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Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 9, 2014

Environmental Protection Agency
Air Docket
Mailcode: 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Docket ID No. EPA-HQ-OAR-2009-0897

Dear Sir or Madam,

The Texas Commission on Environmental Quality (TCEQ) appreciates the opportunity to respond to the United States Environmental Protection Agency's (EPA) proposed rule, published in the *Federal Register* on June 9, 2014 (79 FR 32892). This proposed rule would:

- (1) withdraw from the Phase 2 Ozone Implementation Rule the determination that compliance with the NO_x SIP Call satisfies nitrogen oxides (NO_x) reasonably available control technology (RACT) for electric generating units (EGU) located in certain areas;
- (2) withdraw from the Phase 2 Ozone Implementation Rule the separate determination that compliance with the Clean Air Interstate Rule (CAIR) satisfies NO_x RACT for EGUs in certain areas; and
- (3) withdraw from the fine particulate matter (PM_{2.5}) Implementation Rule any presumption that compliance with the CAIR automatically satisfies RACT or reasonably available control measures (RACM) requirements for sulfur dioxide (SO₂) and NO_x emissions from EGUs located in PM_{2.5} nonattainment areas.

Detailed comments on the proposed rule are enclosed. If there are any questions concerning the TCEQ's comments, please contact Mr. Steve Hagle, P.E., Deputy Director, Office of Air, at 512-239-1295 or steve.hagle@tceq.texas.gov.

Sincerely,

A handwritten signature in black ink that reads "Richard A. Hyde".

Richard A. Hyde, P.E.
Executive Director

Enclosure

cc: Guy Donaldson, EPA R6

**COMMENTS BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
REGARDING WITHDRAWAL OF THE PRIOR DETERMINATION OR
PRESUMPTION THAT COMPLIANCE WITH THE CAIR OR THE NO_x SIP CALL
CONSTITUTES RACT OR RACM FOR THE 1997 8-HOUR OZONE AND 1997 FINE
PARTICLE NAAQS; PROPOSED RULE**

EPA DOCKET ID NO. EPA-HQ-OAR-2009-0897

I. Summary

On June 9, 2014, the United States Environmental Protection Agency (EPA) published in the *Federal Register* the above referenced proposed rule to: (1) withdraw from the Phase 2 Ozone Implementation Rule the determination that compliance with the NO_x SIP Call satisfies nitrogen oxides (NO_x) reasonably available control technology (RACT) for electric generating units (EGU) located in certain ozone nonattainment areas or in states within the Ozone Transport Region (OTR); (2) withdraw from the Phase 2 Ozone Implementation Rule the separate determination that compliance with the Clean Air Interstate Rule (CAIR) satisfies NO_x RACT for EGUs located in certain ozone nonattainment areas; and (3) withdraw from the fine particulate matter (PM_{2.5}) Implementation Rule any presumption that compliance with the CAIR automatically satisfies RACT or reasonably available control measures (RACM) requirements for sulfur dioxide (SO₂) and NO_x emissions from EGUs located in PM_{2.5} nonattainment areas (79 FR 32892). The proposed rule also includes an amendment to the 1997 eight-hour ozone RACT requirements in 40 Code of Federal Regulations (CFR) §51.912.

II. Comments

The EPA should clarify what is meant by the term “regional cap-and-trade program.” Specifically, the EPA should clarify whether this proposed rule is meant to address only CAIR and the NO_x SIP Call, or if the term is meant to more generally be applied to all current or future programs that could be described as “a regional cap-and-trade program.” Additionally, the EPA should make clear that this determination regarding regional cap-and-trade programs does not apply to cap-and-trade programs and similar compliance flexibility alternatives that are confined within a discrete nonattainment area.

Although the EPA’s proposed action to withdraw language from the Phase 2 Ozone Implementation Rule and the PM_{2.5} Implementation Rule is specific to CAIR and NO_x SIP Call RACT/RACM determinations, the rule preamble more generally includes discussion of the EPA’s expected technical requirements necessary to rely upon “a regional cap-and-trade program” to satisfy RACT/RACM requirements. The EPA uses this general term throughout the preamble, rather than specifically stating “CAIR or the NO_x SIP Call.”

The general term is used multiple times in Section III of the preamble, specifically in discussion of the option to conduct technical analysis for “considering the emissions controls required by a regional cap-and-trade program.” These sections specifically mention “compliance by EGUs participating in the program” or “compliance by EGUs participating in the cap-and-trade program,” which seems to exclude other source categories that could be subject to a regional cap-and-trade program other than CAIR or the NO_x SIP Call. If the term “regional cap-and-trade program” used in this discussion is meant to apply to programs other than CAIR and the NO_x SIP Call, the TCEQ requests that the EPA clarify their position on the use of emissions reductions resulting from any sources subject to regional cap-and-trade programs to satisfy RACT/RACM. This possible expansion of the determination beyond CAIR or the NO_x SIP Call is not supported by the analysis in the proposed rule.

The EPA should also clarify that the proposed rule does not apply to cap-and-trade programs for which the program area is confined to the nonattainment area only. In Section II, Part F of the preamble, the EPA states that, "Given the explicit wording of section 172(c)(1) that sources 'in the area' must at a minimum adopt RACT controls for that area, the EPA believes that it is no longer appropriate to presume that this requirement is automatically met through the participation of sources in a regional emissions cap-and-trade program. The EPA believes that it would be inappropriate to pre-judge whether participation in a cap-and-trade program satisfies NO_x RACT for EGU sources in any given nonattainment area...the EPA believes that it would be inappropriate absent an analysis for the EPA to pre-judge whether regional cap-and-trade programs would constitute RACT or RACM for covered sources in a particular PM_{2.5} nonattainment area." Again, if the EPA's intention is that this proposed rule should apply to all cap-and-trade programs, including those confined to a discrete nonattainment area, the TCEQ disagrees with this statement, as it is not supported by the analysis in the proposed rulemaking. Therefore, it should be made clear that the proposed rule does not apply to cap-and-trade programs or similar compliance flexibility alternatives that are confined to a discrete nonattainment area.

The withdrawals of the determinations and presumption as they relate to CAIR or the NO_x SIP Call do not have a practical impact on Texas. However, expansion of the term "regional cap-and-trade program" to include programs or other compliance flexibility alternatives contained within a nonattainment area could have a significant impact on Texas, as these types of programs have previously been relied upon to satisfy RACT.

The proposed amendment to 40 CFR §51.912 does not include language to explicitly allow for the option for states to conduct a technical analysis to demonstrate that compliance by sources participating in a regional cap-and-trade program satisfies RACT for the 1997 eight-hour ozone standard. The TCEQ suggests adding language to reflect the EPA's stated option for states to conduct a technical analysis to support reliance on a regional cap-and-trade program to satisfy RACT.

According to Section III of the preamble, "States have the option of conducting a technical analysis for the specific nonattainment area considering the emissions controls required by a regional cap-and-trade program, and demonstrating that compliance by EGUs participating in the program results in actual emission reductions in the particular nonattainment area that are equal to or greater than the emission reductions that would result if RACT were applied to each individual EGU source or the EGU source category within the nonattainment area." The TCEQ supports the inclusion of this option to allow states to conduct a technical analysis supporting regional cap-and-trade programs as sufficient to meet RACT. Regional cap-and-trade programs have been demonstrated to achieve significant emission reductions and this option should not be foreclosed. However, the EPA's proposed amendment to §51.912 seems to preclude the possibility of exercising this option. The requirement that "an individual RACT determination must be made for each major source or major source category," may not be possible for each individual source participating in a regional cap-and-trade program because they could meet emissions reductions requirements either by installing NO_x emissions controls or by purchasing allowances from other sources located within the program region.

The EPA should also clarify that RACT only applies to the nonattainment area and not another area that is part of a regional trading program.