


TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for 2008 Lead Designation and Boundary Recommendation

AGENDA REQUESTED: August 26, 2009

DATE OF REQUEST: August 7, 2009

NAME & NUMBER OF PERSON TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Kerry Howard, 239-0556

CAPTION: Docket No. 2009-0643-SIP. Discussion and consideration of recommendations regarding designation and boundary determinations for the 2008 revised lead National Ambient Air Quality Standard (NAAQS) for submittal to the governor for his consideration and transmittal to the United States Environmental Protection Agency (EPA). The EPA will consider state recommendations in making final designations and boundary determinations for the 2008 revised lead NAAQS. On October 15, 2008, the EPA revised the lead standard from 1.5 micrograms per cubic meter to 0.15 micrograms per cubic meter. The Federal Clean Air Act requires state recommendations be submitted no later than one year after a new standard is issued, or October 15, 2009. (Melissa Kuskie, Amy Browning)


Chief Engineer


Acting Division Director


Agenda Coordinator

Copy to CCC Secretary? NO X YES


Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** August 7, 2009

Thru: LaDonna Castañuela, Chief Clerk

Thru: Mark R. Vickery, P.G., Executive Director

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

Docket No.: 2009-0643-SIP

Subject: Commission Consideration of 2008 Lead National Ambient Air Quality Standard (NAAQS) Nonattainment Area Designation and Boundary Recommendation

Introduction and reasons for the recommendation:

On October 15, 2008, the United States Environmental Protection Agency (EPA) revised the 1978 lead NAAQS from 1.5 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to $0.15 \mu\text{g}/\text{m}^3$. Section 107(d)(1)(A) of the Federal Clean Air Act (FCAA) requires states to submit to the EPA a recommendation regarding attainment, nonattainment, or unclassifiable areas, including their boundaries, no later than one year after the promulgation of a new or revised NAAQS. The deadline for submitting a recommendation is October 15, 2009.

EPA designations are based on three years of validated data. This recommendation relies on air quality monitoring data from 2006 through 2008, air dispersion modeling, and analysis of relevant factors. The EPA's designation, which is expected by October 15, 2010, (or October 15, 2011, for areas with insufficient monitoring data as of October 2010) may be based on 2007 through 2009 data. The EPA directed states to use the EPA's November 12, 2008, *Federal Register* (73 FR 67032) final rule for boundary guidance for state recommendations. The EPA rule "presumptively define[s] the boundary for designating a nonattainment area as the perimeter of the county associated with the air quality monitor(s) which records a violation of the standard as proposed." However, "as part of the county boundary presumption for nonattainment areas, the state and/or EPA may conduct additional area-specific analyses that could lead EPA to depart from the presumptive county boundary." There is currently one Texas county, Collin County, with an ambient air monitor that is violating the 2008 standard.

Is this recommendation required by federal or state rule or statute? Yes. Section 107(d)(1)(A) of the FCAA requires states to submit to the EPA a recommendation regarding attainment, nonattainment, or unclassifiable for all areas of the state.

Is this recommendation in response to state legislation? No.

Potential alternatives: The FCAA requires that states submit a recommendation. Should the state opt not to submit a recommendation package, the EPA would then make final designations and nonattainment area boundary determinations without state input.

What the lead recommendation will do: Consideration of this recommendation would allow the Texas Commission on Environmental Quality to submit to the governor for his consideration a designation and boundary determination recommendation for transmittal to the EPA to comply with the FCAA.

Re: 2008 lead NAAQS nonattainment area designation and boundary recommendation

What is the authority to submit this recommendation? FCAA, §107(d)(1)(A) and Texas Clean Air Act, §§ 382.002, 382.011, and 382.013.

Effect on the:

- **Regulated community:** Regulated entities in areas designated nonattainment could be subject to regulatory requirements. These may include permitting requirements and requirements to reduce emissions.
- **Public:** The public will benefit from improved air quality but could, though likely will not, be subject to regulatory requirements.
- **Agency programs:** Nonattainment areas will require that agency programs and functions associated with air quality planning issues develop state implementation plans and implement programs, including rulemaking, monitoring, permitting, and enforcement.

Controversial issues: None.

Legislative interest: There have been no legislative inquiries to date.

Schedule and constraints: The governor's recommendation is due to the EPA no later than October 15, 2009.

Stakeholder involvement: The Air Quality Division conducted a public meeting in Austin on May 15, 2009, to discuss the designation process and invited comments for use in preparing a recommendation. The meeting was video-teleconferenced to regional offices in Amarillo, Beaumont, Dallas/Fort Worth, El Paso, Harlingen, Houston, San Antonio, Tyler, and Waco. Sixteen members of the public attended in person, and one member of the public participated via phone. No comments were received.

Executive Director's Recommendation: Considering 2006 through 2008 lead monitoring data and other factors, the Executive Director recommends that the portion of Collin County located in the City of Frisco that is bounded to the north by latitude 33.158, to the east by longitude -96.82, to the south by latitude 33.127, and to the west by longitude -96.84, be designated nonattainment of the 2008 lead standard. The remaining portions of Collin County, along with all other Texas counties, are recommended to be designated as attainment/unclassifiable.

Agency contacts:

Melissa Kuskie, Project Manager, 239-6098, Air Quality Division
Amy Browning, Staff Attorney, 239-0891, Environmental Law Division
Kerry Howard, Texas Register Coordinator, 239-0556

Attachments

- Executive summary technical support: Attachment A - Decision Matrix; Attachment B – Nonattainment Area Boundary Factor Analysis; Attachment C – Modeling Analysis of Lead for Exide Technologies; Exhibits A – Proposed Texas Nonattainment Area for the 2008 Lead Standard maps
- Attachment D - Draft letter from Chairman Garcia to Governor Perry
- Attachment E - Draft letter from Governor Perry to EPA, Region 6 with recommendation enclosures (Exhibits A)

Commissioners

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Re: 2008 lead NAAQS nonattainment area designation and boundary recommendation

cc: Chief Clerk, 5 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Daniel Womack
Kevin Patteson
Betsy Bird
Office of General Counsel
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Kerry Howard