

**COMMENTS BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
REGARDING PROPOSED AIR PLAN APPROVAL; OKLAHOMA; REGIONAL HAZE FIVE-
YEAR PROGRESS REPORT; EPA DOCKET ID NO. EPA-R06-OAR-2016-0619**

I. SUMMARY OF NOTICE

On March 28, 2019, the United States Environmental Protection Agency (EPA) published in the *Federal Register* a proposed rulemaking to approve Oklahoma's Regional Haze Five-Year Progress Report submitted by the Oklahoma Department of Environmental Quality (ODEQ). As noted in the proposal notice, on January 5, 2016, the EPA issued a final action that disapproved portions of Texas and Oklahoma's state implementation plans (SIP) for regional haze for the first planning period. The EPA also simultaneously promulgated a federal implementation plan (FIP) for Texas requiring reductions in sulfur dioxide (SO₂) emissions from eight coal-fired electric power plants for purposes of reasonable progress.

II. COMMENTS

The Texas Commission on Environmental Quality (TCEQ) urges the EPA to take expeditious action on the remanded 2016 FIP for Texas regarding regional haze reasonable progress and repeal the FIP in its entirety. The EPA should also act on and approve Texas' 2014 Regional Haze Five-Year Progress Report and finalize any action resulting from the additional comment period on the 2017 FIP for Texas regarding regional haze best available retrofit technology (BART).

While the TCEQ acknowledges that any action on the 2016 FIP for Texas is outside the scope of the EPA's current proposal to approve Oklahoma's Regional Haze Five-Year Progress Report, the EPA raised the issue of the 2016 FIP in the notice. The FIP imposed SO₂ emission standards on 15 coal-fired electric generating units located at eight Texas power plants, which would have necessitated the installation of new SO₂ emission control equipment at some units and upgrades of existing control equipment at other units at a capital cost of approximately \$2 billion. The EPA's 2016 FIP on Texas was stayed by the Fifth Circuit Court of Appeals and subsequently remanded to the EPA (*Texas, et al v. EPA, et al*, No. 16-60118, March 22, 2017). However, since the court granted the EPA's request for a voluntary remand, the EPA has given no indication of when any action will be taken to address the remanded FIP.

While the 2016 FIP is stayed by the Fifth Circuit Court of Appeals and has no legal effect, EPA's failure to take final action on the remanded FIP creates uncertainty not only for the power companies subject to the FIP but for the State of Texas as well. The TCEQ also notes that Texas' own Regional Haze Five-Year Progress Report submitted in March 2014, which was developed and submitted prior to the EPA's 2016 FIP regarding reasonable progress, has also not been acted on by the EPA. Furthermore, in October 2017, the EPA finalized another regional haze FIP for Texas that implements an SO₂ intrastate trading program for Texas as a BART alternative. While the BART FIP is effective and began implementation on January 1, 2019, the EPA reopened the comment period in August 2018 and requested additional comment on the BART FIP. The additional comment period on the BART FIP closed in October 2018; however, the EPA has not issued a final action on the additional comment opportunity. The TCEQ is actively working on a regional haze SIP revision for the second planning period, which is due to be submitted to the EPA by no later than July 31, 2021. The EPA's pending action on all these matters regarding regional haze in Texas creates uncertainty for the TCEQ's SIP development process. This lack of certainty over fundamental processes, such as state consultations, hinders the TCEQ's development of the upcoming regional haze SIP revision because the TCEQ has no reasonable assurance

that the issues raised by the EPA in the 2016 disapproval have been resolved. Additionally, the TCEQ has not yet determined whether to replace the BART FIP Texas SO₂ trading program with a SIP-based program. However, the potential for the EPA to change the BART FIP Texas SO₂ program in response to the additional comment opportunity creates significant uncertainty regarding any decision to develop a replacement program.

The TCEQ maintains that the 2009 Regional Haze SIP Revision was approvable and the EPA's disapproval of certain components of the SIP revision, such as the Texas-Oklahoma consultation process discussed below, was unjustified. The EPA should take action to address the remanded 2016 FIP as expeditiously as practicable. The 2016 FIP should be repealed in its entirety and the EPA should issue an approval of those components in the 2009 Texas Regional Haze SIP submittal that the EPA disapproved with the 2016 FIP. The EPA should also act on and approve Texas' Regional Haze Five-Year Progress Report submitted in March 2014. Finally, the EPA should finalize its actions regarding the 2018 additional comment opportunity on the 2017 final BART FIP for Texas.

The EPA erred in disapproving the consultation process between Texas and Oklahoma. The TCEQ urges the EPA to approve the Oklahoma-Texas consultation and withdraw the previous determination that the Oklahoma-Texas consultation for the SIP revisions submitted for the first planning period was not adequate.

As discussed above, in the EPA's January 5, 2016 final rule regarding the Texas and Oklahoma Regional Haze SIP submittals for the first planning period, the EPA disapproved the long-term strategy and state consultations between Texas and Oklahoma, in which both states concurred that controls additional to those already required under existing regulations were not reasonable for Texas sources that impacted the Wichita Mountains. The EPA determined that during the consultation process Oklahoma failed to explicitly request that Texas further investigate whether reasonable controls were available or that Texas reduce emissions to ensure that all reasonable measures to improve visibility were included in Texas' long-term strategy and incorporated into Oklahoma's reasonable progress goals for the Wichita Mountains. The EPA determined that this failure resulted in the development of improper reasonable progress goals for the Wichita Mountains.

However, as noted in the EPA's proposed approval of the Oklahoma Regional Haze Five-Year Progress Report, improved visibility has been shown at the Wichita Mountains and improvement is projected to continue. The observed five-year visibility trends reported in Oklahoma's progress report show that the Wichita Mountains are on track to not only exceed the original reasonable progress goals established by Oklahoma but also the more stringent reasonable progress goals set by the EPA in the 2016 disapproval of Oklahoma's SIP. This improvement occurred without additional regulations on Texas sources, including the 2016 FIP on Texas that was stayed by the Fifth Circuit Court of Appeals and remanded to EPA. Furthermore, while eight Texas coal-fired electric generating units have permanently ceased operations in late 2017 and early 2018 (Big Brown 1 and 2, Sandow 4, Sandow Station 5A and 5B, and Monticello 1 - 3), the emission reductions from these shutdowns occurred after the EPA's observed improvement in the visibility data for the Wichita Mountains. The data showing improved visibility in the Wichita Mountains support that the original consultation process between Texas and Oklahoma was not flawed and that the EPA erred in disapproving the consultations between the states. In light of the EPA's proposed approval of the Oklahoma Regional Haze Five-Year Progress SIP revision, including proposed approval of the long-term strategy and reasonable progress goals, and the EPA's documented improvement in visibility in the Wichita Mountains, the TCEQ urges the EPA to reverse its previous determination and approve the consultation process between Oklahoma and Texas.