

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: June 8, 2012

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

From: Steve Hagle, P.E., Deputy Director
Office of Air

Docket No.: 2012-0862-SIP

Subject: Commission Approval for the Proposed Federal Clean Air Act (FCAA) §110(a)(1) and (2) Infrastructure and Transport State Implementation Plan (SIP) Revision for the 2010 Nitrogen Dioxide (NO₂) National Ambient Air Quality Standard (NAAQS)

Infrastructure and Transport SIP Revision for 2010 NO₂ NAAQS
Non-rule Project No. 2012-016-SIP-NR

Background and reason(s) for the SIP revision:

On February 9, 2010, the United States Environmental Protection Agency (EPA) tightened the NAAQS for NO₂. The new primary one-hour NO₂ standard was set at 100 parts per billion (ppb), and the annual standard of 53 ppb was retained.

Section 110(a)(1) of the FCAA requires states to submit a SIP revision to provide for the implementation, maintenance, and enforcement of the NAAQS. States are required to submit the infrastructure portion of this SIP requirement to the EPA to demonstrate that basic program elements have been addressed within three years of the promulgation of any new or revised NAAQS. Section 110(a)(2) lists the elements that the new SIP submissions must contain including the requirement to ensure that emissions within a state will not contribute significantly to nonattainment in, or interfere with maintenance by, any other state for the NAAQS.

Scope of the SIP revision:

A.) Summary of what the SIP revision will do:

The proposed SIP revision would document how the infrastructure elements listed in FCAA, §110(a)(2) are currently addressed in the Texas SIP for NO₂. The SIP revision would outline the requirements of FCAA, §110(a)(2)(A) through (M) and the Texas provisions supporting the requirements. These requirements include basic program elements such as enforceable emission limitations and control measures, air quality monitoring and modeling, a permitting program, adequate funding and personnel, authority under state law to carry out the plan, emissions reporting, emergency powers, public participation, and fee collection. See the attached document for a complete list of FCAA, §110(a)(2) requirements.

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The SIP revision would also include a technical demonstration to support that Texas meets the interstate transport requirements of Section 110(a)(2) of the FCAA. Pursuant to FCAA, §110(a)(2)(D)(i)(I), this SIP revision must contain several elements that provide supporting information demonstrating that Texas is:

- not contributing significantly to nonattainment of the 2010 NO₂ NAAQS for areas in other states; and
- not interfering with the maintenance of the 2010 NO₂ NAAQS in any other state.

B.) Scope required by federal regulations or state statutes:

The proposed SIP revision would document how the infrastructure elements listed in FCAA, §110(a)(2) are currently addressed in the Texas SIP for NO₂. The SIP revision would outline the requirements of FCAA, §110(a)(2)(A) through (M) and the Texas provisions supporting the requirements.

C.) Additional staff recommendations that are not required by federal rule or state statute:

None

Statutory authority:

The authority to propose and adopt the SIP revision is derived from the FCAA, 42 United States Code, §7410, which requires states to submit SIP revisions that contain enforceable measures to attain the NAAQS and other general and specific authority in Texas Water Code, Chapters 5 and 7 and Texas Health and Safety Code, Chapter 382.

Effect on the:

A.) Regulated community:

The proposal would have no effect on the regulated community.

B.) Public:

None

C.) Agency programs:

This SIP revision would have no new effect on agency programs.

Stakeholder meetings:

The proposed §110(a)(1) and (2) SIP revision will go through a public review and comment period including a public hearing.

Potential controversial concerns and legislative interest:

EPA Disapproval Notices:

The EPA has published various proposed disapproval notices for Texas' air permitting programs, and these disapprovals have not yet been fully resolved. Texas has adopted new

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rules that address these notices. Since the EPA has not acted on the rules, it is unclear whether the infrastructure submittal will be fully approvable or not.

The EPA has also proposed limited approval/limited disapproval of the commission's rules regarding public participation for air quality New Source Review (NSR) permits. This proposed action has a potential direct impact on the infrastructure requirements of §110(a)(2). Texas has withdrawn from EPA consideration most of the rules that were the subject of the proposed limited approval/limited disapproval and has submitted new and revised adopted public participation rules to the EPA for the SIP. On October 28, 2010, the EPA signed a notice withdrawing its limited approval and limited disapproval of the SIP revisions relating to public participation because those revisions are no longer before the EPA for review. Despite outstanding issues with aspects of Texas' minor NSR permitting program, Texas has a robust, SIP-approved permitting program and therefore has met the infrastructure requirements of §110(a)(2).

EPA Action on Previous Texas Infrastructure Submittals:

In the December 28, 2011, *Federal Register*, the EPA determined that the Texas SIP meets the infrastructure requirements for the 1997 eight-hour ozone NAAQS and the 1997 and 2006 fine particulate matter (PM_{2.5}) NAAQS at FCAA, §110(a)(2)(A), (B), (E), (F), (G), (H), (K), (L), (M), and portions of (C), (D)(ii) and (J). The EPA determined that the Texas SIP does not meet the infrastructure requirements for the 1997 eight-hour ozone NAAQS and the 1997 and 2006 PM_{2.5} NAAQS at FCAA, §110(a)(2) for portions of (C), (D)(ii), and (J) because Texas has stated it cannot issue permits for and does not intend to regulate greenhouse gas (GHG) emissions. The EPA partially approved and partially disapproved the Texas SIP revisions to address the Prevention of Significant Deterioration (PSD) requirements at FCAA, §110(a)(2)(D)(i) for the 1997 eight-hour ozone NAAQS and the 1997 and 2006 PM_{2.5} NAAQS again because Texas cannot issue permits for emissions of GHG. Texas is challenging the EPA's partial disapproval of the previous infrastructure SIP revisions; however, because the basis for the EPA's partial disapproval was the lack of a GHG permitting program in Texas, the EPA will likely use the same criteria when determining if any future infrastructure SIP revisions may be approved.

Will this SIP revision affect any current policies or require development of new policies?

No

What are the consequences if this SIP revision does not go forward? Are there alternatives to this SIP revision?

The NO₂ infrastructure and transport SIP revision is required by §110(a) of the FCAA. If a SIP revision is not submitted, the EPA would have an obligation to promulgate a federal implementation plan for Texas.

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Key points in the proposal rulemaking schedule:

Anticipated proposal date: June 27, 2012

Anticipated *Texas Register* publication date: July 13, 2012

Public hearing date: August 1, 2012

Public comment period: June 29, 2012 – August 6, 2012

Anticipated adoption date: November 14, 2012

Agency contacts:

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

Amy Browning, Environmental Law Division, 239-0891

Terry Salem, Environmental Law Division, 239-0469

Attachments

cc: Chief Clerk, 2 copies
Executive Director's Office
Susana M. Hildebrand, P.E
Anne Idsal
Curtis Seaton
Office of General Counsel
Margaret Earnest

Attachment: Federal Clean Air Act (FCAA), §110(a)(2)(A) through (M)

Attachment – Federal Clean Air Act (FCAA), §110(a)(2)(A) through (M)

Each State Implementation Plan must:

- (A) include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the FCAA;
- (B) provide for establishment and operation of devices, methods, systems, and procedures necessary to – (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the EPA;
- (C) include a program to provide for enforcement of measures described in §110(a)(2)(A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program as required in parts (C) and (D);
- (D) contain adequate provisions – (i) prohibiting any source or other type of emissions activity from emitting any air pollutant in amounts which will – (I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other state under part (C) to prevent significant deterioration of air quality or to protect visibility, (ii) insuring compliance with the applicable requirements of §126 and §115 (interstate and international pollution abatement);
- (E) provide (i) necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out such implementation plan (and is not prohibited by any provision of federal or state law from carrying out such implementation plan or portion thereof), (ii) requirements that the state comply with the requirements respecting state boards under §128, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision;
- (F) require, as may be prescribed by the EPA – (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to the FCAA, which reports shall be available at reasonable times for public inspection;
- (G) provide for authority comparable to that in §303 and adequate contingency plans to implement such authority;
- (H) provide for revision of such plan – (i) from time to time as necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, (ii) except as provided in (3)(C), whenever the EPA finds on the basis of information available to the EPA that the plan is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional FCAA requirements;
- (I) in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part(D) of this subchapter (relating to nonattainment areas);

- (J) meet the applicable requirements of §121 (relating to consultation), §127 (relating to public notification), and part (C) (relating to prevention of significant deterioration of air quality and visibility protection);
- (K) provide for (i) the performance of air quality modeling as the EPA may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the EPA has established a NAAQS, and (ii) the submission, upon request, of data related to such air quality modeling to the EPA;
- (L) require the owner of a major stationary source to pay to the permitting authority, as a condition of any permit required under the FCAA, a fee sufficient to cover – (i) reasonable costs of reviewing and acting upon any application of such a permit, and (ii) if the owner or operator receives a permit for such a source, the reasonable costs of implementing and enforcing the terms and conditions of the permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the EPA's approval of a fee program under Title V; and
- (M) provide for consultation and participation by local political subdivisions affected by the plan.