

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** September 16, 2011

Thru: Melissa Chao, Acting Chief Clerk
Mark R. Vickery, P.G., Executive Director

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

Docket No.: 2011-0331-SIP

Subject: Commission Approval for Federal Clean Air Act (FCAA) §110(a)(1) and (2) Infrastructure Demonstration State Implementation Plan (SIP) Revision for the 2008 Lead National Ambient Air Quality Standard (NAAQS) Adoption Non-Rule Project No. 2011-016-SIP-NR

Background and reason(s) for the SIP revision:

On October 15, 2008, the United States Environmental Protection Agency (EPA) substantially strengthened the NAAQS for lead. The new standard, set at 0.15 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) measured as a rolling three-month average, is 10 times more stringent than the previous standard of 1.5 $\mu\text{g}/\text{m}^3$ measured as a quarterly average. Section 110(a)(1) of the FCAA requires states to submit a plan to provide for the implementation, maintenance, and enforcement of the NAAQS. Section 110(a)(2) lists the elements that the new SIP revisions must contain. States are required to submit these infrastructure SIP submittals to the EPA to demonstrate that basic program elements have been addressed within three years of the promulgation of a new or revised NAAQS. For the 2008 lead NAAQS, these SIP revisions are due October 15, 2011.

The October 2, 2007, EPA guidance regarding obligations under FCAA, §110(a)(1) and (2) for the 1997 eight-hour ozone and the 1997 particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($\text{PM}_{2.5}$) NAAQS, and the September 25, 2009, guidance for the 2006 $\text{PM}_{2.5}$ NAAQS indicated that if a state determines that its existing SIP is adequate, the state can certify, via a letter to the EPA, that the existing SIP contains provisions that address the infrastructure requirements. However, on February 24, 2011, EPA Region 6 staff communicated to the Texas Commission on Environmental Quality (TCEQ) that pending guidance for the 2008 lead NAAQS would likely require that infrastructure SIP revisions be opened to public notice and comment and that certification letters would no longer be adequate to meet the requirements of §110(a)(1) and (2). EPA Region 6 staff sent a draft 2008 lead NAAQS infrastructure guidance document to the TCEQ on June 21, 2011. This draft guidance indicates that the submittal may be a certification in the form of a letter to the EPA from the governor or the governor's designee but that the state must provide reasonable public notice and opportunity for public hearing on a submittal prior to submission to the EPA. The adopted SIP revision will meet the notice and comment requirements identified in the draft guidance. To meet the infrastructure SIP submittal deadline of October 15, 2011, the TCEQ must adopt this SIP revision despite the lack of finalized EPA guidance.

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Scope of the SIP revision:

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

The adopted SIP revision will document how the infrastructure elements listed in FCAA, §110(a)(2) are currently addressed in the Texas SIP. The SIP revision will outline the requirements of FCAA, §110(a)(2)(A) through (M) and the Texas statutes and rules that allow the TCEQ to meet those requirements. These requirements include basic program elements such as enforceable emission limitations and control measures, air quality monitoring and modeling, a permitting program, adequate funding and personnel, authority under state law to carry out the plan, emissions reporting, emergency powers, public participation, and fee collection. Section 110(a)(2)(D) relating to interstate transport of emissions is not included in this SIP revision but is addressed in a separate Lead Transport SIP Revision adopted on August 17, 2011 (Project Number 2011-005-SIP-NR).

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

FCAA, §110(a)(1) requires states to submit a SIP revision to provide for the implementation, maintenance, and enforcement of the NAAQS within three years of the promulgation of a new or revised NAAQS. Section 110(a)(2)(A) through (M) lists the infrastructure elements that the SIP revision must address.

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

None

Statutory authority:

The authority to propose and adopt this SIP revision is derived from Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.002, which provides that the policy and purpose of the TCAA is to safeguard the state's air resources from pollution; TCAA, §382.011, which authorizes the commission to control the quality of the state's air; TCAA, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and Texas Water Code §5.02, General Powers, and §5.013, General Jurisdiction of the Commission.

The FCAA, 42 USC §§7401, et seq., requires states to submit SIP revisions that specify the manner in which the NAAQS will be achieved and maintained within each air quality control region of the state. Additionally, the specific requirements for the 2008 lead NAAQS were published in the November 12, 2008, issue of the *Federal Register* (73 FR 66963).

Effect on the:

A.) Regulated community:

This SIP revision contains no new control measures and will not affect the regulated community.

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B.) Public:

This SIP revision will have no new effect on the public.

C.) Agency programs:

This SIP revision will have no new effect on agency programs.

Stakeholder meetings:

Because there are no new rules associated with this SIP revision, no stakeholder meetings were held.

Public comment:

The commission offered a public hearing for the proposed SIP revision on July 25, 2011, at 10:00 a.m. at the TCEQ Headquarters in Austin. A question and answer session was held 30 minutes prior to the meeting. The hearing was not officially opened because no party indicated a desire to give comment.

The public comment period opened June 24, 2011, and closed July 29, 2011. A comment letter was received from the EPA Region 6. The EPA suggested language to be added to the Texas Regulatory Authority chapter of the SIP revision. The necessary revisions were made to the SIP narrative, and a summary of the comments and the TCEQ response is provided as part of the SIP revision in the Response to Comments.

Significant changes from proposal:

None

Potential controversial concerns and legislative interest:

Senator Shapiro has voiced interest in and filed legislation that would further control a specific lead source in Frisco, Texas. There has also been considerable interest in lead emissions from the citizens and elected officials in Frisco, Texas. These concerns have been focused on potential exposure and minimizing emissions and not the infrastructure requirements themselves.

Does 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 this SIP revision?

The lead infrastructure SIP revision is required by §110(a) of the FCAA. If a SIP revision is not submitted, the EPA would be required to promulgate a Federal Implementation Plan (FIP) for Texas to address the infrastructure requirements. The state could delay development of a lead infrastructure SIP revision until the EPA issues final guidance regarding lead SIP requirements; should guidance be issued later than anticipated, the

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state might submit the infrastructure SIP revision after the October 15, 2011, deadline but prior to expiration of a two-year FIP clock. The EPA issued draft guidance on June 21, 2011.

The state could alternatively submit a certification letter following the October 2, 2007, EPA guidance regarding obligations under FCAA, §110(a)(1) and (2) for the 1997 eight-hour ozone and PM_{2.5} NAAQS, and the September 25, 2009, guidance for the 2006 PM_{2.5} NAAQS stating that the existing SIP contains provisions that address the infrastructure requirements. However, draft EPA guidance for the 2008 lead NAAQS indicates that a certification letter submitted without reasonable notice and public hearings would not be adequate to fulfill the requirements of §110(a)(1) and (2) for the 2008 lead NAAQS.

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