

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**

for Approval of NO<sub>2</sub> NAAQS Recommendation to Governor

**AGENDA REQUESTED:** November 18, 2010

**DATE OF REQUEST:** October 29, 2010

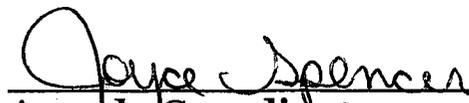
**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Joyce Spencer, 239-5017

**CAPTION:** Docket No. 2010-1496-RES. Discussion and approval of the proposed designation recommendation for the 2010 primary one-hour nitrogen dioxide (NO<sub>2</sub>) National Ambient Air Quality Standard (NAAQS) for submittal to the governor for his consideration and transmittal to the United States Environmental Protection Agency (EPA). The EPA will consider state recommendations in making revised NO<sub>2</sub> NAAQS designations and area boundary determinations.

The EPA revised the primary NO<sub>2</sub> NAAQS effective April 12, 2010, to include a new one-hour standard of 100 parts per billion (ppb). The EPA recommends that states identify violating areas using the most recent three years of air quality data and submit to the EPA no later than January 22, 2011. Staff recommends that all counties in the State of Texas with NO<sub>2</sub> monitors meeting the new NAAQS be designated attainment, with other areas of the state designated as unclassifiable/attainment. (Margaret Earnest, Terry Salem)

  
\_\_\_\_\_  
Chief Engineer

  
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Division Director

  
\_\_\_\_\_  
Agenda Coordinator

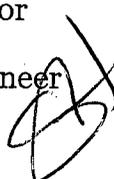
Copy to CCC Secretary? NO X YES

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners Date: October 29, 2010

**Thru:** LaDonna Castañuela, Chief Clerk  
Mark R. Vickery, P.G., Executive Director

**From:** Susana M. Hildebrand, P.E., Chief Engineer 

**Docket No.:** 2010-1496-RES

**Subject:** Commission Approval for 2010 Primary One-Hour Nitrogen Dioxide (NO<sub>2</sub>) National Ambient Air Quality Standard (NAAQS) Designation Recommendation

### Background and reason(s) for the recommendation:

On February 9, 2010, the United States Environmental Protection Agency (EPA) published in the *Federal Register* a revised primary one-hour NAAQS for NO<sub>2</sub> of 100 parts per billion (ppb) in addition to retaining the annual standard of 53 ppb. Section 107(d) of the Federal Clean Air Act (FCAA) requires the governor of each state to submit to the EPA a recommendation regarding which areas should be designated attainment, nonattainment, or unclassifiable for a new or revised standard. The deadline for submitting recommended designations under the new one-hour NO<sub>2</sub> standard to the EPA is January 22, 2011. The EPA recommends that states identify violating areas using three years of air quality data, 2006 through 2008, stored in the EPA Air Quality System (AQS). The EPA's AQS records the highest 2007 through 2009 design value at 65 ppb in El Paso. The NO<sub>2</sub> violations are identified using data from the Federal Reference Method and the Federal Equivalent Method monitors that are sited and operated in accordance with 40 Code of Federal Regulations (CFR) Part 58.

Seventeen monitors in Texas with AQS data eligible for comparison to the 2010 primary one-hour NO<sub>2</sub> NAAQS currently meet the standard. The highest 2006 through 2008 design value is 67 ppb at the monitor located in El Paso. Therefore, all areas are monitoring attainment of the NO<sub>2</sub> NAAQS. The final NO<sub>2</sub> rule will require the installation of an estimated eight new near-road NO<sub>2</sub> monitors. However, the new monitoring network requirements with near-road monitors will not be operating until January 2013, and three years of data will not be complete until 2016.

The EPA stated in the final rulemaking for the new standard that it intends to promulgate initial NO<sub>2</sub> designations by January 2012 and intends to designate all areas that are not currently violating the new standard as unclassifiable, absent data from the newly required monitors. Once the new monitors are in place, the EPA intends to exercise its authority under §107(d)(3) to redesignate areas as appropriate from unclassifiable to attainment or nonattainment. Staff recommends that all counties in Texas with applicable NO<sub>2</sub> monitoring data be designated attainment and all other areas be designated as unclassifiable/attainment.

Although there is no federal or state requirement for a public hearing concerning designation recommendations, a public informational meeting was held on September 16, 2010. Staff provided a presentation in Austin that was video teleconferenced to the regional offices in Dallas-Fort Worth, Houston, San Antonio, El Paso, and Harlingen. These regional offices encompass the urban areas that are required to begin NO<sub>2</sub> near-road monitoring in 2013. The commission's recommendations for the NO<sub>2</sub> designations will be sent to the governor in November 2010. The governor's recommendation to the EPA is due by January 22, 2011.

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**Scope of the recommendation:**

Section 107(d) of the FCAA requires states to submit recommendations for initial designations of nonattainment, attainment, or unclassifiable to the EPA not later than one year after the promulgation of a new or revised standard. If after consideration of the recommendations, the EPA intends to promulgate a designation that deviates from the state recommendation, the EPA must notify the state prior to promulgating the modified designation and provide the state an opportunity to comment on the potential modification. The FCAA requires the EPA to complete the designation process within two years of the effective date of the standard unless the EPA finds that additional information is needed to make these decisions, with an option for a one-year extension if the EPA has insufficient information to promulgate designations.

**A) Summary of what the recommendation will do:** The TCEQ's recommendation to the governor is that all counties in Texas with applicable NO<sub>2</sub> monitor AQS data be designated attainment and all other areas be designated as unclassifiable/attainment for the 2010 one-hour NO<sub>2</sub> NAAQS (see Attachment A).

**B) Scope required by federal regulations or state statutes:** The NO<sub>2</sub> NAAQS changes are required by federal regulations.

**C) Additional staff recommendations that are not required by federal rule or state statute:** None.

**Statutory authority:**

The authority to propose and adopt the implementation plan and similar documents is derived from Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.002, which provides that the policy and purpose of the TCAA is to safeguard the state's air resources from pollution; TCAA, §382.011, which authorizes the commission to control the quality of the state's air; and §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air.

**Effect on the:**

**A) Regulated community:** No known impact at this time. Possible future impacts include potential emission reduction requirements from future attainment or maintenance SIP reviews, as a result of data collected from the new near-road monitoring network.

**B) Public:** No known impact at this time.

**C) Agency programs:** No impact is expected to the Air Quality Division as all 17 of the counties monitoring in Texas have data that indicate values below the 2010 one-hour NO<sub>2</sub> NAAQS, so no new rulemaking is anticipated, and no SIP revisions are needed at this time. Field Operations Support Division (FOSD) is expecting a cost increase as a result of new monitoring requirements. FOSD is working with the Texas Department of Transportation to locate the new near-road monitors, and the division will be responsible for monitoring and maintenance when the new monitors are operational in January 2013.

**Informational meeting:**

An informational meeting was held in Austin on September 16, 2010, to inform the public about the new standard, along with video teleconferencing to the five regional offices where new monitors are required. Six urban areas are required to provide near-road monitoring: Dallas-Fort

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Worth-Arlington; Houston-Sugar Land-Baytown; San Antonio; Austin-Round Rock; El Paso; and McAllen-Edinburg-Mission. Informal comments were requested by staff before October 1, 2010.

No changes were made to the recommendation based on the discussions during the informational meeting. Nineteen attendees were present at the meeting, including representatives from local governments, regional planning organizations, other state agencies, health organizations, various industries, and consultants.

**Public comment:**

Two comment letters were sent to TCEQ by the October 1, 2010, deadline.

Entergy Services, Inc. recommended all Texas counties be designated as unclassifiable for the 2010 one-hour NO<sub>2</sub> NAAQS.

The Eight-Hour Ozone SIP Coalition (Coalition) recommended that Texas counties having NO<sub>2</sub> monitoring data under the one-hour NO<sub>2</sub> design value be designated attainment. For the areas in Texas without sufficient NO<sub>2</sub> monitoring, the Coalition urged the commission to recommend that these areas be designated unclassifiable for the one-hour NO<sub>2</sub> NAAQS. The Coalition agreed that additional data was needed for the one-hour NO<sub>2</sub> NAAQS and suggested the TCEQ should recommend appropriate designations or redesignations in the future based on additional data.

**Potential controversial concerns and legislative interest remaining after public comment:**

The new one-hour NO<sub>2</sub> monitoring network established by the EPA is expected to add eight monitors near Texas highways, within 50 meters (55 yards or 164 feet) from the roadway. Given the close proximity to vehicle emissions, the new monitoring network may detect higher localized concentrations of NO<sub>2</sub>. The EPA is requiring all new NO<sub>2</sub> monitors to begin operating no later than January 1, 2013. Legislative interest is unknown at this time.

**Does this recommendation affect any current policies or require development of new policies?**

No.

**What are the consequences if this recommendation does not go forward? Are there alternatives to recommendation?**

If Texas does not provide designation recommendations, the EPA will designate areas in Texas for the one-hour NO<sub>2</sub> standard without the state's input.

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**Schedule and constraints:**

September 16, 2010:	Informational meeting
October 1, 2010:	Deadline for informal comments
November 18, 2010:	Commissioners' Agenda
November 2010:	Recommendation to governor's office
January 22, 2011:	State designation recommendations to the EPA
January 2012:	EPA makes designations
January 1, 2013:	New NO <sub>2</sub> monitoring network with all monitors operating
January 2016/2017:	Nonattainment designations
January 2021/2022:	Attainment date

**Agency contacts:**

Margaret Earnest, Project Manager, 239-4581, Air Quality Division

Terry Salem, Staff Attorney, 239-0469

Attachments: Design Values by County for NO<sub>2</sub>

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Susana M. Hildebrand, P.E.  
Kevin Patteson  
Curtis Seaton  
Daniel Womack  
Office of General Counsel  
Kerry Howard  
Joyce Spencer  
Margaret Earnest

**Resolution Concerning Nitrogen Dioxide  
National Ambient Air Quality Standard Designations**

2010-1496-RES

WHEREAS, the Texas Commission on Environmental Quality (Commission) met on November 18, 2010, to discuss and consider designation recommendations for the 2010 one-hour primary nitrogen dioxide (NO<sub>2</sub>) National Ambient Air Quality Standard (NAAQS) for submittal to the Governor for his consideration and transmittal to the United States Environmental Protection Agency (EPA); and

WHEREAS, the Commission finds that the EPA revised the NO<sub>2</sub> NAAQS effective April 12, 2010, establishing a new one-hour primary NO<sub>2</sub> NAAQS at 100 parts per billion (ppb); and

WHEREAS, the Commission acknowledges that the Federal Clean Air Act (FCAA), § 107(d), requires the EPA, after the promulgation of a new or revised NAAQS, to designate areas as attainment, nonattainment, or unclassifiable; and

WHEREAS, the Commission acknowledges that the FCAA, § 107(d), also establishes a process for each Governor to provide recommendations to the EPA regarding appropriate designations for the new one-hour primary NO<sub>2</sub> NAAQS for their state, including appropriate geographic boundaries; and

WHEREAS, the Commission acknowledges that the EPA has specified a deadline for the submittal of recommended designations for the new one-hour primary NO<sub>2</sub> NAAQS of January 22, 2011; and

WHEREAS, the Commission acknowledges that the EPA recommends States identify areas not in compliance with the new or revised NAAQS using the most recent three years of air quality data, preferably data from calendar years 2007 through 2009, stored in the EPA Air Quality System (AQS,) from Federal Reference Method and Federal Equivalent Method monitors that are sited and operated in accordance with 40 Code of Federal Regulations (CFR) Part 58; and

WHEREAS, the Commission finds that based on AQS monitoring data from 2007 through 2009, all monitors in Texas with data eligible for comparison to the new one-hour primary NO<sub>2</sub> NAAQS meet the revised NAAQS (Attachment A); and

RESOLVED, that the Commission hereby requests the Governor of Texas to submit a designation recommendation of attainment for all areas of the state with EPA's Air Quality System monitors demonstrating that the 2010 one-hour primary NO<sub>2</sub> NAAQS and that the rest of the State be designated as unclassifiable/attainment for the 2010 one-hour primary NO<sub>2</sub> NAAQS to the EPA for consideration, along with data analysis supporting this recommendation, by the EPA's requested deadline of January 22, 2011.

Issued date:

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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Bryan W. Shaw, Ph.D., Chairman

## Attachment A

### Design Values by County for NO<sub>2</sub>

County	EPA 2006-2008 Design Values (average 98th percentile) ppb	EPA 2007-2009 Design Values (average 98th percentile) ppb
El Paso	67	65
Harris	62	54
Tarrant	60	54
Dallas	58	55
Bexar	54	52
Ellis	45	44
Jefferson	42	41
Brazoria	38	37
Denton	37	35
Montgomery	36	35
Orange	36	34
Hunt	32	30
Kaufman	31	30
Gregg	30	31
Travis	26	24
Smith	23	21
Harrison	21	19

Source: EPA's Air Quality System database (<http://www.epa.gov/ttn/airs/airsaqs>)

The Honorable Rick Perry  
Governor of Texas  
State Capitol  
P. O. Box 12428  
Austin, TX 78711-2428

Dear Governor Perry:

The United States Environmental Protection Agency (EPA) revised the National Ambient Air Quality Standard (NAAQS) for nitrogen dioxide (NO<sub>2</sub>) to 100 parts per billion for the one-hour standard on January 22, 2010. Section 107(d)(3) of the Federal Clean Air Act (FCAA) requires the governor of each state to submit to the EPA a list of all areas with a designation recommendation of attainment, nonattainment, or unclassifiable.

The Texas Commission on Environmental Quality (TCEQ) recommends that all counties in Texas with applicable NO<sub>2</sub> monitoring data be designated attainment and all other areas be designated as unclassifiable/attainment, based on the three most recent years of quality-assured air data from the current monitoring network for the years 2007 through 2009.

Because the EPA is also requiring a new monitoring network as part of the revised NO<sub>2</sub> NAAQS, it is possible that the EPA will exercise its authority under the FCAA, §107(d)(3) to redesignate areas from unclassifiable/attainment to attainment or nonattainment after the state has collected three years of near-road monitoring data, beginning in January 2013.

Enclosed are a resolution, cover letter, and attachment containing the designation recommendation for your signature to be submitted to the EPA by the January 22, 2011, deadline.

If I can be of any assistance, please contact me at 512-239-5510.

Sincerely,

Bryan W. Shaw, Ph.D  
Chairman

Enclosures

cc: Toby Baker, Office of Budget, Planning and Policy, Office of the Governor  
Mark R. Vickery, P.G., Executive Director, TCEQ

**bcc: Terry Salem, Staff Attorney, Environmental Law Division  
Joyce Spencer, Air Quality Division  
Margaret Earnest, Project Manager, Air Quality Planning Section**

Alfredo Armendariz, Ph.D.  
Regional Administrator  
United States Environmental Protection Agency, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

Dear Dr. Armendariz:

Pursuant to the requirements in Section 107(d)(3) of the Federal Clean Air Act, enclosed is the recommendation for designation of areas in Texas with regard to the 2010 one-hour primary nitrogen dioxide (NO<sub>2</sub>) National Ambient Air Quality Standard (NAAQS) of 100 parts per billion.

The Texas Commission on Environmental Quality (TCEQ) recommends that all counties in Texas with applicable NO<sub>2</sub> monitoring data (see Attachment A) be designated attainment and all other areas be designated as unclassifiable/attainment, based on the three most recent years of quality-assured air data from the current monitoring network for the years 2007 through 2009.

Enclosed is a resolution, with 2009 supporting data, containing the 2010 NO<sub>2</sub> NAAQS designation recommendation.

If you have any questions or need additional information, please feel free to contact TCEQ Chairman Bryan W. Shaw, Ph.D., at 512-239-5510.

Sincerely,

Rick Perry  
Governor

Enclosures

cc: Bryan W. Shaw, Ph.D., Chairman, TCEQ