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New Interstate Transport Rule Proposed to Replace 2005 CAIR

EPA intends to act quickly in implementing its proposed interstate transport rule to reduce emissions from power plants that effect downwind states. EPA's July 6 proposal would begin cuts in SO₂ and nitrogen oxides (NO_x) in 2012. By 2014, in conjunction with other clean air actions, SO₂ emissions would be cut 71 percent from 2005 levels and NO_x emissions would be reduced 52 percent. The proposed rule is in response to a July 2008 ruling by the D.C. Circuit of the U.S. Court of Appeals, which ordered EPA to revise the existing Clean Air Interstate Rule (CAIR) deeming it “fundamentally flawed.” EPA's proposal would impose air emission “budgets” on 31 states and Washington, D.C. *Page 6*

EPA Rejects Flexible Permits and Third Piece of Texas Air Program

In another blow to the Texas air permit program, EPA June 30 formally disapproved the state's Flexible Permit (FP) Program, which Texas established more than 15 years ago. In late March, EPA disapproved Texas' Qualified Facilities Program. The Texas Commission on Environmental Quality filed a petition June 14 asking the U.S. Court of Appeals for the 5th Circuit to review that finding. Three business and industry associations also filed petitions. EPA has disapproved the state's public participation requirements, the qualified facilities program and the FP program. A decision on the state's new source review rules is due Aug. 31. In a June 30 statement, EPA said it had determined that the FP program does not meet several federal Clean Air Act requirements. *Page 7*

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OIG Finds EPA Woefully Behind in Implementing Strategy to Reduce Urban Air Toxics Emissions

The U.S. Environmental Protection Agency (EPA) has not implemented key requirements of the Clean Air Act (CAA) related to air toxics in urban areas or taken needed steps to implement the agency's Integrated Urban Air Toxics Strategy, the Office of the Inspector General (OIG) concluded in a report released June 24. EPA is more than 10 years late on several items.

The CAA Amendments of 1990 required EPA to develop a strategy to reduce public health risks from air toxics in urban areas, particularly from small stationary sources. EPA issued this strategy in 1999.

OIG found that EPA has not fully implemented CAA Section 112(k). Specifically, the agency has failed to develop emission standards for all area source categories and failed to submit a second report on the air toxics strategy to Congress that was due in 2002. OIG said the strategy was never fully implemented and that EPA has not established a way to measure and track the strategy's progress.

OIG said EPA determined in 2001 that a risk-based program is needed for the strategy, but that the agency has not determined whether it has the statutory authority to require state and local agencies to implement a risk-based program. Many states have laws preventing them from adopting rules or programs that are more stringent than those of the federal government — without a federal program in place, many states won't have the authority to adopt their own.

OIG made two overall recommendations. First, EPA should submit the report to Congress with a list of urban areas that continue to experience high or unacceptable levels of risk and EPA's plan to reduce risks in those areas. The report should also include factors that have hindered implementation of the strategy and EPA's plan to address those hindrances. Second, EPA should determine how it will measure progress to the strategy's goals.

EPA generally agreed with OIG's findings and conclusions, but only partially agreed with the report's recommendations.

"Despite steady progress, we agree there is more to be done. Unfortunately, limited resources over the past eight years have impaired our ability to fully implement these programs," EPA Assistant Administrator for the Office of Air and Radiation (OAR) Gina McCarthy wrote in May in comments on OIG's draft report.

EPA intends to submit the required report to Congress in summer 2011. OIG had asked EPA to submit the report by the end of fiscal year 2010.

In its review, OIG examined how EPA tracks progress toward the strategy's three goals, which are:

- a 75 percent reduction in cancer attributable to exposure to hazardous air pollutants (HAPs) emitted by large and small stationary sources nationwide;
- a substantial reduction in public health risks (such as birth defects) posed by HAP emissions from small industrial/commercial area sources; and
- addressing disproportionate impacts by air toxics in urban areas, such as geographic "hot spots," highly exposed population subgroups, and predominantly minority and low-income communities.

Under the CAA, EPA regulates 187 air toxics, which it defines as pollutants known or suspected to cause cancer or other serious health effects or adverse environmental effects. Because of the high concentration of people and pollutant sources, air toxics in urban areas are particularly dangerous. EPA's latest assessment estimated that 2 million Americans live in areas where the lifetime risk of cancer or other serious ailment is greater than 1 in 10,000, based on 2002 emissions data.

The CAA required EPA to develop the urban air toxics strategy, but only required it to address risk from stationary sources. EPA issued a strategy to reduce cumulative risks from all air toxics sources, including

See *OIG Report*, p. 3

Clean Air Permits: Manager's Guide to the 1990 Clean Air Act

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mobile sources. The strategy has four approaches to assess progress in meeting the three goals. The approaches are: emissions or ambient concentration weighting; comparisons between ambient concentrations and risk-based concentrations; comparisons between estimated exposures and risk-based concentrations that may yield quantitative estimates of risk; and quantitative estimates of carcinogenic risk for individuals and populations.

OIG said if EPA does not fully implement its strategy, states, local agencies and tribes will not have the necessary programs and resources to meet the public health goals for urban air toxics set by Congress.

Specifically, EPA has not met certain CAA requirements by failing to: promulgate air toxics emissions standards for all area source categories by Nov. 15, 2000; award at least 10 percent of funds available under Section 112 to state or local agencies to address air toxics emissions from area sources; and submit a second report to Congress on actions taken to reduce risks posed by urban air toxics from area sources.

Air toxics emissions standards are still needed for four area source categories, as of January 2010, OIG found. Most standards were finalized long after the November 2000 deadline.

“EPA is 10 years behind schedule in promulgating regulations to reduce emissions from area sources in urban areas,” OIG said. “In addition to issuing area source standards well after their CAA-required implementation dates, many of these standards do not require any additional emission reductions.”

“At least 18 of the 43 area source standards EPA has issued are not expected to result in any additional reductions in air toxics emissions,” OIG said. “According to the *Federal Register* notices for these rules, the most common reason for the lack of expected emission reductions was that the area source category was already well-controlled or had already reduced emissions since the enactment of 1990 CAA Amendments.”

Funding at the federal and state levels also has impaired the development and enforcement of air toxics standards. OIG cited a December 2008 report from the National Association of Clean Air Agencies that explained that area source programs cannot be paid for with Title V fees; another source of revenue or appropriations must be used.

Although the CAA requires EPA to award at least 10 percent of its Section 112 funds to state and local agencies to address air toxics, EPA has not

received any appropriations designated for Section 112. Congress awards funds to EPA under Sections 103 and 105. EPA allocates a portion of these funds to states for Section 112. In recent years, about \$40 million per year has been allocated by EPA to states and local agencies for toxics programs, OIG said. However, “these grants do not meet the 10 percent requirement for innovative area source reduction strategies,” OIG said.

OIG also pointed to three specific actions from EPA’s strategy that are not implemented: a risk-based air toxics program for state, local and tribal agencies; measuring and tracking progress of the strategy’s goals; and defining the term “substantial reduction” to track progress in reducing noncancer health impacts.

A risk-based program was deemed necessary in a September 2001 work plan by EPA, OIG said. EPA set a goal of 2003 for completing the program. EPA staff worked on developing such a program, but “OAR concluded that a program was not established in large part because Section 112 of the CAA did not give EPA explicit authority to require such a program.”

“However, OAR’s conclusion has not been reviewed or endorsed by EPA’s counsel,” OIG said.

Tracking progress in meeting the strategy’s goals is also not being performed, OIG said. The agency has implemented more than 100 air toxics rules and emissions have decreased accordingly, the report said. “However, ... tracking cumulative risk from exposure to air toxics would require EPA to move its performance tracking focus from emissions reductions to reductions in cancer and noncancer health risks,” OIG said.

EPA has made some progress in this goal by using performance measures that weight emissions reductions based on the toxicity of the pollutant rather than the gross emissions levels. OIG said this approach does not go far enough because it lacks dispersion and exposure modeling steps. For a copy of the report dated June 23, see <http://www.epa.gov/oig>. 📌

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EPA Adopts One-hour Sulfur Dioxide Standard and Revokes Current 24-hour, Annual Emissions Limits

A new one-hour health standard for sulfur dioxide (SO₂) will replace existing 24-hour and annual standards, under a final rule announced June 3 by the U.S. Environmental Protection Agency (EPA). The transition from the two current limits to a single public health standard will happen over the next few years. EPA is continuing its review of a secondary SO₂ standard concerning public welfare, which includes the environment.

The new limit, set at 75 parts per billion (ppb), is the first significant change in SO₂ requirements in 40 years. The one-hour limit will protect against short-term exposures ranging from five minutes to 24 hours. EPA said it was appropriate to replace the 24-hour average and annual limit with a one-hour standard “because the science indicates that short-term exposures are of greatest concern and the existing standards would not provide additional health benefits.”

“[T]here is little health evidence to suggest an association between long-term exposure to SO₂ and health effects,” EPA said in a fact sheet explaining the elimination of the current standards.

SO₂ can aggravate asthma and cause other respiration problems. It also is a significant component of acid rain. Emissions have been significantly reduced since it was first regulated in 1971. Changes enacted in the Clean Air Act of 1990 also have dramatically curtailed the amount of SO₂ released in the U.S. Currently more than 70 percent of the annual SO₂ emissions come from fossil fuel-fired power plants, according to EPA. Other industrial processes, such as petroleum refineries, also emit sizeable levels of the pollutant.

EPA’s December 2009 proposal sought to adopt a one-hour average limit in the range of 50 to 100 ppb. The agency also asked for comment on one-hour levels as high as 150 ppb.

“We’re taking on an old problem in a new way, ... moving to a one-hour standard and monitoring in the areas with the highest SO₂ levels is the most efficient and effective way to protect against sulfur dioxide pollution in the air we breathe,” said EPA Administrator Lisa P. Jackson. “This is one of many pollutants we’ve been able to significantly reduce through the Clean Air Act. This new standard ... will ensure continued success in meeting these challenges.”

EPA also made changes in how the one-hour standard is calculated. Under the new rule, which will take effect Aug. 23, SO₂ emissions must be below 75 ppb based

on a three-year average of the annual 99th percentile of one-hour daily maximum concentrations.

The new rule revokes the existing annual average standard of 30 ppb and a daily 140 ppb average. A secondary standard to protect public welfare and the environment is still in place at 500 ppb for a three-hour average. EPA is reviewing this standard and intends to complete its review in 2012.

Monitoring

EPA will require fewer monitors than it had proposed in December because the agency plans to use “a hybrid approach combining air quality modeling and monitoring to determine compliance” with the new standard. For this standard, “it is more technically appropriate, efficient and effective to use modeling as the principal means of assessing compliance for medium to larger sources and to rely more on monitoring for groups of smaller sources and sources not as conducive to modeling,” EPA said.

EPA said the use of modeling is consistent with the agency’s historical approach and longstanding guidance for SO₂.

The new rule will require about 163 monitoring sites nationwide. Approximately 470 monitors are currently operating. EPA estimated that 41 new monitoring sites will need to be established. With EPA approval, states may relocate some existing monitors. New monitors must be in place and operating by Jan. 1, 2013. More monitors will be needed in heavily populated areas due to an EPA formula that gives weight to population size.

State and local agencies will face changes to data reporting and will need to report to EPA two data values for every hour of monitoring that is conducted — a one-hour average SO₂ concentration and a maximum five-minute block average SO₂ concentration out of each hour. EPA regional administrators will have the power to require additional monitoring.

EPA said it expects to identify or designate areas that don’t meet the 75 ppb standard by June 2012. Initially, areas will be designated as nonattainment based on 2008-2010 monitoring data. Areas that have both monitoring data and refined dispersion modeling results that show no violations would be designated as attainment areas. All other areas would be deemed “unclassifiable.”

States with nonattainment areas for SO₂ would need to alter their state implementation plans (SIPs) by early

See *Sulfur Dioxide Rule*, p. 5

Sulfur Dioxide Rule (continued from p. 4)

2014. State actions to meet SO₂ limits would need to be taken as soon as possible after EPA approval of the SIP, but no later than August 2017. States would need to submit maintenance or infrastructure SIPs by June 2013 for all areas that meet the new SO₂ standard.

Details of the transition to the new standard have not been finalized. In a fact sheet, EPA said that in most areas the current one-hour and annual SO₂ standards will continue to be used for one year after area designations for the new standard take effect. For current nonattainment areas or those with unresolved issues, the current standards will stay in place until the state submits and EPA approves a SIP meeting the requirements of the new one-hour standard.

SO₂ Lawsuit

EPA last reviewed the SO₂ standard in 1996 and chose not to revise it. The American Lung Association (ALA) sued EPA over its decision not to revise the standards or set a five-minute standard that had been considered and rejected. The new rule is part of a review that EPA agreed to conduct as part of a judicial consent decree that resulted from ALA's lawsuit and legal action by other groups.

The ALA applauded the new rule saying that, for the first time, the SO₂ standard would help curtail bursts of noxious gas that spew into communities next to coal-fired power plants, industrial boilers, petroleum refineries and metal processing plants as well as from diesel exhaust.

The schedule of EPA's review of this public health standard for SO₂ and the agency's ongoing review of a secondary SO₂ standard are required by a judicial order resolving a lawsuit filed in 2005 by the Center for Biological Diversity.

"EPA ... took a major step forward in protecting the environment and public health by adopting short-term limits on sulfur dioxide pollution," Kevin Bundy, an attorney for the center, said in a statement. "Unfortunately, by rejecting a lower threshold for pollution concentrations and by revoking existing protective standards, the rule does not provide a full margin of safety for asthma sufferers and others vulnerable to air pollution.

"Using the Clean Air Act's proven and successful programs, EPA can and should take further steps to protect the air we all breathe from this dangerous pollutant," Bundy said.

"With [the new rule], EPA has wisely chosen to use an array of tools to identify the communities with dangerous levels of sulfur dioxide," said ALA President and CEO Charles D. Connor. "Communities will have to not

only place new monitors, but do computer modeling to identify where problems may exist. Modeling here is an appropriate and welcome supplement to monitoring and can help ensure that we can better protect the people living nearest to these big polluters."

The ALA also approved of EPA's approach to areas that are classified or unclassified for attainment or nonattainment.


"In the past, communities without adequate monitoring information could avoid having to clean up because they fit in the 'unclassified' category. For the first time, EPA is requiring that these communities use the modeling and monitoring data to show that they are either meeting or failing to meet the standard," Connor said. "This change is a subtle, but fundamental strengthening of the protections for people living in the communities, because it means the problems they face must be recognized and addressed."

EPA plans to use refined dispersion modeling to determine if areas with SO₂ sources that have the potential to cause or contribute to a violation of the new standard can comply with the new limit. "Dispersion modeling simulates how air pollutants spread throughout the atmosphere and is used to estimate the concentration of air pollutants from sources such as industrial plants or highways," EPA explained.

EPA will issue guidance concerning conducting refined air quality dispersion modeling and the implementation of the new SO₂ standard. The guidance will explain how to translate modeling results into a form suitable for comparison to the 75 ppb standard, EPA said. The agency will accept public comments on the guidance before finalizing it.

The new rule also altered EPA's Air Quality Index to reflect the new standard. This change will allow states to alert the public when SO₂ levels are above the new 75 ppb limit.

EPA estimated that the health benefits from the new standard will be \$13 billion to \$33 billion per year from reduced hospital admissions and emergency room visits, fewer lost work days due to illness, and fewer cases of aggravated asthma and chronic bronchitis. The new one-hour standard also will prevent an estimated 2,300 to 5,900 premature deaths and 54,000 asthma attacks annually. The costs to fully implement the standard will be an estimated \$1.5 billion in 2020.

The final rule will take effect Aug. 23. For a copy of the 85-page rule (75 Fed. Reg. 35520, June 22, 2010) and other information, see <http://www.epa.gov/air/sulfurdioxide>. 

EPA Proposes New Interstate Transport Rule to Cut Power Plant Emissions in Midwest, Eastern States

The U.S. Environmental Protection Agency (EPA) intends to act quickly in implementing its proposed interstate transport rule to reduce emissions from power plants that affect downwind states. EPA's July 6 proposal would begin cuts in sulfur dioxide (SO₂) and nitrogen oxides (NO_x) in 2012. By 2014, in conjunction with other clean air actions, SO₂ emissions would be cut 71 percent from 2005 levels and NO_x emissions would be reduced 52 percent.

The proposed rule is in response to a July 2008 ruling by the D.C. Circuit of the U.S. Court of Appeals, which ordered EPA to revise the existing Clean Air Interstate Rule (CAIR). That rule, issued in 2005, remains in place and will continue to be used until a new rule is finalized.

EPA's proposal would impose air emission "budgets" on 31 states and Washington, D.C. The District and 21 states would have annual limits for NO_x, SO₂ and ozone. The other 10 states would have interstate requirements for either particulate matter (by controlling for both NO_x and SO₂) or seasonal ozone. Pollutants drifting from neighboring states or much longer distances make it difficult for states to reach air quality goals.

"This rule is designed to cut pollution that spreads hundreds of miles and has enormous negative impacts on millions of Americans," said EPA Administrator Lisa P. Jackson. "We're working to limit pollution at its source, rather than waiting for it to move across the country. The reductions we're proposing will save billions in health costs, help increase American educational and economic productivity, and — most importantly — save lives."

EPA estimated that if the proposed rule is fully implemented as planned in 2014, it would yield more than \$120 billion in annual health benefits, including avoiding an estimated 14,000 to 36,000 premature deaths, 23,000 nonfatal heart attacks, 21,000 cases of acute bronchitis, 240,000 cases of aggravated asthma and 1.9 million missed days of work or school due to illness from air pollution. The annual cost of compliance would be \$2.8 billion in 2014, EPA said.

"Pollution from coal plants is carried downwind, endangering people throughout the entire eastern United States. This rule addresses the reality that dangerous pollution doesn't recognize state borders," said Bruce Nilles, deputy conservation director for the Sierra Club. "While a thorough review and comment period remains to be completed, the Sierra Club is pleased to see this progress made."

The American Lung Association (ALA) welcomed the proposal.

"Today's action is an important step towards safe and healthy air across the region," said ALA President and CEO Charles D. Connor. "The American Lung Association is pleased that today's proposal ensures greater pollution reductions than the earlier [CAIR] measure. The additional pollution reductions ... will help protect the public health."

Many other industry and environmental groups said they planned to submit detailed comments on the proposal. EPA will accept public comments for 60 days after the rule is published in the *Federal Register*. The agency also plans to hold three public hearings.

Portions of the proposed rule that apply to ozone will be altered after EPA issues a new national standard for ozone this August. EPA said it intends to propose a transport rule to address the 2010 ozone standard next year and finalize it in 2012.

"This rule would not disrupt a reliable flow of affordable electricity for American consumers and businesses," EPA said in a fact sheet. With the recent SO₂ rule (see story, p. 4), the upcoming ozone standard, the new interstate proposal and other changes, many facilities face uncertainty in planning modifications and upgrades which may take years to complete.

To achieve emission cuts, power plants would likely use low-sulfur coal, operate existing pollution control equipment more frequently, or install additional equipment such as scrubbers, selective catalytic reduction or low NO_x burners, EPA said.

EPA's preferred interstate approach would allow for limited interstate trading among power plants. The proposed rule would use the 1997 ozone standard and either the 2006 or 1997 particulate matter 2.5 standard. EPA also asked for comment on two alternative approaches. In the first, EPA would set a pollution budget for each state and emissions trading would be allowed only among power plants in the same state. In the second alternative, a pollution limit also would be set for each state and EPA would specify the allowable emission limit for each power plant and allow some averaging.

EPA would issue federal implementation plans for each state, but states would be able to develop their own plans and replace the federal ones.

For more information, see <http://www.epa.gov/airquality/transport/index.html>. 

EPA Rejects Third Part of Texas Air Program; State And Business Groups Ask Federal Court to Step In

In another blow to the Texas air permit program, the U.S. Environmental Protection Agency (EPA) June 30 formally disapproved the state's Flexible Permit (FP) Program, which Texas established more than 15 years ago.

In late March, EPA disapproved Texas' Qualified Facilities Program (see *Newsletter*, June 2010, p. 3). The Texas Commission on Environmental Quality (TCEQ) filed a petition June 14 asking the U.S. Court of Appeals for the 5th Circuit to review that finding.

Three business and industry associations also asked the court to review EPA's decision. Two of these groups and others sued EPA over the agency's oversight of Texas' program and public review and participation in the state's permitting process. Terms of a July 2009 settlement of that dispute require EPA to approve or disapprove 30 regulatory changes made by Texas since the mid-1990s by Dec. 31, 2013.

EPA has disapproved the state's public participation requirements, the qualified facilities program and the FP program. A decision on the state's new source review rules is due by Aug. 31. Under the 2009 settlement terms, EPA was required to rule on the FP program by June 30. In a statement on that date, EPA said it had determined that the FP program did not meet several federal Clean Air Act (CAA) requirements. According to Texas, the CAA required EPA to approve or disapprove all the state's changes within one year of each being submitted.

The FP program requires facilities to meet a sitewide cap on emissions, rather than comply with limits for each emission point at a facility. Texas argued that when the program was adopted in 1994 there were no federal or state means to require permits for "grandfathered" facilities that had been operating since before the state's program began in 1971.

"Thanks to the Flexible Permit Program and work by the state legislators [who] in later years enacted mandatory permitting requirements, there are no grandfathered facilities in Texas," TCEQ said June 16. "There are many such facilities across the rest of the country that are still grandfathered from both state and federal permitting requirements."

Before EPA issued its formal disapproval, TCEQ proposed changes to its FP program. Public comments on the revisions will be accepted until Aug. 2. The proposed rules will more directly reference potentially-applicable federal permit rules; ensure that the FP rules cannot be

used to circumvent federal permitting; add more detailed monitoring, recordkeeping and reporting for flexible permits; and implement other changes EPA has said are needed to obtain approval of a state implementation plan (SIP) revision, TCEQ explained.

Although TCEQ is complying with EPA's demands by altering its program, state officials have noted repeatedly over the last several months that Texas air quality has improved greatly over the past 15 years. TCEQ and Gov. Rick Perry also have noted that EPA did not object to the state's flexible permitting or qualified facilities program until more than 15 years after Texas adopted the programs and submitted them to EPA for approval. Statements from the governor have repeatedly termed EPA's disapprovals and other agency actions as a "take over" of the state's permitting program.

Perry wrote to President Barack Obama May 28 asking him to "stop EPA's efforts to take over the Texas air quality program already delegated to our state." The governor, who is running for re-election, and others in Texas also see EPA's actions as a threat to the state's economy and jobs.

"In recent years, Texas has made great progress in economic, energy and environmental achievement, but these gains are severely threatened by recent actions taken by [EPA]," Perry wrote. The agency "took unprecedented steps to quash Texas' federally delegated successful Title V permitting program and replace it with a less effective Washington-based, bureaucratic-led, command and control mandate," he wrote.

EPA said it had "reached out to industry, the environmental community and TCEQ to discuss how to convert flexible permits into more detailed permits that comply with the [CAA]."

EPA proposed a voluntary compliance audit program June 17 that current flexible permit holders may use. "The [audit] program will expedite efforts to identify emission limits, operating requirements and monitoring, reporting and recordkeeping data." An informal comment period closed July 2 (75 Fed. Reg. 34445).

"EPA will continue working closely with Texas, industry, environmental organizations and community leaders to assure an effective and legal air permitting system," EPA Region 6 Administrator Al Armendariz, said in a June 30 statement announcing the disapproval of the FP program.

See Texas, p. 8

Texas (continued from p. 7)

In recent months, EPA has issued numerous objection letters to Title V operating permits for facilities in Texas that were seeking permit renewals or modifications. Many, if not all, of the approximately 40 objection letters released since October 2009 relate to permits issued under the flexible permit or qualified facilities programs.

For copies of the objection letters and further details, see EPA Region 6's website at <http://yosemite.epa.gov/r6/Apermit.nsf/AirP>.

Judicial Review Sought

The Texas Association of Manufacturers (TAM), the Texas Oil & Gas Association (TXOGA) and the Business Coalition for Clean Air (BCCA) Appeal Group also have asked the 5th Circuit to review EPA's decision to disapprove the qualified facilities rule. BCCA and TXOGA were involved in the July 2009 settlement that began EPA's review of Texas's SIP revisions.

"We have taken this step because we believe the EPA's action is not supported by applicable law," TAM and TXOGA said in a joint statement June 11. "In addition, the existing Texas air program is helping to improve the state's air quality.

"The administrative flexibility provided by the program actually provides incentives for industries to reduce emissions beyond what would otherwise be required," they said.


TCEQ said its qualified facilities program applies only to facilities that request emissions below the levels that require new source review permits.

"The state law authorizes certain changes at facilities, provided any increase in actual emissions is below emissions thresholds that require [new source review] and if the control technology at the facilities is no older than 10-year-old best available control technology," TCEQ said June 14, when it filed its petition.

"TCEQ will continue to defend its air permitting program while proactively working with EPA to resolve its concerns to provide legal certainty to regulated entities and the public," TCEQ said.

"EPA concurred in 1995 that the rule adequately addressed federal permitting requirements, and the rule was formally submitted to the EPA in 1996," TCEQ said. "The EPA made no formal comment on the rules for 13 years, then disapproved them on April 14 of this year, despite the fact that the TCEQ had proposed rules to address EPA's concerns on March 30, two weeks earlier."

Texas also recently adopted two rule changes for its air permit program concerning public participation and best available control technology in prevention of significant deterioration permitting. The separate rulemakings were both formally adopted June 2 and took effect June 24.

For a copy of TCEQ's FP proposal or the adopted rules, see <http://www.tceq.state.tx.us/rules/prop.html>. 

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