Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993](#).

[Notes of Decisions \(445\)](#)

O’CONNOR’S CROSS REFERENCES

See also *O'Connor's Texas COA*, “Administrative remedies,” ch. 24-A, §2.8.

V. T. C. A., Government Code § 2001.174, TX GOVT § 2001.174

Current through legislation effective June 18, 2021, of the 2021 Regular Session of the 87th Legislature. Some statute sections may be more current, but not necessarily complete through the whole Session. See credits for details.

End of Document

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Appendix 7

Tex. Gov't Code ch. 2003

Vernon's Texas Statutes and Codes Annotated
Government Code (Refs & Annos)
Title 10. General Government (Refs & Annos)
Subtitle A. Administrative Procedure and Practice
Chapter 2003. State Office of Administrative Hearings
Subchapter C. Staff and Administration

V.T.C.A., Government Code § 2003.047

§ 2003.047. Hearings for Texas Commission on Environmental Quality

Effective: September 1, 2017

[Currentness](#)

- (a) The office shall perform contested case hearings for the Texas Commission on Environmental Quality.
- (b) The office shall conduct hearings relating to contested cases before the commission, other than a hearing conducted by one or more commissioners. The commission by rule may delegate to the office the responsibility to hear any other matter before the commission if consistent with the responsibilities of the office.
- (c) The office may contract with qualified individuals to serve as temporary administrative law judges as necessary.
- (d) To be eligible to preside at a hearing on behalf of the commission, an administrative law judge, regardless of temporary or permanent status, must be licensed to practice law in this state and have the expertise necessary to conduct hearings regarding technical or other specialized subjects that may come before the commission.
- (e) In referring a matter for hearing, the commission shall provide to the administrative law judge a list of disputed issues. The commission shall specify the date by which the administrative law judge is expected to complete the proceeding and provide a proposal for decision to the commission. The administrative law judge may extend the proceeding if the administrative law judge determines that failure to grant an extension would deprive a party of due process or another constitutional right. The administrative law judge shall establish a docket control order designed to complete the proceeding by the date specified by the commission.
- (e-1) This subsection applies only to a matter referred under [Section 5.556, Water Code](#). Each issue referred by the commission must have been raised by an affected person in a comment submitted by that affected person in response to a permit application in a timely manner. The list of issues submitted under Subsection (e) must:
- (1) be detailed and complete; and
 - (2) contain either:

(A) only factual questions; or

(B) mixed questions of fact and law.

(e-2) For a matter referred under [Section 5.556](#) or [5.557, Water Code](#), the administrative law judge must complete the proceeding and provide a proposal for decision to the commission not later than the earlier of:

(1) the 180th day after the date of the preliminary hearing; or

(2) the date specified by the commission.

(e-3) The deadline specified by Subsection (e-2) or (e-6), as applicable, may be extended:

(1) by agreement of the parties with the approval of the administrative law judge; or

(2) by the administrative law judge if the judge determines that failure to extend the deadline would unduly deprive a party of due process or another constitutional right.

(e-4) For the purposes of Subsection (e-3)(2), a political subdivision has the same constitutional rights as an individual.

(e-5) This subsection applies only to a matter referred under [Section 5.557, Water Code](#). The administrative law judge may not hold a preliminary hearing until after the executive director has issued a response to public comments under [Section 5.555, Water Code](#).

(e-6) For a matter pertaining to an application described by [Section 11.122\(b-1\), Water Code](#), the administrative law judge must complete the proceeding and provide a proposal for decision to the commission not later than the 270th day after the date the matter was referred to the office.

(f) Except as otherwise provided by this subsection, the scope of the hearing is limited to the issues referred by the commission. On the request of a party, the administrative law judge may consider an issue that was not referred by the commission if the administrative law judge determines that:

(1) the issue is material;

(2) the issue is supported by evidence; and

(3) there are good reasons for the failure to supply available information regarding the issue during the public comment period.

(g) The scope of permissible discovery is limited to:

(1) any matter reasonably calculated to lead to the discovery of admissible evidence regarding any issue referred to the administrative law judge by the commission or that the administrative law judge has agreed to consider; and

(2) the production of documents:

(A) reviewed or relied on in preparing application materials or selecting the site of the proposed facility; or

(B) relating to the ownership of the applicant or the owner or operator of the facility or proposed facility.

(h) The commission by rule shall:

(1) provide for subpoenas and commissions for depositions; and

(2) require that discovery be conducted in accordance with the Texas Rules of Civil Procedure, except that the commission by rule shall determine the level of discovery under Rule 190, Texas Rules of Civil Procedure,¹ appropriate for each type of case considered by the commission, taking into account the nature and complexity of the case.

(i) The office and the commission jointly shall adopt rules providing for certification to the commission of an issue that involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law. The rules must address, at a minimum, the issues that are appropriate for certification and the procedure to be used in certifying the issue. Each agency shall publish the jointly adopted rules.

(i-1) In a contested case regarding a permit application referred under [Section 5.556](#) or [5.557, Water Code](#), the filing with the office of the application, the draft permit prepared by the executive director of the commission, the preliminary decision issued by the executive director, and other sufficient supporting documentation in the administrative record of the permit application establishes a prima facie demonstration that:

(1) the draft permit meets all state and federal legal and technical requirements; and

(2) a permit, if issued consistent with the draft permit, would protect human health and safety, the environment, and physical property.

(i-2) A party may rebut a demonstration under Subsection (i-1) by presenting evidence that:

(1) relates to a matter referred under [Section 5.557, Water Code](#), or an issue included in a list submitted under Subsection (e) in connection with a matter referred under [Section 5.556, Water Code](#); and

- (2) demonstrates that one or more provisions in the draft permit violate a specifically applicable state or federal requirement.
- (i-3) If in accordance with Subsection (i-2) a party rebuts a presumption established under Subsection (i-1), the applicant and the executive director may present additional evidence to support the draft permit.
- (j) An administrative law judge hearing a case on behalf of the commission, on the judge's own motion or on motion of a party and after notice and an opportunity for a hearing, may impose appropriate sanctions as provided by Subsection (k) against a party or its representative for:
 - (1) filing a motion or pleading that is groundless and brought:
 - (A) in bad faith;
 - (B) for the purpose of harassment; or
 - (C) for any other improper purpose, such as to cause unnecessary delay or needless increase in the cost of the proceeding;
 - (2) abuse of the discovery process in seeking, making, or resisting discovery; or
 - (3) failure to obey an order of the administrative law judge or the commission.
- (k) A sanction imposed under Subsection (j) may include, as appropriate and justified, issuance of an order:
 - (1) disallowing further discovery of any kind or of a particular kind by the offending party;
 - (2) charging all or any part of the expenses of discovery against the offending party or its representatives;
 - (3) holding that designated facts be considered admitted for purposes of the proceeding;
 - (4) refusing to allow the offending party to support or oppose a designated claim or defense or prohibiting the party from introducing designated matters in evidence;
 - (5) disallowing in whole or in part requests for relief by the offending party and excluding evidence in support of those requests; and
 - (6) striking pleadings or testimony, or both, in whole or in part.

(l) After hearing evidence and receiving legal argument, an administrative law judge shall make findings of fact, conclusions of law, and any ultimate findings required by statute, all of which shall be separately stated. The administrative law judge shall make a proposal for decision to the commission and shall serve the proposal for decision on all parties. An opportunity shall be given to each party to file exceptions to the proposal for decision and briefs related to the issues addressed in the proposal for decision. The commission shall consider and act on the proposal for decision.

(m) Except as provided in [Section 361.0832, Health and Safety Code](#), the commission shall consider the proposal for decision prepared by the administrative law judge, the exceptions of the parties, and the briefs and argument of the parties. The commission may amend the proposal for decision, including any finding of fact, but any such amendment thereto and order shall be based solely on the record made before the administrative law judge. Any such amendment by the commission shall be accompanied by an explanation of the basis of the amendment. The commission may also refer the matter back to the administrative law judge to reconsider any findings and conclusions set forth in the proposal for decision or take additional evidence or to make additional findings of fact or conclusions of law. The commission shall serve a copy of the commission's order, including its finding of facts and conclusions of law, on each party.

(n) The provisions of Chapter 2001 shall apply to contested case hearings for the commission to the extent not inconsistent with this section.

(o) An administrative law judge hearing a case on behalf of the commission may not, without the agreement of all parties, issue an order referring the case to an alternative dispute resolution procedure if the commission has already conducted an unsuccessful alternative dispute resolution procedure. If the commission has not already conducted an alternative dispute resolution procedure, the administrative law judge shall consider the commission's recommendation in determining whether to issue an order referring the case to the procedure.

Credits

Added by [Acts 1995, 74th Leg., ch. 106, § 1, eff. Sept. 1, 1995](#). Amended by [Acts 1997, 75th Leg., ch. 934, § 5, eff. Sept. 1, 1997](#); [Acts 1999, 76th Leg., ch. 1350, § 6, eff. Sept. 1, 1999](#); [Acts 2015, 84th Leg., ch. 116 \(S.B. 709\), § 1, eff. Sept. 1, 2015](#); [Acts 2015, 84th Leg., ch. 228 \(H.B. 2154\), §§ 6, 7, eff. Sept. 1, 2015](#); [Acts 2017, 85th Leg., ch. 429 \(S.B. 1430\), § 2, eff. Sept. 1, 2017](#); [Acts 2017, 85th Leg., ch. 1097 \(H.B. 3735\), § 6, eff. Sept. 1, 2017](#).

Notes of Decisions (3)

Footnotes

¹ [Vernon's Ann.Rules Civ.Proc., rule 190.1 et seq.](#)

V. T. C. A., Government Code § 2003.047, TX GOVT § 2003.047

Current through legislation effective June 18, 2021, of the 2021 Regular Session of the 87th Legislature. Some statute sections may be more current, but not necessarily complete through the whole Session. See credits for details.

Appendix 8

Tex. Health & Safety Code ch. 382

Vernon's Texas Statutes and Codes Annotated
Health and Safety Code (Refs & Annos)
Title 5. Sanitation and Environmental Quality (Refs & Annos)
Subtitle C. Air Quality
Chapter 382. Clean Air Act (Refs & Annos)
Subchapter A. General Provisions (Refs & Annos)

V.T.C.A., Health & Safety Code § 382.002

§ 382.002. Policy and Purpose

Effective: April 2, 2015

[Currentness](#)

(a) The policy of this state and the purpose of this chapter are to safeguard the state's air resources from pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of public health, general welfare, and physical property, including the esthetic enjoyment of air resources by the public and the maintenance of adequate visibility.

(b) It is intended that this chapter be vigorously enforced and that violations of this chapter or any rule or order of the Texas Commission on Environmental Quality result in expeditious initiation of enforcement actions as provided by this chapter.

Credits

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, § 11.139, eff. Sept. 1, 1995; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0893, eff. April 2, 2015.

[Notes of Decisions \(5\)](#)

V. T. C. A., Health & Safety Code § 382.002, TX HEALTH & S § 382.002

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Chapter 382. Clean Air Act (Refs & Annos)
Subchapter A. General Provisions (Refs & Annos)

V.T.C.A., Health & Safety Code § 382.003

§ 382.003. Definitions

Effective: April 2, 2015

[Currentness](#)

In this chapter:

(1) “Administrator” means the Administrator of the United States Environmental Protection Agency.

(1-a) “Advanced clean energy project” means a project for which an application for a permit or for an authorization to use a standard permit under this chapter is received by the commission on or after January 1, 2008, and before January 1, 2020, and that:

(A) involves the use of coal, biomass, petroleum coke, solid waste, natural gas, or fuel cells using hydrogen derived from such fuels, in the generation of electricity, or the creation of liquid fuels outside of the existing fuel production infrastructure while co-generating electricity, whether the project is implemented in connection with the construction of a new facility or in connection with the modification of an existing facility and whether the project involves the entire emissions stream from the facility or only a portion of the emissions stream from the facility;

(B) with regard to the portion of the emissions stream from the facility that is associated with the project, is capable of achieving:

(i) on an annual basis:

(a) a 99 percent or greater reduction of sulfur dioxide emissions;

(b) if the project is designed for the use of feedstock, substantially all of which is subbituminous coal, an emission rate of 0.04 pounds or less of sulfur dioxide per million British thermal units as determined by a 30-day average; or

(c) if the project is designed for the use of one or more combustion turbines that burn natural gas, a sulfur dioxide emission rate that meets best available control technology requirements as determined by the commission;

(ii) on an annual basis:

(a) a 95 percent or greater reduction of mercury emissions; or

(b) if the project is designed for the use of one or more combustion turbines that burn natural gas, a mercury emission rate that complies with applicable federal requirements;

(iii) an annual average emission rate for nitrogen oxides of:

(a) 0.05 pounds or less per million British thermal units;

(b) if the project uses gasification technology, 0.034 pounds or less per million British thermal units; or

(c) if the project is designed for the use of one or more combustion turbines that burn natural gas, two parts per million by volume; and

(iv) an annual average emission rate for filterable particulate matter of 0.015 pounds or less per million British thermal units; and

(C) captures not less than 50 percent of the carbon dioxide in the portion of the emissions stream from the facility that is associated with the project and sequesters that captured carbon dioxide by geologic storage or other means.

(2) “Air contaminant” means particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor, including any combination of those items, produced by processes other than natural.

(3) “Air pollution” means the presence in the atmosphere of one or more air contaminants or combination of air contaminants in such concentration and of such duration that:

(A) are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property; or

(B) interfere with the normal use or enjoyment of animal life, vegetation, or property.

(3-a) “Coal” has the meaning assigned by [Section 134.004, Natural Resources Code](#).

(4) “Commission” means the Texas Commission on Environmental Quality.

(4-a) “Electric vehicle” means a motor vehicle that draws propulsion energy only from a rechargeable energy storage system.

(5) “Executive director” means the executive director of the commission.

(6) “Facility” means a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not considered to be a facility.

(7) “Federal source” means a facility, group of facilities, or other source that is subject to the permitting requirements of Title IV or V of the federal Clean Air Act Amendments of 1990 ([Pub.L. No. 101-549](#))¹ and includes:

(A) an affected source as defined by Section 402 of the federal Clean Air Act ([42 U.S.C. Section 7651a](#)) as added by Section 401 of the federal Clean Air Act Amendments of 1990 ([Pub.L. No. 101-549](#));

(B) a major source as defined by Title III of the federal Clean Air Act Amendments of 1990 ([Pub.L. No. 101-549](#));

(C) a major source as defined by Title V of the federal Clean Air Act Amendments of 1990 ([Pub.L. No. 101-549](#));

(D) a source subject to the standards or regulations under Section 111 or 112 of the federal Clean Air Act ([42 U.S.C. Sections 7411](#) and [7412](#));

(E) a source required to have a permit under Part C or D of Title I of the federal Clean Air Act ([42 U.S.C. Sections 7470 et seq.](#) and [7501 et seq.](#));

(F) a major stationary source or major emitting facility under Section 302 of the federal Clean Air Act ([42 U.S.C. Section 7602](#)); and

(G) any other stationary source in a category designated by the United States Environmental Protection Agency as subject to the permitting requirements of Title V of the federal Clean Air Act Amendments of 1990 ([Pub.L. No. 101-549](#)).

(7-a) “Federally qualified clean coal technology” means a technology or process, including a technology or process applied at the precombustion, combustion, or postcombustion stage, for use at a new or existing facility that will achieve on an annual basis a 97 percent or greater reduction of sulfur dioxide emissions, an emission rate for nitrogen oxides of 0.08 pounds or less per million British thermal units, and significant reductions in mercury emissions associated with the use of coal in the generation of electricity, process steam, or industrial products, including the creation of liquid fuels, hydrogen for fuel cells, and other coproducts. The technology used must comply with applicable federal law regarding mercury emissions and must render carbon dioxide capable of capture, sequestration, or abatement. Federally qualified clean coal technology includes atmospheric or pressurized fluidized bed combustion technology, integrated gasification combined cycle technology, methanation technology, magnetohydrodynamic technology, direct and indirect coal-fired turbines, undiluted high-flame temperature oxygen combustion technology that excludes air, and integrated gasification fuel cells.

(7-b) “Hybrid vehicle” means a motor vehicle that draws propulsion energy from both gasoline or conventional diesel fuel and a rechargeable energy storage system.

(8) “Local government” means a health district established under Chapter 121, a county, or a municipality.

(9) “Modification of existing facility” means any physical change in, or change in the method of operation of, a facility in a manner that increases the amount of any air contaminant emitted by the facility into the atmosphere or that results in the emission of any air contaminant not previously emitted. The term does not include:

(A) insignificant increases in the amount of any air contaminant emitted that is authorized by one or more commission exemptions;

(B) insignificant increases at a permitted facility;

(C) maintenance or replacement of equipment components that do not increase or tend to increase the amount or change the characteristics of the air contaminants emitted into the atmosphere;

(D) an increase in the annual hours of operation unless the existing facility has received a preconstruction permit or has been exempted, pursuant to [Section 382.057](#), from preconstruction permit requirements;

(E) a physical change in, or change in the method of operation of, a facility that does not result in a net increase in allowable emissions of any air contaminant and that does not result in the emission of any air contaminant not previously emitted, provided that the facility:

(i) has received a preconstruction permit or permit amendment or has been exempted pursuant to [Section 382.057](#) from preconstruction permit requirements no earlier than 120 months before the change will occur; or

(ii) uses, regardless of whether the facility has received a permit, an air pollution control method that is at least as effective as the best available control technology, considering technical practicability and economic reasonableness, that the commission required or would have required for a facility of the same class or type as a condition of issuing a permit or permit amendment 120 months before the change will occur;

(F) a physical change in, or change in the method of operation of, a facility where the change is within the scope of a flexible permit or a multiple plant permit; or

(G) a change in the method of operation of a natural gas processing, treating, or compression facility connected to or part of a natural gas gathering or transmission pipeline which does not result in an annual emission rate of a pollutant in excess of the volume emitted at the maximum designed capacity, provided that the facility is one for which:

(i) construction or operation started on or before September 1, 1971, and at which either no modification has occurred after September 1, 1971, or at which modifications have occurred only pursuant to standard exemptions; or

(ii) construction started after September 1, 1971, and before March 1, 1972, and which registered in accordance with [Section 382.060](#) as that section existed prior to September 1, 1991.

(9-a) “Motor vehicle” means a fully self-propelled vehicle having four wheels that has as its primary purpose the transport of a person or persons, or property, on a public highway.

(9-b) “Natural gas vehicle” means a motor vehicle that uses only compressed natural gas or liquefied natural gas as fuel.

(10) “Person” means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(10-a) “Qualifying motor vehicle” means a motor vehicle that meets the requirements of [Section 382.210\(b\)](#).

(11) “Select-use technology” means a technology that involves simultaneous combustion of natural gas with other fuels in fossil fuel-fired boilers. The term includes cofiring, gas reburn, and enhanced gas reburn/sorbent injection.

(11-a) “Solid waste” has the meaning assigned by [Section 361.003](#).

(12) “Source” means a point of origin of air contaminants, whether privately or publicly owned or operated.

(13) “Well test” means the testing of an oil or gas well for a period of time less than 72 hours that does not constitute a major source or major modification under any provision of the federal Clean Air Act ([42 U.S.C. Section 7401 et seq.](#)).

Credits

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, § 135, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 2.01, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, § 4, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, § 11.140, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 150, § 1, eff. May 19, 1995; Acts 1999, 76th Leg., ch. 62, § 11.04(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 406, § 1, eff. Aug. 30, 1999; Acts 2007, 80th Leg., ch. 262, § 1.01, eff. June 8, 2007; Acts 2007, 80th Leg., ch. 1277, § 2, eff. Sept. 1, 2007; Acts 2009, 81st Leg., ch. 87, § 27.001(55), eff. Sept. 1, 2009; Acts 2009, 81st Leg., ch. 1109, § 2, eff. Sept. 1, 2009; Acts 2009, 81st Leg., ch. 1125, § 3, eff. Sept. 1, 2009; Acts 2011, 82nd Leg., ch. 347 (H.B. 3272), § 1, eff. Sept. 1, 2011; Acts 2013, 83rd Leg., ch. 1003 (H.B. 2446), § 2, eff. June 14, 2013; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0894, eff. April 2, 2015.

Notes of Decisions (9)

Footnotes

¹ 42 U.S.C.A. § 7651 et seq. and 42 U.S.C.A. § 7661 et seq., respectively.

V. T. C. A., Health & Safety Code § 382.003, TX HEALTH & S § 382.003

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Health and Safety Code (Refs & Annos)
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Subtitle C. Air Quality
Chapter 382. Clean Air Act (Refs & Annos)
Subchapter B. Powers and Duties of Commission

V.T.C.A., Health & Safety Code § 382.017

§ 382.017. Rules

Currentness

(a) The commission may adopt rules. The commission shall hold a public hearing before adopting a rule consistent with the policy and purposes of this chapter.

(b) If the rule will have statewide effect, notice of the date, time, place, and purpose of the hearing shall be published one time at least 20 days before the scheduled date of the hearing in at least three newspapers, the combined circulation of which will, in the commission's judgment, give reasonable circulation throughout the state. If the rule will have effect in only a part of the state, the notice shall be published one time at least 20 days before the scheduled date of the hearing in a newspaper of general circulation in the area to be affected.

(c) Any person may appear and be heard at a hearing to adopt a rule. The executive director shall make a record of the names and addresses of the persons appearing at the hearing. A person heard or represented at the hearing or requesting notice of the commission's action shall be sent by mail written notice of the commission's action.

(d) Subsections (a) and (b) notwithstanding, the commission may adopt rules consistent with Chapter 2001, Government Code, if the commission determines that the need for expeditious adoption of proposed rules requires use of those procedures.

(e) The terms and provisions of a rule adopted by the commission may differentiate among particular conditions, particular sources, and particular areas of the state. In adopting a rule, the commission shall recognize that the quantity or characteristic of air contaminants or the duration of their presence in the atmosphere may cause a need for air control in one area of the state but not in other areas. In this connection, the commission shall consider:

(1) the factors found by it to be proper and just, including existing physical conditions, topography, population, and prevailing wind direction and velocity; and

(2) the fact that a rule and the degrees of conformance with the rule that may be proper for an essentially residential area of the state may not be proper for a highly developed industrial area or a relatively unpopulated area.

(f) Except as provided by [Sections 382.0171-382.021](#) or to comply with federal law or regulations, the commission by rule may not specify:

- (1) a particular method to be used to control or abate air pollution;
- (2) the type, design, or method of installation of equipment to be used to control or abate air pollution; or
- (3) the type, design, method of installation, or type of construction of a manufacturing process or other kind of equipment.

Credits

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, § 137, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 2.33, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, §§ 5.95(49), 11.145, eff. Sept. 1, 1995.

Notes of Decisions (7)

V. T. C. A., Health & Safety Code § 382.017, TX HEALTH & S § 382.017

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Subtitle C. Air Quality
Chapter 382. Clean Air Act (Refs & Annos)
Subchapter B. Powers and Duties of Commission

V.T.C.A., Health & Safety Code § 382.032

§ 382.032. Appeal of Commission Action

Currentness

- (a) A person affected by a ruling, order, decision, or other act of the commission or of the executive director, if an appeal to the commission is not provided, may appeal the action by filing a petition in a district court of Travis County.
- (b) The petition must be filed within 30 days after the date of the commission's or executive director's action or, in the case of a ruling, order, or decision, within 30 days after the effective date of the ruling, order, or decision. If the appeal relates to the commission's failure to take final action on an application for a federal operating permit, a reopening of a federal operating permit, a revision to a federal operating permit, or a permit renewal application for a federal operating permit in accordance with [Section 382.0542\(b\)](#), the petition may be filed at any time before the commission or the executive director takes final action.
- (c) Service of citation on the commission must be accomplished within 30 days after the date on which the petition is filed. Citation may be served on the executive director or any commission member.
- (d) The plaintiff shall pursue the action with reasonable diligence. If the plaintiff does not prosecute the action within one year after the date on which the action is filed, the court shall presume that the action has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the attorney general unless the plaintiff, after receiving due notice, can show good and sufficient cause for the delay.
- (e) In an appeal of an action of the commission or executive director other than cancellation or suspension of a variance, the issue is whether the action is invalid, arbitrary, or unreasonable.
- (f) An appeal of the cancellation or suspension of a variance must be tried in the same manner as appeals from the justice court to the county court.

Credits

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 485, § 5, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, § 11.155, eff. Sept. 1, 1995.

[Notes of Decisions \(19\)](#)

O'CONNOR'S ANNOTATIONS

AC Interests, L.P. v. TCEQ, 543 S.W.3d 703, 707 (Tex.2018). “The Clean Air Act provides successive 30-day deadlines in connection with the appeal of a TCEQ ruling. The first deadline is to file the petition that initiates the appeal. The second is to serve citation on the TCEQ. The parties agree that the filing deadline is a mandatory, jurisdictional requirement and that the service deadline is not jurisdictional. The parties disagree about whether the service deadline is mandatory and about what consequence follows failing to meet this service deadline. *At 711*: [Section 382.032(c)] does not state a consequence [for untimely service of citation] and, importantly, no consequence is logically necessary. Contrast this with a jurisdictional requirement, where failure to comply results in dismissal because the failure means that jurisdiction never obtains. In that situation, dismissal is logically necessary though not explicitly stated. But the service requirement here is not jurisdictional. *At 713*: The statute’s purpose here is to provide a process for the judicial review of TCEQ decisions. The successive 30-day deadlines indicate a further purpose to expedite filing and notice and presumably the appeal itself. . . . We . . . see no textual basis to conclude that serving citation within 30 days of filing the petition is so essential to the statute’s purpose that the Legislature intended anything less than strict compliance to require dismissal. *At 714*: [W]hen a statutory provision has mandatory language, but is not jurisdictional, and does not have an explicit or logically necessary consequence, we presume the provision was intended as a direction rather than a mandate.”

V. T. C. A., Health & Safety Code § 382.032, TX HEALTH & S § 382.032

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Subtitle C. Air Quality
Chapter 382. Clean Air Act (Refs & Annos)
Subchapter C. Permits (Refs & Annos)

V.T.C.A., Health & Safety Code § 382.051

§ 382.051. Permitting Authority of Commission; Rules

Effective: September 1, 2001

[Currentness](#)

(a) The commission may issue a permit:

- (1) to construct a new facility or modify an existing facility that may emit air contaminants;
- (2) to operate an existing facility affected by [Section 382.0518\(g\)](#); or
- (3) to operate a federal source.

(b) To assist in fulfilling its authorization provided by Subsection (a), the commission may issue:

- (1) special permits for certain facilities;
- (2) a general permit for numerous similar sources subject to Section 382. 054;
- (3) a standard permit for similar facilities;
- (4) a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere;
- (5) a single federal operating permit or preconstruction permit for multiple federal sources or facilities located at the same site;
- (6) a multiple plant permit for existing facilities at multiple locations subject to [Section 382.0518](#) or [382.0519](#);
- (7) an existing facility permit or existing facility flexible permit under [Section 382.05183](#);
- (8) a small business stationary source permit under [Section 382.05184](#);

- (9) an electric generating facility permit under [Section 382.05185](#) of this code and [Section 39.264, Utilities Code](#);
 - (10) a pipeline facilities permit under [Section 382.05186](#); or
 - (11) other permits as necessary.
- (c) The commission may issue a federal operating permit for a federal source in violation only if the operating permit incorporates a compliance plan for the federal source as a condition of the permit.
- (d) The commission shall adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this chapter.

Credits

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 2.06, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, § 6, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, § 11.159, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 406, § 2, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 965, § 5.02, eff. Sept. 1, 2001.

Notes of Decisions (15)

O'CONNOR'S ANNOTATIONS

BCCA Appeal Grp. v. City of Houston, 496 S.W.3d 1, 20-21 (Tex.2016). “The City argues that its Ordinance’s requirement of a separate registration does not make unlawful what the [Texas Clean Air] Act or the TCEQ permits, but that the requirement is a ministerial, administrative procedure that will identify polluters and fund inspections that the Act and the TCEQ expressly allow a municipality to conduct. [¶] While the Act recognizes the City’s authority to enact ordinances, the Legislature supplies a limitation with unmistakable clarity--an ordinance cannot make unlawful a condition or act approved under the Act or TCEQ rules or orders. Under the Act, the TCEQ has the authority to authorize air emissions, which includes the authority to issue and enforce permits for sources of air contaminants. The TCEQ administers pre-construction permits, operating permits, special permits, and ‘other permits as necessary.’ ... The City’s requirement that a facility must register to operate lawfully effectively moots the effect of a TCEQ permit that has been issued and allows a facility to operate lawfully. Accordingly, the Ordinance’s registration requirement is preempted by the Act.”

V. T. C. A., Health & Safety Code § 382.051, TX HEALTH & S § 382.051

Current through legislation effective June 18, 2021, of the 2021 Regular Session of the 87th Legislature. Some statute sections may be more current, but not necessarily complete through the whole Session. See credits for details.

Vernon's Texas Statutes and Codes Annotated
Health and Safety Code (Refs & Annos)
Title 5. Sanitation and Environmental Quality (Refs & Annos)
Subtitle C. Air Quality
Chapter 382. Clean Air Act (Refs & Annos)
Subchapter C. Permits (Refs & Annos)

V.T.C.A., Health & Safety Code § 382.0517

§ 382.0517. Determination of Administrative Completion of Application

[Currentness](#)

The commission shall determine when an application filed under [Section 382.054](#) or [Section 382.0518](#) is administratively complete. On determination, the commission by mail shall notify the applicant and any interested party who has requested notification. If the number of interested parties who have requested notification makes it impracticable for the commission to notify those parties by mail, the commission shall notify those parties by publication using the method prescribed by [Section 382.031\(a\)](#).

Credits

Added by [Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 2.08, eff. Sept. 1, 1991](#). Amended by [Acts 1995, 74th Leg., ch. 76, § 11.161, eff. Sept. 1, 1995](#).

V. T. C. A., Health & Safety Code § 382.0517, TX HEALTH & S § 382.0517

Current through legislation effective June 18, 2021, of the 2021 Regular Session of the 87th Legislature. Some statute sections may be more current, but not necessarily complete through the whole Session. See credits for details.

Vernon's Texas Statutes and Codes Annotated
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Title 5. Sanitation and Environmental Quality (Refs & Annos)
Subtitle C. Air Quality
Chapter 382. Clean Air Act (Refs & Annos)
Subchapter C. Permits (Refs & Annos)

V.T.C.A., Health & Safety Code § 382.0518

§ 382.0518. Preconstruction Permit

Effective: September 1, 2011

[Currentness](#)

- (a) Before work is begun on the construction of a new facility or a modification of an existing facility that may emit air contaminants, the person planning the construction or modification must obtain a permit or permit amendment from the commission.
- (b) The commission shall grant within a reasonable time a permit or permit amendment to construct or modify a facility if, from the information available to the commission, including information presented at any hearing held under [Section 382.056\(k\)](#), the commission finds:
- (1) the proposed facility for which a permit, permit amendment, or a special permit is sought will use at least the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility; and
 - (2) no indication that the emissions from the facility will contravene the intent of this chapter, including protection of the public's health and physical property.
- (c) In considering the issuance, amendment, or renewal of a permit, the commission may consider the applicant's compliance history in accordance with the method for using compliance history developed by the commission under [Section 5.754, Water Code](#). In considering an applicant's compliance history under this subsection, the commission shall consider as evidence of compliance information regarding the applicant's implementation of an environmental management system at the facility for which the permit, permit amendment, or permit renewal is sought. In this subsection, "environmental management system" has the meaning assigned by [Section 5.127, Water Code](#).
- (d) If the commission finds that the emissions from the proposed facility will contravene the standards under Subsection (b) or will contravene the intent of this chapter, the commission may not grant the permit, permit amendment, or special permit and shall set out in a report to the applicant its specific objections to the submitted plans of the proposed facility.
- (e) If the person applying for a permit, permit amendment, or special permit makes the alterations in the person's plans and specifications to meet the commission's specific objections, the commission shall grant the permit, permit amendment, or special permit. If the person fails or refuses to alter the plans and specifications, the commission may not grant the permit,

permit amendment, or special permit. The commission may refuse to accept a person's new application until the commission's objections to the plans previously submitted by that person are satisfied.

(f) A person may operate a facility or source under a permit issued by the commission under this section if:

(1) the facility or source is not required to obtain a federal operating permit under [Section 382.054](#); and

(2) within the time and in the manner prescribed by commission rule, the permit holder demonstrates that:

(A) the facility complies with all terms of the existing preconstruction permit; and

(B) operation of the facility or source will not violate the intent of this chapter or standards adopted by the commission.

(g) Subsections (a)-(d) do not apply to a person who has executed a contract or has begun construction for an addition, alteration, or modification to a new or an existing facility on or before August 30, 1971, and who has complied with the requirements of [Section 382.060](#), as it existed on November 30, 1991. To qualify for any exemption under this subsection, a contract may not have a beginning construction date later than February 29, 1972.

(h) [Section 382.056](#) does not apply to an applicant for a permit amendment under this section if the total emissions increase from all facilities authorized under the amended permit will meet the de minimis criteria defined by commission rule and will not change in character. For a facility affected by [Section 382.020](#), [Section 382.056](#) does not apply to an applicant for a permit amendment under this section if the total emissions increase from all facilities authorized under the permit amendment is not significant and will not change in character. In this subsection, a finding that a total emissions increase is not significant must be made as provided under [Section 382.05196](#) for a finding under that section.

(i) In considering a permit amendment under this section the commission shall consider any adjudicated decision or compliance proceeding within the five years before the date on which the application was filed that addressed the applicant's past performance and compliance with the laws of this state, another state, or the United States governing air contaminants or with the terms of any permit or order issued by the commission.

Credits

Added by [Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 2.08, eff. Sept. 1, 1991](#). Amended by [Acts 1995, 74th Leg., ch. 76, § 11.162, eff. Sept. 1, 1995](#); [Acts 1995, 74th Leg., ch. 150, § 3, eff. May 19, 1995](#); [Acts 2001, 77th Leg., ch. 965, § 16.13, eff. Sept. 1, 2001](#); [Acts 2001, 77th Leg., ch. 1161, § 6, eff. Sept. 1, 2001](#); [Acts 2001, 77th Leg., ch. 1327, § 2, eff. Sept. 1, 2001](#); [Acts 2011, 82nd Leg., ch. 1021 \(H.B. 2694\), § 4.25, eff. Sept. 1, 2011](#).

[Notes of Decisions \(3\)](#)

V. T. C. A., Health & Safety Code § 382.0518, TX HEALTH & S § 382.0518

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Subchapter C. Permits (Refs & Annos)

V.T.C.A., Health & Safety Code § 382.056

§ 382.056. Notice of Intent to Obtain Permit or Permit Review; Hearing

Effective: September 1, 2017

[Currentness](#)

(a) Except as provided by [Section 382.0518\(h\)](#), an applicant for a permit or permit amendment under [Section 382.0518](#) or a permit renewal review under [Section 382.055](#) shall publish notice of intent to obtain the permit, permit amendment, or permit review not later than the 30th day after the date the commission determines the application to be administratively complete. The commission by rule shall require an applicant for a federal operating permit under [Section 382.054](#) to publish notice of intent to obtain a permit, permit amendment, or permit review consistent with federal requirements and with the requirements of Subsection (b). The applicant shall publish the notice at least once in a newspaper of general circulation in the municipality in which the facility or federal source is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility or federal source. If the elementary or middle school nearest to the facility or proposed facility provides a bilingual education program as required by Subchapter B, Chapter 29, Education Code ¹, the applicant shall also publish the notice at least once in an additional publication of general circulation in the municipality or county in which the facility is located or proposed to be located that is published in the language taught in the bilingual education program. This requirement is waived if such a publication does not exist or if the publisher refuses to publish the notice. The commission by rule shall prescribe the form and content of the notice and when notice must be published. The commission may require publication of additional notice. The commission by rule shall prescribe alternative procedures for publication of the notice in a newspaper if the applicant is a small business stationary source as defined by [Section 5.135, Water Code](#), and will not have a significant effect on air quality. The alternative procedures must be cost-effective while ensuring adequate notice. Notice required to be published under this section shall only be required to be published in the United States.

(b) The notice must include:

- (1) a description of the location or proposed location of the facility or federal source;
- (2) the location at which a copy of the application is available for review and copying as provided by Subsection (d);
- (3) a description, including a telephone number, of the manner in which the commission may be contacted for further information;
- (4) a description, including a telephone number, of the manner in which the applicant may be contacted for further information;

(5) a description of the procedural rights and obligations of the public, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice, that includes a statement that a person who may be affected by emissions of air contaminants from the facility, proposed facility, or federal source is entitled to request a hearing from the commission;

(6) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(7) the time and location of any public meeting to be held under Subsection (e); and

(8) any other information the commission by rule requires.

(c) At the site of a facility, proposed facility, or federal source for which an applicant is required to publish notice under this section, the applicant shall place a sign declaring the filing of an application for a permit or permit review for a facility at the site and stating the manner in which the commission may be contacted for further information. The commission shall adopt any rule necessary to carry out this subsection.

(d) The applicant shall make a copy of the application available for review and copying at a public place in the county in which the facility or federal source is located or proposed to be located.

(e) The applicant, in cooperation with the executive director, may hold a public meeting in the county in which the facility or federal source is located or proposed to be located in order to inform the public about the application and obtain public input.

(f) The executive director shall conduct a technical review of and issue a preliminary decision on the application.

(g) If, in response to the notice published under Subsection (a) for a permit or permit amendment under [Section 382.0518](#) or a permit renewal review under [Section 382.055](#), a person requests during the period provided by commission rule that the commission hold a public hearing and the request is not withdrawn before the date the preliminary decision is issued, the applicant shall publish notice of the preliminary decision in a newspaper, and the commission shall seek public comment on the preliminary decision. The commission shall consider the request for public hearing under the procedures provided by Subsections (i)-(n). The commission may not seek further public comment or hold a public hearing under the procedures provided by Subsections (i)-(n) in response to a request for a public hearing on an amendment, modification, or renewal that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted.

(g-1) The notice of intent required by Subsection (a) and the notice of the preliminary decision described by Subsection (g) may be consolidated into one notice if:

(1) not later than the 15th day after the date the application for which the notice is required is received, the commission determines the application to be administratively complete; and

(2) the preliminary decision and draft permit related to the application are available at the time of the commission's determination under Subdivision (1).

(h) If, in response to the notice published under Subsection (a) for a permit under [Section 382.054](#), a person requests during the public comment period provided by commission rule that the commission hold a public hearing, the commission shall consider the request under the procedures provided by [Section 382.0561](#) and not under the procedures provided by Subsections (i)-(n).

(i) The commission by rule shall establish the form and content of the notice, the manner of publication, and the duration of the public comment period. The notice must include:

(1) the information required by Subsection (b);

(2) a summary of the preliminary decision;

(3) the location at which a copy of the preliminary decision is available for review and copying as provided by Subsection (j);

(4) a description of the manner in which comments regarding the preliminary decision may be submitted; and

(5) any other information the commission by rule requires.

(j) The applicant shall make a copy of the preliminary decision available for review and copying at a public place in the county in which the facility is located or proposed to be located.

(k) During the public comment period, the executive director may hold one or more public meetings in the county in which the facility is located or proposed to be located. The executive director shall hold a public meeting:

(1) on the request of a member of the legislature who represents the general area in which the facility is located or proposed to be located; or

(2) if the executive director determines that there is substantial public interest in the proposed activity.

(k-1) A permit applicant or the applicant's designated representative is required to attend a public meeting held under this section and must make a reasonable effort to respond to questions relevant to the permit application at the meeting.

(l) The executive director, in accordance with procedures adopted by the commission by rule, shall file with the chief clerk of the commission a response to each relevant and material public comment on the preliminary decision filed during the public comment period.

(m) The chief clerk of the commission shall transmit the executive director's decision, the executive director's response to public comments, and instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing to:

- (1) the applicant;
- (2) any person who submitted comments during the public comment period;
- (3) any person who requested to be on the mailing list for the permit action; and
- (4) any person who timely filed a request for a public hearing in response to the notice published under Subsection (a).

(n) Except as provided by [Section 382.0561](#), the commission shall consider a request that the commission reconsider the executive director's decision or hold a public hearing in accordance with the procedures provided by [Sections 5.556](#) and [5.557](#), [Water Code](#).

(o) Notwithstanding other provisions of this chapter, the commission may hold a hearing on a permit amendment, modification, or renewal if the commission determines that the application involves a facility for which the applicant's compliance history is classified as unsatisfactory according to commission standards under [Sections 5.753](#) and [5.754](#), [Water Code](#), and rules adopted and procedures developed under those sections.

(p) The commission by rule shall provide for additional notice, opportunity for public comment, or opportunity for public hearing to the extent necessary to satisfy a requirement to obtain or maintain delegation or approval of a federal program.

(q) The department shall establish rules to ensure that a permit applicant complies with the notice requirement under Subsection (a).

(r) This section does not apply to:

- (1) the relocation or change of location of a portable facility to a site where a portable facility has been located at the proposed site at any time during the previous two years;
- (2) a facility located temporarily in the right-of-way, or contiguous to the right-of-way, of a public works project; or
- (3) a facility described by [Section 382.065\(c\)](#), unless that facility is in a county with a population of 3.3 million or more or in a county adjacent to such a county.

(s) For any permit application subject to this section, the measurement of distances to determine compliance with any location or distance restriction required by this chapter shall be taken toward structures that are in use as of the date that the application is filed with the commission.

Credits

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 2.12, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, § 15, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, § 11.167, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 149, § 2, eff. May 19, 1995; Acts 1997, 75th Leg., ch. 165, § 6.42, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, § 11.04(c), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1350, § 5, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 935, § 4, eff. June 14, 2001; Acts 2001, 77th Leg., ch. 965, §§ 2.02, 16.15, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1327, § 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 226, § 1, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1054, § 1, eff. June 20, 2003; Acts 2005, 79th Leg., ch. 728, § 9.0035(e), eff. Sept. 1, 2005; Acts 2009, 81st Leg., ch. 809, § 1, eff. Sept. 1, 2009; Acts 2011, 82nd Leg., ch. 1021 (H.B. 2694), § 4.26, eff. Sept. 1, 2011; Acts 2011, 82nd Leg., ch. 1163 (H.B. 2702), § 45, eff. Sept. 1, 2011; Acts 2017, 85th Leg., ch. 394 (S.B. 1045), § 1, eff. Sept. 1, 2017.

Notes of Decisions (12)

Footnotes

1 V.T.C.A., Education Code § 29.051 et seq.

V. T. C. A., Health & Safety Code § 382.056, TX HEALTH & S § 382.056

Current through legislation effective June 18, 2021, of the 2021 Regular Session of the 87th Legislature. Some statute sections may be more current, but not necessarily complete through the whole Session. See credits for details.

Appendix 9

Tex. Water Code ch. 5

Vernon's Texas Statutes and Codes Annotated
Water Code (Refs & Annos)
Title 2. Water Administration (Refs & Annos)
Subtitle A. Executive Agencies
Chapter 5. Texas Commission on Environmental Quality (Refs & Annos)
Subchapter M. Environmental Permitting Procedures (Refs & Annos)

V.T.C.A., Water Code § 5.556

§ 5.556. Request for Reconsideration or Contested Case Hearing

[Currentness](#)

- (a) A person may request that the commission reconsider the executive director's decision or hold a contested case hearing. A request must be filed with the commission during the period provided by commission rule.
- (b) The commission shall act on a request during the period provided by commission rule.
- (c) The commission may not grant a request for a contested case hearing unless the commission determines that the request was filed by an affected person as defined by [Section 5.115](#).
- (d) The commission may not refer an issue to the State Office of Administrative Hearings for a hearing unless the commission determines that the issue:
- (1) involves a disputed question of fact;
 - (2) was raised during the public comment period; and
 - (3) is relevant and material to the decision on the application.
- (e) If the commission grants a request for a contested case hearing it shall:
- (1) limit the number and scope of the issues to be referred to the State Office of Administrative Hearings for a hearing; and
 - (2) consistent with the nature and number of the issues to be considered at the hearing, specify the maximum expected duration of the hearing.
- (f) This section does not preclude the commission from holding a hearing if it determines that the public interest warrants doing so.

Credits

Added by [Acts 1999, 76th Leg., ch. 1350, § 2, eff. Sept. 1, 1999](#).

[Notes of Decisions \(3\)](#)

V. T. C. A., Water Code § 5.556, TX WATER § 5.556

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Chapter 5. Texas Commission on Environmental Quality (Refs & Annos)
Subchapter M. Environmental Permitting Procedures (Refs & Annos)

V.T.C.A., Water Code § 5.557

§ 5.557. Direct Referral to Contested Case Hearing

Effective: June 14, 2001

[Currentness](#)

(a) Immediately after the executive director issues a preliminary decision on an application under [Section 5.553](#), the commission, on the request of the applicant or the executive director, shall refer the application directly to the State Office of Administrative Hearings for a contested case hearing on whether the application complies with all applicable statutory and regulatory requirements.

(b) [Sections 5.554](#), [5.555](#), and [5.556](#) of this code and [Sections 2003.047\(e\)](#) and (f), [Government Code](#), do not apply to an application referred for a hearing under Subsection (a).

(c) Notwithstanding Subsection (b), the commission by rule shall provide for public comment and the executive director's response to public comment to be entered into the administrative record of decision on an application.

Credits

Added by [Acts 2001, 77th Leg., ch. 935, § 3, eff. June 14, 2001](#).

V. T. C. A., Water Code § 5.557, TX WATER § 5.557

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Appendix 10

30 Tex. Admin. Code ch. 50

Texas Administrative Code

Title 30. Environmental Quality

Part 1. Texas Commission on Environmental Quality

Chapter 50. Action on Applications and Other Authorizations

Subchapter F. Action by the Commission

30 TAC § 50.115

§ 50.115. Scope of Contested Case Hearings

Currentness

(a) Subsections (b)-(d) of this section apply to applications under Texas Water Code, Chapters 26 and 27 and Texas Health and Safety Code, Chapters 361 and 382. Subsection (e)(1) of this section applies to all applications under this subchapter. Subsections (e)(2) and (f) of this section apply as stated in the subsection.

(b) When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to State Office of Administrative Hearings (SOAH) for a hearing.

(c) The commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue:

(1) involves a disputed question of fact or a mixed question of law and fact;

(2) was raised during the public comment period, and, for applications filed on or after September 1, 2015, was raised in a comment made by an affected person whose request is granted; and

(3) is relevant and material to the decision on the application.

(d) Consistent with the nature and number of the issues to be considered at the contested case hearing, the commission by order shall specify the maximum expected duration of the hearing by stating the date by which the judge is expected to issue a proposal for decision.

(1) For applications filed before September 1, 2015, no hearing shall be longer than one year from the first day of the preliminary hearing to the date the proposal for decision is issued. A judge may extend any hearing if the judge determines that failure to grant an extension will deprive a party of due process or another constitutional right.

(2) For applications filed on or after September 1, 2015, the administrative law judge must complete the hearing and provide a proposal for decision by the 180th day after the first day of the preliminary hearing, or the date specified by the commission, whichever is earlier. This deadline may be extended by the judge if the judge determines that failure to grant an extension would unduly deprive a party of due process or another constitutional right, or by agreement of the parties with approval of the judge.

(e) The commission may limit the scope of a contested case hearing:

(1) to only those portions of a permit for which the applicant requests action through an amendment or modification. All terms, conditions, and provisions of an existing permit remain in full force and effect during the proceedings, and the permittee shall comply with an existing permit until the commission acts on the application; and

(2) to only those requirements in [Texas Health and Safety Code, §382.055](#) for the review of a permit renewal.

(f) When referring a case to SOAH, for applications other than those filed under Texas Water Code, Chapters 26 and 27 and Texas Health and Safety Code, Chapters 361 and 382, the commission or executive director shall provide a list of disputed issues. For hearings on these applications, the disputed issues are deemed to be those defined by law governing these applications, unless the commission orders otherwise under §80.6(d) of this title (relating to Referral to SOAH).

(g) When referring a case to SOAH under [Texas Water Code, §5.556](#) for applications filed on or after September 1, 2015, the commission shall submit a list of detailed and complete issues.

Credits

Source: The provisions of this §50.115 adopted to be effective September 23, 1999, 24 TexReg 8254; amended to be effective December 31, 2015, 40 TexReg 9651.

Current through 46 Tex.Reg. No. 3652, dated June 11, 2021, as effective on or before June 18, 2021. Some sections may be more current. See credits for details.

30 TAC § 50.115, 30 TX ADC § 50.115

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Appendix 11

30 Tex. Admin. Code ch. 80

Texas Administrative Code
Title 30. Environmental Quality
Part 1. Texas Commission on Environmental Quality
Chapter 80. Contested Case Hearings
Subchapter F. Post Hearing Procedures

30 TAC § 80.272

§ 80.272. Motion for Rehearing

Currentness

(a) Any decision in an administrative hearing before the commission that is subject to this section.

(b) Filing motion. A motion for rehearing is a prerequisite to appeal. The motion shall be filed with the chief clerk not later than 25 days after the date that the decision or order is signed, unless the time for filing the motion for rehearing has been extended under [Texas Government Code, §2001.142](#), and §80.276 of this title (relating to Request for Extension to File Motion for Rehearing), by agreement under [Texas Government Code, §2001.147](#), or by the commission's written order issued pursuant to [Texas Government Code, §2001.146\(e\)](#). On or before the date of filing of a motion for rehearing, a copy of the motion shall be mailed or delivered to all parties with certification of service furnished to the commission. Copies of the motion shall be sent to all other parties using the following notification procedures:

(1) personally;

(2) if agreed to by the party or attorney to be notified, by electronic means sent to the current email address or telecopier number of the party's attorney of record or of the party if the party is not represented by counsel; or

(3) by first class, certified, or registered mail sent to the last known address of the party's attorney of record or of the party if the party is not represented by counsel.

(c) The motion shall contain:

- (1) the name and representative capacity of the person filing the motion;
- (2) the style and official docket number assigned by SOAH, and official docket number assigned by the commission;
- (3) the date of the decision or order;
- (4) the findings of fact or conclusions of law, identified with particularity, that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous; and
- (5) a statement of the legal and factual basis for the claimed error.

(d) Reply to motion for rehearing. A reply to a motion for rehearing must be filed with the chief clerk not later than 40 days after the date that the decision or order is signed, or not later than 10 days after the date that a motion for rehearing is filed if the time for filing the motion for rehearing has been extended by an agreement under [Texas Government Code, §2001.147](#) or by a written order issued by the commission pursuant to [Texas Government Code, §2001.146\(e\)](#). Copies of the reply shall be sent to all other parties using the following notification procedures:

- (1) personally;
- (2) if agreed to by the party or attorney to be notified, by electronic means sent to the current email address or telecopier number of the party's attorney of record or of the party if the party is not represented by counsel; or
- (3) by first class, certified, or registered mail sent to the last known address of the party's attorney of record or of the party if the party is not represented by counsel.

(e) Ruling on motion for rehearing.

(1) Upon the request of the general counsel or a commissioner, the motion for rehearing will be scheduled for consideration during a commission meeting. Unless the commission extends time or rules on the motion for rehearing not later than 55 days after the date that the decision or order is signed, the motion is overruled by operation of law.

(2) A motion for rehearing may be granted in whole or in part. When a motion for rehearing is granted, the decision or order is nullified. The commission may reopen the hearing to the extent it deems necessary. Thereafter, the commission shall render a decision or order as required by this subchapter.

(f) Extension of time limits. With the agreement of the parties, on a motion of any party for cause shown, or on their own motion, the commission or the general counsel may, by written order, extend the period of time for filing motions for rehearing and replies and for taking action on the motions so long as the period for taking agency action provided that the agency extends the time or takes the action not later than the 10th day after the date that the period for filing a motion or reply or taking agency action expires. The commission may not extend the period for taking agency action beyond 100 days after the date that the decision or order is signed.

(g) Motion overruled. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 100 days after the date that the decision or order is signed.

(h) Subsequent motion for rehearing. A subsequent motion for rehearing is not required after the commission rules on a motion for rehearing unless the order disposing of the original motion for rehearing:

(1) modifies, corrects, or reforms in any respect the decision or order that is the subject of the complaint, other than a typographical, grammatical, or other clerical change identified as such by the agency in the order, including any modification, correction, or reformation that does not change the outcome of the contested case; or

(2) vacates the decision or order that is the subject of the motion and provides for a new decision or order.

(i) A subsequent motion for rehearing required by subsection (h) of this subsection must be filed not later than 20 days after the date the decision or order disposing of the original motion for rehearing is signed.

Credits

Source: The provisions of this §80.272 adopted to be effective September 23, 1999, 24 TexReg 8276; amended to be effective February 3, 2000, [25 TexReg 595](#); amended to be effective December 31, 2015, 40 TexReg 9680.

Current through 46 Tex.Reg. No. 3652, dated June 11, 2021, as effective on or before June 18, 2021. Some sections may be more current. See credits for details.

30 TAC § 80.272, 30 TX ADC § 80.272

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Appendix 12

30 Tex. Admin. Code ch. 116

Texas Administrative Code

Title 30. Environmental Quality

Part 1. Texas Commission on Environmental Quality

Chapter 116. Control of Air Pollution by Permits for New Construction or Modification

Subchapter A. Definitions

30 TAC § 116.10

§ 116.10. General Definitions

Currentness

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, and in § 101.1 of this title (relating to Definitions), the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Best available control technology (BACT)--An air pollution control method for a new or modified facility that through experience and research, has proven to be operational, obtainable, and capable of reducing or eliminating emissions from the facility, and is considered technically practical and economically reasonable for the facility. The emissions reduction can be achieved through technology such as the use of add-on control equipment or by enforceable changes in production processes, systems, methods, or work practice.

(2) Dockside vessel--Any water-based transportation, platforms, or similar structures which are connected or moored to the land.

(3) Dockside vessel emissions--Those emissions originating from a dockside vessel that are the result of functions performed by onshore facilities or using onshore equipment. These emissions include, but are not limited to:

(A) loading and unloading of liquid bulk materials;

(B) loading and unloading of liquified gaseous materials;

(C) loading and unloading of solid bulk materials;

(D) cleaning and degassing of liquid vessel compartments; and

(E) abrasive blasting and painting.

(4) Facility--A discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not a facility.

(5) Federally enforceable--All limitations and conditions which are enforceable by the United States Environmental Protection Agency (EPA), including:

(A) those requirements developed under Title 40 of the Code of Federal Regulations (CFR) Parts 60 and 61 (40 CFR Parts 60 and 61);

(B) Chapter 113, Subchapter C of this title (relating to National Emission Standards for Hazardous Air Pollutants for Source Categories (FCAA, § 112, 40 CFR Part 63));

(C) requirements within any applicable state implementation plan (SIP);

(D) any permit requirements established under [40 CFR § 52.21](#);

(E) any permit requirements established under regulations approved under 40 CFR Part 51, Subpart I, including permits issued under the EPA-approved program that is incorporated into the SIP and that expressly requires adherence to any permit issued under such program; or

(F) any permit requirements established under Subchapter E of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, § 112(g), 40 CFR Part 63)).

(6) Grandfathered facility--Any facility that is not a new facility and has not been modified since August 30, 1971.

(7) Lead smelting plant--Any facility which produces purified lead by melting and separating lead from metal and nonmetallic contaminants and/or by reducing oxides into elemental lead. Raw materials consist of lead concentrates, lead-bearing ores or lead scrap, drosses, or other lead-bearing residues. Additional processing may include refining and alloying. A facility which only remelts lead bars or ingots for casting into lead products is not a lead smelting plant.

(8) Maximum allowable emissions rate table (MAERT)--A table included with a preconstruction permit issued under this chapter that contains the allowable emission rates established by the permit for a facility.

(9) Modification of existing facility--Any physical change in, or change in the method of operation of, a facility in a manner that increases the amount of any air contaminant emitted by the facility into the atmosphere or that results in the emission of any air contaminant not previously emitted. The term does not include:

(A) insignificant increases in the amount of any air contaminant emitted that is authorized by one or more permits by rule under Chapter 106 of this title (relating to Permits by Rule);

(B) maintenance or replacement of equipment components that do not increase or tend to increase the amount or change the characteristics of the air contaminants emitted into the atmosphere;

(C) an increase in the annual hours of operation unless the existing facility has received a preconstruction permit or has been exempted, under the TCAA, § 382.057, from preconstruction permit requirements;

(D) a physical change in, or change in the method of operation of, a facility that does not result in a net increase in allowable emission of any air contaminant and that does not result in the emission of any air contaminant not previously emitted, provided that the facility:

(i) has received a preconstruction permit or permit amendment or has been exempted under the TCAA, § 382.057, from preconstruction permit requirements no earlier than 120 months before the change will occur; or

(ii) uses, regardless of whether the facility has been exempted under the TCAA, § 382.057, an air pollution control method that is at least as effective as the BACT that the commission required or would have required for a facility of the same class or type as a condition of issuing a permit or permit amendment 120 months before the change will occur;

(E) a physical change in, or change in the method of operation of, a facility where the change is within the scope of a flexible permit or a multiple plant permit; or

(F) a change in the method of operation of a natural gas processing, treating, or compression facility connected to or part of a natural gas gathering or transmission pipeline which does not result in an annual emission rate of any air contaminant in excess of the volume emitted at the maximum designed capacity, provided that the facility is one for which:

(i) construction or operation started on or before September 1, 1971, and at which either no modification has occurred after September 1, 1971, or at which modifications have occurred only under Chapter 106 of this title; or

(ii) construction started after September 1, 1971, and before March 1, 1972, and which registered in accordance with TCAA, § 382.060, as that section existed prior to September 1, 1991.

(10) New facility--A facility for which construction is commenced after August 30, 1971, and no contract for construction was executed on or before August 30, 1971, and that contract specified a beginning construction date on or before February 29, 1972.

(11) New source--Any stationary source, the construction or modification of which is commenced after March 5, 1972.

(12) Nonattainment area--A defined region within the state which is designated by the EPA as failing to meet the national ambient air quality standard for a pollutant for which a standard exists. The EPA will designate the area as nonattainment under the provisions of FCAA, § 107(d).

(13) Public notice--The public notice of application for a permit as required in this chapter.

(14) Qualified facility--An existing facility that satisfies the criteria of either paragraph (9)(D)(i) or (ii) of this section.

(15) Source--A point of origin of air contaminants, whether privately or publicly owned or operated.

Credits

Source: The provisions of this §116.10 adopted to be effective July 8, 1998, 23 TexReg 6973; amended to be effective September 4, 2000, 25 TexReg 8668; amended to be effective June 12, 2002, 27 TexReg 4954; amended to be effective September 12, 2002, [27 TexReg 8546](#); amended to be effective October 7, 2010, [35 TexReg 8944](#).

Current through 46 Tex.Reg. No. 4060, dated July 2, 2021, as effective on or before July 9, 2021. Some sections may be more current. See credits for details.

30 TAC § 116.10, 30 TX ADC § 116.10

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Texas Administrative Code

Title 30. Environmental Quality

Part 1. Texas Commission on Environmental Quality

Chapter 116. Control of Air Pollution by Permits for New Construction or Modification

Subchapter B. New Source Review Permits

Division 1. Permit Application

30 TAC § 116.110

§ 116.110. Applicability

Currentness

(a) Permit to construct. Except as provided in §116.118 of this title (relating to Construction While Permit Amendment Application Pending), before any actual work is begun on the facility, any person who plans to construct any new facility or to engage in the modification of any existing facility which may emit air contaminants into the air of this state shall either:

(1) obtain a permit under §116.111 of this title (relating to General Application);

(2) satisfy the conditions for a standard permit under the requirements in:

(A) Subchapter F of this chapter (relating to Standard Permits);

(B) Chapter 321, Subchapter B of this title (relating to Concentrated Animal Feeding Operations);

(C) Chapter 332 of this title (relating to Composting); or

(D) Chapter 330, Subchapter N of this title (relating to Landfill Mining);

(3) satisfy the conditions for a flexible permit under the requirements in Subchapter G of this chapter (relating to Flexible Permits);

(4) satisfy the conditions for facilities permitted by rule under Chapter 106 of this title (relating to Permits by Rule); or

(5) satisfy the criteria for a de minimis facility or source under §116.119 of this title (relating to De Minimis Facilities or Sources).

(b) Modifications to existing permitted facilities. Modifications to existing permitted facilities may be handled through the amendment of an existing permit.

(c) Compliance history. For all authorizations listed in subsections (a) and (b) of this section or §116.116 of this title (relating to Changes to Facilities), compliance history reviews may be required under Chapter 60 of this title (relating to Compliance History).

(d) Exclusion. Owners or operators of affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) subject to Subchapter E of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)) are not authorized to use:

(1) a permit by rule under Chapter 106 of this title;

(2) standard permits under Subchapter F of this chapter that do not meet the requirements of Subchapter E of this chapter; or

(3) §116.116(e) of this title.

(e) Change in ownership.

(1) Within 30 days after the change of ownership of a facility permitted under this chapter, the new owner shall notify the commission and certify the following:

- (A) the date of the ownership change;
- (B) the name, address, phone number, and contact person for the new owner;
- (C) an agreement by the new owner to be bound by all permit conditions and all representations made in the permit application and any amendments and alterations;
- (D) there will be no change in the type of pollutants emitted; and
- (E) there will be no increase in the quantity of pollutants emitted.

(2) The new owner shall comply with all permit conditions and all representations made in the permit application and any amendments and alterations.

(f) Submittal under seal of Texas licensed professional engineer. Applications for permit or permit amendment with an estimated capital cost of the project above \$2 million, and not subject to any exemption contained in the Texas Engineering Practice Act (TEPA), shall be submitted under seal of a Texas licensed professional engineer. However, nothing in this subsection shall limit or affect any requirement which may apply to the practice of engineering under the TEPA or the actions of the Texas Board of Professional Engineers. The estimated capital cost is defined in §116.141 of this title (relating to Determination of Fees).

(g) Responsibility for permit application. The owner of the facility or the operator of the facility authorized to act for the owner is responsible for complying with this section.

Credits

Source: The provisions of this §116.110 adopted to be effective July 8, 1998, 23 TexReg 6973; amended to be effective September 4, 2000, 25 TexReg 8668; amended to be effective August 29, 2002, 27 TexReg 7910; amended to be effective August 6, 2020, [45 TexReg 5351](#).

Current through 46 Tex.Reg. No. 3652, dated June 11, 2021, as effective on or before June 18, 2021. Some sections may be more current. See credits for details.

30 TAC § 116.110, 30 TX ADC § 116.110

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Texas Administrative Code

Title 30. Environmental Quality

Part 1. Texas Commission on Environmental Quality

Chapter 116. Control of Air Pollution by Permits for New Construction or Modification

Subchapter B. New Source Review Permits

Division 1. Permit Application

30 TAC § 116.111

§ 116.111. General Application

Currentness

(a) In order to be granted a permit, amendment, or special permit amendment, the application must include:

(1) a completed Form PI-1 General Application signed by an authorized representative of the applicant. All additional support information specified on the form must be provided before the application is complete;

(2) information which demonstrates that emissions from the facility, including any associated dockside vessel emissions, meet all of the following.

(A) Protection of public health and welfare.

(i) The emissions from the proposed facility will comply with all rules and regulations of the commission and with the intent of the Texas Clean Air Act (TCAA), including protection of the health and property of the public.

(ii) For issuance of a permit for construction or modification of any facility within 3,000 feet of an elementary, junior high/middle, or senior high school, the commission shall consider any possible adverse short-term or long-term side

effects that an air contaminant or nuisance odor from the facility may have on the individuals attending the school(s).

(B) Measurement of emissions. The proposed facility will have provisions for measuring the emission of significant air contaminants as determined by the executive director. This may include the installation of sampling ports on exhaust stacks and construction of sampling platforms in accordance with guidelines in the "Texas Commission on Environmental Quality Sampling Procedures Manual."

(C) Best available control technology (BACT) must be evaluated for and applied to all facilities subject to the TCAA. Prior to evaluation of BACT under the TCAA, all facilities with pollutants subject to regulation under the Federal Clean Air Act (FCAA), Title I, Part C shall evaluate and apply BACT as defined in §116.160(c)(1)(A) of this title (relating to Prevention of Significant Deterioration Requirements).

(D) New Source Performance Standards (NSPS). The emissions from the proposed facility will meet the requirements of any applicable NSPS as listed under 40 Code of Federal Regulations (CFR) Part 60, promulgated by the United States Environmental Protection Agency (EPA) under FCAA, §111, as amended.

(E) National Emission Standards for Hazardous Air Pollutants (NESHAP). The emissions from the proposed facility will meet the requirements of any applicable NESHAP, as listed under 40 CFR Part 61, promulgated by EPA under FCAA, §112, as amended.

(F) NESHAP for source categories. The emissions from the proposed facility will meet the requirements of any applicable maximum achievable control technology standard as listed under 40 CFR Part 63, promulgated by the EPA under FCAA, §112 or as listed under Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR Part 63)).

(G) Performance demonstration. The proposed facility will achieve the performance specified in the permit application. The applicant may be required to submit additional engineering data after a permit has been issued in order to demonstrate further that the proposed facility will achieve the performance specified in the permit application. In addition, dispersion modeling, monitoring, or stack testing may be required.

(H) Nonattainment review. If the proposed facility is located in a nonattainment area, it shall comply with all applicable requirements in this chapter concerning nonattainment review.

(I) Prevention of Significant Deterioration (PSD) review.

(i) If the proposed facility is located in an attainment area, it shall comply with all applicable requirements in this chapter concerning PSD review.

(ii) If the proposed facility or modification meets or exceeds the applicable greenhouse gases thresholds defined in §116.164 of this title (relating to Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources) then it shall comply with all applicable requirements in this chapter concerning PSD review for sources of greenhouse gases.

(J) Air dispersion modeling. Computerized air dispersion modeling may be required by the executive director to determine air quality impacts from a proposed new facility or source modification. In determining whether to issue, or in conducting a review of, a permit application for a shipbuilding or ship repair operation, the commission will not require and may not consider air dispersion modeling results predicting ambient concentrations of non-criteria air contaminants over coastal waters of the state. The commission shall determine compliance with non-criteria ambient air contaminant standards and guidelines at land-based off-property locations.

(K) Hazardous air pollutants. Affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) for hazardous air pollutants shall comply with all applicable requirements under Subchapter E of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

(L) Mass cap and trade allowances. If subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program), the proposed facility, group of facilities, or account must obtain allowances to operate.

(b) In order to be granted a permit, amendment, or special permit amendment, the applicant must comply with the requirements of Chapter 39 of this title (relating to Public Notice) and Chapter 55 of this title (relating to Request for Reconsideration and Contested Case Hearings; Public Comment).

(c) Upon request by the owner or operator of a facility which previously has received a permit or special permit from the commission, the executive director or designated representative may exempt the relocation of such facility from the provisions in Chapter 39 of this title if there is no indication that the operation of the facility at the proposed new location will significantly affect ambient air quality and no indication that operation of the facility at the proposed new location will cause a condition of air pollution.

Credits

Source: The provisions of this §116.111 adopted to be effective July 8, 1998, 23 TexReg 6973; amended to be effective September 23, 1999, 24 TexReg 8296; amended to be effective March 29, 2001, 26 TexReg 2398; amended to be effective September 12, 2002, [27 TexReg 8546](#); amended to be effective October 7, 2010, [35 TexReg 8944](#); amended to be effective April 17, 2014, 39 TexReg 2901; amended to be effective May 14, 2020, [45 TexReg 3093](#).

Current through 46 Tex.Reg. No. 3652, dated June 11, 2021, as effective on or before June 18, 2021. Some sections may be more current. See credits for details.

30 TAC § 116.111, 30 TX ADC § 116.111

Appendix 13

40 C.F.R. pt. 51

Code of Federal Regulations

Title 40. Protection of Environment

Chapter I. Environmental Protection Agency (Refs & Annos)

Subchapter C. Air Programs

Part 51. Requirements for Preparation, Adoption, and Submittal of Implementation Plans (Refs & Annos)

Subpart I. Review of New Sources and Modifications (Refs & Annos)

40 C.F.R. § 51.160

§ 51.160 Legally enforceable procedures.

Currentness

(a) Each plan must set forth legally enforceable procedures that enable the State or local agency to determine whether the construction or modification of a facility, building, structure or installation, or combination of these will result in—

(1) A violation of applicable portions of the control strategy; or

(2) Interference with attainment or maintenance of a national standard in the State in which the proposed source (or modification) is located or in a neighboring State.

(b) Such procedures must include means by which the State or local agency responsible for final decisionmaking on an application for approval to construct or modify will prevent such construction or modification if—

(1) It will result in a violation of applicable portions of the control strategy; or

(2) It will interfere with the attainment or maintenance of a national standard.

(c) The procedures must provide for the submission, by the owner or operator of the building, facility, structure, or installation to be constructed or modified, of such information on—

(1) The nature and amounts of emissions to be emitted by it or emitted by associated mobile sources;

(2) The location, design, construction, and operation of such facility, building, structure, or installation as may be necessary to permit the State or local agency to make the determination referred to in paragraph (a) of this section.

(d) The procedures must provide that approval of any construction or modification must not affect the responsibility to the owner or operator to comply with applicable portions of the control strategy.

(e) The procedures must identify types and sizes of facilities, buildings, structures, or installations which will be subject to review under this section. The plan must discuss the basis for determining which facilities will be subject to review.

(f) The procedures must discuss the air quality data and the dispersion or other air quality modeling used to meet the requirements of this subpart.

(1) All applications of air quality modeling involved in this subpart shall be based on the applicable models, data bases, and other requirements specified in appendix W of this part (Guideline on Air Quality Models).

(2) Where an air quality model specified in appendix W of this part (Guideline on Air Quality Models) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific State program. Written approval of the Administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures set forth in [§ 51.102](#).

Credits

[[58 FR 38822](#), July 20, 1993; [60 FR 40468](#), Aug. 9, 1995; [61 FR 41840](#), Aug. 12, 1996]

SOURCE: [36 FR 22398](#), Nov. 25, 1971; [51 FR 40669](#), Nov. 7, 1986; [52 FR 24712](#), July 1, 1987; [55 FR 14249](#), April 17, 1990; [56 FR 42219](#), Aug. 26, 1991; [57 FR 32334](#), July 21, 1992; [57 FR 52987](#), Nov. 5, 1992; [58 FR 38821](#), July 20, 1993; [60 FR 40100](#), Aug. 7, 1995; [62 FR 8328](#), Feb. 24, 1997; [62 FR 43801](#), Aug. 15, 1997; [62 FR 44903](#), Aug. 25, 1997; [63 FR 24433](#), May 4, 1998; [64 FR 35763](#), July 1, 1999; [65 FR 45532](#), July 24, 2000; [72 FR 28613](#), May 22, 2007, unless otherwise noted.

AUTHORITY: [23 U.S.C. 101](#); [42 U.S.C. 7401–7671q](#).

[Notes of Decisions \(8\)](#)

Current through July 15, 2021; 86 FR 37250.



KeyCite Red Flag - Severe Negative Treatment

Adopted Regulation



KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted

Code of Federal Regulations

Title 40. Protection of Environment

Chapter I. Environmental Protection Agency (Refs & Annos)

Subchapter C. Air Programs

Part 51. Requirements for Preparation, Adoption, and Submittal of Implementation Plans (Refs & Annos)

Subpart I. Review of New Sources and Modifications (Refs & Annos)

40 C.F.R. § 51.165

§ 51.165 Permit requirements.

Effective: December 24, 2020

Currentness

(a) State Implementation Plan and Tribal Implementation Plan provisions satisfying sections 172(c)(5) and 173 of the Act shall meet the following conditions:

(1) All such plans shall use the specific definitions. Deviations from the following wording will be approved only if the State specifically demonstrates that the submitted definition is more stringent, or at least as stringent, in all respects as the corresponding definition below:

(i) Stationary source means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

(ii)(A) Building, structure, facility, or installation means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual,

1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101–0065 and 003–005–00176–0, respectively).

(B) The plan may include the following provision: Notwithstanding the provisions of paragraph (a)(1)(ii)(A) of this section, building, structure, facility, or installation means, for onshore activities under Standard Industrial Classification (SIC) Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13 that are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered adjacent if they are located on the same surface site; or if they are located on surface sites that are located within ¼ mile of one another (measured from the center of the equipment on the surface site) and they share equipment. Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators or emissions control devices. Surface site, as used in this paragraph (a)(1)(ii)(B), has the same meaning as in [40 CFR 63.761](#).

(iii) Potential to emit means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(iv)(A) Major stationary source means:

(1) Any stationary source of air pollutants that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant (as defined in paragraph (a)(1)(xxxvii) of this section), except that lower emissions thresholds shall apply in areas subject to subpart 2, subpart 3, or subpart 4 of part D, title I of the Act, according to paragraphs (a)(1)(iv)(A)(1)(i) through (viii) of this section.

(i) 50 tons per year of Volatile organic compounds in any serious ozone nonattainment area.

(ii) 50 tons per year of Volatile organic compounds in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area.

(iii) 25 tons per year of Volatile organic compounds in any severe ozone nonattainment area.

(iv) 10 tons per year of Volatile organic compounds in any extreme ozone nonattainment area.

(v) 50 tons per year of Carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to Carbon monoxide levels in the area (as determined under rules issued by the Administrator).

(vi) 70 tons per year of PM_{10} in any serious nonattainment area for PM_{10} .

(vii) 70 tons per year of $PM_{2.5}$ in any serious nonattainment area for $PM_{2.5}$.

(viii) 70 tons per year of any individual precursor for $PM_{2.5}$ (as defined in paragraph (a)(1)(xxxvii) of this section), in any serious nonattainment area for $PM_{2.5}$.

(2) For the purposes of applying the requirements of paragraph (a)(8) of this section to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source which emits, or has the potential to emit, 100 tons per year or more of nitrogen oxides emissions, except that the emission thresholds in paragraphs (a)(1)(iv)(A)(2)(i) through (vi) of this section shall apply in areas subject to subpart 2 of part D, title I of the Act.

(i) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as marginal or moderate.

(ii) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when such area is located in an ozone transport region.

(iii) 100 tons per year or more of nitrogen oxides in any area designated under section 107(d) of the Act as attainment or unclassifiable for ozone that is located in an ozone transport region.

(iv) 50 tons per year or more of nitrogen oxides in any serious nonattainment area for ozone.

(v) 25 tons per year or more of nitrogen oxides in any severe nonattainment area for ozone.

(vi) 10 tons per year or more of nitrogen oxides in any extreme nonattainment area for ozone; or

(3) Any physical change that would occur at a stationary source not qualifying under paragraphs (a)(1)(iv)(A)(1) or (2) of this section as a major stationary source, if the change would constitute a major stationary source by itself.

(B) A major stationary source that is major for volatile organic compounds shall be considered major for ozone

(C) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this paragraph whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(1) Coal cleaning plants (with thermal dryers);

(2) Kraft pulp mills;

- (3) Portland cement plants;
- (4) Primary zinc smelters;
- (5) Iron and steel mills;
- (6) Primary aluminum ore reduction plants;
- (7) Primary copper smelters;
- (8) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (9) Hydrofluoric, sulfuric, or nitric acid plants;
- (10) Petroleum refineries;
- (11) Lime plants;
- (12) Phosphate rock processing plants;
- (13) Coke oven batteries;
- (14) Sulfur recovery plants;
- (15) Carbon black plants (furnace process);
- (16) Primary lead smelters;
- (17) Fuel conversion plants;

(18) Sintering plants;

(19) Secondary metal production plants;

(20) Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(21) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(23) Taconite ore processing plants;

(24) Glass fiber processing plants;

(25) Charcoal production plants;

(26) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and

(27) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

(v)(A) Major modification means any physical change in or change in the method of operation of a major stationary source that would result in:

(1) A significant emissions increase of a regulated NSR pollutant (as defined in paragraph (a)(1)(xxxvii) of this section); and

(2) A significant net emissions increase of that pollutant from the major stationary source.

(B) Any significant emissions increase (as defined in paragraph (a)(1)(xxvii) of this section) from any emissions units or net emissions increase (as defined in paragraph (a)(1)(vi) of this section) at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.

(C) A physical change or change in the method of operation shall not include:

(1) Routine maintenance, repair and replacement. Routine maintenance, repair and replacement shall include, but not be limited to, any activity(s) that meets the requirements of the equipment replacement provisions contained in paragraph (h) of this section;

Note to paragraph (a)(1)(v)(C)(1): On December 24, 2003, the second sentence of this paragraph (a)(1)(v)(C)(1) is stayed indefinitely by court order. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the Federal Register advising the public of the termination of the stay.

(2) Use of an alternative fuel or raw material by reason of an order under sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(3) Use of an alternative fuel by reason of an order or rule section 125 of the Act;

(4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(5) Use of an alternative fuel or raw material by a stationary source which;

(i) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976 pursuant to [40 CFR 52.21](#) or under regulations approved pursuant to [40 CFR subpart I or § 51.166](#), or

(ii) The source is approved to use under any permit issued under regulations approved pursuant to this section;

(6) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to [40 CFR 52.21](#) or regulations approved pursuant to 40 CFR part 51 subpart I or [40 CFR 51.166](#).

(7) Any change in ownership at a stationary source.

(8) [Reserved]

(9) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(i) The State Implementation Plan for the State in which the project is located, and

(ii) Other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated.

(D) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under paragraph (f) of this section for a PAL for that pollutant. Instead, the definition at paragraph (f)(2)(viii) of this section shall apply.

(E) For the purpose of applying the requirements of (a)(8) of this section to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject to subpart 2, part D, title I of the Act, any significant net emissions increase of nitrogen oxides is considered significant for ozone.

(F) Any physical change in, or change in the method of operation of, a major stationary source of volatile organic compounds that results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is subject to subpart 2, part D, title I of the Act.

<Text of subsection (a)(1)(v)(G) stayed effective March 30, 2011.>

(G) Fugitive emissions shall not be included in determining for any of the purposes of this section whether a physical change in or change in the method of operation of a major stationary source is a major modification, unless the source belongs to one of the source categories listed in paragraph (a)(1)(iv)(C) of this section.

(vi)(A) Net emissions increase means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(1) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to paragraph (a)(2)(ii) of this section; and

(2) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph (a)(1)(vi)(A)(2) shall be determined as provided in paragraph (a)(1)(xxxv) of this section, except that paragraphs (a)(1)(xxxv)(A)(3) and (a)(1)(xxxv)(B)(4) of this section shall not apply.

(B) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs;

(C) An increase or decrease in actual emissions is creditable only if:

(1) It occurs within a reasonable period to be specified by the reviewing authority; and

(2) The reviewing authority has not relied on it in issuing a permit for the source under regulations approved pursuant to this section, which permit is in effect when the increase in actual emissions from the particular change occurs; and

<Text of subsection (a)(1)(vi)(C)(3) stayed effective March 30, 2011.>

(3) As it pertains to an increase or decrease in fugitive emissions (to the extent quantifiable), it occurs at an emissions unit that is part of one of the source categories listed in paragraph (a)(1)(iv)(C) of this section or it occurs at an emissions unit that is located at a major stationary source that belongs to one of the listed source categories. Fugitive emission increases or decreases are not creditable for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in paragraph (a)(1)(iv)(C) of this section and that are not, by themselves, part of a listed source category.

(D) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(E) A decrease in actual emissions is creditable only to the extent that:

(1) The old level of actual emission or the old level of allowable emissions whichever is lower, exceeds the new level of actual emissions;

(2) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

(3) The reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR part 51 subpart I or the State has not relied on it in demonstrating attainment or reasonable further progress;

(4) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(5) [Reserved]

(F) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(G) Paragraph (a)(1)(xii)(B) of this section shall not apply for determining creditable increases and decreases or after a change.

(vii) Emissions unit means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric steam generating unit as defined in paragraph (a)(1)(xx) of this section. For purposes of this section, there are two types of emissions units as described in paragraphs (a)(1)(vii)(A) and (B) of this section.

(A) A new emissions unit is any emissions unit which is (or will be) newly constructed and which has existed for less than 2 years from the date such emissions unit first operated.

(B) An existing emissions unit is any emissions unit that does not meet the requirements in paragraph (a)(1)(vii)(A) of this section. A replacement unit, as defined in paragraph (a)(1)(xxi) of this section, is an existing emissions unit.

(viii) Secondary emissions means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(ix) Fugitive emissions means those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

(x)(A) Significant means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant Emission Rate

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides: 40 tpy

Sulfur dioxide: 40 tpy

Ozone: 40 tpy of Volatile organic compounds or Nitrogen oxides

Lead: 0.6 tpy

PM₁₀: 15 tpy

PM_{2.5}: 10 tpy of direct PM_{2.5} emissions; 40 tpy of Sulfur dioxide emissions, 40 tpy of Nitrogen oxide emissions, or 40 tpy of VOC emissions, to the extent that any such pollutant is defined as a precursor for PM_{2.5} in paragraph (a)(1)(xxxvii) of this section.

(B) Notwithstanding the significant emissions rate for ozone in paragraph (a)(1)(x)(A) of this section, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area that is subject to subpart 2, part D, title I of the Act, if such emissions increase of volatile organic compounds exceeds 25 tons per year.

(C) For the purposes of applying the requirements of paragraph (a)(8) of this section to modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in paragraphs (a)(1)(x)(A), (B), and (E) of this section shall apply to nitrogen oxides emissions.

(D) Notwithstanding the significant emissions rate for carbon monoxide under paragraph (a)(1)(x)(A) of this section, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious nonattainment area for carbon monoxide if such increase equals or exceeds 50 tons per year, provided the Administrator has determined that stationary sources contribute significantly to carbon monoxide levels in that area.

(E) Notwithstanding the significant emissions rates for ozone under paragraphs (a)(1)(x)(A) and (B) of this section, any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area that is subject to subpart 2, part D, title I of the Act shall be considered a significant net emissions increase.

(F) For the purposes of applying the requirements of paragraph (a)(13) of this section to modifications at existing major stationary sources of Ammonia located in a PM_{2.5} nonattainment area, if the plan requires that the control requirements of this section apply to major stationary sources and major modifications of Ammonia as a regulated NSR pollutant (as a PM_{2.5} precursor), the plan shall also define “significant” for Ammonia for that area, subject to the approval of the Administrator.

(xi) Allowable emissions means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(A) The applicable standards set forth in 40 CFR part 60 or 61;

(B) Any applicable State Implementation Plan emissions limitation including those with a future compliance date; or

(C) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(xii)(A) Actual emissions means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs (a)(1)(xii)(B) through (D) of this section, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under paragraph (f) of this section. Instead, paragraphs (a)(1)(xxviii) and (xxxv) of this section shall apply for those purposes.

(B) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The reviewing authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(C) The reviewing authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(D) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(xiii) Lowest achievable emission rate (LAER) means, for any source, the more stringent rate of emissions based on the following:

(A) The most stringent emissions limitation which is contained in the implementation plan of any State for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(B) The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within or stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

(xiv) Federally enforceable means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to [40 CFR 52.21](#) or under regulations approved pursuant to 40 CFR part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

(xv) Begin actual construction means in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(xvi) Commence as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(A) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(B) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(xvii) Necessary preconstruction approvals or permits means those Federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State Implementation Plan.

(xviii) Construction means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

(xix) Volatile organic compounds (VOC) is as defined in [§ 51.100\(s\)](#) of this part.

(xx) Electric utility steam generating unit means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(xxi) Replacement unit means an emissions unit for which all the criteria listed in paragraphs (a)(1)(xxi)(A) through (D) of this section are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(A) The emissions unit is a reconstructed unit within the meaning of [§ 60.15\(b\)\(1\)](#) of this chapter, or the emissions unit completely takes the place of an existing emissions unit.

(B) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(C) The replacement does not alter the basic design parameters (as discussed in paragraph (h)(2) of this section) of the process unit.

(D) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

(xxii) Temporary clean coal technology demonstration project means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State Implementation Plan for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(xxiii) Clean coal technology means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(xxiv) Clean coal technology demonstration project means a project using funds appropriated under the heading “Department of Energy–Clean Coal Technology,” up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(xxv) [Reserved]

(xxvi) Pollution prevention means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain “in-process recycling” practices), energy recovery, treatment, or disposal.

(xxvii) Significant emissions increase means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in paragraph (a)(1)(x) of this section) for that pollutant.

(xxviii)(A) Projected actual emissions means, the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(B) In determining the projected actual emissions under paragraph (a)(1)(xxviii)(A) of this section before beginning actual construction, the owner or operator of the major stationary source:

(1) Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans under the approved plan; and

(2) Shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

(3) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under paragraph (a)(1)(xxxv) of this section and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

(4) In lieu of using the method set out in paragraphs (a)(1)(xxviii)(B)(1) through (3) of this section, may elect to use the emissions unit's potential to emit, in tons per year, as defined under paragraph (a)(1)(iii) of this section.

(xxix) [Reserved]

(xxx) Nonattainment major new source review (NSR) program means a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of this section, or a program that implements part 51, appendix S, Sections I through VI of this chapter. Any permit issued under such a program is a major NSR permit.

(xxxi) Continuous emissions monitoring system (CEMS) means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

(xxxii) Predictive emissions monitoring system (PEMS) means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

(xxxiii) Continuous parameter monitoring system (CPMS) means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and to record average operational parameter value(s) on a continuous basis.

(xxxiv) Continuous emissions rate monitoring system (CERMS) means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

(xxxv) Baseline actual emissions means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with paragraphs (a)(1)(xxxv)(A) through (D) of this section.

(A) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The reviewing authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(4) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph (a)(1)(xxxv)(A) (2) of this section.

(B) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the reviewing authority for a permit required either under this section or under a plan approved by the Administrator, whichever is earlier,

except that the 10-year period shall not include any period earlier than November 15, 1990.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(3) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under part 63 of this chapter, the baseline actual emissions need only be adjusted if the State has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of paragraph (a)(3)(ii)(G) of this section.

(4) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used For each regulated NSR pollutant.

(5) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraphs (a)(1)(xxxv)(B) (2) and (3) of this section.

(C) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(D) For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph (a)(1)(xxxv)(A) of this section, for other existing emissions units in accordance with the procedures contained in paragraph (a)(1)(xxxv)(B) of this section, and for a new emissions unit in accordance with the procedures contained in paragraph (a)(1)(xxxv)(C) of this section.

(xxxvi) [Reserved]

(xxxvii) Regulated NSR pollutant, for purposes of this section, means the following:

(A) Nitrogen oxides or any volatile organic compounds;

(B) Any pollutant for which a national ambient air quality standard has been promulgated;

(C) Any pollutant that is identified under this paragraph (a)(1)(xxxvii)(C) as a constituent or precursor of a general pollutant listed under paragraph (a)(1)(xxxvii)(A) or (B) of this section, provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

(1) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.

(2) Sulfur dioxide, Nitrogen oxides, Volatile organic compounds and Ammonia are precursors to PM_{2.5} in any PM_{2.5} nonattainment area.

(D) PM_{2.5} emissions and PM₁₀ emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011 (or any earlier date established in the upcoming rulemaking codifying test methods), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM_{2.5} and

PM₁₀ in nonattainment major NSR permits. Compliance with emissions limitations for PM_{2.5} and PM₁₀ issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.

(xxxviii) Reviewing authority means the State air pollution control agency, local agency, other State agency, Indian tribe, or other agency authorized by the Administrator to carry out a permit program under this section and § 51.166, or the Administrator in the case of EPA-implemented permit programs under § 52.21.

(xxxix) Project means a physical change in, or change in the method of operation of, an existing major stationary source.

(xl) Best available control technology (BACT) means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the reviewing authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR part 60 or 61. If the reviewing authority determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

(xli) Prevention of Significant Deterioration (PSD) permit means any permit that is issued under a major source preconstruction permit program that has been approved by the

Administrator and incorporated into the plan to implement the requirements of § 51.166 of this chapter, or under the program in § 52.21 of this chapter.

(xlii) Federal Land Manager means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

(xliii)(A) In general, process unit means any collection of structures and/or equipment that processes, assembles, applies, blends, or otherwise uses material inputs to produce or store an intermediate or a completed product. A single stationary source may contain more than one process unit, and a process unit may contain more than one emissions unit.

(B) Pollution control equipment is not part of the process unit, unless it serves a dual function as both process and control equipment. Administrative and warehousing facilities are not part of the process unit.

(C) For replacement cost purposes, components shared between two or more process units are proportionately allocated based on capacity.

(D) The following list identifies the process units at specific categories of stationary sources.

(1) For a steam electric generating facility, the process unit consists of those portions of the plant that contribute directly to the production of electricity. For example, at a pulverized coal-fired facility, the process unit would generally be the combination of those systems from the coal receiving equipment through the emission stack (excluding post-combustion pollution controls), including the coal handling equipment, pulverizers or coal crushers, feedwater heaters, ash handling, boiler, burners, turbine-generator set, condenser, cooling tower, water treatment system, air preheaters, and operating control systems. Each separate generating unit is a separate process unit.

(2) For a petroleum refinery, there are several categories of process units: those that separate and/or distill petroleum feedstocks; those that change molecular structures; petroleum treating processes; auxiliary facilities, such as steam generators and

hydrogen production units; and those that load, unload, blend or store intermediate or completed products.

(3) For an incinerator, the process unit would consist of components from the feed pit or refuse pit to the stack, including conveyors, combustion devices, heat exchangers and steam generators, quench tanks, and fans.

Note to paragraph (a)(1)(xliii): By a court order on December 24, 2003, this paragraph (a)(1)(xliii) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the Federal Register advising the public of the termination of the stay.

(xliv) Functionally equivalent component means a component that serves the same purpose as the replaced component.

Note to paragraph (a)(1)(xliv): By a court order on December 24, 2003, this paragraph (a)(1)(xliv) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the Federal Register advising the public of the termination of the stay.

(xlv) Fixed capital cost means the capital needed to provide all the depreciable components. “Depreciable components” refers to all components of fixed capital cost and is calculated by subtracting land and working capital from the total capital investment, as defined in paragraph (a)(1)(xlvi) of this section.

Note to paragraph (a)(1)(xlv): By a court order on December 24, 2003, this paragraph (a)(1)(xlv) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the Federal Register advising the public of the termination of the stay.

(xlvi) Total capital investment means the sum of the following: All costs required to purchase needed process equipment (purchased equipment costs); the costs of labor and materials for installing that equipment (direct installation costs); the costs of site preparation and buildings; other costs such as engineering, construction and field expenses, fees to contractors, startup and performance tests, and contingencies (indirect installation costs); land for the process equipment; and working capital for the process equipment.

Note to paragraph (a)(1)(xlvi): By a court order on December 24, 2003, this paragraph (a)(1)(xlvi) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the Federal Register advising the public of the termination of the stay.

(2) Applicability procedures.

(i) Each plan shall adopt a preconstruction review program to satisfy the requirements of sections 172(c)(5) and 173 of the Act for any area designated nonattainment for any national ambient air quality standard under subpart C of 40 CFR part 81. Such a program shall apply to any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment under section 107(d)(1)(A)(i) of the Act, if the stationary source or modification would locate anywhere in the designated nonattainment area. Different pollutants, including individual precursors, are not summed to determine applicability of a major stationary source or major modification.

(ii) Each plan shall use the specific provisions of paragraphs (a)(2)(ii)(A) through (F) of this section. Deviations from these provisions will be approved only if the State specifically demonstrates that the submitted provisions are more stringent than or at least as stringent in all respects as the corresponding provisions in paragraphs (a)(2)(ii)(A) through (F) of this section.

(A) Except as otherwise provided in paragraphs (a)(2)(iii) and (iv) of this section, and consistent with the definition of major modification contained in paragraph (a)(1)(v)(A) of this section, a project is a major modification for a regulated NSR pollutant (as defined in paragraph (a)(1)(xxxvii) of this section) if it causes two types of emissions increases—a significant emissions increase (as defined in paragraph (a)(1)(xxvii) of this section), and a significant net emissions increase (as defined in paragraphs (a)(1)(vi) and (x) of this section). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(B) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs (a)(2)(ii)(C) through (F) of this section. The procedure for calculating (before beginning actual

construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition in paragraph (a)(1)(vi) of this section. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(C) Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in paragraph (a)(1)(xxviii) of this section) and the baseline actual emissions (as defined in paragraphs (a)(1)(xxxv)(A) and (B) of this section, as applicable), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph (a)(1)(x) of this section).

(D) Actual-to-potential test for projects that only involve construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in paragraph (a)(1)(iii) of this section) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in paragraph (a)(1)(xxxv)(C) of this section) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in paragraph (a)(1)(x) of this section).

(E) [Reserved]

(F) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference for all emissions units, using the method specified in paragraphs (a)(2)(ii)(C) through (D) of this section as applicable with respect to each emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph (a)(1)(x) of this section).

(G) The “sum of the difference” as used in paragraphs (C), (D) and (F) of this section shall include both increases and decreases in emissions calculated in accordance with those paragraphs.

(iii) The plan shall require that for any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under paragraph (f) of this section.

(iv) [Reserved]

(3)(i) Each plan shall provide that for sources and modifications subject to any preconstruction review program adopted pursuant to this subsection the baseline for determining credit for emissions reductions is the emissions limit under the applicable State Implementation Plan in effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where;

(A) The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area for which the preconstruction review program was adopted; or

(B) The applicable State Implementation Plan does not contain an emissions limitation for that source or source category.

(ii) The plan shall further provide that:

(A) Where the emissions limit under the applicable State Implementation Plan allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential;

(B) For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable State Implementation Plan for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier

fuel at some later date. The reviewing authority should ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches,

(C)(1) Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may be generally credited for offsets if they meet the requirements in paragraphs (a)(3)(ii)(C)(1)(i) through (ii) of this section.

(i) Such reductions are surplus, permanent, quantifiable, and federally enforceable.

(ii) The shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this paragraph, a reviewing authority may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.

(2) Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements in paragraph (a)(3)(ii)(C)(1)(ii) of this section may be generally credited only if:

(i) The shutdown or curtailment occurred on or after the date the construction permit application is filed; or

(ii) The applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment met the requirements of paragraph (a)(3)(ii)(C)(1)(i) of this section.

(D) No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" ([42 FR 35314](#), July 8, 1977; (This document is also available from Mr. Ted Creekmore, Office of Air Quality Planning and Standards, (MD-15) Research Triangle Park, NC 27711.))

(E) All emission reductions claimed as offset credit shall be federally enforceable;

(F) Procedures relating to the permissible location of offsetting emissions shall be followed which are at least as stringent as those set out in [40 CFR part 51 appendix S](#) section IV.D.

(G) Credit for an emissions reduction can be claimed to the extent that the reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR part 51 subpart I or the State has not relied on it in demonstration attainment or reasonable further progress.

(H), (I) [Reserved]

(J) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with section 173 of the Act shall be determined by summing the difference between the allowable emissions after the modification (as defined by paragraph (a)(1)(xi) of this section) and the actual emissions before the modification (as defined in paragraph (a)(1)(xii) of this section) for each emissions unit.

(4) Each plan may provide that the provisions of this paragraph do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or citric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

(5) Each plan shall include enforceable procedures to provide that:

(i) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provision of the plan and any other requirements under local, State or Federal law.

(ii) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of regulations approved pursuant to this section shall apply to the source or modification as though construction had not yet commenced on the source or modification;

(6) Each plan shall provide that, except as otherwise provided in paragraph (a)(6)(vi) of this section, the following specific provisions apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of paragraph (a)(6)(vi) of this section, that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in paragraphs (a)(1)(xxviii)(B)(1) through (3) of this section for calculating projected actual emissions. Deviations from these provisions will be approved only if the State specifically demonstrates that the submitted provisions are more stringent than or at least as stringent in all respects as the corresponding provisions in paragraphs (a)(6)(i) through (vi) of this section.

(i) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(A) A description of the project;

(B) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(C) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph (a)(1)(xxviii)(B)(3) of this section and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(ii) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out

in paragraph (a)(6)(i) of this section to the reviewing authority. Nothing in this paragraph (a)(6)(ii) shall be construed to require the owner or operator of such a unit to obtain any determination from the reviewing authority before beginning actual construction.

(iii) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in paragraph (a)(6)(i)(B) of this section; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

(iv) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the reviewing authority within 60 days after the end of each year during which records must be generated under paragraph (a)(6)(iii) of this section setting out the unit's annual emissions during the year that preceded submission of the report.

(v) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the reviewing authority if the annual emissions, in tons per year, from the project identified in paragraph (a)(6)(i) of this section, exceed the baseline actual emissions (as documented and maintained pursuant to paragraph (a)(6)(i)(C) of this section, by a significant amount (as defined in paragraph (a)(1)(x) of this section) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (a)(6)(i)(C) of this section. Such report shall be submitted to the reviewing authority within 60 days after the end of such year. The report shall contain the following:

(A) The name, address and telephone number of the major stationary source;

(B) The annual emissions as calculated pursuant to paragraph (a)(6)(iii) of this section; and

(C) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(vi) A “reasonable possibility” under paragraph (a)(6) of this section occurs when the owner or operator calculates the project to result in either:

(A) A projected actual emissions increase of at least 50 percent of the amount that is a “significant emissions increase,” as defined under paragraph (a)(1)(xxvii) of this section (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(B) A projected actual emissions increase that, added to the amount of emissions excluded under paragraph (a)(1)(xxviii)(B)(3), sums to at least 50 percent of the amount that is a “significant emissions increase,” as defined under paragraph (a)(1)(xxvii) of this section (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of paragraph (a)(6)(vi)(B) of this section, and not also within the meaning of paragraph (a)(6)(vi)(A) of this section, then provisions (a)(6)(ii) through (v) do not apply to the project.

(7) Each plan shall provide that the owner or operator of the source shall make the information required to be documented and maintained pursuant to paragraph (a)(6) of this section available for review upon a request for inspection by the reviewing authority or the general public pursuant to the requirements contained in § 70.4(b)(3)(viii) of this chapter.

(8) The plan shall provide that the requirements of this section applicable to major stationary sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in ozone nonattainment areas or in portions of an ozone transport region where the Administrator has granted a NO_x waiver applying the standards set forth under section 182(f) of the Act and the waiver continues to apply.

(9)(i) The plan shall require that in meeting the emissions offset requirements of paragraph (a)(3) of this section, the ratio of total actual emissions reductions to the emissions increase shall be at least 1:1 unless an alternative ratio is provided for the applicable nonattainment area in paragraphs (a)(9)(ii) through (a)(9)(iv) of this section.

(ii) The plan shall require that in meeting the emissions offset requirements of paragraph (a)(3) of this section for ozone nonattainment areas that are subject to subpart 2, part D, title I of the Act, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be as follows:

(A) In any marginal nonattainment area for ozone—at least 1.1:1;

(B) In any moderate nonattainment area for ozone—at least 1.15:1;

(C) In any serious nonattainment area for ozone—at least 1.2:1;

(D) In any severe nonattainment area for ozone—at least 1.3:1 (except that the ratio may be at least 1.2:1 if the approved plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC); and

(E) In any extreme nonattainment area for ozone—at least 1.5:1 (except that the ratio may be at least 1.2:1 if the approved plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC); and

(iii) Notwithstanding the requirements of paragraph (a)(9)(ii) of this section for meeting the requirements of paragraph (a)(3) of this section, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1.15:1 for all areas within an ozone transport region that is subject to subpart 2, part D, title I of the Act, except for serious, severe, and extreme ozone nonattainment areas that are subject to subpart 2, part D, title I of the Act.

(iv) The plan shall require that in meeting the emissions offset requirements of paragraph (a)(3) of this section for ozone nonattainment areas that are subject to subpart 1, part D, title I of the Act (but are not subject to subpart 2, part D, title I of the Act, including 8-hour ozone nonattainment areas subject to [40 CFR 51.902\(b\)](#)), the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1:1.

(10) The plan shall require that the requirements of this section applicable to major stationary sources and major modifications of PM₁₀ shall also apply to major stationary sources and

major modifications of PM₁₀ precursors, except where the Administrator determines that such sources do not contribute significantly to PM₁₀ levels that exceed the PM₁₀ ambient standards in the area.

(11) Interpollutant offsetting, or interpollutant trading or interprecursor trading or interprecursor offset substitution—The plan shall require that in meeting the emissions offset requirements of paragraph (a)(3) of this section, the emissions offsets obtained shall be for the same regulated NSR pollutant unless interprecursor offsetting is permitted for a particular pollutant as specified in this paragraph. (a)(3) of this section, the emissions offsets obtained shall be for the same regulated NSR pollutant unless interprecursor offsetting is permitted for a particular pollutant as specified in this paragraph.

(i) The plan may allow the offset requirement in paragraph (a)(3) of this section for emissions of the ozone precursors NO_x and VOC to be satisfied, where appropriate, by offsetting reductions of actual emissions of either of those precursors, if all other requirements contained in this section for such offsets are also satisfied.

(A) The plan shall indicate whether such precursor substitutions for ozone precursors are to be based on an area-specific default ratio (default ratio) for the applicable ozone nonattainment area, established in regulations as part of the approved plan, or default IPT ratios for an applicable ozone nonattainment area established in advance by an air agency that are presumed to be appropriate for each permit application in the area, absent contrary information in the record of an individual permit application, or case-specific ratios established for individual permits.

(B)(1) Where a state seeks to use a default IPT ratio that is not part of the approved plan, the plan shall include the following to authorize the development of a default ratio for a particular ozone nonattainment area, including a revised default ratio resulting from the periodic review required under paragraph (a)(11)(i)(B)(2) of this section:

(i) A description of the model(s) that will be used to develop any default ratio;

(ii) A description of the approach that will be used to analyze modeling data, ambient monitoring data, and emission inventory data to determine the sensitivity of an area to emissions of ozone precursors in the formation of ground-level ozone; and

(iii) A description of the modeling demonstration that will be used to show that the default ratio provides an equivalent or greater air quality benefit with respect to ground level concentrations in the ozone nonattainment area than an offset of the emitted precursor would achieve.

(2) The plan shall require that for any default ratio for ozone, the reviewing authority shall evaluate that ratio at least every 5 years to determine whether current conditions support the continued use of such ratio.

(C) The plan shall require that, for any case-specific permit ratio for ozone proposed by a permit applicant to be used for a particular permit, the following information shall be submitted to the reviewing authority to support approval of the ratio:

(1) The description of the air quality model(s) used to propose a case-specific ratio; and

(2) the proposed ratio for the precursor substitution and accompanying calculations; and

(3) a modeling demonstration showing that such ratio(s) as applied to the proposed project and credit source will provide an equivalent or greater air quality benefit with respect to ground level concentrations in the ozone nonattainment area than an offset of the emitted precursor would achieve.

(ii) The plan may allow the offset requirements in paragraph (a)(3) of this section for direct PM_{2.5} emissions or emissions of precursors of PM_{2.5} to be satisfied by offsetting reductions in direct PM_{2.5} emissions or emissions of any PM_{2.5} precursor identified under paragraph (a)(1)(xxxvii)(C) of this section if such offsets comply with the interprecursor trading hierarchy and ratio established in the approved plan for a particular nonattainment area.

(12) The plan shall require that in any area designated nonattainment for the 2008 ozone NAAQS and designated nonattainment for the 1997 ozone NAAQS on April 6, 2015 the requirements of this section applicable to major stationary sources and major modifications of ozone shall include the anti-backsliding requirements contained at [§ 51.1105](#).

(13) The plan shall require that the control requirements of this section applicable to major stationary sources and major modifications of PM_{2.5} shall also apply to major stationary sources and major modifications of PM_{2.5} precursors in a PM_{2.5} nonattainment area, except that a reviewing authority may exempt new major stationary sources and major modifications of a particular precursor from the requirements of this section for PM_{2.5} if the NNSR precursor demonstration submitted to and approved by the Administrator shows that such sources do not contribute significantly to PM_{2.5} levels that exceed the standard in the area. Any demonstration submitted for the Administrator's review must meet the conditions for a NNSR precursor demonstration as set forth in [§ 51.1006\(a\)\(3\)](#).

(b)(1) Each plan shall include a preconstruction review permit program or its equivalent to satisfy the requirements of section 110(a)(2)(D)(i) of the Act for any new major stationary source or major modification as defined in paragraphs (a)(1) (iv) and (v) of this section. Such a program shall apply to any such source or modification that would locate in any area designated as attainment or unclassifiable for any national ambient air quality standard pursuant to section 107 of the Act, when it would cause or contribute to a violation of any national ambient air quality standard.

(2) A major source or major modification will be considered to cause or contribute to a violation of a national ambient air quality standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable national standard:

Pollutant	Annual	Averaging time (hours)			
		24	8	3	1
SO ₂	1.0 µg/ m ³	5 µg/ m ³		25 µg/ m ³	
PM ₁₀	1.0 µg/ m ³	5 µg/ m ³			

PM _{2.5}	0.3 µg/ m ³	1.2 µg/ m ³	
NO ₂	1.0 µg/ m ³		
CO	0.5 mg/ m ³	2 mg/ m ³

(3) Such a program may include a provision which allows a proposed major source or major modification subject to paragraph (b) of this section to reduce the impact of its emissions upon air quality by obtaining sufficient emission reductions to, at a minimum, compensate for its adverse ambient impact where the major source or major modification would otherwise cause or contribute to a violation of any national ambient air quality standard. The plan shall require that, in the absence of such emission reductions, the State or local agency shall deny the proposed construction.

(4) The requirements of paragraph (b) of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment pursuant to section 107 of the Act.

(c) to (e) [Reserved]

(f) Actuals PALs. The plan shall provide for PALs according to the provisions in paragraphs (f)(1) through (15) of this section.

(1) Applicability.

(i) The reviewing authority may approve the use of an actuals PAL for any existing major stationary source (except as provided in paragraph (f)(1)(ii) of this section) if the PAL meets the requirements in paragraphs (f)(1) through (15) of this section. The term “PAL” shall mean “actuals PAL” throughout paragraph (f) of this section.

(ii) The reviewing authority shall not allow an actuals PAL for VOC or NO_x for any major stationary source located in an extreme ozone nonattainment area.

(iii) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements in paragraphs (f)(1) through (15) of this section, and complies with the PAL permit:

(A) Is not a major modification for the PAL pollutant;

(B) Does not have to be approved through the plan's nonattainment major NSR program; and

(C) Is not subject to the provisions in paragraph (a)(5)(ii) of this section (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the nonattainment major NSR program).

(iv) Except as provided under paragraph (f)(1)(iii)(C) of this section, a major stationary source shall continue to comply with all applicable Federal or State requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

(2) Definitions. The plan shall use the definitions in paragraphs (f)(2)(i) through (xi) of this section for the purpose of developing and implementing regulations that authorize the use of actuals PALs consistent with paragraphs (f)(1) through (15) of this section. When a term is not defined in these paragraphs, it shall have the meaning given in paragraph (a)(1) of this section or in the Act.

(i) Actuals PAL for a major stationary source means a PAL based on the baseline actual emissions (as defined in paragraph (a)(1)(xxxv) of this section) of all emissions units (as defined in paragraph (a)(1)(vii) of this section) at the source, that emit or have the potential to emit the PAL pollutant.

(ii) Allowable emissions means “allowable emissions” as defined in paragraph (a)(1)(xi) of this section, except as this definition is modified according to paragraphs (f)(2)(ii)(A) through (B) of this section.

(A) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(B) An emissions unit's potential to emit shall be determined using the definition in paragraph (a)(1)(iii) of this section, except that the words “or enforceable as a practical matter” should be added after “federally enforceable.”

(iii) Small emissions unit means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in paragraph (a)(1)(x) of this section or in the Act, whichever is lower.

(iv) Major emissions unit means:

(A) Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

(B) Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Act for nonattainment areas. For example, in accordance with the definition of major stationary source in section 182(c) of the Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.

(v) Plantwide applicability limitation (PAL) means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with paragraphs (f)(1) through (f)(15) of this section.

(vi) PAL effective date generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit which is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(vii) PAL effective period means the period beginning with the PAL effective date and ending 10 years later.

(viii) PAL major modification means, notwithstanding paragraphs (a)(1)(v) and (vi) of this section (the definitions for major modification and net emissions increase), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(ix) PAL permit means the major NSR permit, the minor NSR permit, or the State operating permit under a program that is approved into the plan, or the title V permit issued by the reviewing authority that establishes a PAL for a major stationary source.

(x) PAL pollutant means the pollutant for which a PAL is established at a major stationary source.

(xi) Significant emissions unit means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in paragraph (a)(1)(x) of this section or in the Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in paragraph (f)(2)(iv) of this section.

(3) Permit application requirements. As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the reviewing authority for approval:

(i) A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, Federal or State applicable requirements, emission limitations or work practices apply to each unit.

(ii) Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown and malfunction.

(iii) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by paragraph (f)(13)(i) of this section.

(4) General requirements for establishing PALs.

(i) The plan allows the reviewing authority to establish a PAL at a major stationary source, provided that at a minimum, the requirements in paragraphs (f)(4)(i)(A) through (G) of this section are met.

(A) The PAL shall impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(B) The PAL shall be established in a PAL permit that meets the public participation requirements in paragraph (f)(5) of this section.

(C) The PAL permit shall contain all the requirements of paragraph (f)(7) of this section.

(D) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

(E) Each PAL shall regulate emissions of only one pollutant.

(F) Each PAL shall have a PAL effective period of 10 years.

(G) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in paragraphs (f) (12) through (14) of this section for each emissions unit under the PAL through the PAL effective period.

(ii) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under paragraph (a)(3)(ii) of this section unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

(5) Public participation requirement for PALs. PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with §§ 51.160 and 51.161 of this chapter. This includes the requirement that the reviewing authority provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The reviewing authority must address all material comments before taking final action on the permit.

(6) Setting the 10-year actuals PAL level.

(i) Except as provided in paragraph (f)(6)(ii) of this section, the plan shall provide that the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in paragraph (a)(1)(xxv) of this section) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under paragraph (a)(1)(x) of this section or under the Act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The reviewing authority shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) that the reviewing authority is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_x to a new rule limit of 30 ppm, then the permit shall

contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

(ii) For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in paragraph (f)(6)(i) of this section, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

(7) Contents of the PAL permit. The plan shall require that the PAL permit contain, at a minimum, the information in paragraphs (f)(7)(i) through (x) of this section.

(i) The PAL pollutant and the applicable source-wide emission limitation in tons per year.

(ii) The PAL permit effective date and the expiration date of the PAL (PAL effective period).

(iii) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with paragraph (f)(10) of this section before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the reviewing authority.

(iv) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns and malfunctions.

(v) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of paragraph (f)(9) of this section.

(vi) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by paragraph (f)(13)(i) of this section.

(vii) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under paragraph (f)(12) of this section.

(viii) A requirement to retain the records required under paragraph (f)(13) of this section on site. Such records may be retained in an electronic format.

(ix) A requirement to submit the reports required under paragraph (f)(14) of this section by the required deadlines.

(x) Any other requirements that the reviewing authority deems necessary to implement and enforce the PAL.

(8) PAL effective period and reopening of the PAL permit. The plan shall require the information in paragraphs (f)(8)(i) and (ii) of this section.

(i) PAL effective period. The reviewing authority shall specify a PAL effective period of 10 years.

(ii) Reopening of the PAL permit.

(A) During the PAL effective period, the plan shall require the reviewing authority to reopen the PAL permit to:

(1) Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL.

(2) Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under paragraph (a)(3)(ii) of this section.

(3) Revise the PAL to reflect an increase in the PAL as provided under paragraph (f)(11) of this section.

(B) The plan shall provide the reviewing authority discretion to reopen the PAL permit for the following:

(1) Reduce the PAL to reflect newly applicable Federal requirements (for example, NSPS) with compliance dates after the PAL effective date.

(2) Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the State may impose on the major stationary source under the plan.

(3) Reduce the PAL if the reviewing authority determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

(C) Except for the permit reopening in paragraph (f)(8)(ii)(A)(1) of this section for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of paragraph (f)(5) of this section.

(9) Expiration of a PAL. Any PAL which is not renewed in accordance with the procedures in paragraph (f)(10) of this section shall expire at the end of the PAL effective period, and the requirements in paragraphs (f)(9)(i) through (v) of this section shall apply.

(i) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in paragraphs (f)(9)(i)(A) through (B) of this section.

(A) Within the time frame specified for PAL renewals in paragraph (f)(10)(ii) of this section, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the reviewing authority) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under

paragraph (f)(10)(v) of this section, such distribution shall be made as if the PAL had been adjusted.

(B) The reviewing authority shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the reviewing authority determines is appropriate.

(ii) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The reviewing authority may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emission limitation.

(iii) Until the reviewing authority issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under paragraph (f)(9)(i)(A) of this section, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(iv) Any physical change or change in the method of operation at the major stationary source will be subject to the nonattainment major NSR requirements if such change meets the definition of major modification in paragraph (a)(1)(v) of this section.

(v) The major stationary source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to paragraph (a)(5)(ii) of this section, but were eliminated by the PAL in accordance with the provisions in paragraph (f)(1)(iii)(C) of this section.

(10) Renewal of a PAL.

(i) The reviewing authority shall follow the procedures specified in paragraph (f)(5) of this section in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to

the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the reviewing authority.

(ii) Application deadline. The plan shall require that a major stationary source owner or operator shall submit a timely application to the reviewing authority to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(iii) Application requirements. The application to renew a PAL permit shall contain the information required in paragraphs (f)(10)(iii)(A) through (D) of this section.

(A) The information required in paragraphs (f)(3)(i) through (iii) of this section.

(B) A proposed PAL level.

(C) The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

(D) Any other information the owner or operator wishes the reviewing authority to consider in determining the appropriate level for renewing the PAL.

(iv) PAL adjustment. In determining whether and how to adjust the PAL, the reviewing authority shall consider the options outlined in paragraphs (f)(10)(iv)(A) and (B) of this section. However, in no case may any such adjustment fail to comply with paragraph (f)(10)(iv)(C) of this section.

(A) If the emissions level calculated in accordance with paragraph (f)(6) of this section is equal to or greater than 80 percent of the PAL level, the reviewing authority may renew the PAL at the same level without considering the factors set forth in paragraph (f)(10)(iv)(B) of this section; or

(B) The reviewing authority may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the reviewing authority in its written rationale.

(C) Notwithstanding paragraphs (f)(10)(iv)(A) and (B) of this section,

(1) If the potential to emit of the major stationary source is less than the PAL, the reviewing authority shall adjust the PAL to a level no greater than the potential to emit of the source; and

(2) The reviewing authority shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of paragraph (f)(11) of this section (increasing a PAL).

(v) If the compliance date for a State or Federal requirement that applies to the PAL source occurs during the PAL effective period, and if the reviewing authority has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

(11) Increasing a PAL during the PAL effective period.

(i) The plan shall require that the reviewing authority may increase a PAL emission limitation only if the major stationary source complies with the provisions in paragraphs (f)(11)(i)(A) through (D) of this section.

(A) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

(B) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(C) The owner or operator obtains a major NSR permit for all emissions unit(s) identified in paragraph (f)(11)(i)(A) of this section, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the nonattainment major NSR program process (for example, LAER), even though they have also become subject to the PAL or continue to be subject to the PAL.

(D) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(ii) The reviewing authority shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with paragraph (f)(11)(i)(B)), plus the sum of the baseline actual emissions of the small emissions units.

(iii) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of paragraph (f)(5) of this section.

(12) Monitoring requirements for PALs—

(i) General requirements.

(A) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(B) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in paragraphs (f)(12)(ii)(A) through (D) of this section and must be approved by the reviewing authority.

(C) Notwithstanding paragraph (f)(12)(i)(B) of this section, you may also employ an alternative monitoring approach that meets paragraph (f)(12)(i)(A) of this section if approved by the reviewing authority.

(D) Failure to use a monitoring system that meets the requirements of this section renders the PAL invalid.

(ii) Minimum Performance Requirements for Approved Monitoring Approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in paragraphs (f)(12)(iii) through (ix) of this section:

(A) Mass balance calculations for activities using coatings or solvents;

(B) CEMS;

(C) CPMS or PEMS; and

(D) Emission Factors.

(iii) Mass Balance Calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(A) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

(B) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

(C) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the reviewing authority determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(iv) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(A) CEMS must comply with applicable Performance Specifications found in [40 CFR part 60, appendix B](#); and

(B) CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

(v) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(A) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

(B) Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the reviewing authority, while the emissions unit is operating.

(vi) Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(A) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(B) The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

(C) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the reviewing authority determines that testing is not required.

(vii) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(viii) Notwithstanding the requirements in paragraphs (f)(12)(iii) through (vii) of this section, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the reviewing authority shall, at the time of permit issuance:

(A) Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

(B) Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

(ix) Re-validation. All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the reviewing authority. Such testing must occur at least once every 5 years after issuance of the PAL.

(13) Recordkeeping requirements.

(i) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of paragraph (f) of this section and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record.

(ii) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus 5 years:

(A) A copy of the PAL permit application and any applications for revisions to the PAL;
and

(B) Each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

(14) Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the reviewing authority in accordance with the applicable title V operating permit program. The reports shall meet the requirements in paragraphs (f)(14)(i) through (iii).

(i) Semi-Annual Report. The semi-annual report shall be submitted to the reviewing authority within 30 days of the end of each reporting period. This report shall contain the information required in paragraphs (f)(14)(i)(A) through (G) of this section.

(A) The identification of owner and operator and the permit number.

(B) Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to paragraph (f)(13)(i) of this section.

(C) All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions.

(D) A list of any emissions units modified or added to the major stationary source during the preceding 6-month period.

(E) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

(F) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by paragraph (f)(12)(vii) of this section.

(G) A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(ii) Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to [§ 70.6\(a\)\(3\)\(iii\)\(B\)](#) of this chapter shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing [§ 70.6\(a\)\(3\)\(iii\)\(B\)](#) of this chapter. The reports shall contain the following information:

(A) The identification of owner and operator and the permit number;

(B) The PAL requirement that experienced the deviation or that was exceeded;

(C) Emissions resulting from the deviation or the exceedance; and

(D) A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(iii) Re-validation results. The owner or operator shall submit to the reviewing authority the results of any re-validation test or method within 3 months after completion of such test or method.

(15) Transition requirements.

(i) No reviewing authority may issue a PAL that does not comply with the requirements in paragraphs (f)(1) through (15) of this section after the Administrator has approved regulations incorporating these requirements into a plan.

(ii) The reviewing authority may supersede any PAL which was established prior to the date of approval of the plan by the Administrator with a PAL that complies with the requirements of paragraphs (f)(1) through (15) of this section.

(g) If any provision of this section, or the application of such provision to any person or circumstance, is held invalid, the remainder of this section, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(h) Equipment replacement provision. Without regard to other considerations, routine maintenance, repair and replacement includes, but is not limited to, the replacement of any component of a process unit with an identical or functionally equivalent component(s), and

maintenance and repair activities that are part of the replacement activity, provided that all of the requirements in paragraphs (h)(1) through (3) of this section are met.

(1) Capital Cost threshold for Equipment Replacement.

(i) For an electric utility steam generating unit, as defined in § 51.165(a)(1)(xx), the fixed capital cost of the replacement component(s) plus the cost of any associated maintenance and repair activities that are part of the replacement shall not exceed 20 percent of the replacement value of the process unit, at the time the equipment is replaced. For a process unit that is not an electric utility steam generating unit the fixed capital cost of the replacement component(s) plus the cost of any associated maintenance and repair activities that are part of the replacement shall not exceed 20 percent of the replacement value of the process unit, at the time the equipment is replaced.

(ii) In determining the replacement value of the process unit; and, except as otherwise allowed under paragraph (h)(1)(iii) of this section, the owner or operator shall determine the replacement value of the process unit on an estimate of the fixed capital cost of constructing a new process unit, or on the current appraised value of the process unit.

(iii) As an alternative to paragraph (h)(1)(ii) of this section for determining the replacement value of a process unit, an owner or operator may choose to use insurance value (where the insurance value covers only complete replacement), investment value adjusted for inflation, or another accounting procedure if such procedure is based on Generally Accepted Accounting Principles, provided that the owner or operator sends a notice to the reviewing authority. The first time that an owner or operator submits such a notice for a particular process unit, the notice may be submitted at any time, but any subsequent notice for that process unit may be submitted only at the beginning of the process unit's fiscal year. Unless the owner or operator submits a notice to the reviewing authority, then paragraph (h)(1)(ii) of this section will be used to establish the replacement value of the process unit. Once the owner or operator submits a notice to use an alternative accounting procedure, the owner or operator must continue to use that procedure for the entire fiscal year for that process unit. In subsequent fiscal years, the owner or operator must continue to use this selected procedure unless and until the owner or operator sends another notice to the reviewing authority selecting another procedure consistent with this paragraph or paragraph (h)(1)(ii) of this section at the beginning of such fiscal year.

(2) Basic design parameters. The replacement does not change the basic design parameter(s) of the process unit to which the activity pertains.

(i) Except as provided in paragraph (h)(2)(iii) of this section, for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on British Thermal Units content shall be used for determining the basic design parameter(s) for a coal-fired electric utility steam generating unit.

(ii) Except as provided in paragraph (h)(2)(iii) of this section, the basic design parameter(s) for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material when selecting a basic design parameter.

(iii) If the owner or operator believes the basic design parameter(s) in paragraphs (h)(2)(i) and (ii) of this section is not appropriate for a specific industry or type of process unit, the owner or operator may propose to the reviewing authority an alternative basic design parameter(s) for the source's process unit(s). If the reviewing authority approves of the use of an alternative basic design parameter(s), the reviewing authority shall issue a permit that is legally enforceable that records such basic design parameter(s) and requires the owner or operator to comply with such parameter(s).

(iv) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter(s) specified in paragraphs (h)(2)(i) and (ii) of this section.

(v) If design information is not available for a process unit, then the owner or operator shall determine the process unit's basic design parameter(s) using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.

(vi) Efficiency of a process unit is not a basic design parameter.

(3) The replacement activity shall not cause the process unit to exceed any emission limitation, or operational limitation that has the effect of constraining emissions, that applies to the process unit and that is legally enforceable.

Note to paragraph (h): By a court order on December 24, 2003, this paragraph (h) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the Federal Register advising the public of the termination of the stay.

(i) Public participation requirements. The reviewing authority shall notify the public of a draft permit by a method described in either paragraph (i)(1) or (2) of this section. The selected method, known as the “consistent noticing method,” shall comply with the public participation procedural requirements of § 51.161 of this chapter and be used for all permits issued under this section and may, when appropriate, be supplemented by other noticing methods on individual permits.

(1) Post the information in paragraphs (i)(1)(i) through (iii) of this section, for the duration of the public comment period, on a public Web site identified by the reviewing authority.

(i) A notice of availability of the draft permit for public comment;

(ii) The draft permit; and

(iii) Information on how to access the administrative record for the draft permit.

(2) Publish a notice of availability of the draft permit for public comment in a newspaper of general circulation in the area where the source is located. The notice shall include information on how to access the draft permit and the administrative record for the draft permit.

Credits

[[52 FR 24713](#), July 1, 1987; [52 FR 29386](#), Aug. 7, 1987; [54 FR 27285, 27299](#), June 28, 1989; [57 FR 3946](#), Feb. 3, 1992; [57 FR 32334](#), July 21, 1992; [67 FR 80244](#), Dec. 31, 2002; [68 FR 61276](#), Oct. 27, 2003; [68 FR 63027](#), Nov. 7, 2003; [69 FR 40275](#), July 1, 2004; [70 FR 71698](#), Nov. 29, 2005; [72 FR 24077](#), May 1, 2007; [72 FR 32528](#), June 13, 2007; [72 FR 72616](#), Dec. 21, 2007; [73 FR 28347](#), May 16, 2008; [73 FR 77895](#), Dec. 19, 2008; [74 FR 50116](#), Sept. 30, 2009; [74 FR 65694](#), Dec. 11, 2009; [75 FR 16015](#), March 31, 2010; [75 FR 64902](#), Oct. 20, 2010; [76 FR 17552](#), March 30, 2011; [80 FR 12318](#), March 6, 2015; [81 FR 35632](#), June 3, 2016; [81 FR 58150](#), Aug. 24, 2016; [81 FR 71629](#), Oct. 18, 2016; [83 FR 63032](#), Dec. 6, 2018; [85 FR 74908](#), Nov. 24, 2020]

SOURCE: [36 FR 22398](#), Nov. 25, 1971; [51 FR 40669](#), Nov. 7, 1986; [52 FR 24712](#), July 1, 1987; [55 FR 14249](#), April 17, 1990; [56 FR 42219](#), Aug. 26, 1991; [57 FR 32334](#), July 21, 1992; [57 FR 52987](#), Nov. 5, 1992; [58 FR 38821](#), July 20, 1993; [60 FR 40100](#), Aug. 7, 1995; [62 FR 8328](#), Feb. 24, 1997; [62 FR 43801](#), Aug. 15, 1997; [62 FR 44903](#), Aug. 25, 1997; [63 FR 24433](#), May 4, 1998; [64 FR 35763](#), July 1, 1999; [65 FR 45532](#), July 24, 2000; [72 FR 28613](#), May 22, 2007, unless otherwise noted.

AUTHORITY: [23 U.S.C. 101](#); [42 U.S.C. 7401–7671q](#).

Notes of Decisions (17)

Current through July 15, 2021; 86 FR 37250.

Appendix 14

40 C.F.R. pt. 52

Code of Federal Regulations

Title 40. Protection of Environment

Chapter I. Environmental Protection Agency (Refs & Annos)

Subchapter C. Air Programs

Part 52. Approval and Promulgation of Implementation Plans (Refs & Annos)

Subpart SS. Texas

40 C.F.R. § 52.2270

§ 52.2270 Identification of plan.

Effective: June 28, 2021

Currentness

(a) Purpose and scope. This section sets forth the applicable State Implementation Plan (SIP) for Texas under section 110 of the Clean Air Act, [42 U.S.C. 7410](#), and 40 CFR part 51 to meet national ambient air quality standards.

(b) Incorporation by reference.

(1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to December 31, 1998, were approved for incorporation by reference by the Director of the Federal Register in accordance with [5 U.S.C. 552\(a\)](#) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the Federal Register. Entries in paragraphs (c) and (d) of this section with EPA approval dates after December 31, 1998, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 6 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State Implementation Plan as of December 31, 1998.

(3) Copies of the materials incorporated by reference may be inspected at <https://www.epa.gov/sips-tx> or the Environmental Protection Agency, Region 6, 1201 Elm Street,

Suite 500, Dallas, Texas 75270–2102. If you wish to obtain material from the EPA Regional Office, please call (800) 887–6063 or (214) 665–2760.

(c) EPA approved regulations.

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation.....	Title/Subject.....	State approval/ Submittal date	EPA approval date	Explanation
Chapter 19—Electronic Reporting				
Subchapter A—General Provisions				
Section 19.1.....	Definitions.....	2/7/2007	July 23, 2010, 75 FR 43062	
Section 19.3.....	Applicability.....	2/7/2007	July 23, 2010, 75 FR 43062	
Subchapter B—Electronic Reporting Requirements				
Section 19.10.....	Use of Electronic Document Receiving System.....	2/7/2007	July 23, 2010, 75 FR 43062	
Section 19.12.....	Authorized Electronic Signature.....	2/7/2007	July 23, 2010, 75 FR 43062	
Section 19.14.....	Enforcement.....	2/7/2007	July 23, 2010, 75 FR 43062	
Chapter 39—Public Notice				
Subchapter H—Applicability and General Provisions				
Section 39.402.....	Applicability to Air Quality Permits and Permit Amendments.....	6/2/2010	10/6/2015, 80 FR 60296	SIP includes 39.402 (a) (1)-(a)(6), (a)(8), (a) (11), and (a)(12).
Section 39.405.....	General Notice Provisions.....	12/9/2015	5/9/2018, 83 FR 21180	SIP includes 39.405(f)

			(3) and (g), (h)(2)- (h)(4), (h) (6), (h)(8)- (h)(11), (i) and (j) as adopted on 12/9/2015.
			SIP includes 39.405(h) (1)9A) as adopted on 6/2/2010.
Section 39.407.....	Mailing Lists.....	9/2/1999	1/6/2014, 79 FR 551
Section 39.409.....	Deadline for Public Comment, and Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing.....	6/2/2010	1/6/2014, 79 FR 551
Section 39.411.....	Text of Public Notice.....	5/9/2018	7/12/2019, 84 FR 33173SIP includes 39.411(a), 39.411(e) (1)-(4) (A)(i) and (iii), (4) (B), (e)(5) introductory paragraph, (e)(5)(A), (e)(5)(B), (e)(6)-(9), (e)(10), (e)(11)(A) (i), (e)(11) (A)(iii)- (vi), (e) (11)(B)- (F), (e) (13), (e) (15), (e) (16), (f) introductory paragraph, (f)(1)-(8), (g), and (h).

Section 39.412.....	Combined Notice for Certain Greenhouse Gases Permit Applications.....	3/26/2014	11/10/2014, 79 FR 66626	
Section 39.418.....	Notice of Receipt of Application and Intent to Obtain Permit.....	6/2/2010	1/6/2014, 79 FR 551	SIP includes 39.418(a), (b)(2)(A), (b)(3) and (c).
Section 39.419.....	Notice of Application and Preliminary Determination.....	12/9/2015	5/9/2018, 83 FR 21180	SIP includes 39.419(e) (e)(1) and (e)(2).
Section 39.420.....	Transmittal of the Executive Director's Response to Comments and Decisions.....	3/26/2014	11/10/2014, 79 FR 66626	SIP includes 39.420(c) (1)(A)-(D) (i)(I) and (D)(i)(II), (D)(ii), (c) (2), and (d)-(e).

Subchapter K- Public Notice of Air Quality Applications

Section 39.601.....	Applicability.....	6/2/2010	1/6/2014, 79 FR 551	
Section 39.602.....	Mailed Notice.....	6/2/2010	1/6/2014, 79 FR 551	SIP does not include 39.602(c) adopted on 12/9/2015.
Section 39.603.....	Newspaper Notice.....	5/9/2018	7/12/2019, 84 FR 33173	
Section 39.604.....	Sign-Posting.....	6/2/2010	1/6/2014, 79 FR 551	
Section 39.605.....	Notice to Affected Agencies.....	6/2/2010	1/6/2014, 79 FR 551	

Chapter 55—Requests for Reconsideration and Contested Case Hearings; Public Comment

Subchapter E—Public Comment and Public Meetings

Section 55.150.....Applicability.....	6/14/2006	1/6/2014, 79 FR 551	
Section 55.152.....Public Comment Period...	5/9/2018		7/12/2019, 84 FR 33173SIP includes 55.152(a) (1), (a)(2), (a)(3), (a) (4), (a)(7), (a)(8) and (b).
Section 55.154.....Public Meetings.....	6/2/2010	1/6/2014, 79 FR 551	SIP includes 55.154(a), (b), (c)(1)- (3) and (5), and (d)-(g).
Section 55.156.....Public Comment Processing.....	12/9/2015	5/9/2018, 83 FR 21180	SIP includes 55.156(a), (b), (c)(1), and (g).

Chapter 101—General Air Quality Rules

Subchapter A—General Rules

Section 101.1.....Definitions.....	7/6/2016	6/8/2017, 82 FR 26598	
Section 101.2.....Multiple air Contaminant Sources or Properties.....	04/13/73	06/22/73, 38 FR 16568	Ref 52.2299(c) (7).
Section 101.3.....Circumvention.....	04/13/73	06/22/73, 38 FR 16568	Ref 52.2299(c) (7).
Section 101.4.....Nuisance.....	04/13/73	06/22/73, 38 FR 16568	Ref 52.2299(c) (7).
Section 101.5.....Traffic Hazard.....	04/13/73	06/22/73, 38 FR 16568	Ref 52.2299(c) (7).
Section 101.8.....Sampling.....	12/11/73	01/27/82, 47 FR 03767	Ref 52.2299(c) (33).

Section 101.9.....Sampling Ports.....	04/13/73	06/22/73, 38 FR 16568	Ref 52.2299(c) (7).
Section 101.10.....Emissions Inventory Requirements.....	7/6/2016	6/8/2017, 82 FR 26598	
Section 101.13.....Use and Effect of Rules...	04/13/73	06/22/73, 38 FR 16568	Ref 52.2299(c) (7).
Section 101.14.....Sampling Procedures and Terminology.....	04/13/73	06/22/73, 38 FR 16568	Ref 52.2299(c) (7).
Section 101.18.....Remedies Cumulative.....	04/13/73	06/22/73, 38 FR 16568	Ref 52.2299(c) (7).
Section 101.19.....Severability.....	04/13/73	06/22/73, 38 FR 16568	Ref 52.2299(c) (7).
Section 101.20.....Compliance with Environmental Protection Agency Standards.....	05/09/75	06/01/77, 42 FR 27894	Rule 23 Ref, 52.2299(c) (10).
	07/26/85	06/24/92, 57 FR 28093	Section 101.20(3), Ref 52.2299(c) (73).
			(1) and (2) NOT IN SIP.
Section 101.21.....The National Primary and Secondary Air Quality Standards.....	05/09/75	06/01/77, 42 FR 27894	Ref 52.2299(c) (10).
Section 101. Rule 16.....Invoking Jurisdiction.....	04/13/73	6/22/73, 38 FR 16568	Ref 52.2299(c) (7). Not in current Texas General Rules.
Section 101. Rule 19.....Initiation of Review.....	04/13/73	06/22/73, 38 FR 16568	Ref 52.2299(c) (7). Not in current Texas General Rules.

Subchapter B— Failure to Attain Fee		
Section 101.100.....Definitions.....	5/22/2013	2/14/2020, 85 FR 8426
Section 101.101.....Applicability.....	5/22/2013	2/14/2020, 85 FR 8426
Section 101.102.....Equivalent Alternative Fee.....	5/22/2013	2/14/2020, 85 FR 8426
Section 101.104.....Equivalent Alternative Fee Accounting.....	5/22/2013	2/14/2020, 85 FR 8426
Section 101.106.....Baseline Amount Calculation.....	5/22/2013	2/14/2020, 85 FR 8426
Section 101.107.....Aggregated Baseline Amount.....	5/22/2013	2/14/2020, 85 FR 8426
Section 101.108.....Alternative Baseline Amount.....	5/22/2013	2/14/2020, 85 FR 8426
Section 101.109.....Adjustment of Baseline Amount.....	5/22/2013	2/14/2020, 85 FR 8426
Section 101.110.....Baseline Amount for New Major Stationary Source, New Construction at a Major Stationary Source, or Major Stationary Sources with Less Than 24 Months of Operation.....	5/22/2013	2/14/2020, 85 FR 8426
Section 101.113.....Failure to Attain Fee Obligation.....	5/22/2013	2/14/2020, 85 FR 8426
Section 101.116.....Failure to Attain Fee Payment.....	5/22/2013	2/14/2020, 85 FR 8426
Section 101.117.....Compliance Schedule.....	5/22/2013	2/14/2020, 85 FR 8426

Section 101.118(a)(1) and (a)(3).....	Cessation of Program.....	5/22/2013	2/14/2020, 85 FR 8426	SIP does not include 101.118(a) (2) or 101.118(b).
Section 101.120.....	Eligibility for Equivalent Alternative Obligation.....	5/22/2013	2/14/2020, 85 FR 8426	
Section 101.121.....	Equivalent Alternative Obligation.....	5/22/2013	2/14/2020, 85 FR 8426	
Section 101.122.....	Using Supplemental Environmental Project to Fulfill an Equivalent Alternative Obligation.....	5/22/2013	2/14/2020, 85 FR 8426	

Subchapter F—Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities

Division 1—Emissions Events

Section 101.201.....	Emissions Event Reporting and Recordkeeping Requirements.....	03/26/14	11/10/14, 79 FR 66626	101.201(h) is not in the SIP.
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Division 2—Maintenance, Startup, and Shutdown Activities

Section 101.211.....	Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements.....	01/23/06	11/10/10, 75 FR 68989	101.211(f) is not in the SIP.
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Division 3—Operational Requirements, Demonstrations, and Actions to Reduce Excessive Emissions

Section 101.221.....	Operational Requirements.....	01/23/06	11/10/10, 75 FR 68989	
Section 101.222.....	Demonstrations.....	01/23/06	11/10/10, 75 FR 68989	The SIP does not include 101.222(h), 101.222 (i), and 101.222 (j). See section 52.2273(e).

Section 101.223.....	Actions to Reduce Excessive Emissions.....	01/23/06	11/10/10, 75 FR 68989
Section 101.224.....	Temporary Exemptions During Drought Conditions.....	08/21/02	03/30/05, 70 FR 16129

Division 4—Variances

Section 101.231.....	Petition for Variance.....	08/21/02	03/30/05, 70 FR 16129
Section 101.232.....	Effect of Acceptance of Variance or Permit.....	08/21/02	03/30/05, 70 FR 16129
Section 101.233.....	Variance Transfers.....	08/21/02	03/30/05, 70 FR 16129

Subchapter H—Emissions Banking and Trading

Division 1—Emission Credit Program

Section 101.300.....	Definitions.....	09/20/2017	12/7/2017, 82 FR 57679
Section 101.301.....	Purpose.....	6/3/2015	5/11/2017, 82 FR 21925
Section 101.302.....	General Provisions.....	09/20/2017	12/7/2017, 82 FR 57679
Section 101.303.....	Emission Reduction Credit Generation and Certification.....	09/20/2017	12/7/2017, 82 FR 57679
Section 101.304.....	Mobile Emission Reduction Credit Generation and Certification.....	09/20/2017	12/7/2017, 82 FR 57679
Section 101.305.....	Emission Reductions Achieved Outside the United States.....	10/4/2006	5/18/10, 75 FR 27647
Section 101.306.....	Emission Credit Use.....	09/20/2017	12/7/2017, 82 FR 57679

Section 101.309.....	Emission Credit Banking and Trading.....	6/3/2015	5/11/2017, 82 FR 21925
Section 101.311.....	Program Audits and Reports.....	11/10/04	9/6/06, 71 FR 52698

Division 2—Emissions Banking and Trading of Allowances

Section 101.330.....	Definitions.....	12/16/1999	1/3/2011, 76 FR 15.
Section 101.331.....	Applicability.....	12/16/1999	1/3/2011, 76 FR 15.
Section 101.332.....	General Provisions.....	12/16/1999	1/3/2011, 76 FR 15.
Section 101.333.....	Allocation of Allowances	08/09/2000	1/3/2011, 76 FR 15.
Section 101.334.....	Allowance Deductions....	12/16/1999	1/3/2011, 76 FR 15.
Section 101.335.....	Allowance Banking and Trading.....	12/16/1999	1/3/2011, 76 FR 15.
Section 101.336.....	Emission Monitoring, Compliance Demonstration, and Reporting.....	12/16/1999	1/3/2011, 76 FR 15.
Section 101.338.....	Emission Reductions Achieved Outside the United States.....	10/04/2006	1/3/2011, 76 FR 15.
Section 101.339.....	Program Audits and Reports.....	10/04/2006	1/3/2011, 76 FR 15.

Division 3—Mass Emissions Cap and Trade Program

Section 101.350.....	Definitions.....	6/3/2015	5/11/2017, 82 FR 21925
Section 101.351.....	Applicability.....	6/3/2015	5/11/2017, 82 FR 21925
Section 101.352.....	General Provisions.....	6/3/2015	5/11/2017, 82 FR 21925
Section 101.353.....	Allocation of Allowances	6/3/2015	5/11/2017, 82 FR 21925

Section 101.354.....	Allowance Deductions....	6/3/2015	5/11/2017, 82 FR 21925
Section 101.356.....	Allowance Banking and Trading.....	6/3/2015	5/11/2017, 82 FR 21925
Section 101.357.....	Use of Emission Reductions Generated from the Texas Emissions Reduction Plan (TERP)...	3/13/2002	5/11/2017, 82 FR 21925
Section 101.359.....	Reporting.....	6/3/2015	5/11/2017, 82 FR 21925
Section 101.360.....	Level of Activity Certification.....	6/3/2015	5/11/2017, 82 FR 21925
Section 101.363.....	Program Audits and Reports.....	09/26/01	11/14/01, 66 FR 57252

Division 4—Discrete Emission Credit Program

Section 101.370.....	Definitions.....	09/20/2017	12/7/2017, 82 FR 57679
Section 101.371.....	Purpose.....	6/3/2015	5/11/2017, 82 FR 21925
Section 101.372.....	General Provisions.....	09/20/2017	12/7/2017, 82 FR 57679
Section 101.373.....	Discrete Emission Reduction Credit Generation and Certification.....	09/20/2017	12/7/2017, 82 FR 57679
Section 101.374.....	Mobile Discrete Emission Reduction Credit Generation and Certification.....	09/20/2017	12/7/2017, 82 FR 57679
Section 101.375.....	Emission Reductions Achieved Outside the United States.....	10/4/2006	5/18/2010, 75 FR 27644
Section 101.376.....	Discrete Emission Credit Use.....	09/20/2017	12/7/2017, 82 FR 57679

Section 101.378.....	Discrete Emission Credit Banking and Trading.....	6/3/2015	5/11/2017, 82 FR 21925
Section 101.379.....	Program Audits and Reports.....	6/3/2015	5/11/2017, 82 FR 21925

Division 6—Highly Reactive Volatile Organic Compound Emissions Cap and Trade Program

Section 101.390.....	Definitions.....	6/3/2015	5/11/2017, 82 FR 21925
Section 101.391.....	Applicability.....	6/3/2015	5/11/2017, 82 FR 21925
Section 101.392.....	Exemptions.....	6/3/2015	5/11/2017, 82 FR 21925
Section 101.393.....	General Provisions.....	6/3/2015	5/11/2017, 82 FR 21925
Section 101.394.....	Allocation of Allowances	6/3/2015	5/11/2017, 82 FR 21925
Section 101.396.....	Allowance Deductions....	6/3/2015	5/11/2017, 82 FR 21925
Section 101.399.....	Allowance Banking and Trading.....	6/3/2015	5/11/2017, 82 FR 21925
Section 101.400.....	Reporting.....	6/3/2015	5/11/2017, 82 FR 21925
Section 101.401.....	Level of Activity Certification.....	4/6/2010	1/2/2014, 79 FR 57
Section 101.403.....	Program audits and reports.....	12/01/04	9/6/06, 71 FR 52659

Division 7—Clean Air Interstate Rule

Section 101.503.....	Clean Air Interstate Rule Oxides of Nitrogen Annual Trading Budget...	07/12/06	07/30/07, 72 FR 41453	
Section 101.504.....	Timing Requirements for Clean Air Interstate	07/12/06	07/30/07, 72 FR 41453	Subsections 101.504(a) (2),

	Rule Oxides of Nitrogen Allowance Allocations....			101.504(a) (3), 101.504(a) (4), 101.504(c), and 101.504(d) NOT IN SIP.
Section 101.506.....	Clean Air Interstate Rule Oxides of Nitrogen Allowance Allocations....	07/12/06	07/30/07, 72 FR 41453	Subsections 101.506(a) (2), 101.506(b) (2), 101.506(b) (3), and 101.506(g) NOT IN SIP.
Section 101.508.....	Compliance Supplement Pool.....	07/12/06	07/30/07, 72 FR 41453	
Chapter 106—Permits by Rule				
Subchapter A—General Requirements				
Section 106.1.....	Purpose.....	08/09/00	11/14/03, 68 FR 64548	
Section 106.2.....	Applicability.....	03/26/14	11/10/14, 79 FR 66626	
Section 106.4.....	Requirements for Permitting by Rule.....	03/26/14	11/10/14, 79 FR 66626	The SIP approved provisions at 30 TAC Section 106.4(a) (1), (a)(3), and (a)(4) are those adopted by the State as of 4/20/2011.
Section 106.6.....	Registration of Emissions	11/20/02	11/14/03, 68 FR 64549	

Section 106.8.....	Recordkeeping.....	10/10/01	11/14/03, 68 FR 64549
Section 106.13.....	References to Standard Exemptions and Exemptions from Permitting.....	08/09/00	11/14/03, 68 FR 64549

Subchapter B—Registration Fees for New Permits by Rule

Section 106.50.....	Registration Fees for Permits by Rule.....	9/25/2002	3/20/2009, 74 FR 11851.
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Chapter 111 (Reg 1)—Control of Air Pollution from Visible Emissions and Particulate Matter

Subchapter A: Visible Emissions and Particulate Matter

Division 1: Visible Emissions

Section 111.111(a), (b)....	Requirements for Specified Sources.....	6/18/1993	5/8/1996, 61 FR 20732
Section 111.111(c).....	Requirements for Specified Sources.....	10/25/1991	1/18/1994, 59 FR 2532
Section 111.113.....	Alternative Opacity Limitations.....	6/16/1989	5/8/1996, 61 FR 20732

Division 2: Incineration

Section 111.121.....	Single-Chamber Incineration.....	6/16/1989	4/28/2009, 74 FR 19144
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Division 4: Materials Handling, Construction, Roads, Streets, Alleys, and Parking Lots

Section 111.141.....	Geographic Areas of Application and Date of Compliance.....	10/25/1991	1/18/1994, 59 FR 02532
Section 111.143.....	Materials Handling.....	6/16/1989	1/18/1994, 59 FR 02532
Section 111.145.....	Construction and Demolition.....	10/25/1991	1/18/1994, 59 FR 02532
Section 111.147.....	Roads, Streets, and Alleys.....	1/25/2012	12/14/2015, 80 FR 77254

Section 111.149.....	Parking Lots.....	6/16/1989	1/18/1994, 59 FR 02532
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Division 5: Emission Limits on Nonagricultural Processes

Section 111.151.....	Allowable Emissions Limits.....	6/16/1989	4/28/2009, 74 FR 19144
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Section 111.153.....	Emission Limits for Steam Generators.....	6/16/1989	4/28/2009, 74 FR 19144
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Division 6: Emission Limits on Agricultural Processes

Section 111.171.....	Emission Limits Based on Process Weight Method.....	6/16/1989	4/28/2009, 74 FR 19144
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Section 111.173.....	Emissions Limits Based on Alternate Method.....	6/16/1989	4/28/2009, 74 FR 19144
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Section 111.175.....	Exemptions.....	6/16/1989	4/28/2009, 74 FR 19144
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Division 7: Exemptions for Portable or Transient Operations

Section 111.181.....	Exemption Policy.....	6/16/1989	4/28/2009, 74 FR 19144
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Section 111.183.....	Requirements for Exemptions.....	6/16/1989	4/28/2009, 74 FR 19144
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Subchapter B: Outdoor Burning

Section 111.201.....	General Prohibitions.....	8/21/1996	4/28/2009, 74 FR 19144
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Section 111.203.....	Definitions.....	7/7/2017	4/27/2018, 83 FR 18430
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Section 111.205.....	Exceptions for Fire Training.....	8/21/1996	4/28/2009, 74 FR 19144
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Section 111.207.....	Exceptions for Fires Used for Recreation, Ceremony, Cooking, and Warmth.....	8/21/1996	4/28/2009, 74 FR 19144
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Section 111.209.....	Exception for Disposal Fires.....	6/28/2006	1/11/2017, 82 FR 3172
Section 111.211.....	Exception for Prescribed Burn.....	1/15/2014	1/11/2017, 82 FR 3172
Section 111.213.....	Exception for Hydrocarbon Burning.....	8/21/1996	4/28/2009, 74 FR 19144
Section 111.215.....	Executive Director Approval of Otherwise Prohibited Outdoor Burning.....	8/21/1996	4/28/2009, 74 FR 19144
Section 111.217.....	Requirements for Certified and Insured Prescribed Burn Managers.....	7/7/2017	4/27/2018, 83 FR 18430
Section 111.219.....	General Requirements for Allowable Outdoor Burning.....	8/21/1996	4/28/2009, 74 FR 19144
Section 111.221.....	Responsibility for Consequences of Outdoor Burning.....	8/21/1996	4/28/2009, 74 FR 19144

Chapter 112 (Reg 2)—Control of Air Pollution From Sulfur Compounds

Section 112.1.....	Definitions.....	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c) (76).
Section 112.2.....	Compliance, Reporting, and Recordkeeping.....	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c) (76).
Section 112.3.....	Net Ground Level Concentrations.....	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c) (76).
Section 112.4.....	Net Ground Level Concentra- tions— Exemption Conditions.....	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c) (76).
Section 112.5.....	Allowable Emission Rates—Sulfuric Acid Plant Burning Elemental Sulfur.....	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c) (76).
Section 112.6.....	Allowable Emission Rates—Sulfuric Acid Plant.....	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c) (76).

Section 112.7.....	Allowable Emission Rates—Sulfur Recovery Plant.....	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c) (76).
Section 112.8.....	Allowable Emissions Rates from Solid Fossil Fuel-Fired Steam Generators.....	09/18/92	02/18/97, 62 FR 07163	Ref 52.2299(c) (101).
Section 112.9.....	Allowable Emission Rates— Combustion of Liquid Fuel.....	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c) (76).
Section 112.14.....	Allowable Emission Rates— Nonferrous Smelter Processes.....	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c) (76).
Section 112.15.....	Temporary Fuel Shortage Plan Filing Requirements.....	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c) (76).
Section 112.16.....	Temporary Fuel Shortage Plan Operating Requirements.....	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c) (76).
Section 112.17.....	Temporary Fuel Shortage Plan Notification Procedures.....	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c) (76)
Section 112.18.....	Temporary Fuel Shortage Plan Reporting Requirements.....	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c) (76)
Section 112.19.....	Application for Area Control Plan.....	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c) (76)
Section 112.20.....	Exemption Procedure.....	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c) (76)
Section 112.21.....	Allowable Emission Rates Under Area Control Plan.....	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c) (76)
Section 112.41 to 112.47.	Control of Sulfuric Acid..	05/12/89	NOT in SIP but is a part of the EPA approved Texas 111(d) Plan
Section 112.51 to 112.59.	Control of Total Reduced Sulfur (TRS).....	05/12/89	NOT in SIP but is a part of the EPA

approved
Texas
111(d)
Plan.

Chapter 114 (Reg 4)—Control of Air Pollution from Motor Vehicles

Subchapter A—Definitions

Section 114.1.....	Definitions.....	2/12/2014	10/7/2016, 81 FR 69684
Section 114.2.....	Inspection and Maintenance Definitions.	4/29/2015	10/7/2016, 81 FR 69684
Section 114.5.....	Transportation Planning Definition.....	05/03/00	12/5/02, 67 FR 72382
Section 114.6.....	Low Emission Fuel Definitions.....	8/22/12	5/6/13, 78 FR 26255

Subchapter C—Vehicle Inspection and Maintenance; Low Income Vehicle Repair Assistance,
Retrofit, and Accelerated Vehicle Retirement Program; and Early Action Compact Counties

Division 1: Vehicle Inspection and Maintenance

Section 114.50.....	Vehicle Emission Inspection Requirements.	2/12/2014	10/7/2016, 81 FR 69679	Subsection 114.50(b) (2) is NOT part of the approved SIP.
Section 114.51.....	Equipment Evaluation Procedures for Vehicle Gas Analyzers.....	11/18/2010	7/25/2014, 79 FR 43264	
114.53.....	Inspection and Maintenance Fees.....	4/29/2015	10/7/2016, 81 FR 69684	

Division 3: Early Action Compact Counties

Section 114.80.....	Applicability.....	11/17/04	8/8/05, 70 FR 45542
Section 114.81.....	Vehicle Emissions Inspection Requirements.	11/17/04	8/8/05, 70 FR 45542
114.82.....	Control Requirements.....	2/12/2014	10/7/2016, 81 FR 69684

114.83.....	Waivers and Extensions...	2/12/2014	10/7/2016, 81 FR 69684
114.84.....	Prohibitions.....	2/12/2014	10/7/2016, 81 FR 69684
Section 114.85.....	Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers....	11/17/04	8/8/05, 70 FR 45542
114.87.....	Inspection and Maintenance Fees.....	4/29/2015	10/7/2016, 81 FR 69684

Subchapter D—Oxygen Requirements for Gasoline

Section 114.100.....	Oxygenated Fuels.....	1/20/2017	2/27/2018, 83 FR 8361
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Subchapter G—Transportation Planning

Section 114.260.....	Transportation Conformity.....	6/27/2007	11/12/2014, 79 FR 67071
Section 114.270.....	Transportation Control Measures.....	6/27/2007	1/31/2014, 79 FR 5287

Subchapter H—Low Emission Fuels

Division 1: Gasoline Volatility

Section 114.301.....	Control Requirements for Reid Vapor Pressure.....	04/25/00	4/26/01, 66 FR 20931	Part (c) is not approved.
Section 114.305.....	Approved Test Methods..	1/20/2017	2/27/2018, 83 FR 8361	
114.306.....	Recordkeeping Requirements.....	4/25/2000	4/26/2001, 66 FR 20927	Not in SIP: 114.306(c)
114.307.....	Exemptions.....	9/10/2014	7/20/2015, 80 FR 42732	
114.309.....	Affected Counties.....	9/10/2014	7/20/2015, 80 FR 42732	

Division 2: Low Emission Diesel

Section 114.312.....	Low Emission Diesel Standards.....	8/22/12	5/6/13, 78 FR 26255
Section 114.313.....	Designated Alternative Limits.....	8/22/12	5/6/13, 78 FR 26255
Section 114.314.....	Registration of Diesel Producers and Importers..	8/22/12	5/6/13, 78 FR 26255
Section 114.315.....	Approved Test Methods..	8/22/12	5/6/13, 78 FR 26255
Section 114.316.....	Monitoring, Recordkeeping, and Reporting Requirements..	8/22/12	5/6/13, 78 FR 26255
Section 114.317.....	Exemptions to Low Emission Diesel Requirements.....	8/22/12	5/6/13, 78 FR 26255
Section 114.318.....	Alternative Emission Reduction Plan.....	8/22/12	5/6/13, 78 FR 26255
Section 114.319.....	Affected Counties and Compliance Dates.....	8/22/12	5/6/13, 78 FR 26255

Subchapter I—Non-Road Engines

Division 3—Non-Road Large Spark-Ignition Engines

Section 114.420.....	Definitions.....	04/19/00	11/14/01, 66 FR 57222
Section 114.421.....	Emission Specifications..	12/06/00	11/14/01, 66 FR 57222
Section 114.422.....	Control Requirements.....	04/19/00	11/14/01, 66 FR 57222
Section 114.427.....	Exemptions.....	04/19/00	11/14/01, 66 FR 57222
Section 114.429.....	Affected Counties and Compliance Schedules....	12/06/00	11/14/01, 66 FR 57222

Subchapter J—Operational Controls for Motor Vehicles

Division 2: Locally Enforced Motor Vehicle Idling Limitations

Section 114.510..... Definitions.....	11/17/04	4/11/05, 70 FR 18308
Section 114.511..... Applicability.....	11/17/04	4/11/05, 70 FR 18308
Section 114.512..... Control Requirements for Motor Vehicle Idling.....	7/20/2011	7/25/2014, 79 FR 43264
Section 114.517..... Exemptions.....	8/08/2012	7/25/2014, 79 FR 43264

Subchapter K—Mobile Source Incentive Programs

Division 3: Diesel Emissions Reduction Incentive Program for On-Road and Non-Road Vehicles

Section 114.620..... Definitions.....	4/4/2018	10/4/2018; 83 FR 50021
Section 114.621..... Applicability.....	01/28/04	08/19/05, 70 FR 48647
Section 114.622..... Incentive Program Requirements.....	6/10/2020	5/27/2021, 86 FR 28496
Section 114.623..... Small Business Incentives.....	4/4/2018	10/4/2018; 83 FR 50021
Section 114.624..... Rebate Grant Process.....	9/20/2006	4/9/2010, 75 FR 18061
Section 114.626..... Monitoring, Recordkeeping, and Reporting Requirements..	08/22/01	08/19/05, 70 FR 48647
¹ Section 114.629..... Affected Counties and Implementation Schedule	4/9/2014	6/9/2017, 82 FR 26756
² Section 114.629..... Affected Counties and Implementation Schedule	6/10/2020	5/27/2021, 86 FR 28496

Division 4: Texas Clean School Bus Program

Section 114.640..... Definitions.....	3/26/2014	6/9/2017, 82 FR 26756
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Section 114.642.....	Applicability.....	3/26/2014	6/9/2017, 82 FR 26756
Section 114.644.....	Clean School Bus Program Requirements....	3/26/2014	6/9/2017, 82 FR 26756
Section 114.646.....	Monitoring, Recordkeeping, and Reporting Requirements..	3/26/2014	6/9/2017, 82 FR 26756
Section 114.648.....	Expiration.....	3/26/2014	6/9/2017, 82 FR 26756

Division 5: Texas Clean Fleet Program

Section 114.650.....	Definitions.....	4/4/2018	10/4/2018; 83 FR 50021
Section 114.651.....	Applicability.....	4/4/2018	10/4/2018; 83 FR 50021
Section 114.652.....	Qualifying Vehicles.....	4/4/2018	10/4/2018; 83 FR 50021
Section 114.653.....	Grant Eligibility.....	4/4/2018	10/4/2018; 83 FR 50021
Section 114.654.....	Usage and Disposition....	3/28/2012	1/31/2014, 79 FR 5287
Section 114.655.....	Grant Restrictions.....	2/24/2010	1/31/2014, 79 FR 5287
Section 114.656.....	Eligible Grant Amounts...	4/9/2014	6/9/2017, 82 FR 26756
Section 114.657.....	Reporting Requirements..	2/24/2010	1/31/2014, 79 FR 5287
Section 114.658.....	Implementation Schedule	2/24/2010	1/31/2014, 79 FR 5287

Division
8: Seaport

and Rail
Yard
Areas
Emissions
Reduction
Program

Section 114.680..... Definitions.....	4/4/2018	10/4/2018; 83 FR 50021
Section 114.681..... Applicability.....	4/4/2018	10/4/2018; 83 FR 50021
Section 114.682..... Eligible Vehicle Models..	4/4/2018	10/4/2018; 83 FR 50021

Texas Department of Transportation Regulation—31 TAC Chapter 17—Vehicle Titles and Registration

Section 17.80..... Vehicle Emissions Verification System.....	11/09/93	08/22/94, 59 FR 43046	Ref 52.2299(c) (87)(i)(F).
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Texas Department of Public Safety—37 TAC Chapter 23—Vehicle Inspection

Section 23.93..... Vehicle Emissions Inspection Requirements.	10/26/2005	7/25/2014, 79 FR 43264
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Chapter 115 (Reg 5)—Control of Air Pollution From Volatile Organic Compounds

Subchapter A—Definitions

115.10..... Covered Attainment Counties.....	6/15/2015	12/21/2017, 82 FR 60547
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Subchapter B—General Volatile Organic Compound Sources

Division 1: Storage of Volatile Organic Compounds

115.110..... Applicability and Definitions.....	6/15/2015	12/21/2017, 82 FR 60547
115.111..... Exemptions.....	6/15/2015	12/21/2017, 82 FR 60547
Section 115.112..... Control Requirements.....	12/15/2016	4/30/2019, 84 FR 18150

Section 115.113..... Alternate Control Requirements.....	12/1/2011	9/9/2014, 79 FR 53302
Section 115.114..... Inspection Requirements.	12/15/2016	4/30/2019, 84 FR 18150
115.115..... Monitoring Requirements	6/15/2015	12/21/2017, 82 FR 60547
Section 115.116..... Testing Requirements.....	12/1/2011	9/9/2014, 79 FR 53302
115.117..... Approved Test Methods..	6/15/2015	12/21/2017, 82 FR 60547
Section 115.118..... Recordkeeping Requirements.....	12/15/2016	4/30/2019, 84 FR 18150
Section 115.119..... Compliance Schedules....	12/15/2016	4/30/2019, 84 FR 18150

Division 2: Vent Gas Control

Section 115.120..... Vent Gas Definitions.....	12/13/02	02/27/08, 73 FR 10383
115.121..... Emissions Specifications.	6/15/2015	12/21/2017, 82 FR 60547
115.122..... Control Requirements.....	6/15/2015	12/21/2017, 82 FR 60547
Section 115.123..... Alternate Control Requirements.....	12/13/02	02/27/08, 73 FR 10383
115.125..... Testing Requirements.....	6/15/2015	12/21/2017, 82 FR 60547
115.126..... Monitoring and Recordkeeping Requirements.....	6/15/2015	12/21/2017, 82 FR 60547
115.127..... Exemptions.....	6/15/2015	12/21/2017, 82 FR 60547

115.129.....	Counties and Compliance Schedules.....	6/15/2015	12/21/2017, 82 FR 60547
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Division 3: Water Separation

Section 115.131.....	Emission Specifications..	05/04/94	05/22/97, 62 FR 27964
Section 115.132.....	Control Requirements.....	04/26/02	02/27/08, 73 FR 10383
Section 115.133.....	Alternate Control Requirements.....	04/26/02	02/27/08, 73 FR 10383
Section 115.135.....	Testing Requirements.....	05/04/94	05/22/97, 62 FR 27964
Section 115.136.....	Monitoring and Recordkeeping Requirements.....	04/26/02	02/27/08, 73 FR 10383
Section 115.137.....	Exemptions.....	04/26/02	02/27/08, 73 FR 10383
115.139.....	Counties and Compliance Schedules.....	6/15/2015	12/21/2017, 82 FR 60547

Division 4: Industrial Wastewater

Section 115.140.....	Industrial Wastewater Definitions.....	04/26/02	02/27/08, 73 FR 10383
Section 115.142.....	Control Requirements.....	12/13/02	02/27/08, 73 FR 10383
Section 115.143.....	Alternate Control Requirements.....	12/13/02	02/27/08, 73 FR 10383
Section 115.144.....	Inspection and Monitoring Requirements	12/13/02	2/27/08, 73 FR 10383
Section 115.145.....	Approved Test Methods..	4/26/02	02/27/08, 73 FR 10383

Section 115.146.....	Recordkeeping Requirements.....	10/27/99	12/20/00, 65 FR 79745
Section 115.147.....	Exemptions.....	12/13/02	02/27/08, 73 FR 10383
Section 115.148.....	Training Requirements....	10/27/99	12/20/00, 65 FR 79745
Section 115.149.....	Counties and Compliance Schedules.....	11/15/06	7/17/08, 73 FR 40972

Division 5: Municipal Solid Waste Landfills

Section 115.152.....	Control Requirements.....	5/04/94	5/22/97, 62 FR 27964
Section 115.153.....	Alternate Control Requirements.....	4/26/02	2/27/08, 73 FR 10383
Section 115.155.....	Approved Test Methods..	05/04/94	05/22/97, 62 FR 27964
Section 115.156.....	Monitoring and Recordkeeping Requirements.....	5/4/94	05/22/97, 62 FR 27964
Section 115.157.....	Exemptions.....	5/4/94	5/22/97, 62 FR 27964
Section 115.159.....	Counties and Compliance Schedules.....	4/26/02	2/27/08, 73 FR 10383

Division 6: Batch Processes

Section 115.160.....	Batch Process Definitions.....	12/13/02	02/27/08, 73 FR 10383
Section 115.161.....	Applicability.....	12/13/02	02/27/08, 73 FR 10383
Section 115.162.....	Control Requirements.....	12/06/00	07/16/01, 66 FR 36913

Section 115.163.....	Alternate Control Requirements.....	10/27/99	12/20/00, 65 FR 79745
Section 115.164.....	Determination of Emissions and Flow Rates.....	12/06/00	07/16/01, 66 FR 36913
Section 115.165.....	Approved Test Methods and Testing Requirements.....	12/06/00	07/16/01, 66 FR 36913
Section 115.166.....	Monitoring and Recordkeeping Requirements.....	12/13/02	02/27/08, 73 FR 10383
Section 115.167.....	Exemptions.....	9/28/2005	7/10/2009, 74 FR 33146
Section 115.169.....	Counties and Compliance Schedules.....	9/28/2005	7/10/2009, 74 FR 33146

Subchapter C—Volatile Organic Compound Transfer Operations

Division 1: Loading and Unloading of Volatile Organic Compounds

Section 115.211.....	Emission Specifications..	12/13/02	01/19/06, 71 FR 3009
Section 115.212.....	Control Requirements.....	12/06/00	07/16/01, 66 FR 36913
Section 115.213.....	Alternate Control Requirements.....	06/30/99	12/20/00, 65 FR 79745
Section 115.214.....	Inspection Requirements.	04/26/02	01/19/06, 71 FR 3009
115.215.....	Approved Test Methods..	6/15/2015	12/21/2017, 82 FR 60547
Section 115.216.....	Monitoring and Record-keeping Requirements.....	10/22/03	01/19/06, 71 FR 3009
Section 115.217.....	Exemptions.....	10/22/03	01/19/06, 71 FR 3009

115.219.....	Counties and Compliance Schedules.....	6/15/2015	12/21/2017, 82 FR 60547	
Section 115.220*	Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicles Fuel Dispensing Facilities in Bexar County.....	03/30/79	11/10/82, 47 FR 50866	Ref 52.2299(c) (48). The number 220* was created to avoid duplicate sections numbers in the SIP. There is no section 115.220 in the current SIP approved codification.

Division 2: Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities

Section 115.221.....	Emission Specifications..	9/10/2014	4/30/2015, 80 FR 24215
Section 115.222.....	Control Requirements.....	9/10/2014	4/30/2015, 80 FR 24215
Section 115.223.....	Alternate Control Requirements.....	03/23/05	01/19/06, 71 FR 3009
Section 115.224.....	Inspection Requirements.	9/10/2014	4/30/2015, 80 FR 24215
Section 115.225.....	Testing Requirements.....	9/10/2014	4/30/2015, 80 FR 24215
Section 115.226.....	Recordkeeping Requirements.....	9/10/2014	4/30/2015, 80 FR 24215
Section 115.227.....	Exemptions.....	9/10/2014	4/30/2015, 80 FR 24215
115.229.....	Counties and Compliance Schedules.....	6/15/2015	12/21/2017, 82 FR 60547

Division 3: Control of Volatile Organic Leaks from Transport Vessels

Section 115.234.....	Inspection Requirements.	06/30/99	12/20/00, 65 FR 79745
Section 115.235.....	Approved Test Methods..	6/30/99	12/20/00, 65 FR 79745
Section 115.236.....	Recordkeeping Requirements.....	6/30/99	12/20/00, 65 FR 79745
Section 115.237.....	Exemptions.....	06/30/99	12/20/00, 65 FR 79745
115.239.....	Counties and Compliance Schedules.....	6/15/2015	12/21/2017, 82 FR 60547

Division 4: Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities

Section 115.240.....	Stage II Vapor Recovery Definitions and List of California Air Resources Board Certified Stage II Equipment.....	10/ 9/ 2013	3/ 17/ 14, 79 FR 14611
Section 115.241.....	Emission Specifications..	10/ 9/ 2013	3/ 17/ 14, 79 FR 14611
Section 115.242.....	Control Requirements.....	10/ 9/ 2013	3/ 17/ 14, 79 FR 14611
Section 115.243.....	Alternate Control Requirements.....	10/ 9/ 2013	3/ 17/ 14, 79 FR 14611
Section 115.244.....	Inspection Requirements.	10/ 9/ 2013	3/ 17/ 14, 79 FR 14611
Section 115.245.....	Testing Requirements.....	10/ 9/ 2013	3/ 17/ 14, 79 FR 14611
Section 115.246.....	Recordkeeping Requirements.....	10/ 9/ 2013	3/ 17/ 14, 79 FR 14611
Section 115.248.....	Training Requirements....	3/23/05	1/19/06, 71 FR 3009

Section 115.252 to 115.259.....	Control of Reid Vapor Pressure of Gasoline.....	5/4/94	05/22/97, 62 FR 27964	Ref 52.2299(c) (104).
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Subchapter D—Petroleum Refining, Natural Gas Processing, and Petrochemical Processes

Division 1: Process Unit Turnaround and Vacuum-Producing Systems in Petroleum Refineries

Section 115.311.....	Emission Specifications..	4/26/02	2/27/08, 73 FR 10383
Section 115.312.....	Control Requirements.....	12/13/02	2/27/08, 73 FR 10383
Section 115.313.....	Alternate Control Requirements.....	04/26/02	02/27/08, 73 FR 10383
Section 115.315.....	Testing Requirements.....	5/8/92	3/7/95, 60 FR 12438
Section 115.316.....	Monitoring and Recordkeeping Requirements.....	4/26/02	2/27/08, 73 FR 10383
Section 115.317.....	Exemptions.....	5/8/92	3/7/95, 60 FR 12438
Section 115.319.....	Counties and Compliance Schedules.....	11/15/06	7/17/08, 73 FR 40972

Division 2: Fugitive Emission Control in Petroleum Refineries in Gregg, Nueces, and Victoria Counties

Section 115.322.....	Control Requirements.....	6/2/2010	2/26/2015, 80 FR 10355
Section 115.323.....	Alternate Control Requirements.....	6/2/2010	2/26/2015, 80 FR 10355
Section 115.324.....	Inspection Requirements.	6/2/2010	2/26/2015, 80 FR 10355
Section 115.325.....	Testing Requirements.....	6/2/2010	2/26/2015, 80 FR 10355
Section 115.326.....	Recordkeeping Requirements.....	6/2/2010	2/26/2015, 80 FR 10355

Section 115.327.....Exemptions.....	4/26/02	2/27/08, 73 FR 10383
Section 115.329.....Counties and Compliance Schedules.....	8/8/01	2/27/08, 73 FR 10383

Division 3: Fugitive Emission Control in Petroleum Refining, Natural Gas/
Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas

Section 115.352.....Control Requirements.....	6/2/2010	2/26/2015, 80 FR 10355
Section 115.353.....Alternate Control Requirements.....	6/2/2010	2/26/2015, 80 FR 10355
Section 115.354.....Monitoring and Inspection Requirements.	6/2/2010	2/26/2015, 80 FR 10355
Section 115.355.....Approved Test Methods..	6/2/2010	2/26/2015, 80 FR 10355]
Section 115.356.....Recordkeeping Requirements.....	6/2/2010	2/26/2015, 80 FR 10355
Section 115. 357.....Exemptions.....	6/2/2010	2/26/2015, 80 FR 10355
Section 115.358.....Alternative Work Practice.....	6/2/2010	2/26/2015, 80 FR 10355
115.359.....Counties and Compliance Schedules.....	6/15/2015	12/21/2017, 82 FR 60547

Subchapter E—Solvent-Using Processes

Division 1: Degreasing Processes

§ 115.410.....Applicability.....	6/15/2015	12/21/2017, 82 FR 60547
§ 115.411.....Exemptions.....	6/15/2015	12/21/2017, 82 FR 60547

Section 115.412.....	Control Requirements.....	11/17/04	3/29/05, 70 FR 15769
Section 115.413.....	Alternate Control Requirements.....	11/17/04	3/29/05, 70 FR 15769
115.415.....	Testing.....	6/15/2015	12/21/2017, 82 FR 60547
115.416.....	Recordkeeping Requirements.....	6/15/2015	12/21/2017, 82 FR 60547
115.419.....	Counties and Compliance Schedules.....	6/15/2015	12/21/2017, 82 FR 60547

Division 2: Surface Coating Processes

115.420.....	Applicability and Definitions.....	6/15/2015	12/21/2017, 82 FR 60547
115.421.....	Emissions Specifications.	6/15/2015	12/21/2017, 82 FR 60547
115.422.....	Control Requirements.....	6/15/2015	12/21/2017, 82 FR 60547
115.423.....	Alternate Control Requirements.....	6/15/2015	12/21/2017, 82 FR 60547
Section 115.424.....	Inspection Requirements.	6/29/00	10/30/01, 66 FR 54688
115.425.....	Testing Requirements.....	6/15/2015	12/21/2017, 82 FR 60547
115.426.....	Monitoring and Recordkeeping Requirements.....	6/15/2015	12/21/2017, 82 FR 60547
115.427.....	Exemptions.....	6/15/2015	12/21/2017, 82 FR 60547
115.429.....	Counties and Compliance Schedules.....	6/15/2015	12/21/2017, 82 FR 60547

Division 3: Flexographic and Rotogravure Printing

Section 115.430.....	Applicability and Definitions.....	01/17/12	3/27/15, 80 FR 16294.
Section 115.431.....	Exemptions.....	01/17/12	3/27/15, 80 FR 16294.
Section 115.432.....	Control Requirements.....	01/17/12	3/27/15, 80 FR 16294.
Section 115.433.....	Alternate Control Requirements.....	01/17/12	3/27/15, 80 FR 16294.
Section 115.435.....	Testing Requirements.....	01/17/12	3/27/15, 80 FR 16294.
Section 115.436.....	Monitoring and Recordkeeping Requirements.....	01/17/12	3/27/15, 80 FR 16294.
Section 115.439.....	Counties and Compliance Schedules.....	01/17/12	3/27/15, 80 FR 16294.

Division 4: Offset Lithographic Printing

115.440.....	Applicability and Definitions.....	6/15/2015	12/21/2017, 82 FR 60547
115.441.....	Exemptions.....	6/15/2015	12/21/2017, 82 FR 60547
115.442.....	Control Requirements.....	6/15/2015	12/21/2017, 82 FR 60547
Section 115.443.....	Alternate Control Requirements.....	3/10/2010	8/4/2014, 79 FR 45106
Section 115.445.....	Approved Test Methods..	3/10/2010	8/4/2014, 79 FR 45106
115.446.....	Monitoring and Recordkeeping Requirements.....	6/15/2015	12/21/2017, 82 FR 60547

115.449.....	Compliance Schedules....	6/15/2015	12/21/2017, 82 FR 60547
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Division 5: Control Requirements for Surface Coating Processes

115.450.....	Applicability and Definitions.....	6/15/2015	12/21/2017, 82 FR 60547
115.451.....	Exemptions.....	6/15/2015	12/21/2017, 82 FR 60547
115.453.....	Control Requirements.....	6/15/2015	12/21/2017, 82 FR 60547
Section 115.454.....	Alternate Control Requirements.....	01/17/12	3/27/15, 80 FR 16294.
Section 115.455.....	Approved Test Methods and Testing Requirements.....	01/17/12	3/27/15, 80 FR 16294.
Section 115.458.....	Monitoring and Recordkeeping Requirements.....	01/17/12	3/27/15, 80 FR 16294.
115.459.....	Counties and Compliance Schedules.....	6/15/2015	12/21/2017, 82 FR 60547

Division 6: Industrial Cleaning Solvents

115.460.....	Applicability and Definitions.....	6/15/2015	12/21/2017, 82 FR 60547
115.461.....	Exemptions.....	6/15/2015	12/21/2017, 82 FR 60547
Section 115.463.....	Control Requirements.....	01/17/12	3/27/15, 80 FR 16294.
Section 115.464.....	Alternate Control Requirements.....	01/17/12	3/27/15, 80 FR 16294.
Section 115.465.....	Approved Test Methods and Testing Requirements.....	01/17/12	3/27/15, 80 FR 16294.

Section 115.468.....	Monitoring and Recordkeeping Requirements.....	01/17/12	3/27/15, 80 FR 16294.
115.469.....	Compliance Schedules....	6/15/2015	12/21/2017, 82 FR 60547

Division 7: Miscellaneous Industrial Adhesives

Section 115.470.....	Applicability and Definitions.....	01/17/12	3/27/15, 80 FR 16294.
115.471.....	Exemptions.....	6/15/2015	12/21/2017, 82 FR 60547
115.473.....	Control Requirements.....	6/15/2015	12/21/2017, 82 FR 60547
Section 115.474.....	Alternate Control Requirements.....	01/17/12	3/27/15, 80 FR 16294.
Section 115.475.....	Approved Test Methods and Testing Requirements.....	01/17/12	3/27/15, 80 FR 16294.
Section 115.478.....	Monitoring and Recordkeeping Requirements.....	01/17/12	3/27/15, 80 FR 16294.
115.479.....	Compliance Schedules....	6/15/2015	12/21/2017, 82 FR 60547

Subchapter F—Miscellaneous Industrial Sources

Division 1: Cutback Asphalt

Section 115.510.....	Cutback Asphalt Definitions.....	08/31/99	12/22/99, 64 FR 71670
Section 115.512.....	Control Requirements.....	11/17/04	3/29/05, 70 FR 15769
Section 115.513.....	Alternative Control Requirements.....	08/31/99	12/22/99, 64 FR 71670
Section 115.515.....	Testing Requirements.....	08/31/99	12/22/99, 64 FR 71670

Section 115.516.....Recordkeeping Requirements.....	11/17/04	3/29/05, 70 FR 15769	
Section 115.517.....Exemptions.....	11/17/04	3/29/05, 70 FR 15769	Ref 52.2299(c) (88).
115.519.....Compliance Schedules....	6/15/2015	12/21/2017, 82 FR 60547	

Division 2: Pharmaceutical Manufacturing Facilities

Section 115.531.....Emission Specifications..	05/04/94	05/22/97, 62 FR 27964	
Section 115.532.....Control Requirements.....	04/26/02	02/27/08, 73 FR 10383	
Section 115.533.....Alternate Control Requirements.....	04/26/02	02/27/08, 73 FR 10383	
Section 115.534.....Inspection Requirements.	05/04/94	05/22/97, 62 FR 27964	
Section 115.535.....Testing Requirements.....	04/26/02	02/27/08, 73 FR 10383	
Section 115.536.....Monitoring and Recordkeeping Requirements.....	05/04/94	05/22/97, 62 FR 27964	
Section 115.537.....Exemptions.....	05/04/94	05/22/97, 62 FR 27964	
Section 115.539.....Counties and Compliance Schedules.....	11/15/06	7/17/08, 73 FR 40972	

Division 3: Degassing or Cleaning of Stationary, Marine, and Transport Vessels

Section 115.540.....Applicability and Definitions.....	1/26/2011	9/23/2015, 80 FR 57304	
Section 115.541.....Emission Specifications..	1/26/2011	9/23/2015, 80 FR 57304	

Section 115.542..... Control Requirements.....	1/26/2011	9/23/2015, 80 FR 57304
Section 115.543..... Alternate control Requirements.....	1/26/2011	9/23/2015, 80 FR 57304
Section 115.544..... Inspection, Monitoring, and Testing Requirements.....	1/26/2011	9/23/2015, 80 FR 57304
Section 115.545..... Approved Test Methods..	1/26/2011	9/23/2015, 80 FR 57304
Section 115.546..... Recordkeeping and Notification Requirements.....	1/26/2011	9/23/2015, 80 FR 57304
Section 115.547..... Exemptions.....	1/26/2011	9/23/2015, 80 FR 57304
Section 115.549..... Compliance Schedules....	1/26/2011	9/23/2015, 80 FR 57304

Division 4: Petroleum Dry Cleaning Systems

Section 115.552..... Control Requirements.....	04/26/02	02/27/08, 73 FR 10383
Section 115.553..... Alternate Control Requirements.....	05/04/94	05/22/97, 62 FR 27964
Section 115.555..... Testing Methods and Procedures.....	05/04/94	05/22/97, 62 FR 27964
Section 115.556..... Recordkeeping Requirements.....	05/04/94	05/22/97, 62 FR 27964
Section 115.557..... Exemptions.....	05/04/94	05/22/97, 62 FR 27964
Section 115.559..... Counties and Compliance Schedules.....	04/26/02	02/27/08, 73 FR 10383

Subchapter G—Consumer-Related Sources

Division 1: Automotive Windshield Washer Fluid

Section 115.600.....	Consumer Products Definitions.....	01/28/04	02/10/05, 70 FR 7041
Section 115.610.....	Applicability.....	01/28/04	02/10/05, 70 FR 7041
Section 115.612.....	Control Requirements.....	01/28/04	02/10/05, 70 FR 7041
Section 115.613.....	Alternate Control Requirements.....	01/28/04	02/10/05, 70 FR 7041
Section 115.615.....	Testing Requirements.....	01/28/04	02/10/05, 70 FR 7041
Section 115.616.....	Recordkeeping and Reporting Requirements..	01/28/04	02/10/05, 70 FR 7041
Section 115.617.....	Exemptions.....	01/28/04	02/10/05, 70 FR 7041
Section 115.619.....	Counties and Compliance Schedules.....	01/28/04	02/10/05, 70 FR 7041

Division 2: Portable Fuel Containers

Subchapter H—Highly-Reactive Volatile Organic Compounds

Division 1: Vent Gas Control

Section 115.720.....	Applicability and Definitions.....	12/01/04	9/06/06, 71 FR 52657
Section 115.722.....	Site-wide Cap and Control Requirements.....	12/01/04	9/06/06, 71 FR 52657
Section 115.725.....	Monitoring and Testing Requirements.....	12/01/04	9/06/06, 71 FR 52657
Section 115.726.....	Recordkeeping and Reporting Requirements..	12/01/04	9/06/06, 71 FR 52657

Section 115.727.....	Exemptions.....	12/01/04	9/06/06, 71 FR 52657
Section 115.729.....	Counties and Compliance Schedules.....	12/01/04	9/06/06, 71 FR 52657

Division 2: Cooling Tower Heat Exchange Systems

Section 115.760.....	Applicability and Cooling Tower Heat Exchange System Definitions.....	12/01/04	9/06/06, 71 FR 52657
Section 115.761.....	Site-wide Cap.....	12/01/04	9/06/06, 71 FR 52657
Section 115.764.....	Monitoring and Testing Requirements.....	12/01/04	9/06/06, 71 FR 52657
Section 115.766.....	Recordkeeping and Reporting Requirements..	12/01/04	9/06/06, 71 FR 52657
Section 115.767.....	Exemptions.....	12/01/04	9/06/06, 71 FR 52657
Section 115.769.....	Counties and Compliance Schedules.....	12/01/04	9/06/06, 71 FR 52657

Division 3: Fugitive Emissions

Section 115.780.....	Applicability.....	12/01/04	9/06/06, 71 FR 52657
Section 115.781.....	General Monitoring and Inspection Requirements.	6/2/2010	2/26/2015, 80 FR 10355
Section 115.782.....	Procedures and Schedule for Leak Repair and Follow-up.....	6/2/2010	2/26/2015, 80 FR 10355
Section 115.783.....	Equipment Standards.....	12/01/04	9/06/06, 71 FR 52657
Section 115.784.....	Alternate Control Requirements.....	6/2/2010	2/26/2015, 80 FR 10355

Section 115.786.....	Recordkeeping Requirements.....	6/2/2010	2/26/2015, 80 FR 10355
Section 115.787.....	Exemptions.....	6/2/2010	2/26/2015, 80 FR 10355
Section 115.788.....	Audit Provisions.....	6/2/2010	2/26/2015, 80 FR 10355
Section 115.789.....	Counties and Compliance Schedules.....	12/01/04	9/06/06, 71 FR 52657

Subchapter J—Administrative Provisions

Division 1: Alternate Means of Control

Section 115.901.....	Insignificant Emissions...	07/13/94	05/22/97, 62 FR 27964
Section 115.910.....	Availability of Alternate Means of Control.....	04/26/02	02/27/08, 73 FR 10383
Section 115.911.....	Criteria for Approval of Alternate Means of Control Plans.....	04/26/02	02/27/08, 73 FR 10383
Section 115.912.....	Calculations for Determining Alternate Means of Control Reductions.....	04/26/02	02/27/08, 73 FR 10383
Section 115.913.....	Procedures for Alternate Means of Control Plan Submittal.....	04/26/02	02/27/08, 73 FR 10383
Section 115.914.....	Procedures for an Alternate Means of Control Plan Approval.....	04/26/02	02/27/08, 73 FR 10383
Section 115.915.....	Public Notice Format.....	04/26/02	02/27/08, 73 FR 10383
Section 115.916.....	Review of Approved Alternate Means of Control Plans and Termination of Alternate Means of Control Plans...	04/26/02	02/27/08, 73 FR 10383

Division 2: Early Reductions

Section 115.920..... Applicability.....	04/26/02	02/27/08, 73 FR 10383
Section 115.923..... Documentation.....	04/26/02	02/27/08, 73 FR 10383

Division 3: Compliance and Control Plan Requirements

Section 115.930..... Compliance Dates.....	04/26/02	02/27/08, 73 FR 10383
Section 115.932..... Congtrol Plan Procedure.	04/26/02	02/27/08, 73 FR 10383
Section 115.934..... Control Plan Deviation....	04/26/02	02/27/08, 73 FR 10383
Section 115.936..... Reporting Procedure.....	11/10/93	05/22/97, 62 FR 27964
Section 115.940..... Equivalency Determination.....	04/26/02	02/27/08, 73 FR 10383
Section 115.950..... Use of Emissions Credits for Compliance.....	12/06/00	09/06/06, 71 FR 52698

Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification

Subchapter A—Definitions

Section 116.10..... Definitions.....	9/15/2010	9/9/2016, 81 FR 62385	SIP does not include 30 TAC Section 116.10(5) (F) or 116.10(9) (F).
Section 116.11..... Compliance History Definitions.....	06/17/98	09/18/02, 67 FR 58709.	
Section 116.12..... Nonattainment and Prevention of Significant Deterioration Review Definitions.....	3/26/2014	11/10/2014, 79 FR 66626	The SIP does NOT include the substantive

revisions to the definitions of “major stationary source” at 30 TAC Section 116.12(19) or “major modification” at 30 TAC Section 116.12(20) pertaining to “Step 2” or “non-anyway” GHG sources.

The SIP includes the TCEQ's letter dated 5/3/2012, which explains and clarifies the TCEQ's interpretation of the definition of “plant-wide applicability limit” in 30 TAC Section 116.12(24).

Section 116.13.....Flexible Permit Definitions.....	7/31/2014	7/20/2015, 80 FR 42729
Section 116.14.....Standard Permit Definitions.....	06/17/98	11/14/03, 68 FR 64549
Section 116.17.....Qualified Facility Definitions.....	9/15/2010	9/9/2016, 81 FR 62385

Section 116.18.....	Electric Generating Facility Permits Definitions.....	5/22/2002	1/11/2011, 76 FR 1525
Section 116.20.....	Portable Facilities Definitions.....	2/10/2010	10/6/2015, 80 FR 60296

Subchapter B—New Source Review Permits

Division 1—Permit Application

Section 116.110.....	Applicability.....	7/15/2020	10/14/2020, 85 FR 64968	SIP does not include 116.110(a) (5), 116.110(c), or 116.110(d).
Section 116.111.....	General Application.....	03/26/14	11/10/2014, 79 FR 66626	30 TAC Section 116.111(a) (2)(I) is SIP- approved as adopted by the State as of 8/21/2002. The SIP does NOT include 30 TAC Section 116.111(a) (2)(K).
Section 116.112.....	Distance Limitations.....	1/14/2004	12/7/2005, 70 FR 72720	
Section 116.114.....	Application Review Schedule.....	10/31/2018	2/13/2020, 85 FR 8187	
Section 116.115.....	General and Special Conditions.....	2/9/2011	10/25/2012, 77 FR 65119	
Section 116.116.....	Changes to Facilities.....	7/15/2020	10/14/2020, 85 FR 64968	SIP does not include 30 TAC Section

				116.116(b) (3).
Section 116.117.....	Documentation and Notification of Changes to Qualified Facilities.....	9/15/2010	9/9/2016, 81 FR 62385	SIP does not include 30 TAC Section 116.117(a) (4)(B).
Section 116.118.....	Construction While Permit Amendment Application Pending.....	7/15/2020	10/14/2020, 85 FR 64968	
Section 116.120.....	Voiding of Permits.....	8/20/03	4/2/10, 75 FR 16671	
Section 116.127.....	Actual to Projected Actual and Emission Exclusion Test for Emissions.....	2/9/2011	10/25/2012, 77 FR 65119	
Division 4—Permit Fees				
Section 116.140.....	Applicability.....	06/17/98	09/18/02, 67 FR 58709	
Section 116.141.....	Determination of Fees.....	9/25/2002	3/20/2009, 74 FR 11851.	
Section 116.143.....	Payment of Fees.....	8/20/2003	3/20/2009, 74 FR 11851.	
Division 5—Nonattainment Review				
Section 116.150.....	New Major Source or Major Modification in Ozone Nonattainment Area.....	7/25/2012	10/25/2012, 77 FR 65119	
Section 116.151.....	New Major Source or Major Modification in Nonattainment Area Other than Ozone.....	7/25/2012	10/25/2012, 77 FR 65119	
Division 6—Prevention of Significant Deterioration Review				
Section 116.160.....	Prevention of Significant Deterioration.....	10/31/2018	2/13/2020, 85 FR 8187	The PSD SIP includes 30 TAC Section 116.160(a)

as adopted
by the
State as of
6/2/2010.
The
PSD SIP
includes a
letter from
the TCEQ
dated
December
2, 2013,
committing
that Texas
will
follow
a SIP
amendment
process
to apply
its PSD
SIP to
additional
pollutants
that are
regulated
in the
future,
including
non-
NAAQS
pollutants.
The
PSD SIP
includes a
letter from
the TCEQ
dated May
30, 2014,
clarifying
the
judicial
review
process
for the
Texas
PSD
permit
program.

Section 116.161.....	Source Located in an Attainment Area with Greater than De Minimis Impact.....	06/17/98	09/18/02, 67 FR 58709.	
Section 116.162.....	Evaluation of Air Quality Impacts.....	10/10/01	7/22/04, 69 FR 43755

Section 116.163.....	Prevention of Significant Deterioration Permit Fees	9/25/2002	3/20/2009, 74 FR 11851.	
Section 116.164.....	Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources.....	10/31/2018		The PSD SIP does NOT include 30 TAC Sections 116.164(b).
Section 116.169.....	Greenhouse Gases Program Transitions.....	3/26/2014	11/10/2014, 79 FR 66626	The PSD SIP does NOT include 30 TAC Section 116.169(b).
				The PSD SIP includes a letter from the TCEQ dated January 13, 2014, regarding the TCEQ's authority to administer EPA-issued GHG PSD permits.

Division 7—Emission Reductions: Offsets

Section 116.170.....	Applicability of Emission Reductions as Offsets.....	8/20/2003	3/20/2009, 74 FR 11851.
Section 116.172.....	Emissions Offsets from Rocket Engine Firing and Cleaning.....	8/20/2003	3/20/2009, 74 FR 11851.
Section 116.174.....	Determination by Executive Director to Authorize Reductions.....	6/17/1998	11/2/2011, 76 FR 67600
Section 116.175.....	Recordkeeping.....	8/16/1993	11/2/2011, 76 FR 67600

Section 116.176.....	Use of Mass Cap Allowances for Offsets....	3/07/01	9/6/06, 71 FR 52664
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Division 8—Portable Facilities

Section 116.178.....	Relocations and Changes of Location of Portable Facilities.....	2/10/2010	10/6/2015, 80 FR 60296
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Subchapter C—Plant-wide Applicability Limits

Division 1—Plant-wide Applicability Limits

Section 116.180.....	Applicability.....	7/25/2012	10/25/2012, 77 FR 65119
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Section 116.182.....	Plant-Wide Applicability Limit Permit Application.	2/9/2011	10/25/2012, 77 FR 65119
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Section 116.184.....	Application Review Schedule.....	1/11/2006	10/25/2012, 77 FR 65119
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Section 116.186.....	General and Specific Conditions.....	7/25/2012	10/25/2012, 77 FR 65119
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The SIP includes TCEQ's "Letter of explanation and interpretation of the Texas SIP for NSR Reform" dated 5/3/2012, which explains and clarifies TCEQ's interpretation of paragraphs (a), (b)(9) and (c)(2).

Section 116.188.....	Plant-Wide Applicability Limit.....	2/9/2011	10/25/2012, 77 FR 65119
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Section 116.190.....	Federal Nonattainment and Prevention of Significant Deterioration Review.....	2/9/2011	10/25/2012, 77 FR 65119
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Section 116.192.....	Amendments and Alterations.....	2/9/2011	10/25/2012, 77 FR 65119
Section 116.194.....	Public Notification and Comment.....	6/2/2010	1/6/2014, 79 FR 551
Section 116.196.....	Renewal of a Plant-wide Applicability Limit Permit.....	10/31/2018	
Section 116.198.....	Expiration of Voidance....	10/31/2018	

Subchapter D—Permit Renewals

Section 116.310.....	Notification of Permit Holder.....	10/31/2018		
Section 116.311.....	Permit Renewal Application.....	8/21/2002	9/9/2016, 81 FR 62385	SIP does not include 30 TAC Section 116.311(a) (6).
Section 116.312.....	Public Notification and Comment Procedures.....	9/2/1999	1/6/2014, 79 FR 551	
Section 116.313.....	Renewal Application Fees.....	8/20/2003	3/20/2009, 74 FR 11851.	
Section 116.314.....	Review Schedule.....	6/17/1998	11/14/2011, 76 FR 70354	
Section 116.315.....	Permit Renewal Submittal.....	5/7/2008	3/11/10, 75 FR 11464	

Subchapter F—Standard Permits

Section 116.601.....	Types of Standard Permits.....	2/9/2011	4/1/2014, 79 FR 18183
Section 116.602.....	Issuance of Standard Permits.....	12/16/99	11/14/03, 68 FR 64549
Section 116.603.....	Public Participation in Issuance of Standard Permits.....	9/20/06	9/17/08, 73 FR 53716

Section 116.604.....	Duration and Renewal of Registrations to Use Standard Permits.....	12/16/99	11/14/03, 68 FR 64549	
Section 116.605.....	Standard Permit Amendment and Revocation.....	12/16/99	11/14/03, 68 FR 64549	
Section 116.606.....	Delegation.....	12/16/99	11/14/03, 68 FR 64549	
Section 116.610.....	Applicability.....	03/26/14	11/10/14, 79 FR 66626	30 TAC Section 116.610(b) is SIP- approved as adopted by the State as of 11/20/2002. The SIP does NOT include 30 TAC Section 116.610(d).
Section 116.611.....	Registration to Use a Standard Permit.....	10/31/2018		30 TAC Section 116.611(b) is SIP- approved as adopted by the State as of 11/20/2002. The SIP does NOT include 30 TAC Section 116.611(c) (3), (c)(3) (A), and (c)(3)(B).
Section 116.614.....	Standard Permit Fees.....	9/25/2002	3/20/2009, 74 FR 11851	
Section 116.615.....	General Conditions.....	10/31/2018		
Section 116.617.....	State Pollution Control Project Standard Permit...	1/11/2006	4/1/2014, 79 FR 18183	

Section 116.620.....	Installation and/or Modification of Oil and Gas Facilities.....	8/9/2000	2/14/2014, 79 FR 8861	<p>The types of emission units that may be authorized by this section are the following:</p> <ul style="list-style-type: none"> • Internal combustion engines (ICEs), • Natural gas turbines (NG turbines), • Flares, • Other combustion units (design heat input >40 million BTU per hour), • Natural gas glycol dehydration units, • Storage tanks, • Separators, • Condensers, • Vapor recovery units, • Process vents, and • Process fugitives
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Subchapter G: Flexible Permits

116.710.....	Applicability.....	July 15, 2020	10/14/2020, 85 FR 64968	
Section 116.711.....	Flexible Permit Application.....	7/31/2014	7/20/2015, 80 FR 42729	SIP includes 30 TAC 116.711(1), (2)(A), (B) and (C)(i) and (ii), (D)- (J), and (L)-(N)
Section 116.714.....	Application Review Schedule.....	6/17/1998	7/14/2014, 79 FR 40666	
Section 116.715.....	General and Special Conditions.....	7/31/2014	7/20/2015, 80 FR 42729	SIP includes 30 TAC 116.715(a)- (e) and (f) (1) and (2) (B)
Section 116.716.....	Emission Caps and Individual Emission Limitations.....	7/31/2014	7/20/2015, 80 FR 42729	
Section 116.717.....	Implementation Schedule for Additional Controls...	7/31/2014	7/20/2015, 80 FR 42729	
Section 116.718.....	Significant Emission Increase.....	7/31/2014	7/20/2015, 80 FR 42729	
Section 116.720.....	Limitation on Physical and Operational Changes.	7/31/2014	7/20/2015, 80 FR 42729	
116.721.....	Amendments and Alterations.....	July 15, 2020	10/14/2020, 85 FR 64968	
Section 116.722.....	Distance Limitations.....	8/9/2000	7/14/2014, 79 FR 40666	
Section 116.740.....	Public Notice and Comment.....	7/31/2014	7/20/2015, 80 FR 42729	SIP includes 30 TAC Section 116.740(a).

Section 116.750.....Flexible Permit Fee.....	7/31/2014	7/20/2015, 80 FR 42729	
Section 116.760.....Flexible Permit Renewal.	11/16/1994	7/20/2015, 80 FR 42729	
Section 116.765.....Compliance Schedule.....	7/31/2014	7/20/2015, 80 FR 42729	SIP includes 30 TAC Section 116.765(b) and (c).

Subchapter H—Permits for Grandfathered Facilities

Division 1—General Applicability

Section 116.770.....Requirement to Apply.....	1/28/04	1/6/14, 79 FR 577	
Section 116.771.....Implementation Schedule for Additional Controls...	5/22/02	1/6/14, 79 FR 577	
Section 116.772.....Notice of Shutdown.....	1/28/04	1/6/14, 79 FR 577	

Division 2—Small Business Stationary Source Permits, Pipeline Facilities Permits, and Existing Facility Permits

Section 116.774.....Eligibility for Small Business Stationary Source Permits.....	5/22/02	1/6/14, 79 FR 577	
Section 116.775.....Eligibility for Pipeline Facilities Permits.....	5/22/02	1/6/14, 79 FR 577	
Section 116.777.....Eligibility for Existing Facility Permits.....	5/22/02	1/6/14, 79 FR 577	
Section 116.778.....Additional Requirements for Applications for Small Business Stationary Source Permits, Pipeline Facilities Permits, or Existing Facility Permits.	8/21/02	1/6/14, 79 FR 577	
Section 116.779.....Applications for Small Business Stationary Source Permits, Pipeline Facilities Permits, or Existing Facility Permits.	5/22/02	1/6/14, 79 FR 577	116.779(a) (10) is not in the SIP.
Section 116.780.....Public Participation for Initial Issuance	5/22/02	1/6/14, 79 FR 577	

	of Pipeline Facilities Permits and Existing Facility Permits.....			
Section 116.781.....	Notice and Comment Hearings for Initial Issuance of Pipeline Facilities Permits and Existing Facility Permits.	5/22/02	1/6/14, 79 FR 577	
Section 116.783.....	Notice of Final Action on Pipeline Facilities Permit Applications and Existing Facility Permit Applications.....	5/22/02	1/6/14, 79 FR 577	
Section 116.785.....	Permit Fee.....	5/22/02	1/6/14, 79 FR 577	
Section 116.786.....	General and Special Conditions.....	5/22/02	1/6/14, 79 FR 577	116.786(c) (2)(B)(ii) (I) is not in the SIP.
Section 116.787.....	Amendments and Alterations of Permits Issued Under this Division.....	5/22/02	1/6/14, 79 FR 577	
Section 116.788.....	Renewal of Permits Issued Under this Division.....	5/22/02	1/6/14, 79 FR 577	
Section 116.790.....	Delegation.....	5/22/02	1/6/14, 79 FR 577	

Subchapter I—Electric Generating Facility Permits

Section 116.910.....	Applicability.....	5/22/2002	1/11/2011, 76 FR 1525	
Section 116.911.....	Electric Generating Facility Permit.....	5/22/2002	4/1/20142014, 79 FR 18183	Section 116.911(a) (2) is authorized for Minor NSR only.
Section 116.912.....	Electric Generating Facilities.....	12/16/1999	1/11/2011, 76 FR 1525	
Section 116.913.....	General and Special Conditions.....	5/22/2002	1/11/2011, 76 FR 1525	

Section 116.914.....	Emissions Monitoring and Reporting Requirements.....	12/16/1999	1/11/2011, 76 FR 1525
Section 116.916.....	Permits for Grandfathered and Electing Generating Facilities in El Paso County.....	12/16/1999	1/11/2011, 76 FR 1525
Section 116.917.....	Electric Generating Facility Permit Application for Certain Grandfathered Coal- Fired Electric Generating Facilities and Certain Facilities Located at Electric Generating Facility Sites.....	5/22/2002	1/11/2011, 76 FR 1525
Section 116.918.....	Additional General Special Conditions for Grandfathered Coal- Fired Electric Generating Facilities and Certain Facilities Located at Electric Generating Facility Sites.....	5/22/2002	1/11/2011, 76 FR 1525
Section 116.919.....	Additional Requirements for Grandfathered Electric Generating Facility Permit Applications.....	8/21/02	1/6/14, 79 FR 577
Section 116.920.....	Applicability.....	12/16/1999	1/11/2011, 76 FR 1525
Section 116.921.....	Notice and Comment Hearings for Initial Issuance.....	5/22/2002	1/11/2011, 76 FR 1525
Section 116.922.....	Notice of Final Action.....	12/16/1999	1/11/2011, 76 FR 1525
Section 116.926.....	Permit Fee.....	5/22/2002	1/11/2011, 76 FR 1525
Section 116.928.....	Delegation.....	5/22/2002	1/11/2011, 76 FR 1525
Section 116.930.....	Amendments and Alterations Issued Under this Subchapter.....	5/22/2002	1/11/2011, 76 FR 1525

Section 116.931.....	Renewal.....	12/16/1999	1/11/2011, 76 FR 1525
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Subchapter M: Best Available Retrofit Technology (BART)

Section 116.1500.....	Definitions.....	2/25/2009	1/5/2016, 81 FR 350	
Section 116.1510.....	Applicability and Exemption Requirements	2/25/2009	1/5/2016, 81 FR 350	116.1510(d) is NOT part of the approved SIP.
Section 116.1520.....	Best Available Retrofit Technology (BART) Analysis.....	2/25/2009	1/5/2016, 81 FR 350	
Section 116.1530.....	Best Available Retrofit Technology (BART) Control Implementation..	2/25/2009	1/5/2016, 81 FR 350	
Section 116.1540.....	Exemption from Best Available Retrofit Technology (BART) Control Implementation..	2/25/2009	1/5/2016, 81 FR 350	

Chapter 117—Control of Air Pollution From Nitrogen Compounds

Subchapter A—Definitions

Section 117.10.....	Definitions.....	6/3/2015	4/13/2016, 81 FR 21750
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Subchapter B—Combustion Control at Major Industrial,
Commercial, and Institutional Sources in Ozone Nonattainment Areas

Division 1—Beaumont-Port Arthur Ozone Nonattainment Area Major Sources

Section 117.100.....	Applicability.....	5/30/2007	12/3/2008, 73 FR 73562
Section 117.103.....	Exemptions.....	5/30/2007	12/3/2008, 73 FR 73562
Section 117.105.....	Emission Specifications for Reasonably Available Control Technology (RACT).....	5/30/2007	12/3/2008, 73 FR 73562

Section 117.110.....	Emission Specifications for Attainment Demonstration.....	5/30/2007	12/3/2008, 73 FR 73562	117.110(c) not in SIP.
Section 117.115.....	Alternative Plant-Wide Emission Specifications..	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.123.....	Source Cap.....	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.130.....	Operating Requirements..	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.135.....	Initial Demonstration of Compliance.....	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.140.....	Continuous Demonstration of Compliance.....	2/11/2009	7/31/2009, 74 FR 38102	
Section 117.145.....	Notification, Recordkeeping, and Reporting Requirements..	2/11/2009	7/31/2009, 74 FR 38102	
Section 117.150.....	Initial Control Plan Procedures.....	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.152.....	Final Control Plan Procedures for Reasonably Available Control Technology.....	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.154.....	Final Control Plan Procedures for Attainment Demonstration Emission Specifications.....	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.156.....	Revision of Final Control Plan.....	5/30/2007	12/3/2008, 73 FR 73562	

Division 3—Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources

Section 117.300.....	Applicability.....	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.303.....	Exemptions.....	5/30/2007	12/3/2008, 73 FR 73562	

Section 117.305.....	Emission Specifications for Reasonably Available Control Technology (RACT).....	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.310.....	Emission Specifications for Attainment Demonstration.....	5/30/2007	12/3/2008, 73 FR 73562	117.310(c) not in SIP.
Section 117.315.....	Alternative Plant-Wide Emission Specifications..	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.320.....	System Cap.....	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.323.....	Source Cap.....	5/30/2007	1/14/2009, 74 FR 1927	
Section 117.330.....	Operating Requirements..	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.335.....	Initial Demonstration of Compliance.....	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.340.....	Continuous Demonstration of Compliance.....	2/11/2009	7/31/2009, 74 FR 38102	
Section 117.345.....	Notification, Recordkeeping, and Reporting Requirements..	2/11/2009	7/31/2009, 74 FR 38102	
Section 117.350.....	Initial Control Plan Procedures.....	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.352.....	Final Control Plan Procedures for Reasonably Available Control Technology.....	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.354.....	Final Control Plan Procedures for Attainment Demonstration Emission Specifications.....	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.356.....	Revision of Final Control Plan.....	5/30/2007	12/3/2008, 73 FR 73562	

Division 4—Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources

Section 117.400.....	Applicability.....	6/3/2015	4/13/2016, 81 FR 21750	
Section 117.403.....	Exemptions.....	6/3/2015	4/13/2016, 81 FR 21750	
Section 117.405.....	Emission Specifications for Reasonably Available Control Technology (RACT).....	6/3/2015	4/13/2016, 81 FR 21750	117.405(d) Not in SIP.
Section 117.410.....	Emission Specifications for Eight-Hour Attainment Demonstration Reporting	6/3/2015	4/13/2016, 81 FR 21750	117.410(c) NOT in SIP.
Section 117.423.....	Source Cap.....	6/3/2015	4/13/2016, 81 FR 21750	
Section 117.430.....	Operating Requirements..	6/3/2015	4/13/2016, 81 FR 21750	
Section 117.435.....	Initial Demonstration of Compliance.....	6/3/2015	4/13/2016, 81 FR 21750	
Section 117.440.....	Continuous Demonstration of Compliance.....	6/3/2015	4/13/2016, 81 FR 21750	
Section 117.445.....	Notification, Recordkeeping, and Reporting Requirements..	6/3/2015	4/13/2016, 81 FR 21750	
Section 117.450.....	Initial Control Plan Procedures.....	6/3/2015	4/13/2016, 81 FR 21750	
Section 117.452.....	Final Control Plan Procedures for Reasonably Available Control Technology.....	6/3/2015	4/13/2016, 81 FR 21750	
Section 117.454.....	Final Control Plan Procedures for Attainment Demonstration Emission Specifications.....	6/3/2015	4/13/2016, 81 FR 21750	
Section 117.456.....	Revision of Final Control Plan.....	6/3/2015	4/13/2016, 81 FR 21750	

Division 1—Beaumont-Port Arthur Ozone Nonattainment Area Utility Electric Generation Sources

Section 117.1000.....	Applicability.....	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.1003.....	Exemptions.....	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.1005.....	Emission Specifications for Reasonably Available Control Technology (RACT).....	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.1010.....	Emission Specifications for Attainment Demonstration.....	5/30/2007	12/3/2008, 73 FR 73562	117.1010(b) not in SIP.
Section 117.1015.....	Alternative System-Wide Emission Specifications..	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.1020.....	System Cap.....	4/6/2012	7/31/2014, 79 FR 44300	
Section 117.1035.....	Initial Demonstration of Compliance.....	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.1040.....	Continuous Demonstration of Compliance.....	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.1045.....	Notification, Recordkeeping, and Reporting Requirements..	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.1052.....	Final Control Plan Procedures for Reasonably Available Control Technology.....	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.1054.....	Final Control Plan Procedures for Attainment Demonstration Emission Specifications.....	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.1056.....	Revision of Final Control Plan.....	5/30/2007	12/3/2008, 73 FR 73562	

Division 3—Houston-Galveston-Brazoria Ozone Nonattainment Area Utility Electric Generation Sources

Section 117.1200.....	Applicability.....	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.1203.....	Exemptions.....	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.1205.....	Emission Specifications for Reasonably Available Control Technology (RACT).....	5/30/2007	1/14/2009, 74 FR 1927	
Section 117.1210.....	Emission Specifications for Attainment Demonstration.....	5/30/2007	1/14/2009, 74 FR 1927	117.1210(b) not in SIP.
Section 117.1215.....	Alternative System-Wide Emission Specifications..	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.1220.....	System Cap.....	4/6/2012	7/31/2014, 79 FR 44300	
Section 117.1235.....	Initial Demonstration of Compliance.....	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.1240.....	Continuous Demonstration of Compliance.....	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.1245.....	Notification, Recordkeeping, and Reporting Requirements..	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.1252.....	Final Control Plan Procedures for Reasonably Available Control Technology.....	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.1254.....	Final Control Plan Procedures for Attainment Demonstration Emission Specifications.....	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.1256.....	Revision of Final Control Plan.....	5/30/2007	12/3/2008, 73 FR 73562	

Division 4—Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources

Section 117.1303.....	Exemptions.....	6/3/2015	4/13/2016, 81 FR 21750	
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Section 117.1310.....	Emission Specifications for Eight-Hour Attainment Demonstration.....	6/3/2015	4/13/2016, 81 FR 21750	117.1310(b) Not in SIP.
Section 117.1335.....	Initial Demonstration of Compliance.....	6/3/2015	4/13/2016, 81 FR 21750	
Section 117.1340.....	Continuous Demonstration of Compliance.....	6/3/2015	4/13/2016, 81 FR 21750	
Section 117.1345.....	Notification, Recordkeeping, and Reporting Requirements..	6/3/2015	4/13/2016, 81 FR 21750	
Section 117.1350.....	Initial Control Plan Procedures.....	6/3/2015	4/13/2016, 81 FR 21750	
Section 117.1354.....	Final Control Plan Procedures for Attainment Demonstration Emission Specifications.....	6/3/2015	4/13/2016, 81 FR 21750	

Subchapter D—Combustion Control at Minor Sources in Ozone Nonattainment Areas

Division 1—Houston-Galveston-Brazoria Ozone Nonattainment Area Minor Sources

Section 117.2000.....	Applicability.....	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.2003.....	Exemptions.....	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.2010.....	Emission Specification....	5/30/2007	12/3/2008, 73 FR 73562	117.2010(i) not in SIP.
Section 117.2030.....	Operating Requirements..	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.2035.....	Monitoring and Testing Requirements.....	2/11/2009	7/31/2009, 74 FR 38102	
Section 117.2045.....	Recordkeeping and Reporting Requirements..	2/11/2009	7/31/2009, 74 FR 38102	

Division 2—Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources

Section 117.2100.....	Applicability.....	5/30/2007	12/3/2008, 73 FR 73562
Section 117.2103.....	Exemptions.....	5/8/2013	7/31/2014, 79 FR 44300
Section 117.2110.....	Emission Specifications for Eight-Hour Attainment Demonstration.....	5/18/2011	5/6/2013, 78 FR 26251
Section 117.2130.....	Operating Requirements..	5/8/2013	7/31/2014, 79 FR 44300
Section 117.2135.....	Monitoring, Notification, and Testing Requirements.....	5/8/2013	7/31/2014, 79 FR 44300
Section 117.2145.....	Recordkeeping and Reporting Requirements..	5/8/2013	7/31/2014, 79 FR 44300

Subchapter E—Multi-Region Combustion Control

Division 1—Utility Electric Generation in East and Central Texas

Section 117.3000.....	Applicability.....	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.3003.....	Exemptions.....	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.3005.....	Gas-Fired Steam Generation.....	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.3010.....	Emission Specifications..	5/30/2007	12/3/2008, 73 FR 73562	117.3010(2) not in SIP.
Section 117.3020.....	System Cap.....	4/6/2012	7/31/2014, 79 FR 44300	
Section 117.3035.....	Initial Demonstration of Compliance.....	5/30/2007	12/3/2008, 73 FR 73562	
Section 117.3040.....	Continuous Demonstration of Compliance.....	5/30/2007	12/3/2008, 73 FR 73562	

Section 117.3045.....	Notification, Recordkeeping, and Reporting Requirements..	5/30/2007	12/3/2008, 73 FR 73562
Section 117.3054.....	Final Control Plan Procedures.....	5/30/2007	12/3/2008, 73 FR 73562
Section 117.3056.....	Revision of Final Control Plan.....	5/30/2007	12/3/2008, 73 FR 73562

Division 2—Cement Kilns

Section 117.3100.....	Applicability.....	5/30/2007	01/14/2009, 74 FR 1927	
Section 117.3101.....	Cement Kilns Definitions	5/30/2007	1/14/2009, 74 FR 1927	
Section 117.3103.....	Exemptions.....	5/30/2007	1/14/2009, 74 FR 1927	
Section 117.3110.....	Emission Specifications..	5/30/2007	1/14/2009, 74 FR 1927	
Section 117.3120.....	Source Cap.....	5/30/2007	1/14/2009, 74 FR 1927	
Section 117.3123.....	Dallas-Fort Worth Eight- Hour Ozone Attainment Demonstration Control Requirements.....	5/30/2007	1/14/2009, 74 FR 1927	117.3123(f) not in SIP.
Section 117.3140.....	Continuous Demonstration of Compliance.....	5/30/2007	1/14/2009, 74 FR 1927	
Section 117.3142.....	Emission Testing and Monitoring for Eight- Hour Attainment Demonstration.....	5/30/2007	1/14/2009, 74 FR 1927	
Section 117.3145.....	Notification, Recordkeeping, and Reporting Requirements..	5/30/2007	1/14/2009, 74 FR 1927	

Division 3—Water Heaters, Small Boilers, and Process Heaters

Section 117.3200.....	Applicability.....	5/30/2007	12/3/2008, 73 FR 73562
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Section 117.3300.....	Applicability.....	5/30/2007	12/3/2008, 73 FR 73562
Section 117.3303.....	Exemptions.....	5/30/2007	12/3/2008, 73 FR 73562
Section 117.3310.....	Emission Specifications for Eight-Hour Attainment Demonstration.....	5/30/2007	12/3/2008, 73 FR 73562
Section 117.3330.....	Operating Requirements..	5/30/2007	12/3/2008, 73 FR 73562
Section 117.3335.....	Monitoring, Notification, and Testing Requirements.....	5/30/2007	12/3/2008, 73 FR 73562
Section 117.3345.....	Recordkeeping and Reporting Requirements..	5/30/2007	12/3/2008, 73 FR 73562

Division 1—Adipic Acid Manufacturing

64

Section 117.4005.....Emission Specifications..	5/30/2007	12/3/2008, 73 FR 73562
Section 117.4025.....Alternative Case Specific Specifications.....	5/30/2007	12/3/2008, 73 FR 73562
Section 117.4035.....Initial Demonstration of Compliance.....	5/30/2007	12/3/2008, 73 FR 73562
Section 117.4040.....Continuous Demonstration of Compliance.....	5/30/2007	12/3/2008, 73 FR 73562
Section 117.4045.....Notification, Recordkeeping, and Reporting Requirements..	5/30/2007	12/3/2008, 73 FR 73562
Section 117.4050.....Control Plan Procedures..	5/30/2007	12/3/2008, 73 FR 73562

Division 2—Nitric Acid Manufacturing—Ozone Nonattainment Areas

Section 117.4100.....Applicability.....	5/30/2007	12/3/2008, 73 FR 73562
Section 117.4105.....Emission Specifications..	5/30/2007	12/3/2008, 73 FR 73562
Section 117.4125.....Alternative Case Specific Specifications.....	5/30/2007	12/3/2008, 73 FR 73562
Section 117.4135.....Initial Demonstration of Compliance.....	5/30/2007	12/3/2008, 73 FR 73562
Section 117.4140.....Continuous Demonstration of Compliance.....	5/30/2007	12/3/2008, 73 FR 73562
Section 117.4145.....Notification, Recordkeeping, and Reporting Requirements..	5/30/2007	12/3/2008, 73 FR 73562
Section 117.4150.....Control Plan Procedures..	5/30/2007	12/3/2008, 73 FR 73562

Division 3—Nitric Acid Manufacturing—General

Section 117.4200.....	Applicability.....	5/30/2007	12/3/2008, 73 FR 73562
Section 117.4205.....	Emission Specifications..	5/30/2007	12/3/2008, 73 FR 73562
Section 117.4210.....	Applicability of Federal New Source Performance Standards.....	5/30/2007	12/3/2008, 73 FR 73562

Subchapter G—General Monitoring and Testing Requirements

Division 1—Compliance Stack Testing and Report Requirements

Section 117.8000.....	Stack Testing Requirements.....	6/3//2015	4/13/2016, 81 FR 21750
Section 117.8010.....	Compliance Stack Test Reports.....	5/30/2007	12/3/2008, 73 FR 73562

Division 2—Emission Monitoring

Section 117.8100.....	Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources.	5/30/2007	12/3/2008, 73 FR 73562
Section 117.8110.....	Emission Monitoring System Requirements for Utility Electric Generation Sources.....	5/30/2007	12/3/2008, 73 FR 73562
Section 117.8120.....	Carbon Monoxide (CO) Monitoring.....	5/30/2007	12/3/2008, 73 FR 73562
Section 117.8130.....	Ammonia Monitoring.....	5/30/2007	12/3/2008, 73 FR 73562
Section 117.8140.....	Emission Monitoring for Engines.....	5/30/2007	12/3/2008, 73 FR 73562

Subchapter H—Administrative Provisions

Division 1—Compliance Schedules

Section 117.9000.....	Compliance Schedule for Beaumont-Port Arthur Ozone Nonattainment Area Major Sources.....	5/30/2007	12/3/2008, 73 FR 73562
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Section 117.9020.....	Compliance Schedule for Houston-Galveston- Brazoria Ozone Nonattainment Area Major Sources.....	5/30/2007	12/3/2008, 73 FR 73562
Section 117.9030.....	Compliance Schedule for Dallas-Fort Worth Eight- Hour Ozone Nonattainment Area Major Sources.....	6/3/2015	4/13/2016, 81 FR 21750
Section 117.9100.....	Compliance Schedule for Beaumont-Port Arthur Ozone Nonattainment Area Utility Electric Generation Sources.....	5/30/2007	12/3/2008, 73 FR 73562
Section 117.9120.....	Compliance Schedule for Houston-Galveston- Brazoria Ozone Nonattainment Area Utility Electric Generation Sources.....	5/30/2007	12/3/2008, 73 FR 73562
Section 117.9130.....	Compliance Schedule For Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources.....	6/3/2015	4/13/2016, 81 FR 21750
Section 117.9200.....	Compliance Schedule for Houston-Galveston- Brazoria Ozone Nonattainment Area Minor Sources.....	5/30/2007	12/3/2008, 73 FR 73562
Section 117.9210.....	Compliance Schedule for Dallas-Fort Worth Eight- Hour Ozone Nonattainment Area Minor Sources.....	5/30/2007	12/3/2008, 73 FR 73562
Section 117.9300.....	Compliance Schedule for Utility Electric Generation in East and Central Texas.....	5/30/2007	12/3/2008, 73 FR 73562
Section 117.9320.....	Compliance Schedule for Cement Kilns.....	5/30/2007	1/14/2009, 74 FR 1927
Section 117.9340.....	Compliance Schedule for East Texas Combustion...	5/30/2007	12/3/2008, 73 FR 73562

Section 117.9500.....	Compliance Schedule for Nitric Acid and Adipic Acid Manufacturing Sources.....	5/30/2007	12/3/2008, 73 FR 73562
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Division 2—Compliance Flexibility

Section 117.9810.....	Use of Emission Reductions Generated from the Texas Emissions Reduction Plan (TERP)...	6/3/2015	5/11/2017, 82 FR 21925
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Chapter 118 (Reg 8)—Control Of Air Pollution Episodes

Section 118.1.....	Generalized Air Pollution Episodes.....	03/05/00	07/26/00
Section 118.2.....	Provisions Governing Generalized Episode Control.....	03/05/00	07/26/00
Section 118.3.....	Localized Air Pollution Episodes.....	03/05/00	07/26/00
Section 118.4.....	Hearings.....	03/05/00	07/26/00
Section 118.5.....	Emission Reduction Plan.	03/05/00	07/26/00
Section 118.6.....	Texas Air Pollution Episode Contingency Plan and Emergency Management Center.....	03/05/00	07/26/00

Chapter 122—Federal Operating Permits Program

Subchapter B—Permit Requirements

Division 2—Applicability

Section 122.122.....	Potential to Emit.....	03/26/14	11/10/14, 79 FR 66626	The SIP does NOT include 30 TAC Section 122.122(e)(3), (e)(3)(A), or (e)(3)(B).
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(d) EPA–Approved State Source-Specific Requirements.

EPA-APPROVED TEXAS SOURCE-SPECIFIC REQUIREMENTS

Name of Source.....	Permit No.....	State approval/ submittal Date.....	EPA Approval Date	Explanation
Alcoa Inc., Rockdale, Milam County, Texas.....	Agreed Order No. 2000-0032-SIP.....	04/19/2000.....	10/26/00, 65 FR 64155	H/GA, D/FW, and B/PA, Texas 1-hour ozone standard attainment demonstrations.
Eastman Chemical Company, Texas Operations, Longview, Harrison County, Texas...	Agreed Order No. 2000-0033-SIP.....	04/19/2000.....	10/26/00, 65 FR 64156	H/GA, D/FW, and B/PA, Texas 1-hour ozone standard attainment demonstrations.
Gould National Battery, Incorporated.....	Order Nos. 92-09(k), 93-12, 99-0351-SIP.....	9/3/92, 6/2/93, 7/8/99, respectively.....	11/29/94, 11/29/94, October 13, 1999, respectively	92-09(k) and 93-12 were incorporated by reference in our approval of the lead SIP on 11/29/94, (59 FR 60905).
Continental Airlines at George Bush Intercontinental Airport, Houston, Texas.....	Agreed Order No. 2000-0826-SIP.....	10/18/00.....	11/14/01, 66 FR 57222	HGA, Texas 1-hour ozone standard attainment demonstrations.
Southwest Airlines at William Hobby Airport, Houston, Texas.....	Agreed Order No. 2000-0827-SIP.....	12/06/00.....	11/14/01, 66 FR 57222	HGA, Texas 1-hour ozone standard attainment demonstrations.
American Airlines, American Eagle Airlines	Agreed Order No. 2000-1149-SIP.....	5/23/2001.....	4/22/02, 67 FR 19516	DFW, Texas 1-hour

at D/FW International airport, Texas.....				ozone standard attainment demonstrations.
Delta Airlines at D/ FW International Airport, Texas.....	Agreed Order No. 2001-0221-AIR.....	5/23/2001.....	4/22/02, 67 FR 19516	DFW, Texas 1-hour ozone standard attainment demonstrations.
Southwest Airlines at Love Field, Texas.....	Agreed Order No. 2001-0222-AIR.....	5/23/2001.....	4/22/02, 67 FR 19516	DFW, Texas 1-hour ozone standard attainment demonstrations.
ExxonMobil Oil Corporation, Jefferson County, Texas.....	Agreed Order No. 2004-0846-SIP.....	12/15/2004.....	4/12/2005, 70 FR 18995	
Huntsman Petrochemical Corporation, Port Neches Plant, Jefferson County, Texas.....	Agreed Order No. 2004-0882-SIP.....	12/15/2004.....	4/12/2005, 70 FR 18995	
Huntsman Petrochemical Corporation, Port Arthur Plant, Jefferson County, Texas.....	Agreed Order No. 2004-0845-SIP.....	12/15/2004.....	4/12/2005, 70 FR 18995	
ISP Elastomers, Jefferson County, Texas.....	Agreed Order No. 2004-0842-SIP.....	12/15/2004.....	4/12/2005, 70 FR 18995	
Mobil Chemical Company, Division of ExxonMobil Oil Corporation, Jefferson County, Texas.....	Agreed Order No. 2004-0841-SIP.....	12/15/2004.....	4/12/2005, 70 FR 18995	
Motiva Enterprises LLC, Jefferson County, Texas...	Agreed Order No. 2004-0843-SIP.....	12/15/2004.....	4/12/2005, 70 FR 18995	
Premcor Refining Group, Inc., Jefferson County, Texas.....	Agreed Order No. 2004-0844-SIP.....	12/15/2004.....	4/12/2005, 70 FR 18995	
Mobil Chemical Company, Division of ExxonMobil Oil Corporation, Jefferson County, Texas.....	Agreed Order No. 2004-1654-SIP.....	12/15/2004.....	4/12/2005, 70 FR 18995	

American Electric Power 2001-0878-RUL.....	03/13/2002.....	8/19/2005, 70 FR 48642	
Knox Lee Plant (Gregg Co.), Pirkey Plant (Harrison Co.), Wilkes Plant (Cass Co.).....			
Texas Utilities Martin 2001-0879-RUL.....	03/13/2002.....	8/19/2005, 70 FR 48642	
Lake plant (Rusk Co.), Monticello plant (Titus Co.).....			
Eastman Chemical 2001-0880-RUL.....	03/13/2002.....	8/19/2005, 70 FR 48642	
Company Longview plant (Harrison Co.).....			
Alcoa Inc, Rockdale, Permit Number 48437.....	4/27/05.....	8/15/2008, 73 FR 47835	
Milam County, Texas.....			
Exide Technologies.....	Agreed Order No. 8/14/2012.....	6/29/2017, 82 FR 29430	
	2011-0521-MIS.....		
TXI Operations LP Agreed Order No. 08/21/18.....		02/22/19, 84 FR 5602	DFW 2008 8- Hour ozone standard.
(Texas Industries, Inc., 2017-1648-SIP.....			
TXI), Kiln #5, Ellis County, Texas.....			

(e) EPA approved nonregulatory provisions and quasi-regulatory measures.

EPA APPROVED STATUTES IN THE TEXAS SIP

Title/Subject.....	State approval/ submittal date.....	EPA approval date.....	Comments
Texas Clean Air Act (Article 4477-5), Vernon's Texas Civil Statutes.....	01/28/72.....	05/31/72, 37 FR 10895.	As amended by S.B. 48 of 1969.
Article 698d Air Pollution, Penal Code of Texas, 1925.....	01/28/72.....	05/31/72, 37 FR 10895.	As amended by S.B. No. 5 of 1969.
House Bill 322.....	01/28/72.....	05/31/72, 37 FR 10895.	As passed by the 62nd Legislature

of Texas,
amending
the
Texas
Clean
Air
Act
regarding
permits
for
construction
or
modification
of
facilities.

Texas Clean Air (Tex. Rev. Civ. Stat. Ann. Art. 4477-5) as amended June 13, 1979.	07/23/81..... 12/15/81, 46 FR 61125.	Ref 52.2299(c) (29).
Air Pollution (Tex. Rev. Civ. Stat. Ann. Art. 4477-5b) as amended January 1, 1974.....	07/23/81..... 12/15/81, 46 FR 61125.	Ref 52.2299(c) (29).
Texas Administrative Procedure and Texas Register Act.....	07/23/81..... 12/15/81, 46 FR 61125.	Ref 52.2299(c) (29).
(Tex. Rev. Civ. Stat. Ann. Art. 6252-13a) effective January 1, 1976.....	07/23/81..... 12/15/81, 46 FR 61125.	Ref 52.2299(c) (29).
Texas Open Record Act (Tex. Rev. Civ. Stat. Ann. Art. 6252-17a) as amended May 27, 1975.	07/23/81..... 12/15/81, 46 FR 61125.	Ref 52.2299(c) (29).
Standards of Conduct of State Officers and Employees (Tex. Rev. Civ. Stat. Ann. Art. 6252-9b) effective January 1, 1974.....	07/23/81..... 12/15/81, 46 FR 61125.	Ref 52.2299(c) (29).
Department of Public Safety and Texas Air Control Board Rules and Regulations, Texas Vehicle Inspection Act Article XV.....	11/9/84..... 06/26/85, 50 FR 26362.	Ref 52.2299(c) (61).

Documentation to Authorize and Support the Implementation
and Enforcement of the Texas Vehicle parameter Inspection and
Maintenance Program, Appendix X, containing the following documents:

A. Senate Bill 1205.....	11/9/84.....	06/26/85, 50 FR 26362.	Ref 52.2299(c) (61).
B. Letters of Commitment from Texas Department of Public Safety City of Houston Police Department and Harris County Sheriff.....	11/9/84.....	06/26/85, 50 FR 26362.	Ref 52.2299(c) (61).
C. Parameter Vehicle Emission Inspection and Maintenance Rules and Regulations for Official Vehicle Inspection Stations and Certified Inspectors, July 1, 1984.....	11/9/84.....	06/26/85, 50 FR 26362.	Ref 52.2299(c) (61).
Texas Motor Vehicle Laws, 1981-1982— Rules and Regulations for Official Vehicle Inspection Stations and Certified Inspectors, November 11, 1983, Sections A,B,C, pages C-1, C-16, C-17, C-18, C-26, C-27, and C-28, D, and E pages E-1, E-6, E-7, E-8, and E-9..	11/9/84.....	06/26/85, 50 FR 26362.	Ref 52.2299(c) (61).
VIMTCM, Appendix AJ, Excerpted Senate Bill 725, section 35(d) and (g) effective September 1, 1985; and House Bill 1593 sections 21 and 22 effective June 18, 1987.	09/30/85 and 12/21/87..	02/09/89, 54 FR 06287.	Ref 52.2299(c) (66).
Texas Clean Air Act (TCAA), Texas Health and Safety Code Ann. (Vernon 1992), Section 382.0365, “Small Business Stationary Source Assistance Program”, enacted by the Texas 1991 legislative session and effective September 1, 1991.....	11/13/92.....	08/19/94, 59 FR 42759.	Ref 52.2299(c) (85).

Legal opinion letter dated October 15, 1992 from Kirk P. Watson, Chairman, TACB, to Mr. B.J. Wynne, III, Regional Administrator, EPA Region 6, regarding the composition of the Small Business Compliance Advisory Panel of Texas.....	11/13/92..... 08/19/94, 59 FR 42759.	Ref 52.2299(c) (85).
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House Bill 1969, an act relating to motor vehicle registration, inspections, and providing penalties amending:

(1) Sections 382.037 and 382.038 of the Texas Health and Safety Code;.....	11/12/93 and 03/09/94.. 08/22/94, 59 FR 43046.	Ref 52.2299(c) (87).
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(2) Section 2 Chapter 88, General Laws, Acts of the 41st legislature, 2nd called session, 1929 (Article 6675a-2, Vernon's Texas Civil Statutes);.....	11/12/93 and 03/09/94.. 08/22/94, 59 FR 43046.	Ref 52.2299(c) (87).
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(3) Title 116, Article 6675b-4, 6675b-4A, and 6675b-4B;.....	11/12/93 and 03/09/94.. 08/22/94, 59 FR 43046.	Ref 52.2299(c) (87).
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(4) Section 141(d), and section 142(h), Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Civil Statutes);.....	11/12/93 and 03/09/94.. 08/22/94, 59 FR 43046.	Ref 52.2299(c) (87).
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(5) Section 4.202, County Road and Bridge Act (Article 6702-1, Vernon's Texas Civil Statutes). Signed by the Governor on 01/08/93, effective 08/30/93.....	11/12/93 and 03/09/94.. 08/22/94, 59 FR 43046.	Ref 52.2299(c) (87).
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Texas Health and Safety Code (Vernon 1990), the Texas Clean Air Act, sections 382.017, 382.037, 382.038, effective September 1, 1991.....	11/12/93 and 03/09/94.. 08/22/94, 59 FR 43046.	Ref 52.2299(c) (87).
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Order No. 93-23, as adopted November 10, 1993, and Order No. 94-02 as adopted February 16, 1994.....	11/12/93 and 03/09/94.. 08/22/94, 59 FR 43046.	Ref 52.2299(c) (87).
Texas Civil Statutes, Articles 6675a-1 to 6675b-2 and 6687-1. (Vernon 1993).....	11/12/93 and 03/09/94.. 08/22/94, 59 FR 43046.	Ref 52.2299(c) (87).
Texas Portable Fuel Container State Implementation Plan.....	All Affected 1997 Eight-Hour Ozone Standard Nonattainment And Near Nonattainment Areas In The State Of Texas.....	3/4/2010..... 2/24/2011, 76 FR 10249

**EPA APPROVED NONREGULATORY PROVISIONS AND
QUASI-REGULATORY MEASURES IN THE TEXAS SIP**

Applicable

Name.....	geographic.....	State		
of SIP.....	or.....	submittal/.....	EPA	
provision.....	nonattainment.....	effective.....	approval	
	area.....	date.....	date	Comments
Public Hearings.....	Statewide.....	02/08/72.....	05/31/72, 37 FR 10895	Ref 52.2299 (c)(1).
HydroCarbon Emission Data.....	Statewide.....	05/02/72.....	05/31/72, 37 FR 10895	Ref 52.2299 (c)(2).
Source Surveillance.....	Statewide.....	05/03/72.....	05/31/72, 37 FR 10895	Ref 52.2299 (c)(2).
Minor Revisions.....	Statewide.....	07/31/72.....	10/28/72, 37 FR 23092	Ref 52.2299 (c)(4).
Attainment Date Corrections.....	Statewide.....	11/10/72.....	02/08/73, 38 FR 03600	Ref 52.2299 (c)(6).
Classification Revisions for PM, SOx, and CO.....	Statewide.....	03/21/75.....	04/18/77, 42 FR 20131	Ref 52.2299 (c)(9).

Administrative Revisions Statewide.....	04/20/77, 42 FR 20463	Ref 52.2299 (c)(11).
Air Quality Surveillance Statewide..... 08/02/76..... Plan.....	04/18/77, 42 FR 20131	Ref 52.2299 (c)(12).
Air Quality Surveillance Statewide..... 08/12/77..... Plan.....	03/07/78, 43 FR 09276	Ref 52.2299 (c)(13).
Administrative Revisions Statewide..... to Section X.....	07/06/77, 42 FR 34518	Ref 52.2299 (c)(14).
Administrative Revisions Statewide..... 08/14/78..... to Section IX.....	04/11/79, 44 FR 21644	Ref 52.2299 (c)(16).
Board Order No. 78-6.....Corpus Christi, TX..... 07/24/78.....	09/24/79, 44 FR 55005	Ref 52.2299 (c)(17) (see 52.2275)
Draft inspection/ Harris County..... 04/13/79..... maintenance legislation and study schedule.....	12/18/79, 44 FR 74831	Ref 52.2299 (c)(18).
Adopted inspection/ Harris County..... 08/09/79..... maintenance legislation and administrative revisions.....	12/19/79, 44 FR 74831	Ref 52.2299 (c)(19).
Plan Revisions (Part D Statewide..... 04/13/79..... requirements).....	03/25/80, 45 FR 19244	Ref 52.2299 (c)(20).
Administrative Revisions Statewide..... 08/09/79..... to Transportation Control	03/25/80, 45 FR 19244	Ref 52.2299 (c)(21).
Transportation Control Harris County..... 12/28/79..... Measures for Harris County.....	08/06/80, 45 FR 52148	Ref 52.2299 (c)(24).
Board Order No. 78-8.....General Portland, Inc., 09/13/78..... New Braunfels, Comal County, TX.....	08/28/81, 46 FR 43425	Ref 52.2299 (c)(26). (See 52.2276).
Administrative Revision Statewide..... 07/23/81..... to Section I.....	11/13/81, 46 FR 55970	Ref 52.2299 (c)(28).

Administrative Revision to Section V.....	Statewide.....	07/23/81.....	12/15/81, 46 FR 61125	Ref 52.2299 (c)(29).
Plan Revisions for Intergovernmental Consultation and Composition.....	Statewide.....	04/13/79.....	03/29/82, 47 FR 13143	Ref 52.2299 (c)(32).
Texas Lead SIP and Board Order No. 82-11....	Statewide excluding Dallas and El Paso areas..	06/12/80.....	10/04/83, 48 FR 45248	Ref 52.2299 (c)(41).
Texas Air Pollution Emergency Episode Contingency Plan.....	Statewide.....	05/18/82.....	10/07/82, 47 FR 44261	Ref 52.2299 (c)(42).
Administrative Revision to Section XII.....	Statewide.....	07/06/82.....	10/25/82, 47 FR 47247	Ref 52.2299 (c)(47).
Administrative Revision to Section III.....	N/A.....	08/17/82.....	03/31/83, 48 FR 13428	Ref 52.2299 (c)(51).
Administrative Revision to Section IX.....	Statewide.....	06/22/83.....	11/07/83, 48 FR 51153	Ref 52.2299 (c)(52).
Lead Plan for Dallas County, TX.....	Dallas County, TX.....	04/6/84.....	08/15/84, 49 FR 32580	Ref 52.2299 (c)(54).
Revisions to Lead Plan for Dallas County, TX.....	Dallas County, TX.....	07/16/84.....	08/15/84, 49 FR 32580	Ref 52.2299 (c)(55).
Lead Plan for El Paso County.....	El Paso County, TX.....	06/20/84.....	08/13/84, 49 FR 32190	Ref 52.2299 (c)(56).
Alternative Emission Control Plan for Exxon Baytown Refinery.....	Baytown, TX.....	03/18/83.....	07/10/85, 50 FR 26992	Ref 52.2299 (c)(60) (Board Order No. 83-2).
Plan for Ozone Attainment in Harris County.....	Harris County, TX.....	12/09/82, 01/03/84, 03/18/85.....	06/26/85, 50 FR 26362	Ref 52.2299 (c)(61).
Alternative Emission Reduction Plan for Continental Can Company, Longview, TX	Gregg County, (Longview), TX.....	07/25/85.....	05/05/89, 54 FR 19373	Ref 52.2299 (c)(64).

Revision to Lead Plan for El Paso County and Board Order No. 87-14....	El Paso County, TX.....	10/26/87.....	05/06/88, 53 FR 16263	Ref 52.2299 (c)(65).
Ozone Attainment Plan for Dallas and Tarrant Counties.....	Dallas and Tarrant Counties, TX.....	09/30/85 and 12/21/87.....	02/09/89, 54 FR 06287	Ref 52.2299 (c)(66).
Vehicle Inspection and Maintenance and Transportation Control Measures (VIMTCM), Appendix AG.....	Dallas and Tarrant Counties, TX.....	08/28/85.....	02/09/89, 54 FR 06287	Ref 52.2299 (c)(66).
VIMTCM, Appendix AK, Portions I through 6	Dallas and Tarrant Counties, TX.....	12/18/87.....	02/09/89, 54 FR 06287	Ref 52.2299 (c)(66).
VIMTCM, Appendix AM, Sections 1, 2, and 3.	Dallas and Tarrant Counties, TX.....	12/18/87.....	02/09/89, 54 FR 06287	Ref 52.2299 (c)(66).
VIMTCM, Appendix AN	Dallas and Tarrant Counties, TX.....	12/18/87.....	02/09/89, 54 FR 06287	Ref 52.2299 (c)(66).
Part II of the Visibility Protection Plan and Board Order No. 87-15....	Big Bend and Guadalupe Mountain National Parks.	09/18/87.....	02/23/89, 54 FR 07770	Ref 52.2299 (c)(67).
Alternative Emission Reduction Plan (Bubble) for E.I. DuPont de Nemours & Company's Sabine River Works, Orange, TX.....	Orange County, TX.....	03/12/82.....	04/13/90	Ref 52.2299 (c)(70).
Revisions to Texas Air Pollution Episode Contingency Plan.....	Statewide.....	10/02/87.....	09/06/90, 55 FR 36634	Ref 52.2299 (c)(71).
Revisions to Ozone Attainment Plan for Dallas and Tarrant Counties.....	Dallas and Tarrant Counties, TX.....	03/05/90.....	08/03/90, 55 FR 31587	Ref 52.2299 (c)(72).
Revisions for Prevention of Significant Deterioration and Board Orders No. 85-07, 87-09, and 88-08.....	Statewide.....	12/11/85, 10/26/87,.....	06/4/92, 57 FR 28098	Ref 52.2299(c) (73).
		9/29/88.....		For Board Order 87-09, the provisions at paragraphs

7(a) and
7(b) have
been
replaced
by EPA's
SIP-
approval
of 30 TAC
39.411(f)
(8)(A) and
39.605(1)
(D). See
1/6/14, 79
FR 551

Board Order No. 90-07.... Tarrant County.....	06/22/90.....	10/12/90, 55 FR 41525	Ref 52.2299 (c) (74).
Board Order No. 92-19.... Statewide.....	09/18/92.....	08/30/93, 58 FR 45457	Ref 52.2299 (c)(76).
Revision for Prevention of Significant Deterioration and Board Order No. 90-13.....	Statewide..... 12/14/90.....	09/09/94, 59 FR 46557	Ref 52.2299 (c)(78).
Revision addressing PM-10 nonattainment area requirements for El Paso and Board Orders 89-03 and 91-15.....	El Paso, TX..... 11/05/91.....	01/18/94, 59 FR 02535	Ref 52.2299 (c)(79).
City of El Paso, TX, Ordinance, Title 9.....	El Paso, TX..... 12/11/90.....	01/18/94, 59 FR 02535	Ref 52.2299 (c)(79).
Board Order No. 92-16.... Ozone nonattainment areas.....	10/16/92.....	04/15/94, 59 FR 17943	Ref 52.2299 (c) (81).
Board Order No. 92-20.... Ozone nonattainment areas.....	08/20/92.....	08/26/94, 59 FR 44039	Ref 52.2299 (c)(82).
Revision for the El Paso CO nonattainment area and Board Order No. 92-15.....	El Paso County, TX..... 09/18/92.....	09/12/94, 59 FR 46766	Ref 52.2299 (c)(84).
Small Business Stationary Source Technical and Environmental Compliance Assistance Program.....	Statewide..... 11/13/92.....	08/19/94, 59 FR 42759	Ref 52.2299 (c)(85).

Board Order No. 92-22....	Statewide.....	11/06/92.....	08/19/94, 59 FR 42759	Ref 52.2299 (c)(85).
Board Order No. 92-04....	N/A.....	05/08/92.....	03/07/95, 60 FR 12438	Ref 52.2299 (c)(88).
Board Order No. 92-16....	N/A.....	10/16/92.....	03/07/95, 60 FR 12438	Ref 52.2299 (c)(88).
Revision to Modify SLAMS and NAMS Monitoring Systems and Board Order No. 93-24....	Statewide.....	11/10/93.....	10/04/94, 59 FR 50504	Ref 52.2299 (c)(90).
Employer Trip Reduction Program and Board Order No. 92-14.....	Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.....	11/13/92.....	03/07/95, 60 FR 12442	Ref 52.2299 (c)(91).
Revision limiting SO2 by agreed orders 94-09 through 94-22.....	Certain Nonpermitted facilities in Harris County.....	08/03/94.....	03/06/95, 60 FR 12125	Ref 52.2299 (c)(93).
Revision addressing visible emissions with Board Orders 89-03, 90-12, 92-19, and 93-06..	Statewide.....	08/21/89, 01/29/91, 10/15/92, and 08/04/93....	05/08/96, 61 FR 20732	Ref 52.2299 (c)(94).
Alternative Emission Reduction (Bubble) for Shell Oil Company's Deer Park manufacturing complex.....	Deer Park, TX.....	07/26/93.....	06/19/95, 60 FR 31915	Ref 52.2299 (c)(95).
Transportation Conformity and Board Order No. 94-40.....	Areas designated nonattainment and areas subject to a maintenance plan.....	10/12/94.....	11/08/95, 60 FR 56244	Ref 52.2299 (c)(96).
Revision to Permitting Regulations and Board Orders No. 85-07, 87-09, 87-17, 88-08, 89-06, 90-05, 91-10, 92-06, 92-18, and 93-17.....	Statewide.....	07/26/85, 07/17/87, 12/18/87, 07/15/88, 08/11/89, 05/18/90, 09/20/91, 05/08/92, 10/16/92, 08/16/93.....	09/27/95, 60 FR 49781	Ref 52.2299 (c)(97).
VOC RACT Negative Declarations.....	Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, Houston/Galveston.	1/10/96.....	10/30/96, 61 FR 55894	Ref 52.2299(c) (103).
VOC RACT Negative Declaration for SOCM Batch Processing Source Category.....	El Paso.....	1/10/96.....	6/7/07, 72 FR31457.	

Alternate Control Strategy for Bell Helicopter Textron, Inc....	Ft Worth, TX, Plant 1 facility.....	04/18/96.....	05/30/97, 62 FR 29297	Ref 52.2299 (c)(100).
Revisions to the Plan concerning Sulfur Dioxide in Milam County	Rockdale, TX.....	10/15/92 and 09/20/95.....	09/30/97, 61 FR 49685	Ref 52.2299 (c)(101).
TNRCC Order No. 93-20, 94-06, 94-26, 94-0676-SIP.....	The four ozone nonattainment areas in TX.....	11/10/93, 05/04/94, 07/13/94, 11/09/94.....	05/22/97, 62 FR 27964	Ref 52.2299 (c)(104).
15% ROP Plan.....	Beaumont/ Port Arthur ozone nonattainment area	08/09/96.....	02/10/98, 63 FR 6659	Ref 52.2299 (c)(107).
15% ROP Plan.....	Dallas/ Ft Worth, El Paso, and Houston/ Galveston ozone nonattainment areas.....	08/09/96.....	11/10/98, 63 FR 62943	Ref 52.2299 (c)(113) See also 52.2309.
Lead Maintenance Plan for Gould National Battery, Incorporated.....	Collin County.....	08/31/99.....	10/13/99, 64 FR 55425	Ref. 59 FR 60905 (11/29/94).
Post 96 Rate of Progress Plan.....	Houston, Texas.....	5/19/98.....	4/25/01, 66 FR 20750	Originally submitted 11/9/94 and revised 8/9/96.
Contingency Measures....	Houston, Texas.....	5/19/98.....	4/25/01, 66 FR 20751	Originally submitted 11/9/94 and revised 8/9/96.
Attainment Demonstration for the 1-hour Ozone NAAQS.....	Houston/Galveston, TX... 1	12/09/00.....	11/14/01, 66 FR 57195	
Speed Limit Reduction....	Houston/ Galveston, TX..	9/26/02.....	11/14/02, 67 FR 68944	Section 6.3.12
Voluntary Mobile Emissions Program.....	Houston/ Galveston, TX..	9/26/02.....	11/14/02, 67 FR 68944	
Texas Senate Bill 5.....	Houston/ Galveston, TX..	9/26/00.....	11/14/01, 66 FR 57195	

Transportation Control Measures Appendix I.....	Houston/ Galveston, TX.. 12/09/00.....	11/14/01, 66 FR 57195	
Commitment to Mid-course review.....	Houston/ Galveston, TX.. 4/19/01.....	11/14/01, 66 FR 57195	
Table 7.1-1 Enforceable Commitments.....	Houston/ Galveston, TX.. 9/26/01.....	11/14/01, 66 FR 57196	
Post 1999 Rate of Progress Plan.....	Houston/ Galveston, TX.. 11/16/04.....	2/14/05, 70 FR 7407	
15% Rate of Progress Plan.....	Houston/ Galveston, TX.. 12/09/00.....	11/14/01, 66 FR 57196	
Revisions to the 1990 Base Year Inventory.....	Houston/ Galveston, TX.. 11/16/04.....	2/14/05, 70 FR 7407	
Reasonably Available Control Measure Analysis.....	Houston/ Galveston, TX.. 09/26/01.....	11/14/01, 66 FR 57196	
Memorandum of Agreement between TNRCC and Houston Airport System.....	Houston/ Galveston Area 10/18/2000..... Ozone Nonattainment Area.....	11/14/01, 66 FR 57223	HGA, Texas 1-hour ozone standard attainment demonstra- tions.
Vehicle Miles Traveled Offset Plan.....	Houston/ Galveston 05/09/00..... Ozone nonattainment area.....	11/14/01, 66 FR 57251	Originally submitted 11/12/93 and revised 11/06/94, 8/25/97, and 05/17/00.
Memorandum of Agreement between TNRCC and the City of Dallas, Texas.....	Dallas/Fort Worth Ozone 5/23/01..... Nonattainment Area.....	4/22/02, 67 FR 19516	DFW, Texas 1-hour ozone standard attainment demonstra- tions.

Memorandum of Agreement between TNRCC and the City of Fort Worth, Texas.....	Dallas/Fort Worth Ozone 5/23/01..... Nonattainment Area.....	4/22/02, 67 FR 19516	DFW, Texas 1-hour ozone standard attainment demonstra- tions.
Memorandum of Agreement between TNRCC and the D/FW International Airport Board, Texas.....	Dallas/Fort Worth Ozone 5/23/01..... Nonattainment Area.....	4/22/02, 67 FR 19516	DFW, Texas 1-hour ozone standard attainment demonstra- tions.
Transportation Control Measures SIP Revision....	All Nonattainment and Maintenance Areas.....	5/9/2000..... 12/5/2002, 67 FR 72382	Chapter 1. Introduction, Chapter 2. General, and Chapter 3. Criteria and Procedures.
Section 179B Demonstration of Attainment for Carbon Monoxide for El Paso.....	El Paso CO nonattainment area.....	09/27/95..... 07/02/03, 68 FR 39460	Supplemented 02/11/98.
Carbon Monoxide On-Road Emissions Budget for Conformity.....	El Paso CO nonattainment area.....	09/27/95..... 07/02/03	
Contingency Measure for El Paso Carbon Monoxide Area.....	El Paso CO nonattainment area.....	09/27/95..... 07/02/03, 68 FR 39460	
Section 179B Attainment Demonstration Report....	El Paso ozone nonattainment area.....	10/03/94..... 6/10/04	Approval includes a revision submitted 08/09/96.
Deferral of the post 1996 RFP.....	El Paso ozone nonattainment area.....	6/10/04	
Enforceable commitment to conduct additional modeling for the area as new data become available. This modeling effort will be conducted under the auspices of the 1983 La Paz Agreement	El Paso ozone nonattainment area.....	10/03/94..... 6/10/04	

between the United
States and Mexico.....

VOC and NO_x El Paso ozone 12/11/97..... 6/10/04
Motor Vehicle Emissions nonattainment area.....
Budget for Conformity....

Second 10-year Victoria..... 02/05/03..... 01/03/05,
maintenance plan for 70 FR 22
Victoria County.....

Approval of the Dallas-Fort Worth..... 10/25/1999..... 3/28/05,
Post-1996 Rate-of- 70 FR
Progress Plan and 15592
Motor Vehicle Emission
Budgets.....

Adjustments to the 1990 Dallas-Fort Worth..... 10/25/1999..... 3/28/05,
base year emissions 70 FR
inventory..... 15592

Approval of the 15% Dallas-Fort Worth..... 9/8/1996..... 4/12/2005,
Rate of Progress Plan 70 FR
and the Motor Vehicle 18993
Emissions Budget.....

Memorandum of Dallas-Fort Worth..... 1/14/04..... 04/22/05,
Agreement between 70 FR
Texas Council on 20816
Environmental Quality
and the North Central
Texas Council of
Governments Providing
Emissions Offsets to
Dallas Fort Worth
International Airport.....

Clean Air Action Plan, Bastrop, Caldwell, Hays, 12/06/04..... 8/19/05,
8-hour ozone standard Travis and Williamson 70 FR
attainment Counties, TX..... 48640
demonstration, and
Transportation Emission
Reduction Measures
(TERMs) for the Austin
EAC area.....

Clean Air Action Plan Gregg, Harrison, Rusk, 12/06/04..... 8/19/05,
and 8-hour ozone Smith and Upshur 70 FR
standard attainment Counties, TX..... 48642
demonstration for the
Northeast Texas Early
Action Compact area.....

Clean Air Plan, 8- Bexar, Comal, 12/06/04..... 8/22/05,
hour ozone standard Guadalupe, and Wilson 70 FR
attainment demonstration Counties, TX..... 48877
and Transportation
Emission Reduction

Measures (TERMs) for
the San Antonio EAC
area.....

Voluntary Mobile Emission Program.....	Dallas/Fort Worth, TX.....4/25/00.....	8/26/05, 70 FR 50208	
Dallas—Fort Worth SIP, Appendix G; Transportation Control Measures in the Dallas/ Fort Worth Ozone Nonattainment Area.....	Dallas/Fort Worth Ozone 01/14/04..... Nonattainment Area.....	09/27/05, 70 FR 56374	
Approval of the Speed Limits Local Initiative Measure in the DFW nine county area. Affected counties are Dallas, Tarrant, Collin, Denton, Parker, Johnson, Ellis, Kaufman, Rockwall.....	Dallas-Fort Worth.....9/16/2010.....	1/9/2014, 79 FR 1596	Recategorized as a Transportation Control Measure.
Memorandum of Understanding Between the Texas Department of Transportation and the Texas Natural Resource Conservation Commission.....	Statewide.....08/15/02.....	12/12/2005, 70 FR 73380	
Post 1996 Rate of Progress Plan.....	Beaumont/Port Arthur, TX.....11/16/04.....	2/22/06, 71 FR 8965	
Revisions to the 1990 Base Year Inventory.....	Beaumont/Port Arthur, TX.....11/16/04.....	2/22/06, 71 FR 8965	
Attainment Demonstration for Houston/ Galveston/ Brazoria (HGB) One- hour Ozone Nonattainment Area Adopting Strategy Based on NO _x and Point Source Highly-Reactive VOC Emission Reductions.....	Houston/ Galveston, TX.. 12/01/04.....	09/06/06, 71 FR 52670	
Texas Clean Air Interstate Rule Nitrogen Oxides Annual Trading Program Abbreviated SIP Revision.....	Statewide.....07/12/06.....	07/30/07, 72 FR 41453	Only CAIR Phase I NO _x

Annual
and CSP
Allocations
approved
into SIP.

El Paso County Carbon Monoxide Maintenance Plan.....	El Paso, TX.....	2/13/08.....	8/04/08, 73 FR 45162	
2002 Emissions Inventory.....	Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall and Tarrant Counties, TX.....	4/27/05.....	8/15/2008, 73 FR 47835	
Energy Efficiency Measures.....	Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall and Tarrant Counties, TX.....	4/27/05.....	8/15/2008, 73 FR 47835	
Dallas-Fort Worth 1997 8-hour ozone Attainment Demonstration SIP and its 2009 attainment MVEBs, RACM demonstration, and Failure-to-Attain Contingency Measures Plan.....	Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall and Tarrant Counties, TX.....	May 23, 2007, November 7, 2008.....	January 14, 2009, 74 FR 1903	Conditional Approval.
Transportation Control Measures.....	Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall and Tarrant Counties, TX.....	May 23, 2007.....	January 14, 2009, 74 FR 1903	
VMEP.....	Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall and Tarrant Counties, TX.....	May 23, 2007.....	January 14, 2009, 74 FR 1903	
VOC RACT finding for the 1-hour ozone NAAQS and the 1997 8-hour ozone NAAQS.....	Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall and Tarrant Counties, TX.....	May 23, 2007.....	January 14, 2009, 74 FR 1903	
El Paso County 1997 8-Hour Ozone Maintenance Plan.....	El Paso, TX.....	1/11/06.....	1/15/09, 74 FR 2387	
Approval of the 1997 8-hour Ozone 15% Reasonable Further Progress Plan, and 2008 RFP Motor Vehicle Emission Budgets.....	Dallas/Fort Worth, TX.....	05/23/07.....	10/7/08, 73 FR 58475	

Revised 2002 Base Year Emissions Inventory.....	Dallas/Fort Worth, TX.....	05/23/07.....	10/7/08, 73 FR 58475
Approval of the 1997 8-hour Ozone 15% Reasonable Further Progress Plan, and 2008 RFP Motor Vehicle Emission Budgets.....	Houston-Galveston-Brazoria, TX.....	5/23/07.....	4/22/09, 74 FR 18298
2002 Base Year Emissions Inventory.....	Houston-Galveston-Brazoria, TX.....	5/23/07.....	4/22/09, 74 FR 18298
VOC and NO _x RACT demonstration for the 1-hour ozone NAAQS.....	Beaumont/Port Arthur Area: Hardin, Jefferson, and Orange Counties.....	9/28/2005.....	7/10/2009, 74 FR 33146
Redesignation Request for the 1997 8-hour Ozone NAAQS (Hardin, Jefferson, and Orange Counties).....	Beaumont/Port Arthur, TX.....	12/10/2008.....	10/20/2010, 75 FR 64675.
Determination of Attainment for the 1-hour Ozone NAAQS (Hardin, Jefferson, and Orange Counties).....	Beaumont/Port Arthur, TX.....	12/10/2008.....	10/20/2010, 75 FR 64675.
2002 Base Year Emissions Inventory.....	Beaumont/Port Arthur, TX.....	12/10/2008.....	10/20/2010, 75 FR 64675.
(1997 8-hour Ozone NAAQS)			
Texas Clean-Fuel Vehicle Program Equivalency Demonstration (1-hour Ozone NAAQS).....	Beaumont/Port Arthur, TX.....	12/10/2008.....	10/20/2010, 75 FR 64675.
Substitute Control Measures for the SIP-Approved Failure-to-attain Contingency Measures (1-hour Ozone NAAQS).....	Beaumont/Port Arthur, TX.....	12/10/2008.....	10/20/2010, 75 FR 64675.
Post 1996 Rate of Progress Plan Contingency Measures (1-hour Ozone NAAQS).	Beaumont/Port Arthur, TX.....	11/16/2004.....	10/20/2010, 75 FR 64675.

Maintenance Plan (1997 8-hour Ozone NAAQS, CAA Section 175A).....	Beaumont/Port Arthur, TX.....	12/10/2008.....	10/20/2010, 75 FR 64675.	
2021 Motor Vehicle Emissions Budget (1997 8-hour Ozone NAAQS)...	Beaumont/Port Arthur, TX.....	12/10/2008.....	10/20/2010, 75 FR 64675.	
Infrastructure and Interstate Transport for the 1997 Ozone and the 1997 and 2006 PM _{2.5} NAAQS.....	Statewide.....	12/12/2007, 3/11/2008, 4/4/2008, 5/1/2008, 11/23/2009.....	12/28/2011, 76 FR 81371	Approval for CAA elements 110(a) (2)(A), (B), (E), (F), (G), (H), (K), (L), and (M). Full approval for CAA elements 110(a)(2) (C), (D)(i) (II), (D) (ii) and (J) with approval of the GHG PSD revision (11/10/2014, 79 FR66626). 1997 and 2006 PM _{2.5} element D(i)(I) approved 5/14/2018, 83 FR 22208. 1997 ozone element D(i)(I) approved 12/6/2018, 83 FR 62720.
Letter of explanation and interpretation of the Texas SIP for NSR Reform.....	Statewide.....	5/3/2012.....	10/25/2012, 77 FR 65119	Letter dated 5/3/2012 from TCEQ to EPA explains

				and clarifies TCEQ's interpretation of section 116.12(22); and section 116.186(a), (b)(9), and (c)(2).
On-Road Mobile Source Emissions Inventory and Motor Vehicle Emissions Budget Update.....	Beaumont/Port Arthur, TX.....	12/10/2012.....	2/4/2013, 78 FR 7673	MOVES update to motor vehicle emissions budgets.
Voluntary Mobile Emission Reduction Program (VMEP).....	Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller Counties, TX.....	June 13, 2007.....	4/2/13, 78 FR 19599	
NO _x RACT finding for the 1997 8-hour ozone NAAQS.....	Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller Counties, TX.....	April 6, 2010.....	4/2/13, 78 FR 19599	
VOC RACT finding for the 1997 8-hour ozone NAAQS.....	Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller Counties, TX.....	April 6, 2010.....	4/2/13, 78 FR 19599	For selected categories.
Victoria County 1997 8-Hour Ozone Maintenance Plan.....	Victoria, TX.....	7/28/2010.....	8/8/2013, 78 FR 48318	
Reasonable Further Progress Plan (RFP), RFP Contingency Measures.....	Houston-Galveston-Brazoria, TX.....	4/1/2010, 5/6/2013.....	79 FR 51	
RFP Motor Vehicle Emission Budgets (2008, 2011, 2014, 2017 and 2018).....	Houston-Galveston-Brazoria, TX.....	5/6/2013.....	79 FR 51	
Vehicle miles traveled offset analysis.....	Houston-Galveston-Brazoria, TX.....	5/6/2013,.....	79 FR 51	
Houston-Galveston-Brazoria 1997 8-hour Ozone NAAQS Attainment Demonstration SIP and its MECT and HECT air pollution control program	Houston-Galveston-Brazoria, TX.....	4/6/2010.....	1/2/2014, 79 FR 57	

revisions, VMEP
measures and TCMs,
2018 MVEB, RACM
demonstration, and
Failure to attain
contingency measure
plan.....

Stage II Vapor Recovery Statewide.....	10/ 9/ 2013.....	3/ 17/ 14,
Program SIP.....		79 FR
		14611

VOC RACT negative declaration for Fiberglass Boat Manufacturing Materials, Leather Tanning and Finishing, Surface Coating for Flat Wood Paneling, Letterpress Printing, Automobile and Light- Duty Truck Assembly Coating, Rubber Tire Manufacturing, and Vegetable Oil Manufacturing Operations.....	Brazoria, Chambers, Fort April 6, 2010..... Bend, Galveston, Harris, Liberty, Montgomery and Waller Counties, TX.....
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VOC RACT finding for the 1997 8-hour ozone NAAQS, except for the 2006-2010 EPA- issued CTG series.....	Brazoria, Chambers, Fort April 6, 2010..... Bend, Galveston, Harris, Liberty, Montgomery and Waller Counties, TX.....	4/15/14, 79 FR 21144
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Flexible Permits Interpretative Letter from the TCEQ.....	Statewide..... December 9, 2013.....	7/14/2014, 79 FR 40666	Clarifies how the TCEQ implements the rules regarding (1) Director discretion; (2) BACT; (3) changes made by Standard Permits or Permits by Rule; (4) compliance with permit and permit application; and (5) start-
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up and
shutdown
emissions
to ensure
compliance
with CAA
requirements.

Vehicle Inspection and Maintenance..... Dallas-Fort Worth, El Paso County and Houston-Galveston-Brazoria..... 6/11/2015..... 10/7/2016, 81 FR 69684

VOC RACT finding for Lithographic Printing under the 1997 8-hour ozone NAAQS, including the 2006 EPA-issued CTG..... Houston-Galveston-Brazoria (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller Counties, TX)..... 4/6/2010..... 8/4/2014, 79 FR 45106 HGB as Severe.

VOC RACT finding for Lithographic Printing under the 1997 8-hour ozone NAAQS, including the 2006 EPA-issued CTG..... Dallas-Fort Worth (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties, TX)..... 4/6/2010..... 8/4/2014, 79 FR 45106 DFW as Moderate and Serious.

Conformity with the National Ambient Air Quality Standards..... Statewide..... 10/28/2011..... 7/18/2014, 79 FR 41908 The General Conformity SIP is removed from the Texas SIP; the federal rules at 40 CFR Part 93, subpart B apply now.

Commitment Letter from the TCEQ regarding regulation of PSD pollutants into the future.. Statewide..... December 2, 2013..... 11/10/2014, 79 FR 66626 Clarifies that the TCEQ has the authority under the Texas Clean Air Act to apply the Texas PSD program to all pollutants newly

			subject to regulation, including non-NAAQS pollutants into the future.
Clarification Letter from Statewide..... January 13, 2014.....	11/10/2014,		
the TCEQ regarding	79 FR		
authority to administer	66626		
EPA issued GHG PSD			
permits.....			Clarifies that the TCEQ has the general authority to administer EPA issued GHG PSD permits. Also clarifies that the TCEQ has authority to process and issue any and all subsequent PSD actions relating to EPA issued GHG PSD permits.
Clarification Letter from Statewide..... May 30, 2014.....	11/10/2014,		
the TCEQ regarding	79 FR		
Judicial Review for PSD	66626		
Permits.....			Clarifies the judicial review process for Texas PSD permits.
Failure-to-Attain	Collin, Dallas, Denton, 3/10/2010.....	11/12/2014,	
Contingency Measures	Ellis, Johnson, Kaufman,	79 FR	
Plan.....	Parker, Rockwall and	67071	
	Tarrant Counties, TX.....		
Reasonable Further	Collin, Dallas, Denton, 12/7/2011.....	11/12/2014,	
Progress Plan (RFP),	Ellis, Johnson, Kaufman,	79 FR	
RFP Contingency	Parker, Rockwall and	67071	
Measures, RFP Motor	Tarrant Counties, TX.....		
Vehicle Emission			

Budgets for 2011 and
2012, and Revised 2002
Base Year Emissions
Inventory.....

Enhanced Ambient Monitoring and the Clean-fuel Fleet Programs.....	Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall and Tarrant Counties, TX.....	12/7/2011.....	11/12/2014, 79 FR 67071
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DFW nine-county area ESL TCM to traffic signalization TCMs.....	Dallas-Fort Worth: Dallas, Tarrant, Collin, Denton, Parker, Johnson, Ellis, Kaufman and Rockwall Counties.....	9/16/2010.....	1/9/2014, 79 FR 1596	DFW ESLs recategorized as TCM 1/9/2014, substituted with traffic signalization TCMs 11/3/2014.
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2011 Emissions Inventory for the 2008 Ozone NAAQS.....	Dallas-Fort Worth and Houston-Galveston- Brazoria Ozone Nonattainment Areas.....	7/16/2014.....	2/20/2015, 80 FR 9206
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NO _x RACT finding for the 1997 8-hour ozone NAAQS.....	Collin, Dallas, Denton, Tarrant, Ellis, Johnson, Kaufman, Parker, and Rockwall Counties, TX...	01/17/12.....	3/27/15, 80 FR 16294.	DFW as Moderate and Serious.
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VOC RACT finding of negative declaration for Fiberglass Boat Manufacturing Materials, Ship Building and Ship Repair Coating, Leather Tanning and Finishing, Surface Coating for Flat Wood Paneling, Vegetable Oil Manufacturing, Letterpress Printing, Plywood Veneer Dryers, Rubber Tire Manufacturing, and Batch Processes Operations.....	Collin, Dallas, Denton, Tarrant, Ellis, Johnson, Kaufman, Parker, and Rockwall Counties, TX...	01/17/12.....	3/27/15, 80 FR 16294.	DFW as Moderate and Serious.
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VOC RACT finding for all sectors under the 1997 8-hour ozone NAAQS, including the 2006-2008 EPA-issued CTG series and non-CTG major sources.....	Collin, Dallas, Denton, Tarrant, Ellis, Johnson, Kaufman, Parker, and Rockwall Counties, TX...	01/17/12.....	3/27/15, 80 FR 16294.	DFW as Moderate and Serious.
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VOC RACT finding for Brazoria, Chambers, Fort Bend, Galveston, Harris, 8-hour ozone NAAQS, Liberty, Montgomery and including the 2006-2008 Waller Counties, TX..... EPA-issued CTG series and non-CTG major sources.....	3/27/15, 80 FR 16294.	HGB as Severe.
Revision to El Paso PM ₁₀ Attainment Demonstration SIP (dust control contingency measures)..... El Paso, TX..... 3/7/2012.....	12/14/2015, 80 FR 77254	
Texas Regional Haze SIP Statewide..... 3/19/2009.....	1/5/2016, 81 FR 350	The following sections are not approved as part of the SIP: The reasonable progress four-factor analysis, reasonable progress goals and the calculation of the emission reductions needed to achieve the uniform rates of progress for the Guadalupe Mountains and Big Bend; calculation of natural visibility conditions; calculation of the number of deciviews by which baseline conditions exceed natural

visibility
conditions;
long-term
strategy
consultations
with
Oklahoma;
Texas
securing
its
share of
reductions
necessary
to achieve
the
reasonable
progress
goals
at Big
Bend, the
Guadalupe
Mountains,
and the
Wichita
Mountains;
technical
basis
for its
long-term
strategy
and
emission
limitations
and
schedules
for
compliance
to achieve
the RPGs
for Big
Bend, the
Guadalupe
Mountains
and
Wichita
Mountains.

Infrastructure and	Statewide.....	5/6/2013.....	1/11/2016,
Transport SIP Revision			81 FR
for the 2010 SO ₂			1128
NAAQS.....			

Approval
for CAA
elements
110(a)(2)
(A), (B),
(C), (D)(i)
(II) (PSD
portion),
D(ii), (E),
(F), (G),
(H), (J),

			(K), (L), and (M).
Infrastructure and Interstate Transport for the 2008 Pb NAAQS.....	Statewide..... 9/8/2011, 10/13/2011.....	1/14/2016, 81 FR 1882	
Infrastructure and Transport SIP Revisions for the 2010 Nitrogen Dioxide Standard.....	Statewide..... 12/7/2012.....	9/9/2016, 81 FR 62375	Approval for 110(a) (2)(A), (B), (C), (D)(i) (portions pertaining to nonattainment and interference with maintenance), D(ii), (E), (F), (G), (H), (K), (L) and (M). Approval for 110(a) (2)(J) on 10/7/2016, 81 FR 69687.
Infrastructure and Transport SIP Revisions for the 2008 Ozone Standard.....	Statewide..... 12/13/2012.....	9/9/2016, 81 FR 62375	Approval for 110(a) (2)(A), (B), (C), (D)(i) (portion pertaining to PSD), D(ii), (E), (F), (G), (H), (K), (L) and (M). Approval for 110(a) (2)(J) 10/7/2016, 81 FR 69687.
Revisions to the State Implementation Plan (SIP) Concerning the Qualified Facility Program as Authorized by Senate Bill 1126.....	Statewide..... 9/15/2010.....	9/9/2016, 81 FR 62385	

Austin Early Action Compact area Vehicle Inspection and Maintenance.....	Travis and Williamson Counties.....	6/11/2015.....	10/7/2016, 81 FR 69684	
DFW nine-county area US67/IH-35E HOV Lane TCM to traffic signalization TCMs.....	Dallas-Fort Worth: Dallas, Tarrant, Collin, Denton, Parker, Johnson, Ellis, Kaufman and Rockwall Counties.....	8/16/2016.....	11/9/2016, 81 FR 78724	
DFW Reasonable Further Progress (RFP) Plan, RFP Contingency Measures, RFP Motor Vehicle Emission Budgets for 2017, and Revised 2011 Base Year Emissions Inventory for the 2008 Ozone NAAQS.	Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant and Wise Counties, TX....	7/10/2015.....	12/7/2016, 81 FR 88125	Supplement submitted on April 22, 2016.
Discrete Emissions Reduction Credits (DERC) SIP.....	Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall and Tarrant Counties, TX.....	12/10/2008.....	5/11/2017, 82 FR 21925	
Vehicle Inspection and Maintenance, Nonattainment New Source Review and Emission Statement Requirements for the 2008 Ozone NAAQS.....	Houston-Galveston- Brazoria, TX.....	12/29/2016.....	5/15/2017, 82 FR 22294	
Vehicle Inspection and Maintenance and Nonattainment New Source Review Requirements for the 2008 Ozone NAAQS.....	Dallas-Fort Worth, TX.....	7/6/2016.....	6/14/2017, 82 FR 27125	
Second 10-year Lead maintenance plan for 1978 Lead NAAQS.....	Collin County, TX.....	9/15/2009.....	6/29/2017, 82 FR 29430	
Lead Attainment Demonstration for 2008 Lead NAAQS.....	Collin County, TX.....	10/10/2012.....	6/29/2017, 82 FR 29430	
Maintenance Plan for 2008 Lead NAAQS.....	Collin County, TX.....	11/02/2016.....	6/29/2017, 82 FR 29430	
Second 10-year Carbon Monoxide maintenance plan (limited	El Paso, TX.....	9/21/2016.....	9/8/2017, 82 FR 42457	

maintenance plan) for the
El Paso CO area.....

NO _x RACT finding under the 2008 8-Hour ozone NAAQS.....	Collin, Dallas, Denton, Tarrant, Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties, TX.....	07/10/15.....	09/22/17, 82 FR 44320	DFW as Moderate and Serious.
NO _x RACT finding of negative declarations for nitric acid and adipic acid operations under the 2008 8-Hour ozone NAAQS.....	Collin, Dallas, Denton, Tarrant, Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties, TX.....	07/10/15.....	09/22/17, 82 FR 44320	DFW as Moderate and Serious.
Texas Regional Haze BART Requirement for EGUs for PM.....	Statewide.....	3/31/2009.....	10/17/2017, 82 FR 48363	
DFW VOC RACT Demonstration.....	DFW 2008 Ozone NAAQS non-attainment area.....	7/10/2015.....	12/21/2017, 82 FR 60547	
Infrastructure and Interstate Transport for the 2012 PM _{2.5} NAAQS.	Statewide.....	12/01/2015.....	6/5/2018, 83 FR 25921	Approval for CAA elements 110(a) (2)(A), (B), (C), (D)(i)(I), (D)(i)(II) (portion pertaining to PSD), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). 6/5/2018, 83 FR 25921.
Emission Statement Requirements for the 2008 Ozone NAAQS.....	Dallas-Fort Worth, TX.....	8/21/2018.....	12/4/2018, 83 FR 62470.	
HGB Area Reasonable Further Progress (RFP) Plan, RFP Contingency Measures, RFP Motor Vehicle Emission Budgets for 2017, and Revised 2011 Base Year Emissions Inventory for the 2008 Ozone NAAQS.	Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller Counties, TX.....	12/29/2016.....	2/13/2019, 84 FR 3710	

NO _x RACT finding under the 2008 8-Hour ozone NAAQS.....	Collin, Dallas, Denton, Tarrant, Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties, TX.....	8/21/2018.....	02/22/19, 84 FR 5602	DFW as Moderate and Serious, also converts conditional approval 09/22/17, 82 FR 44322 to full approval.
HGB VOC and NO _x RACT Finding, except for the 2016 EPA-issued CTG for the Oil and Natural Gas Industry, EPA-453/B-16-001.....	HGB 2008 Ozone NAAQS non-attainment area.....	12/29/2016.....	4/30/2019, 84 FR 18145	Vegetable Oil Mfg category, previously sited under negative declarations for HGB area, is added to RACT determinations.
Infrastructure and Interstate Transport for the 2015 Ozone NAAQS.	Statewide.....	8/17/2018.....	9/23/2019, 84 FR 49667	Approval for CAA elements 110(a) (2)(A), (B), (C), (D)(i)(II) (portion pertaining to PSD), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Houston-Galveston-Brazoria Redesignation Request and Maintenance Plan for the 1-hour and 1997 8-hour Ozone Standards.....	Houston-Galveston-Brazoria, TX.....	12/12/2018.....	2/14/2020, 85 FR 8426	
Dallas-Fort Worth Redesignation Request and Maintenance Plan for the 1-hour and 1997 8-hour Ozone Standards.....	Dallas Fort-Worth, TX.....	3/29/2019.....	4/6/2020, 85 FR 19108	

DFW nine-county area IH-35E/IH-635 HOV Lane TCMs to traffic signalization TCMs.....	L2Dallas-Fort Worth: Dallas, Tarrant, Collin, Denton, Parker, Johnson, Ellis, Kaufman and Rockwall Counties.....	4/8/2020.....	6/17/2020, 85 FR 36506
Beaumont-Port Arthur Second 10-Year Maintenance Plan for the 1997 8-hour Ozone Standard.....	Hardin, Jefferson and Orange Counties.....	2/5/2019.....	9/2/2020, 85 FR 54506
Reasonable Further Progress Plan (RFP), RFP Motor Vehicle Emission Budgets for 2020, and Revised 2011 Base Year Emissions Inventory.....	Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, TX.	3/4/2020.....	5/10/2021 86 FR 24718
^a 2017 Emissions Inventory for the 2015 Ozone NAAQS.....	Dallas-Fort Worth, Houston Galveston- Brazoria, and Bexar County Ozone Nonattainment Areas.....	June 24, 2020.....	June 29, 2021 86 FR 34140

Credits

[[64 FR 36589](#), July 7, 1999; [64 FR 36794](#), July 8, 1999; [64 FR 55424](#), Oct. 13, 1999; [64 FR 57988](#), Oct. 28, 1999; [64 FR 61525](#), Nov. 12, 1999; [64 FR 70593](#), Dec. 17, 1999; [64 FR 71669](#), Dec. 22, 1999; [65 FR 11473](#), March 3, 2000; [65 FR 18007](#), April 6, 2000; [65 FR 43993](#), July 17, 2000; [65 FR 45917](#), July 26, 2000; [65 FR 53177](#), Sept. 1, 2000; [65 FR 53598](#), Sept. 5, 2000; [65 FR 64153](#), Oct. 26, 2000; [65 FR 70794](#), Nov. 28, 2000; [65 FR 79748](#), Dec. 20, 2000; [66 FR 9205](#), Feb. 7, 2001; [66 FR 15199](#), March 16, 2001; [66 FR 20750](#), April 25, 2001; [66 FR 20931](#), April 26, 2001; [66 FR 26939](#), May 15, 2001; [66 FR 35906](#), July 10, 2001; [66 FR 36917](#), July 16, 2001; [66 FR 46220](#), Sept. 4, 2001; [66 FR 48804](#), Sept. 24, 2001; [66 FR 49293](#), Sept. 27, 2001; [66 FR 54691](#), Oct. 30, 2001; [66 FR 57195](#), [57218](#), [57222](#), [57229](#), [57244](#), [57251](#), [57260](#), [57264](#), Nov. 14, 2001; [66 FR 58667](#), Nov. 23, 2001; [67 FR 19516](#), April 22, 2002; [67 FR 58709](#), Sept. 18, 2002; [67 FR 68944](#), Nov. 14, 2002; [67 FR 72382](#), Dec. 5, 2002; [68 FR 39460](#), July 2, 2003; [68 FR 44635](#), July 30, 2003; [68 FR 53891](#), Sept. 15, 2003; [68 FR 56179](#), Sept. 30, 2003; [68 FR 64548](#), Nov. 14, 2003; [68 FR 66000](#), Nov. 24, 2003; [69 FR 15686](#), March 26, 2004; [69 FR 16493](#), March 30, 2004; [69 FR 32453](#), June 10, 2004; [69 FR 43754](#), July 22, 2004; [69 FR 63068](#), Oct. 29, 2004; [69 FR 75478](#), Dec. 17, 2004; [70 FR 25](#), Jan. 3, 2005; [70 FR 7043](#), Feb. 10, 2005; [70 FR 7410](#), Feb. 14, 2005; [70 FR 8878](#), Feb. 23, 2005; [70 FR 15593](#), March 28, 2005; [70 FR 15773](#), March 29, 2005; [70 FR 16133](#), March 30, 2005; [70 FR 17322](#), April 6, 2005; [70 FR 18310](#), April 11, 2005; [70 FR 18995](#), [19000](#), April 12, 2005; [70 FR 20821](#), April 22, 2005; [70 FR 38779](#), July 6, 2005; [70 FR 40195](#), July 13, 2005; [70 FR 45544](#), Aug. 8, 2005; [70 FR 48642](#), [48644](#), [48649](#), Aug. 19, 2005; [70 FR 48879](#), Aug. 22, 2005; [70 FR 50207](#), [50212](#), Aug. 26, 2005; [70 FR 56376](#), Sept. 27,

2005; [70 FR 56569](#), Sept. 28, 2005; [70 FR 58327](#), Oct. 6, 2005; [70 FR 58979](#), Oct. 11, 2005; [70 FR 70737](#), Nov. 23, 2005; [70 FR 72722](#), Dec. 7, 2005; [70 FR 73383](#), Dec. 12, 2005; [71 FR 3012](#), Jan. 19, 2006; [71 FR 8965](#), Feb. 22, 2006; [71 FR 12289](#), March 10, 2006; [71 FR 13551](#), March 16, 2006; [71 FR 52657](#), [52663](#), [52668](#), [52693](#), [52694](#), [52701](#), [52708](#), Sept. 6, 2006; [71 FR 56876](#), Sept. 28, 2006; [71 FR 67311](#), Nov. 21, 2006; [71 FR 68482](#), Nov. 27, 2006; [72 FR 2782](#), Jan. 23, 2007; [72 FR 14044](#), March 26, 2007; [72 FR 31460](#), June 7, 2007; [72 FR 41458](#), July 30, 2007; [72 FR 49202](#), Aug. 28, 2007; [73 FR 10386](#), Feb. 27, 2008; [73 FR 40975](#), July 17, 2008; [73 FR 45169](#), Aug. 4, 2008; [73 FR 47839](#), Aug. 15, 2008; [73 FR 53717](#), Sept. 17, 2008; [73 FR 58480](#), Oct. 7, 2008; [73 FR 63381](#), Oct. 24, 2008; [73 FR 73572](#), Dec. 3, 2008; [74 FR 1926](#), Jan. 14, 2009; [74 FR 1934](#), Jan. 14, 2009; [74 FR 2391](#), Jan. 15, 2009; [74 FR 11856](#), March 20, 2009; [74 FR 18302](#), April 22, 2009; [74 FR 19145](#), April 28, 2009; [74 FR 33151](#), July 10, 2009; [74 FR 34508](#), July 16, 2009; [74 FR 38106](#), July 31, 2009; [75 FR 10420](#), March 8, 2010; [75 FR 11468](#), March 11, 2010; [75 FR 15350](#), March 29, 2010; [75 FR 16675](#), April 2, 2010; [75 FR 18066](#), April 9, 2010; [75 FR 19493](#), April 14, 2010; [75 FR 27646](#), May 18, 2010; [75 FR 27649](#), May 18, 2010; [75 FR 43065](#), July 23, 2010; [75 FR 56452](#), Sept. 15, 2010; [75 FR 55987](#), Sept. 15, 2010; [75 FR 64678](#), Oct. 20, 2010; [75 FR 69001](#), Nov. 10, 2010; [75 FR 69888](#), Nov. 16, 2010; [75 FR 81484](#), Dec. 28, 2010; [76 FR 16](#), Jan. 3, 2011; [76 FR 1531](#), Jan. 11, 2011; [76 FR 10253](#), Feb. 24, 2011; [76 FR 44275](#), July 25, 2011; [76 FR 56982](#), Sept. 15, 2011; [76 FR 67603](#), Nov. 2, 2011; [76 FR 70360](#), Nov. 14, 2011; [76 FR 71266](#), Nov. 17, 2011; [76 FR 81392](#), Dec. 28, 2011; [77 FR 1873](#), Jan. 12, 2012; [77 FR 2643](#), Jan. 19, 2012; [77 FR 65123](#), Oct. 25, 2012; [78 FR 7673](#), Feb. 4, 2013; [78 FR 19602](#), April 2, 2013; [78 FR 26254](#), May 6, 2013; [78 FR 26257](#), May 6, 2013; [78 FR 48322](#), Aug. 8, 2013; [78 FR 55224](#), Sept. 10, 2013; [78 FR 66648](#), Nov. 6, 2013; [78 FR 69776](#), Nov. 21, 2013; [79 FR 53](#), Jan. 2, 2014; [79 FR 59](#), Jan. 2, 2014; [79 FR 551](#), Jan. 6, 2014; [79 FR 571](#), Jan. 6, 2014; [79 FR 578](#), Jan. 6, 2014; [79 FR 1599](#), Jan. 9, 2014; [79 FR 5290](#), Jan. 31, 2014; [79 FR 8863](#), Feb. 14, 2014; [79 FR 14612](#), March 17, 2014; [79 FR 18189](#), April 1, 2014; [79 FR 21146](#), April 15, 2014; [79 FR 31048](#), May 30, 2014; [79 FR 40671](#), July 14, 2014; [79 FR 41908](#), July 18, 2014; [79 FR 43265](#), July 25, 2014; [79 FR 44300](#), July 31, 2014; [79 FR 45106](#), Aug. 4, 2014; [79 FR 53302](#), Sept. 9, 2014; [79 FR 66638](#), Nov. 10, 2014; [79 FR 67071](#), Nov. 12, 2014; [79 FR 73844](#), Dec. 12, 2014; [80 FR 9206](#), Feb. 20, 2015; [80 FR 10355](#), Feb. 26, 2015; [80 FR 11323](#), March 3, 2015; [80 FR 16294](#), March 27, 2015; [80 FR 16576](#), March 30, 2015; [80 FR 24215](#), April 30, 2015; [80 FR 27254](#), May 13, 2015; [80 FR 37161](#), June 30, 2015; [80 FR 42729](#), July 20, 2015; [80 FR 42732](#), July 20, 2015; [80 FR 53469](#), Sept. 4, 2015; [80 FR 57304](#), Sept. 23, 2015; [80 FR 60296](#), Oct. 6, 2015; [80 FR 77254](#), Dec. 14, 2015; [81 FR 350](#), Jan. 5, 2016; [81 FR 1128](#), Jan. 11, 2016; [81 FR 1882](#), Jan. 14, 2016; [81 FR 21750](#), April 13, 2016; [81 FR 62378](#), Sept. 9, 2016; [81 FR 62385](#), Sept. 9, 2016; [81 FR 69684](#), Oct. 7, 2016; [81 FR 69687](#), Oct. 7, 2016; [81 FR 78724](#), Nov. 9, 2016; [81 FR 88125](#), Dec. 7, 2016; [82 FR 3172](#), Jan. 11, 2017; [82 FR 8500](#), Jan. 26, 2017; [82 FR 14445](#), March 21, 2017; [82 FR 21925](#), May 11, 2017; [82 FR 22294](#), May 15, 2017; [82 FR 23148](#), May 22, 2017; [82 FR 26598](#), June 8, 2017; [82 FR 26756](#), June 9, 2017; [82 FR 27125](#), June 14, 2017; [82 FR 29430](#), June 29, 2017; [82 FR 42457](#), Sept. 8, 2017; [82 FR 44322](#), Sept. 22, 2017; [82 FR 48363](#), Oct. 17, 2017; [82 FR 57679](#), Dec. 7, 2017; [82 FR 60547](#), Dec. 21, 2017; [83 FR 8361](#), Feb. 27, 2018; [83 FR 18430](#),

April 27, 2018; [83 FR 21180](#), May 9, 2018; [83 FR 22208](#), May 14, 2018; [83 FR 25921](#), June 5, 2018; [83 FR 50021](#), Oct. 4, 2018; [83 FR 62470](#), Dec. 4, 2018; [83 FR 62720](#), Dec. 6, 2018; [84 FR 3710](#), Feb. 13, 2019; [84 FR 5602](#), Feb. 22, 2019; [84 FR 18150](#), April 30, 2019; [84 FR 26352](#), June 6, 2019; [84 FR 33173](#), July 12, 2019; [84 FR 39977](#), Aug. 13, 2019; [84 FR 44229](#), Aug. 23, 2019; [84 FR 49667](#), Sept. 23, 2019; [84 FR 50307](#), Sept. 25, 2019; [85 FR 8187](#), Feb. 13, 2020; [85 FR 8426](#), Feb. 14, 2020; [85 FR 19108](#), April 6, 2020; [85 FR 36506](#), June 17, 2020; [85 FR 54506](#), Sept. 2, 2020; [85 FR 64968](#), Oct. 14, 2020; [86 FR 24718](#), May 10, 2021; [86 FR 28496](#), May 27, 2021; [86 FR 34140](#), June 29, 2021]

SOURCE: [57 FR 32336](#), July 21, 1992; [57 FR 37104](#), Aug. 18, 1992; [58 FR 6606](#), Feb. 1, 1993; [58 FR 38883](#), July 20, 1993; [59 FR 39859](#), Aug. 4, 1994; [62 FR 8328](#), Feb. 24, 1997, unless otherwise noted.

AUTHORITY: [42 U.S.C. 7401 et seq.](#)

[Notes of Decisions \(14\)](#)

Current through July 15, 2021; 86 FR 37250.

Footnotes

1 As revised 9/26/01.

a Text of entry added by 86 FR 34140, effective July 29, 2021.

Appendix 15

Travis (Tex.) Civ. Dist. Ct. Loc. R. 10.3, 10.5

LOCAL RULES
OF
CIVIL PROCEDURE
AND
RULES OF DECORUM

The District Courts of Travis County, Texas

Effective June 2, 2014

10.3 Hearings

The Judge to whom a case is assigned will hear all matters relating to the case. A final hearing on the merits of an administrative appeal as defined above should be scheduled by arrangement with the office of the assigned judge. Before setting the final hearing, all counsel must confer regarding the date of any hearing, the amount of time to be requested for the hearing and, if there are multiple parties, the order of presentation. The time to be allotted to argument is in the discretion of the Court.

Hearings on dilatory motions, pleas to the jurisdiction, summary judgments or declaratory judgments, including agency rule challenges, must be set on the Central Docket before the assigned judge, unless otherwise instructed by the assigned judge. (See Chapter 2, In-Order settings.) Failure to brief an issue for the merits hearing waives the issue, but failure to argue an issue at the merits hearing does not waive the issue. Matters set on the Central Docket, either Preferentially or In-Order, must be scheduled through the office of the assigned Judge and the Court Administrator. The parties must announce at docket call in the usual manner for all proceedings before the assigned Judge set on the Central Docket.

10.4 Applications for Temporary Restraining Order

An application for a temporary restraining order in a case not yet assigned may be heard by the Duty Judge, but the applicant must immediately thereafter notify in writing the Local Administrative Judge that the case is subject to this chapter requiring assignment.. If a temporary restraining order is sought, the applicant must provide advance notice in writing by facsimile and notice by telephone to the party or parties to the agency proceeding, to counsel if the party was represented at agency proceeding and, if notice was not provided, a statement of the reason for any failure to provide notice.

The applicant must also comply with any specific notice requirements imposed by law or rule. In all cases, prior notice must be given to counsel for a

governmental entity of any application to restrain governmental action. Notice of any hearing to restrain agency action must be provided to the Office of the Attorney General of Texas.

10.5 Briefs

Administrative appeals must be briefed by the parties in advance of the hearing on the merits. The parties must attempt to establish a briefing schedule by agreement and must notify the Judge to whom the case is assigned of the agreed dates.

Briefs must conform to the "Requisites of Briefs," including the limits on length, in the Texas Rules of Appellate Procedure as they apply to an administrative appeal in the courts of appeal, *except*:

- 1) Do not include a statement regarding oral argument;
- 2) Do include a glossary of technical terms, which is not counted in determining the limit on the length of the brief

Each party must deliver a copy of each brief to the assigned judge.

10.6 Required & Optional Appendices for Convenience of Judge

In addition to providing the assigned judge with a copy of its brief, the Plaintiff *must* deliver to the judge a **separately bound** and clearly labeled appendix with:

- (a) a copy of the agency's final order, including any report or recommendation incorporated or adopted by reference in the order; and
- (b) a copy of the Plaintiff's motion for rehearing filed with the agency, or that portion of the motion necessary to show that the points of error briefed were included in the motion.

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