

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** March 23, 2012

Thru: Bridget C. Bohac, Chief Clerk
Mark R. Vickery, P.G., Executive Director

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

Docket No.: 2012-0147-SIP

Subject: Commission Approval for Proposed Stage II Vapor Recovery Program State Implementation Plan (SIP) Revision
SIP Project No. 2012-003-SIP-NR

Background and reason(s) for the SIP revision:

The Stage II vapor recovery program (Stage II) is a requirement of the Federal Clean Air Act (FCAA) that requires the installation of technology to prevent gasoline vapors from escaping during the refueling of on-road motor vehicles. Currently, the Stage II program is required in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties in the Houston-Galveston-Brazoria area; Collin, Dallas, Denton, and Tarrant Counties in the Dallas-Fort Worth area (DFW); El Paso County; and Hardin, Jefferson, and Orange Counties in the Beaumont-Port Arthur area. The FCAA provides for a waiver from Stage II requirements if certain criteria are met. These criteria include the determination that on-board refueling vapor recovery (ORVR) systems are in widespread use.

With the DFW area reclassified as a serious ozone nonattainment area on January 19, 2011, an additional five counties (Ellis, Johnson, Kaufman, Parker, and Rockwall) in the DFW area may be required to meet the Stage II requirements unless the United States Environmental Protection Agency (EPA) administrator determines that ORVR systems are in widespread use throughout the motor fleet as provided by FCAA, §202(a)(6). As required by FCAA, §182(b)(3) and §182(c), a state implementation plan (SIP) revision for Stage II vapor recovery is due to the EPA no later than two years after the effective date of the reclassification. The Texas Commission Environmental Quality (TCEQ) Stage II SIP revision is due to the EPA by January 30, 2013.

However, the EPA is currently proposing a rulemaking (published in the July 15, 2011, issue of the *Federal Register*, 76 FR 41731) for 40 Code of Federal Regulations (CFR) Part 51 §51.126 for determining that by June 30, 2013, ORVR will be in widespread use for the purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet nationwide. The proposed EPA rulemaking would provide a waiver for any nonattainment area classified after January 1, 2011, as serious, severe, or extreme from implementing a Stage II program.

If the federal rule is not adopted and the TCEQ waiver request is denied by the EPA, the TCEQ would need to address Stage II requirements at a future date. The EPA has not set a date for the adoption of the federal rulemaking but has indicated that the proposed rule may be finalized in July 2012.

Scope of the SIP revision:

Currently, FCAA, §202(a)(6), authorizes the EPA Administrator to waive the Stage II requirements when the Administrator determines that ORVR systems are in widespread use throughout the

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motor vehicle fleet. The TCEQ waiver request will be submitted to the EPA as part of the Stage II SIP revision. Since the proposed federal rule establishing ORVR widespread use may not be adopted by the EPA, the TCEQ is proposing to submit this SIP revision to the EPA that includes a request to waive the requirement to implement Stage II in the five outlying DFW counties. If the proposed federal rule establishing ORVR widespread use is adopted, the TCEQ will withdraw this waiver request. If the federal rule is not adopted and the TCEQ waiver request is denied by the EPA, the TCEQ will be required to address Stage II requirements in a future rulemaking and SIP revision action.

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

The Stage II SIP revision will request the EPA to waive the Stage II requirements in the five outlying DFW counties if the federal ORVR widespread use rule is not finalized.

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

Federal regulations allow states to request a waiver from Stage II requirements if ORVR widespread use is determined.

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

None.

Statutory authority:

Texas Water Code (TWC), §5.103, and §5.105, authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. THSC, §382.002 also establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.019, which authorizes the commission to adopt Stage II rules in nonattainment areas if demonstrated as necessary for attainment of the ozone National Ambient Air Quality Standard or upon a determination that it is necessary to protect public health; and §382.208, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

Effect on the:

If this SIP revision is approved, there will be no effect to the public or to business owners of gas dispensing facilities. However, if the SIP is not approved then there may be a fiscal impact on the public and business owners of the gasoline dispensing facilities in the five DFW counties because those owners may be required to install Stage II equipment.

A.) Regulated community:

If the additional five DFW counties are required to implement Stage II, there will be a minimum cost of \$40,000 per facility for the required Stage II equipment. Also, gasoline dispensing facilities are required to have at least one Stage II facility representative who has been trained by an approved TCEQ training provider to operate and maintain an appropriate Stage II vapor recovery system. The training costs \$45 per Stage II facility representative.

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B.) Public:

If the additional five DFW counties are required to implement Stage II, gasoline dispensing facility owners may increase costs to recoup their expenditures.

C.) Agency programs:

If the additional five DFW counties are required to implement Stage II, there will be an increase in the number of Stage II facilities that are required to be investigated by the staff in the Compliance and Enforcement's Field Operations Division in the DFW area.

Stakeholder meetings:

No stakeholder meetings have been held.

Potential controversial concerns and legislative interest:

If the Stage II SIP revision with a waiver is not approved and Stage II must be implemented in the five outlying DFW counties, business owners in these areas will be required to comply with Stage II requirements resulting in increased costs.

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 SIP revision?

If this SIP revision does not go forward and the EPA ORVR widespread use determination is not finalized, the TCEQ Stage II SIP revision may not be submitted by the EPA deadline of January 2013. If a timely SIP revision is not submitted, Texas would be subject to a finding of failure to submit, which would subject the state to sanctions under FCAA, §179, including loss of highway funding and increased emission offset requirements for businesses seeking construction or modification permit authorization.

Key points in the proposal SIP revision schedule:

Anticipated proposal date: April 11, 2012

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

Public hearing date (if any): May 22, 2012 and May 24, 2012

Public comment period: April 13, 2012 through May 29, 2012

Anticipated adoption date: September 19, 2012

Agency contacts:

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Attachments:

July 15, 2011, *Federal Register* publication of proposed 40 CFR Part 51, § 51.126, *Determination of widespread use of ORVR and waiver of CAA section 182(b)(3) Stage II gasoline vapor recovery requirements.*

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