

US EPA ARCHIVE DOCUMENT

**Transition Process for Pending GHG PSD Permit Applications and
Issued GHG PSD Permits upon Rescission of the Texas GHG PSD FIP**

EPA-R06-OAR-2013-0808

February 4, 2014

EPA is proposing approval of the Texas GHG PSD SIP revisions and simultaneously proposing to rescind the GHG PSD FIP for Texas at 40 CFR 52.2305. The following transition process has been developed by EPA Region 6 for the transfer of pending permit applications and permitting authority to TCEQ, in the eventuality that EPA finalizes our SIP approval and associated FIP rescission. Upon the effective date of the FIP rescission, the TCEQ will accept transfer of any pending permit applications provided by EPA consistent with final adoption by TCEQ and approval in the Texas SIP of 30 TAC Section 116.169.

Transition Process for Pending GHG PSD Permit Applications

1. EPA Region 6 will continue our current practice of maintaining a list of all submitted permit applications on the EPA Region 6 GHG website at <http://yosemite.epa.gov/r6/Apermit.nsf/AirP>.
2. No later than 15 days after the state's final adoption of the GHG rules proposed on October 23, 2013, EPA will contact each applicant, via letter, to provide the applicant a minimum of 30 days to make a decision about future permitting authority. Applicants must communicate in writing to EPA Region 6 the request for GHG PSD permitting authority by the deadline specified in the letter. The applicant has the discretion to

determine whether to continue with EPA as the GHG PSD permitting authority or whether the submitted application will be processed by TCEQ.

3. If the applicant fails to make a selection of permitting authority by the deadline specified in the above referenced letter, then EPA will make the decision for the applicant based on the date of EPA's proposed determination on the permit application as evidenced by a published notice of draft permit as follows:
 - a. EPA will retain the GHG PSD permitting authority for the pending applications that fail to select a permitting authority by the deadline specified in the applicant letter, only if EPA has made a proposed determination on the pending permit application by publishing notice of a draft permit by the signature date of the FIP rescission.
 - b. EPA will transfer the permitting authority and all associated materials to TCEQ for any pending permit applications that fail to select a permitting authority by the deadline specified in the applicant letter, if EPA has not made a proposed determination through a published notice of draft permit by the signature date of the final FIP rescission.
4. Upon the effective date of the FIP rescission, EPA will transfer to the TCEQ all documents related to the pending permit applications that will be processed by TCEQ through the SIP-approved GHG PSD permitting process.
 - a. If an application is transferred where EPA has already proposed a draft permit, then EPA will transfer the application, all related technical materials submitted by the applicant, the proposed draft permit and any comments received on the proposed draft permit to TCEQ. The TCEQ will require the applicant to comply

with SIP-approved public notice rules. The applicant will either follow the current SIP-approved process of publishing a separate NORI and NAPD, or publish a combined NORI and NAPD notice pursuant to new proposed revisions at 30 TAC Section 39.412. Further, pursuant to the Texas SIP, any comments submitted to EPA on the proposed draft permit must be resubmitted to the TCEQ during the TCEQ's public comment period. EPA intends to identify on the EPA Region 6 GHG website which applications with proposed draft permits have been transferred to TCEQ for issuance. EPA will endeavor to notify each commenter about the need to resubmit comments under the SIP-approved Texas public comment period provisions or the newly proposed revisions at 30 TAC Section 39.412.

- b. If an application is transferred for which EPA has not proposed a draft permit, EPA will transfer the application, all related technical materials submitted by the applicant and EPA's draft analysis (if available).
5. With regard to the permit applications for which EPA will retain permitting authority over the application (and is listed in EPA's final FRN on the GHG PSD SIP), this permitting authority may cease upon an applicant's written request to EPA withdrawing the pending permit application before a final determination is made.

Transition Process for Transfer of Final GHG PSD Permits Issued by EPA

1. Upon the signature date of EPA's final action to approve the Texas GHG SIP rule and rescind the GHG PSD FIP, EPA will determine which issued permits constitute a "final GHG PSD permit issued by EPA"; a permit where all final EPA actions have been taken

and all administrative and judicial appeal opportunities have expired or processes have been concluded or completed. EPA will maintain this list of final GHG PSD permits issued by EPA on the EPA Region 6 GHG website.

2. For the identified “final GHG PSD permits issued by EPA”, EPA will provide the TCEQ with all materials relevant to these permits so that the TCEQ can assume full PSD responsibility for the administration and implementation of these permits.
3. EPA remains the GHG PSD permitting authority for issued permits until either a) the time for filing an administrative appeal has expired or b) all administrative and judicial appeals processes (including any associated remand actions) are completed. EPA will monitor our issued permits to determine when these deadlines have expired or all processes have been completed.
4. EPA will notify the TCEQ as issued permits become “final GHG PSD permits” and are thus ready for transfer to TCEQ for administration and implementation under the Texas PSD program. EPA Region 6 will update our issued permits list on the Region 6 GHG website to indicate when TCEQ has assumed responsibility for the final permits.