

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** June 3, 2011

Thru: LaDonna Castañuela, Chief Clerk
Mark R. Vickery, P.G., Executive Director

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

Docket No.: 2011-0282-SIP

Subject: Commission Approval for Proposed 2011 Collin County Attainment Demonstration State Implementation Plan (SIP) Revision for the 2008 Lead National Ambient Air Quality Standard (NAAQS)
Short Title: 2008 Lead Attainment Demonstration SIP Revision
Non-Rule Project No. 2011-001-SIP-NR

Background and reasons 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 established in 1978 of 1.5 $\mu\text{g}/\text{m}^3$ measured as a quarterly average. Effective December 31, 2010, the EPA designated an area surrounding Exide Technologies (Exide) located in Frisco, Collin County, as nonattainment for the 2008 lead NAAQS (75 FR 71033).

Section 110(a)(1) of the Federal Clean Air Act (FCAA) requires states to submit a SIP revision for areas that have been designated nonattainment to provide for the implementation, maintenance, and enforcement of the NAAQS. States are required to adopt and submit attainment demonstration SIP revisions within 18 months of designation. In accordance with FCAA, §172 and implementation guidance published with the November 12, 2008, final Lead NAAQS (73 FR 66964), the proposed SIP revision contains a reasonably available control measures analysis, a reasonably available control technology analysis, demonstration of attainment through air dispersion modeling, a control strategy demonstration, an emissions inventory, a demonstration of reasonable further progress, and contingency measures.

Scope of the proposed SIP revision:

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

The 2008 Lead Attainment Demonstration SIP revision would demonstrate attainment using an air dispersion modeling analysis that includes existing control strategies as well as the control strategies being implemented concurrently with this SIP revision. This SIP revision also includes FCAA required elements, including a reasonably available control

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measures (RACM) analysis, a reasonably available control technology (RACT) analysis, demonstration of reasonable further progress (RFP), and a contingency plan.

The control measures and contingency measures that have been identified for the 2008 Lead Attainment Demonstration SIP revision will be enforceable through an Agreed Order between the Texas Commission on Environmental Quality (TCEQ) and Exide (Agreed Order No. 2011-0521-MIS), the only lead source in the nonattainment area. To ensure compliance with the 2008 lead NAAQS, the Agreed Order is being proposed concurrently with this SIP revision. The Agreed Order provides enforceable measures to reduce emissions necessary for the Collin County lead nonattainment area to attain the 2008 lead NAAQS by November 1, 2012, and contains contingency measures designed to ensure continued compliance with the standard.

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

In accordance with FCAA, §172(c) and implementation guidance published with the final 2008 lead NAAQS (73 FR 66964), an attainment demonstration for lead must include the following elements:

- RACM and RACT analysis;
- dispersion modeling demonstrating attainment by the required December 2015 deadline;
- control strategy demonstration;
- emissions inventory;
- contingency measures; and
- demonstration of RFP.

Submission of RFP is typically separate from attainment demonstration SIP submissions, but in the case of lead nonattainment areas, RFP is met by “adherence to an ambitious compliance schedule,” which is expected to periodically yield significant emission reductions. The EPA believes that the expeditious implementation of RACM/RACT within the nonattainment area is an appropriate approach to RFP.

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.

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FCAA, 42 United States Code §§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 66964).

Effect on the:

A.) Regulated community:

The affected regulated community consists only of Exide, the sole significant contributing source of lead in the nonattainment area. The affected source would be required to install additional control technologies to meet the NAAQS, implement new work practices, and comply with additional monitoring and recordkeeping requirements. For further information, please refer to the executive summary in the narrative of the proposed 2008 Lead Attainment Demonstration SIP revision, which contains details of the controls set out in the Agreed Order.

B.) Public:

The general public in the Frisco area would benefit from improved air quality from reduced lead emissions.

C.) Agency programs:

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

Stakeholder meetings:

A stakeholder meeting for the proposed 2008 Lead Attainment Demonstration SIP revision was held on January 19, 2011, in Frisco. Stakeholders expressed numerous concerns about air quality, public health, industry-related emissions, proposed control strategies, and property values.

Potential controversial concerns and legislative interest:

The City of Frisco, the citizens of Frisco, and the Honorable Florence Shapiro, Texas Senator District 8, have expressed considerable concern regarding Frisco's air quality. Parties have also expressed great interest in expediting emission reductions at the Exide facility.

Will 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 commission could choose to not comply with requirements to develop and submit this lead attainment demonstration SIP revision to the EPA. If the 2008 Lead Attainment

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Demonstration SIP revision is not submitted by June 30, 2012, the EPA could issue a finding of failure to submit, requiring that the commission submit the required SIP revision within a specified time period, and imposing sanctions on the state. The EPA would be required to promulgate a Federal Implementation Plan (FIP) if the commission failed to make the submission within two years. Sanctions could include transportation funding restrictions and grant withholdings. The EPA would be required to impose such sanctions and implement a FIP until it approved a replacement SIP for the area.

Alternatively, the commission could propose a SIP revision that relies on rule changes as the control strategy for the SIP. This would require the proposal, followed by a public notice and comment period for any rule changes and a different SIP revision.

Key points in the proposal SIP revision schedule:

Anticipated proposal date: June 22, 2011

Public hearing date: July 28, 2011

Public comment period: June 24, 2011 through August 8, 2011

Anticipated adoption date: December 7, 2011

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