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## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

February 13, 2013

Mr. Sam Coleman  
Deputy Regional Administrator  
U.S. Environmental Protection Agency  
1445 Ross Avenue  
Dallas, Texas 75202

Dear Mr. Coleman:

The Environmental Protection Agency (EPA) Region 6 (R6) has advised Prevention of Significant Deterioration (PSD) greenhouse gas (GHG) applicants on its website that for those projects triggering the need for a PSD permit solely because of GHGs, EPA will be responsible for permitting the increases of non-GHG pollutants if they are "significant" as defined at 40 Code of Federal Regulations (CFR) Section 52.21(b)(23). As a result of this statement, the Texas Commission on Environmental Quality (TCEQ) entered into a dialogue with EPA R6 to resolve the potential "dual authorization" associated with these non-GHG emissions. The dual authorization circumstance arises because under state law, a preconstruction permit is likewise required for these non-GHG air contaminants. EPA R6 has indicated that if TCEQ can provide the legal basis for TCEQ authorizing the "traditional" pollutants at or above the significance levels associated with a "PSD for GHG only" permit application, EPA will process and review only the GHG portion of the PSD permit application.

The Texas Clean Air Act (TCAA) provides that it is "[t]he policy of this state and the purpose of [Texas Health and Safety Code (THSC) Chapter 382] to safeguard the state's air resources from pollution by controlling or abating air pollution and emission 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." THSC Section 382.002 The TCAA defines a "Federal source" to include "a source required to have a permit under Part C . . . of Title I of the Federal Clean Air Act." THSC Section 382.003(7)(E) The TCEQ also has the "powers necessary or convenient to carry out its responsibilities" pursuant to Section 382.011, General Powers and Duties. The TCAA further provides that the commission may issue a permit "to construct a new facility or modify an existing facility that may emit contaminants" and to assist in fulfilling this authorization may issue "other permits as necessary." THSC Section 382.051(a) and (b)(11) The TCAA requires that "[b]efore work is begun on the construction of a new facility or 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." THSC Section 382.0518

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Agency rules likewise require that a permit to construct must be obtained by 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. 30 Texas Administrative Code (TAC) Section 116.110 In order to be granted a permit, an application must include certain information, including information which demonstrates that emissions from the facility will be protective of public health and welfare and that BACT will be evaluated for and applied to all facilities subject to the TCAA. 30 TAC Section 116.111 Agency rules further specify that "if a proposed facility is located in an attainment area, it shall comply with all applicable requirements in this chapter concerning PSD review." *Id.* PSD requirements are set forth in Section 116.160. The owner of a facility or the operator is authorized to act for the owner is responsible for complying with Section 116.111.

In the situation of a "PSD for GHG only" project, permit applicants have expressed a willingness to voluntarily undergo PSD review by TCEQ for those non-GHG emissions meeting the significance levels in 40 CFR 52.21. Because state law and the above TCEQ SIP-approved rules require authorization to construct for any new or modified facilities, the TCEQ may, upon request of an applicant, determine compliance with PSD requirements for those non-GHG emissions at or above 52.21 significance levels and issue a permit for these emissions pursuant to THSC Sections 382.051(b)(11) and 382.0518.

TCEQ authorization of the non-GHG emissions is also consistent with the TCEQ's authority to control air quality in the state and to regulate stationary sources necessary to assure that National Ambient Air Quality Standards (NAAQS) are achieved under State Implementation Plan (SIP) requirements in Section 110 of the Federal Clean Air Act. Section 110(a) requires each SIP include enforceable emission limits, including permitting programs for minor and major sources to attain and maintain the NAAQS.

At a practical level, this will ensure a consistent review and application of technical requirements for non-GHG emissions since a preconstruction permit is required under state law. Consistent with TCEQ review of PSD permit applications associated with traditional pollutants that also require PSD authorization for GHGs, the TCEQ can continue to coordinate with EPA in its review of a PSD GHG-only permit application. This will ensure that any implications arising from each respective agency's technical review are vetted for consistency.

Your concurrence with TCEQ's approach outlined above is requested so that permit applicants may proceed with a timely review by both TCEQ and EPA. Please contact me at (512) 239-3914 if you need further information.

Sincerely,



Zak Covar  
Executive Director