

Sections 122.215–122.217 of the Texas permit regulation requires certain permit revisions to be processed as “permit additions”. The criteria for “permit additions” appear to be the same as the Federal criteria for some types of changes noted under minor permit modification provisions (40 CFR 70.7) and for some changes allowed as “off permit” changes under 40 CFR 70.4(b)(14). The State proposes to implement the “permit addition” criteria in the interest of providing adequate, streamlined, and reasonable procedures for processing permit revisions. However, the EPA does not consider the streamlined procedures set out in sections 122.215–122.217 of the Texas permit regulation to be equivalent to the minor permit modification procedures found in the part 70 regulation. For full approval, the permit additions rule and all other Texas permit revisions rules must be modified to be consistent with part 70.

The criteria to qualify for permit additions in section 122.215 include the following: A change at a site may qualify as a permit addition if the change is not addressed or prohibited by the Federal operating permit, does not violate any existing term or condition of the Federal operating permit, does not violate any applicable requirement, and is not a title I modification.

Section 122.215(c) also allows a change at a site to be processed as a permit addition if the change “does not require or change a determination of an emission limitation under section 112(g) or section 112(j) of title I of the Act * * *”. The Federal part 70 regulation contains a similar provision at 40 CFR 70.7(e)(2)(i)(A)(3) with respect to minor permit modification procedures, but the Federal provision is written in general terms to prohibit modifications that change a “case-by-case” determination of an emission limitation or standard. Section 122.215(c) of the Texas permit regulation does not require case-by-case reasonably available control technology (RACT) changes to be processed as significant permit modifications. The EPA interprets 40 CFR 70.7(e)(2)(i)(A)(3) provisions prohibiting changes in “case-by-case” determinations to apply to RACT equivalency determinations. Therefore, the EPA does not consider the Texas provision to be equivalent to the part 70 regulation. For full approval, the permit regulation must be modified consistent with part 70.

Section 122.215(c)(2) of the Texas permit regulation defines “significant changes to monitoring, reporting or recordkeeping requirements in the permit.” The definition includes the “removal of monitoring, recordkeeping,

or reporting terms and conditions, or a substitution in those terms and conditions promulgated pursuant to Federal New Source Performance Standards or National Emission Standards for Hazardous Air Pollutants.” This definition of significant changes to monitoring, reporting or recordkeeping requirements is acceptable under the current part 70 rule. If any additional rulemaking is promulgated by the EPA on this subject, the State must change its definition consistent with the new rulemaking.

Section 122.216 of the Texas permit regulation allows applications for permit additions to be submitted to the State no later than 90 days after the owner or operator has obtained or qualified for a preconstruction authorization. However, under this rule after the source receives its preconstruction permit, it may make the requested operating change before submitting the operating permit application within the 90-day timeframe. 40 CFR 70.7(e)(2)(v) requires that no operating change be made if a source is changing a term in its original part 70 permit until the source has submitted the operating permit revision application. For full approval, the Texas permit regulation must be revised to be consistent with part 70.

Section 122.217 addresses the procedures used to process permit additions and states “the permit addition shall not become final until after the EPA’s 45-day review period at renewal.” For the EPA to consider permit additions equivalent to the procedures in 40 CFR 70.7(e)(2), the EPA must have the opportunity to review and object to the issuance in writing within 45 days of receipt of the proposed permit. For full approval, the Texas permit regulation must be consistent with part 70 and allow for timely EPA review.

The Texas permit addition procedures addressed in section 122.217 provide that, within 90 days after receipt of a complete application, the agency is to determine that the requested modification does not meet the permit addition criteria and that it should therefore be reviewed under the significant modification procedure, or the agency is to revise the draft permit addition and transmit to the EPA the new proposed permit addition. This section does not include a deadline for the TNRC to issue or deny a permit addition modification. The minor permit modification procedures contained in 40 CFR 70.7(e)(2) require a State to issue or deny the permit modification within 90 days or 15 days after the end of the Administrator’s 45

day review period, whichever is later. For full approval, the Texas permit regulation must be consistent with part 70.

Subchapter E of the Texas permit regulation contains the acid rain provisions, as well as the deadlines for submitting acid rain permit applications. The provisions and timelines are consistent with those required by title IV of the Act. Section 122.139 of the Texas permit regulation regarding action on permit applications and section 122.136 regarding additional information are consistent with 40 CFR 70.4(b)(6) and 70.7(a)(4).

Pursuant to the part 70 regulation, a permit must be reopened and revised for cause when an additional applicable requirement becomes applicable to a permitted site with a remaining permit term of three or more years. Sections 122.231 and 122.233 of the Texas permit regulation discuss the criteria and procedures for permit reopenings and meet the requirements of 40 CFR 70.7(f).

Provisions for public notice have been contained in section 122.153 of the Texas permit regulation and in section 122.202(a)(3) for general permits. Those sections provide for procedures for public notice and an opportunity for public comment for all permit issuance proceedings, including initial permit issuance, significant modifications, renewals, and initial general permits. 40 CFR 70.7(h) requires the public notice to include the emissions change involved in any permit modification. For full approval, the State must revise its permit regulation to be consistent with part 70.

Provisions for the EPA and affected State review to be accomplished in an expeditious manner as required by 40 CFR 70.8 have been provided for in sections 122.310 and 122.311 of the Texas permit regulation. Section 122.132 of the Texas permit regulation requires the applicant, rather than the permitting authority, to submit the permit application directly to the Administrator. This is acceptable and meets the requirements of 40 CFR 70.8.

40 CFR 70.8(a)(3) requires each State permitting authority to keep records for five years. The State did not address this requirement in the Texas permit regulation. However, the TNRC is subject to, and must comply with, the State of Texas Records Retention Schedule that is approved by the State Auditor’s Office and the Texas State Library and Archives Commission (signed and dated April 7, 1993) requiring permit files to be maintained for three years after a file is closed. A closed file is one that is closed, terminated, expired, or settled.