

**COMMENTS BY THE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) REGARDING THE
DETERMINATION OF NONATTAINMENT AND RECLASSIFICATION OF THE
HOUSTON-GALVESTON-BRAZORIA 2008 EIGHT-HOUR OZONE
NONATTAINMENT AREA; TEXAS**

EPA DOCKET ID NO. EPA-R06-OAR-2016-0275

I. SUMMARY

On September 27, 2016, the United States (U.S.) Environmental Protection Agency (EPA) published in the *Federal Register* a proposed determination that the Houston-Galveston-Brazoria (HGB) area failed to attain the 2008 eight-hour ozone National Ambient Air Quality Standard (NAAQS) by the applicable deadline of July 20, 2016. This results in a reclassification by operation of law to the designation of "Moderate." This action proposes to require that Texas must submit state implementation plan (SIP) revisions to the EPA by January 1, 2017. These SIP revisions would be required to meet the Federal Clean Air Act (FCAA) statutory and regulatory requirements that apply to 2008 ozone NAAQS nonattainment areas reclassified as Moderate.

Under the Moderate area plan requirements of FCAA, Section 182(b)(1) and 40 CFR 51.1108, states with ozone nonattainment areas classified as Moderate are provided three years from the date of designation to submit a SIP revision complying with the Moderate ozone nonattainment plan requirements. For areas designated nonattainment for the 2008 ozone NAAQS and originally classified as Moderate, that deadline was July 20, 2015. In this proposal, the EPA interprets its existing rules as setting the attainment year for HGB area at 2017, and thus that January 1, 2017 is the beginning of the Moderate attainment year ozone season for the HGB area and the latest date that would be compatible with the deadline for Moderate area reasonably available control technology (RACT) to be in place.

The action also proposes that implementation of SIP-driven applicable controls occur no later than January 1, 2017.

II. COMMENTS

The proposed SIP submittal deadline of January 1, 2017 for the HGB 2008 ozone nonattainment area is unreasonable, not consistent with previous practice, and the EPA's lack of timely notification of the abbreviated schedule resulted in an undue burden on the state and stakeholders in the HGB area.

The EPA has long held that an appropriate deadline for states with reclassified nonattainment areas to submit FCAA-required SIP revisions is one year from final reclassification and followed this schedule for previous reclassifications of Texas nonattainment areas. The EPA continued to believe that SIP submittal within one year of reclassification is reasonable when it proposed reclassification of marginal nonattainment areas for the 2008 ozone NAAQS in August 2015:

We also note that we believe it is reasonable to provide states with a period of at least approximately 1 year after the reclassification is finalized to develop and submit the Moderate area SIP revisions. This provides time necessary for states and local air districts to finish their review of available control measures, adopt necessary

attainment strategies, address other SIP requirements, and complete the public notice process necessary to adopt and submit SIP revisions.¹

When the EPA published its final notice of reclassification, however, it determined that SIP submittal by January 1, 2017 was appropriate because such a deadline would allow the SIP to be in place by the beginning of the attainment year. Upon inception of this new interpretation, the EPA could have chosen to notify states with marginal nonattainment areas that received one-year attainment deadline extensions, like the HGB area, that should these areas be reclassified, the required SIP revisions would be due by January 1, 2017. Instead, EPA staff communicated to the TCEQ and local stakeholders on several occasions that these SIP revisions would be due one year from final reclassification by the EPA.

With this understanding of the EPA's intentions of a late 2017 or early 2018 due date, the TCEQ set about planning to develop the SIP revision. The TCEQ payed for contract work to develop emissions inventory improvements, worked with local, state, and federal partners to plan for the use of the most current transportation information to meet transportation conformity requirements, and communicated the anticipated SIP submittal schedule with stakeholders.

It was not until September 7, 2016 (less than 4 months from when it proposes the required SIP revisions are due) that the EPA notified the TCEQ of its final decision that January 1, 2017 would be the submittal deadline. While the TCEQ intends to meet this deadline, the EPA's lack of timely notification of its intentions has caused an undue burden on TCEQ and stakeholder resources. Further, the TCEQ was required to pay an additional \$20,000 to complete on-road emissions inventory work ahead of time to meet the EPA's unexpected, fast-tracked schedule, which also resulted in less time for TCEQ to conduct quality assurance of this data. The TCEQ has submitted numerous SIP revisions and has worked with EPA staff for decades on SIP development issues. The EPA is well aware of the significant time, effort, and resources the TCEQ puts into developing its SIP revisions. The EPA is very aware of the undue burden it has put on the state. The EPA's lack of concern shows how little emphasis was placed on working cooperatively and in good faith with Texas to develop the required SIP revisions.

It is not clear how the EPA is working closely with the TCEQ to support submittal of the required moderate nonattainment area requirements by the proposed January 1, 2017 deadline.

In Section III. *Proposed Action*, the EPA acknowledges that meeting the proposed January 1, 2017 deadline will be challenging and mentions that it is "working closely with TCEQ to support their submittal in a timely manner." It is unclear what actions the EPA has taken or will take to achieve such support, and the EPA should explain what this means in its final rule.

The TCEQ disagrees with the proposed January 1, 2017 RACT compliance deadline for the HGB reclassified nonattainment area and recommends adjusting this deadline to allow affected entities to comply with RACT no later than July 20, 2018.

In the 2008 eight-hour ozone standard SIP requirements rule, the EPA indicates that RACT must be implemented "no later than the outside attainment date for the area's classification," for

¹ "Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Several Areas Classified as Marginal for the 2008 Ozone National Ambient Air Quality Standards; Proposed Rule" 80 *Federal Register* 166 (August 27, 2015) p. 51999

areas reclassified after initial designations are issued, which is July 20, 2018 for the HGB area.² Also in the SIP requirements rule, the EPA indicates that if

“an area is reclassified from Marginal to Moderate at some later date, then that area would become subject to a new RACT requirement, and the EPA would set new SIP submission and RACT compliance dates on a reasonable schedule that the Administrator will establish in the applicable notice and comment rulemaking reclassifying the area.”³

In its proposed notice and comment rulemaking reclassifying the HGB area (81 *Federal Register* (FR) 66240), the EPA convolutes the RACT deadline for areas originally designated as a Moderate or higher nonattainment area with those areas that are reclassified at a later date, proposing to require compliance no later than January 1 of the 5th year after the effective date of original designation for the 2008 ozone NAAQS, which is, in this case, January 1, 2017. Establishing January 1, 2017 as the RACT compliance date for those nonattainment areas initially designated Moderate or above is consistent with the SIP requirements rule and provides approximately two and a half years for entities to comply with RACT requirements. However, establishing this same RACT compliance deadline for an area reclassified and thus becoming subject to FCAA RACT obligations over four years after initial designations is inconsistent with the SIP requirements rule and significantly reduces the amount of time affected entities would have to comply, so much so that compliance by January 1, 2017 becomes not just unreasonable, but impossible. The TCEQ has expedited its currently proposed volatile organic compounds (VOC) storage tank RACT update rule (Rule Project Number 2016-039-115-AI) to meet the EPA's unreasonable January 1, 2017 submission deadline. Even with the condensed timeline, the RACT rulemaking is anticipated to become effective only a couple of days before January 1, 2017. Affected entities cannot be expected to comply with the updated rule requirements immediately upon the effective date; this is surely not what was intended as “reasonable” in the SIP requirements rule.

Furthermore, the EPA's proposal indicates all control measures needed for attainment must be implemented no later than the beginning of the attainment year ozone season, which is January 1, 2017 for the HGB area. However, not all RACT rules are implemented as “control measures needed for attainment” as is the case with the proposed HGB VOC storage tank RACT update rule. States update and implement RACT requirements in a nonattainment area to satisfy control techniques guidelines (CTG) and non-CTG major source obligations under FCAA §172(c)(1) and §182(b)(2). While RACT and reasonably available control measures (RACM) have similar consideration factors like technological and economic feasibility, there is a significant distinction between RACT and RACM. A control measure must advance attainment of the area towards meeting the NAAQS for that measure to be considered RACM. Advancing attainment of the area is not a factor of consideration when evaluating RACT because the benefit of implementing RACT is presumed under the FCAA. Therefore, it is not imperative that the rules implemented to satisfy RACT obligations be implemented no later than the beginning of the attainment year ozone season. Rather, consistent with the EPA's own SIP requirements rule, the EPA should set a RACT compliance deadline no later than the attainment deadline, or July 20, 2018. This date would allow affected entities a reasonable one and a half years to comply with updated RACT requirements.

² 80 FR 12264 and 80 FR 12268

³ 80 FR 12282