



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

December 21, 2010

OFFICE OF
AIR AND RADIATION

Bryan W. Shaw, Ph.D., Chairman
Texas Commission on Environmental Quality
P.O. Box 13087 (MC 100)
Austin, TX 78711

Dear Dr. Shaw:

I am writing to notify you of certain actions that the U.S. Environmental Protection Agency (EPA) anticipates taking on or about December 23, 2010, to ensure that as of January 2, 2011, businesses in Texas will be able to obtain, in a timely way, federal air construction and operating permits meeting the requirements of the Clean Air Act.

As you know, the Clean Air Act allows states to implement certain elements of the federal Clean Air Act, one of which is the Prevention of Significant Deterioration (PSD) permitting program for major sources of federally regulated air pollutants. TCEQ has been implementing an EPA-approved PSD program since 1992. Beginning on January 2, 2011, greenhouse gases will become newly regulated air pollutants under the Clean Air Act. On December 10, the D.C. Circuit Court confirmed that EPA's greenhouse gas regulations shall remain in effect and enforceable pending completion of judicial review. Therefore, it is incumbent on EPA to take action now to ensure that permitting authorities have the ability to issue, and covered sources the ability to obtain, the necessary permits beginning on January 2. Specifically, the Act requires that sources emitting greenhouse gases over certain quantities must obtain a PSD preconstruction permit for their emissions of those pollutants. EPA has been in communication with most, if not all, state and local air permitting agencies, including the TCEQ, over the past year to ensure that those agencies will be in a position to issue PSD permits for greenhouse gases or, if not, a federal plan is in place so as to avoid delays for businesses wishing to build new or expand existing sources.

Earlier this month, EPA issued a final rule with a determination that the permitting programs for thirteen states, including Texas, are not adequate because they do not apply PSD to greenhouse gas emissions. "Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call; Final Rule," 75 Fed. Reg. 77698 (Dec. 13, 2010). In that final rule, EPA also included a "SIP call" requiring these state agencies to revise their PSD state implementation plans (SIPs) to include greenhouse gases, and EPA established deadlines for the states to submit their revised plans. EPA gave each affected state an opportunity to select a deadline of up to 12 months to submit its revised plan. TCEQ did not select a deadline, and as a result, EPA was required to establish the default deadline of December 1, 2011. However, state

officials in Texas have made clear, in letters to EPA Administrator Lisa P. Jackson, in statements in the media, and in legal challenges to EPA's greenhouse gas rules, including the recent challenge to the SIP Call rule, that they have no intention of implementing this portion of the federal air permitting program. As a result, absent further action, certain industrial facilities in Texas that emit large amounts of greenhouse gases will not have available a PSD permitting authority when they become subject to PSD requirements on January 2, 2011. TCEQ has estimated that some 167 projects could be affected next year. Based on this information, EPA noted in the SIP Call rule "We are planning additional actions to ensure that [greenhouse gas] sources in Texas can be issued permits as of January 2, 2011." 75 Fed. Reg. 77700.

The unwillingness of Texas state officials to implement this portion of the federal program leaves EPA no choice but to resume its role as the permitting authority, in order to assure that businesses in Texas are not subject to delays or potential legal challenges and are able to move forward with planned construction and expansion projects that will create jobs and otherwise benefit the state's and the nation's economy. To effectuate this promptly, so that there will be no period of time when sources are unable to obtain necessary PSD permits, EPA intends to promulgate a partial disapproval of Texas' PSD program and a Federal Implementation Plan, to take effect by January 2, 2011.

Although EPA will be the greenhouse gas permitting authority on January 2, 2011, I want to emphasize that EPA would prefer that TCEQ act as the permitting authority for greenhouse gas-emitting sources in Texas, as it does for all other sources. I would be pleased to discuss with you steps that TCEQ could take to address the inadequacy in its PSD program and take over the greenhouse gas permitting function, as soon as possible after January 2, 2011, either through a revision to the PSD SIP that EPA could approve expeditiously or through a delegation agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina McCarthy", written in a cursive style.

Gina McCarthy
Assistant Administrator