TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 19, 2013

Dr. Karl Pepple
Office of Air Quality Planning and Standards
Environmental Protection Agency
Mail Code 2822T
1301 Constitution Avenue NW
Washington, DC 20460

Attn: Docket ID No. EPA-HQ-OAR-2010-0885

Re: Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements; Proposed Rule

Dear Dr. Pepple:

The Texas Commission on Environmental Quality (TCEQ) appreciates the opportunity to respond to the United States Environmental Protection Agency's (EPA) announcement of a public comment period for the proposed requirements for implementation of the 2008 National Ambient Air Quality Standard (NAAQS) for Ozone: State Implementation Plans (SIPs).

Detailed comments on the many facets of this 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,

Zak Covar
Executive Director

Enclosure

COMMENTS BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY REGARDING IMPLEMENTATION OF THE 2008 NATIONAL AMBIENT AIR QUALITY STANDARDS FOR OZONE: STATE IMPLEMENTATION PLAN REQUIREMENTS; PROPOSED RULE

EPA DOCKET ID NO. EPA-HQ-OAR-2010-0885

I. Summary

On June 6, 2013, the United States Environmental Protection Agency (EPA) published in the *Federal Register* a proposed rule for implementing the 2008 ozone National Ambient Air Quality Standard (NAAQS) that were promulgated on March 12, 2008 (78 FR 34178). The proposed rule addresses state implementation plan (SIP) requirements for the 2008 ozone NAAQS, the timing of SIP submissions, proposed revocation of the 1997 ozone NAAQS, and anti-backsliding requirements for previous ozone standards.

II. Comments

1) SIP Submission Deadlines

Although the TCEQ supports the flexibility offered by a consolidated approach in which all of the required SIP elements for a nonattainment area would be submitted at one time, the deadline for such a submittal should be 36 months following the effective date of designations.

The proposal indicates that the EPA believes that the later due date for Emissions Inventory and Reasonably Available Control Technology (RACT) SIPs under the 30-month consolidated option would provide for a *de minimis* delay; however, it is only six months prior to the 36-month statutory due date for all other SIP elements. The EPA does not provide a rationale for why 30 months provides for a *de minimis* delay, but 36 months does not. Submitting the attainment demonstration to the EPA in 30 months, instead of 36 months, would not advance attainment of the standard because the EPA's implementation deadlines for RACT, Reasonably Available Control Measures (RACM), and Reasonable Further Progress (RFP) control measures are independent of the SIP submittal date.

Additionally, the EPA's delay in proposing, and in turn finalizing the implementation rule essentially nullifies the benefit that might be offered from the proposed flexibility in the SIP submission deadlines. The EPA has indicated that it intends to finalize the implementation rule in "early 2014." At best, this would be only a few months prior to the proposed 30-month deadline of January 2015. A 36-month submittal deadline would provide additional time for modeling, stakeholder involvement in the RACM analysis, rule development, and SIP narrative development. The EPA should publish a draft of its revised modeling guidance as soon as possible since modeling must be completed well in advance of SIP submission. The delayed release and finalization of these documents warrant a 36-month deadline given the length of time needed to have stakeholder meetings, proposal, and adoption of the SIP and rule revisions.

2) Attainment Demonstrations

The TCEQ supports the addition of supportive evidence in "weight of evidence" determinations, including alternative attainment test calculations. However, the adjustment of monitored ozone values needs to be carefully evaluated and should only be based on scientifically validated unusual natural events and catastrophic occurrences, whether human-caused or not.

Footnote 20 of the proposed rule states EPA intends to suggest an alternative method for calculating future design values for "weight of evidence" determinations by adjusting monitored air quality days if influenced by unusual natural or anthropogenic events. Without specific and limited definition criteria, any day could be interpreted to be influenced by an unusual event. The proposed rule language is not specific in what days are being considered for adjustment, such as baseline design value days or base case modeled days, or what concentration level is an "influence" level. The TCEQ supports the exclusion of days impacted by major industrial accidents, such as refinery fires, as well as foreign transport or other unusual natural events or events outside the control of the state, from the calculation of baseline design values, since it would be inappropriate to include effects of such rare but extreme events in the development of control strategies. The TCEQ also supports modification of the modeling guidance to specifically allow for this.

3) Reasonable Further Progress (RFP) Requirements

In the discussion of RFP reduction requirements for 2008 ozone nonattainment areas that include portions consisting of all or a piece of one or more nonattainment areas for a previous NAAQS and which fulfilled the 15% RFP plan requirement for volatile organic compounds (VOC) for that previous NAAQS and portions that have never been subject to or never have fulfilled the 15% RFP plan requirement for VOC for a previous NAAQS (Section III.C.2.e of the proposal), clarification is needed concerning the EPA's second proposed approach.

The EPA proposes to allow states choosing the second proposed approach described above to demonstrate the 15% VOC reduction requirement for the portion of the 2008 ozone standard nonattainment area that has never been designated nonattainment by using VOC reductions from the entire 2008 nonattainment area provided that the existing portions, those designated nonattainment under a previous standard, have a VOC reduction target as part of the RFP plan. The TCEQ requests clarification concerning the VOC reduction target stipulation for the existing counties.

For example, would states be allowed to set a VOC target for existing counties that is not reduced from the base year VOC target? In this case, there would be a "VOC target" for the existing counties, but no further VOC reductions would be required, and the 15% reduction requirement for those counties could be demonstrated with nitrogen oxides (NO_X) reductions only. Alternately, would states choosing to use VOC emission reductions from the entire 2008 nonattainment area to satisfy the newly designated portion's initial 15% VOC reduction requirement be required to then demonstrate an additional VOC reduction for the existing portion's 15% NO_X and/or VOC reduction requirement, beyond the base year VOC target?

Please clarify whether the language describing the second approach in Section III.C.2.e of the proposal is meant to be read as either of the above interpretations, or if the EPA intended a completely different interpretation.

More clarification and consistency is needed throughout the section discussing the requirements to account for non-creditable reductions when calculating RFP emission reduction targets.

The proposal indicates that non-creditable emissions reductions, as specified in Federal Clean Air Act (FCAA), §182(b)(1)(D), would no longer be calculated and removed from RFP emissions reduction targets because their effects are considered *de minimis*. The TCEQ agrees that these effects are *de minimis*. However, the proposal also states that all SIP-approved or federally promulgated emissions reductions that occur after the baseline inventory year, except those listed in §182(b)(1)(D), are creditable toward RFP. These sections seem to be inconsistent, and the requirements are therefore unclear. The EPA should provide justification for why the non-creditable reductions would not be *de minimis* for both purposes. Is the EPA proposing that states would no longer be required to calculate non-creditable reductions for RFP targets but that non-creditable reductions must still be removed from the emission reductions used to meet RFP targets? Or is the EPA proposing that states would no longer be required to consider, due to their *de minimis* effects, non-creditable reductions in RFP demonstrations?

For areas choosing 2011 as a baseline year for a moderate nonattainment area, the EPA should more clearly define the "whatever additional emissions reductions" requirement for January 1, 2018 to December 31, 2018 as a specific percentage (such as 3%).

Because RFP calculations are based on emissions reductions (tons), and not ozone concentrations (ppb), it is difficult to define these "whatever additional emissions reductions." For areas that choose a pre-2011 baseline year, the EPA has proposed that the area is responsible for a specific 3% emissions reduction each year after the initial six-year period has concluded up to the beginning of the attainment year. The EPA should apply the same requirement to moderate areas that choose 2011 as a baseline year (as recommended by the EPA's proposal) and require an additional 3% emissions reduction for the final year before the attainment deadline. This approach would be more clear and consistent between areas that choose 2011 as a baseline year and those that choose a different year. It would also be more consistent with the EPA's proposal for serious and higher nonattainment areas to provide an additional average of 3% emissions reductions beyond the initial six-year period through the attainment year.

If the EPA chooses to leave the "whatever additional reductions needed" requirement in the final rulemaking rather than change it to a specific percentage requirement, then the TCEQ suggests that the EPA also include a method for calculating the requirement.

Although the TCEQ appreciates the potential for alternative RFP approaches, the two approaches described in the proposal require further clarification.

The proposal does not provide enough detailed information on how an air quality-based approach or a VOC-weighted approach would be practically implemented. For the air quality-based approach, without more detail on how the EPA would expect states to translate RFP emissions reduction targets (tons) into ozone air quality targets (ppb), it is difficult for the TCEQ to provide comment. Based on the brief summary provided by the EPA, the TCEQ assumes that additional photochemical modeling would be required to achieve this translation. The EPA should provide additional guidance and/or clarification as to how both these alternative approaches would be implemented.

In the proposal, the EPA specifically discusses the concept of weighting VOC emissions based on ozone reactivity for RFP purposes. The proposal notes that "In many areas we now know that

NO_X reductions will have a far greater effect than VOC reductions on reducing ambient ozone concentrations." The proposal discusses an alternative approach that would base the requirements on air quality improvements rather than prescriptive emission limits. The TCEQ endorses this increased flexibility since it would provide an avenue by which VOC and NO_X emissions could be substituted for one another on an air-quality basis instead of on a percent-for-percent emissions basis.

4) Reasonably Available Control Technology (RACT) Requirements

The TCEQ supports the EPA's proposal to allow state RACT determinations to take into consideration the limited impact of VOC emission reductions on reducing ozone concentrations.

As noted in the EPA's proposal, reducing VOC emissions may have a negligible effect on ozone concentrations in some areas; photochemical modeling sensitivity tests have shown that reducing general VOC emissions has a negligible effect in both the Dallas-Fort Worth and Houston-Galveston-Brazoria 1997 eight-hour ozone nonattainment areas. The TCEQ agrees that states should have the flexibility to consider such limited impact when making RACT determinations on an individual source basis or source category basis when photochemical modeling demonstrates that additional VOC controls are ineffective in reducing ambient ozone concentrations. FCAA, §172(c)(1) requires SIPs to include all RACM, including emission reductions from existing sources achieved through adoption of RACT, and FCAA, §182(b)(2) requires the SIP to provide for the implementation of RACT under §172(c)(1) for specific VOC sources. The EPA has historically interpreted FCAA, §172(c)(1) as a requirement that the SIP incorporate all RACM that would advance an area's attainment date (57 FR 13498). Since FCAA, §172(c)(1) and §182(b)(2) include RACT as a subset of the broader RACM requirement, the TCEQ supports allowing state RACT determinations to take into consideration whether the associated VOC emission reductions would advance the area's attainment date.

The TCEQ supports allowing states to rely on participation in a nonattainment area cap and trade program to satisfy RACT requirements.

For sources located within a nonattainment area, cap and trade programs that are limited to that nonattainment area can provide additional flexibility to affected sources while still achieving significant emission reductions that satisfy RACT. For example, the TCEQ successfully implemented the Mass Emissions Cap and Trade (MECT) Program in the Houston-Galveston-Brazoria nonattainment area to limit NO_X emissions from affected sources. The TCEQ supports continuing to allow development and implementation of nonattainment area cap and trade programs, such as MECT, to satisfy RACT.

The EPA should make clear any requirements regarding RACT for marginal nonattainment areas under the 2008 eight-hour ozone NAAQS.

During an EPA Webinar on June 20, 2013 regarding the proposed implementation rule, an EPA staff member made a comment about RACT for marginal nonattainment areas. However, the EPA's Webinar presentation does not discuss RACT corrections with regard to marginal nonattainment areas under FCAA, §182(a)(2)(A). In the preamble of the proposed implementation rule (78 FR 34191), the EPA only makes a brief statement regarding RACT for marginal nonattainment areas:

> "Subpart 2 requires Marginal ozone nonattainment areas to correct pre-1990 RACT requirements..."

This statement is consistent with the Phase II implementation rule for the 1997 eight-hour ozone NAAQS regarding RACT corrections for marginal nonattainment areas under §182(a)(2)(A). More recently, in an EPA proposed action (78 FR 13007, February 26 2013) regarding RACT for Pennsylvania, the EPA stated the following regarding RACT under §182(a)(2)(A):

> "Section 182 of the CAA sets forth two separate RACT requirements for ozone nonattainment areas. The first requirement, contained in section 182(a)(2)(A) of the CAA, and referred to as RACT fix-up, requires the correction of RACT rules for which EPA identified deficiencies before the CAA was amended in 1990. The Pennsylvania RACT fix-up SIP submittal was approved with a conditional limited approval on March 23, 1998 (63 FR 13789) and later converted to a full approval on October 22, 2008 (73 FR 62891)."

The TCEQ requests that the EPA clarify that if a state has already made corrections to any applicable pre-1990 RACT rules that have been approved by the EPA as a SIP revision, then the state has already satisfied its obligation under §182(a)(2)(A) for a marginal nonattainment area for purposes of the 2008 ozone NAAQS. If the EPA is considering a different interpretation for marginal nonattainment areas under §182(a)(2)(A) for the 2008 eight-hour ozone NAAQS, then the EPA should propose a supplemental notice of rulemaking and an additional comment period so that states have adequate opportunity to review and comment.

5) Contingency Measures

Additional "fleet turnover" motor vehicle emissions budgets (MVEB) for the year after the attainment year are unnecessary.

According to the proposal, states using on-road motor vehicle fleet turnover to meet contingency requirements would need to create VOC and NO_X MVEBs for the year after the attainment deadline. The proposal indicates that these MVEBs would help to ensure that fleet turnover reductions would be available and surplus if needed. However, this should be unnecessary as fleet turnover is based on federal vehicle emission standards already in place, and the EPA has not indicated that those standards will be unavailable in the future. Further, the proposal does not address the implications of a 2019 contingency MVEB on conformity. It would be inappropriate and unduly restrictive to set a contingency MVEB and then, in effect, require areas to base conformity analyses on a contingency MVEB.

6) International Transport

The TCEQ supports the EPA's interpretation of FCAA, §179B to include consideration of any emissions from North American or intercontinental sources.

The EPA's interpretation that FCAA, §179B could include consideration of any emissions from any non-United States (U.S.) sources is appropriate. The TCEQ endorses this interpretation since it accounts for the potentially significant impact that international emissions can have on an area's air quality. The TCEQ seeks confirmation of the interpretation that FCAA, §179B may be applied to nonattainment areas other than those adjoining international borders. Further, the TCEQ seeks confirmation that "emissions emanating from outside the United States" FCAA, §179B include anthropogenic sources and natural emission sources outside the continental U.S.

EPA did not provide an explanation for why it proposed limiting the availability of a determination under FCAA, §179B to areas classified "moderate" or above; excluding "marginal" areas. **Since FCAA, §179B does not limit this option to areas classified "moderate"**

or above, the TCEQ supports its availability for all areas, including "marginal" areas.

7) 1997 Ozone NAAQS Revocation

The TCEQ supports revocation of the 1997 eight-hour ozone standard. However, the EPA should continue to formally redesignate areas to attainment of the revoked standard if the state submits an approvable redesignation request and maintenance plan for that standard.

FCAA, §107(d) allows the EPA to redesignate to attainment an area that demonstrates that it has attained the relevant NAAQS, while §175A requires a state requesting such a redesignation also submit a maintenance plan. Without such a redesignation, it is possible that nonattainment consequences, including the assessment of §185 fees, may continue to be imposed on an area that is no longer monitoring nonattainment for the one-hour ozone standard and/or the 1997 eight-hour ozone standard. The EPA must provide for such an opportunity for redesignation otherwise an area that has, through extensive control requirements, managed to meet these previous standards will continue to unfairly experience penalties and requirements related to those standards. This is a particularly egregious type of punishment for areas that have not yet missed the applicable attainment date for a particular standard.

8) Anti-backsliding Requirements

The TCEQ agrees that formal redesignation to attainment for the 2008 eight-hour ozone NAAQS and approval of a maintenance plan demonstrates that an area has satisfied its obligations to adopt anti-backsliding requirements.

The TCEQ also supports the removal of nonattainment new source review (NSR) requirements and their replacement with prevention of significant deterioration (PSD) requirements for the 2008 ozone standard and all previous standards once an area has met its attainment obligations for those previous standards. The TCEQ also agrees that this redesignation to attainment should also terminate §185 obligations.

If a "redesignation substitute" approach is taken, the TCEQ would recommend a similar approach for the Major NSR air permitting process so that requirements for a more stringent classification would no longer be in place once an area has attained the previous standards. This would allow a state to conduct air permit applicability determinations using the classifications associated with the 2008 standard, rather than the most stringent classification for areas that did not attain the one-hour and 1997 eight-hour standard before the standards were revoked, once those areas reach attainment. This process would be consistent with the recommendation that the EPA formally redesignate areas that were nonattainment for the previous ozone standards at the time they were revoked, once those areas reach attainment for the previous standards. Neither the environment nor the economy benefits by retaining classifications and basing permit requirements related to revoked standards, particularly once an area has met its obligations for attainment under those standards.

The EPA's proposed "redesignation substitute" option for satisfying anti-backsliding obligations should only require one submission rather than an initial "showing" that addresses redesignation requirements to be followed by a separate SIP revision to cease implementing nonattainment SIP requirements.

Although the EPA's stated intention is to reduce the burden on states by not requiring a formal SIP revision for the redesignation substitute "showing," the EPA is still requiring approval of this showing prior to allowing SIP revisions to remove nonattainment requirements. Contrary to

the EPA's intention, this process could result in significant delays in removal of nonattainment requirements while the state waits for EPA action on the initial redesignation "showing." Rather, as is done with formal redesignation requests that are submitted concurrently with maintenance plans, a redesignation substitute could be submitted concurrently with the necessary SIP revisions to remove nonattainment SIP requirements.

The TCEQ supports the exclusion of the Stage II vapor recovery program from the list of measures to be retained for anti-backsliding purposes.

Vehicle on-board refueling vapor recovery (ORVR) provides pollution reduction equivalent to Stage II control systems. Given the widespread use and effectiveness of ORVR as determined by the EPA, the use of Stage II control systems is not cost-effective and is a redundant system.

The language in proposed §51.1118 requires clarification about which ozone standard must be attained in order to suspend SIP planning requirements.

The proposed §51.1118 states:

> "Upon a determination by EPA that an area designated nonattainment for the 2008 ozone NAAQS, or for any prior ozone NAAQS, has attained the standard, the requirements for such area to submit attainment demonstrations and associated reasonably available control measures, reasonable further progress plans, contingency measures for failure to attain or make reasonable progress and other planning SIPs related to attainment of the 2008 ozone NAAQS, or for any prior NAAQS for which the determination has been made, shall be suspended until such time as: the area is redesignated to attainment for that NAAQS, at which time the requirements no longer apply; or EPA determines that the area has violated that NAAQS, at which time the area is again required to submit such plans."

This language does not specify which ozone NAAQS must be attained in order to suspend planning requirements. This section applies to an area designated nonattainment for the 2008 ozone NAAQS or for any prior ozone NAAQS, so this section must also specifically indicate which ozone NAAQS must be attained in order to suspend planning requirements. According to the EPA's proposal, it will no longer redesignate areas to attainment for prior ozone NAAQS upon revocation of those NAAQS, so it appears that the attainment requirement in §51.1118 is meant to be interpreted as attainment of the 2008 NAAQS. However, this language is unclear and only states "has attained the standard" rather than more specifically stating "attained the 2008 ozone NAAQS." If §51.1118 is instead meant to be applied more generally to all ozone NAAQS, it should be made more clear.

9) Transition Requirements

The TCEQ seeks clarification of the interpretation of Table 2: *2008 Ozone NAAQS Transition Obligations* and Section (IV)(I)(4)(a)(ii).

The EPA stated that it is proposing that "areas designated nonattainment for the 2008 ozone NAAQS and nonattainment for the 1997 ozone NAAQS will be obligated to implement the applicable requirements set forth in 51.100(o) for the 1997 ozone NAAQS and ... must also continue addressing those applicable one-hour ozone NAAQS requirements for that area." It continues to state that the area must apply nonattainment NSR in "accordance with their highest nonattainment classification under any ozone standard for which they are (or were at the time of revocation) designated nonattainment, as well as any section 185 requirements for areas classified Severe or Extreme at the time of revocation for a prior standard." This statement implies that an area that is in severe (or extreme) nonattainment status for both the one-hour

and a later ozone NAAQS standard would be subject to §185 fees for both standards. It is requested that the EPA clarify what requirements would satisfy a §185 fee for both standards. Would assessment of two separate fees with two different baseline amounts and years be required or would the §185 fee requirement be satisfied for both unmet standards if the higher of the two fees were assessed on major sources? It is noted that the higher of the two classifications is used for NSR purposes and assessing only the higher of the two fees could be consistent with NSR. Additionally, payment of a higher fee would fulfill the obligation of the smaller fee.

10) The Relationship between Implementation of the 2008 Ozone NAAQS and Title V

The TCEQ supports the position that the Title V program is not considered to be a "control" under the meaning of §172(e), and supports a position that there should be consistency between the applicable major source thresholds for nonattainment area requirements.

The TCEQ does not believe that Title V is a control within the meaning of §172(e). The EPA has consistently stated that Title V is a separate program when compared to the requirements of Title I. Also, the TCEQ believes that the Title V program should use the same major source thresholds applicable for purposes of other requirements, such as RACT and NSR. This approach would provide applicants with clarity and uniformity regarding applicable major source thresholds. The TCEQ does not believe that there should be two methods for determining major source status between the NSR and Title V programs for nonattainment area requirements.