

**COMMENTS BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
REGARDING THE APPROVAL AND PROMULGATION OF IMPLEMENTATION
PLANS; TEXAS; PROPOSED DISAPPROVAL OF INTERSTATE TRANSPORT STATE
IMPLEMENTATION PLAN REVISION FOR THE 2006 24-HOUR PM_{2.5} NAAQS;
PROPOSED RULE**

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I. Summary of Proposed Action

On April 13, 2011, the United States Environmental Protection Agency (EPA) published in the *Federal Register* (76 FR 20602) a proposed rule to disapprove Texas' infrastructure state implementation plan (SIP) submission addressing the Federal Clean Air Act (FCAA), §110(a)(2)(D)(i)(I) transport requirements for the 2006 fine particulate matter (PM_{2.5}) National Ambient Air Quality Standard (NAAQS).

II. Comments

The September 25, 2009, EPA "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS)" was published four days after the FCAA-required deadline for submittal of such SIPs, and it did not adequately describe how to complete the required technical analysis, in light of the gap between the remand of the Clean Air Interstate Rule (CAIR) and the finalization of the replacement Transport Rule.

The EPA published guidance for 2006 24-hour PM_{2.5} NAAQS §110(a)(1) and (2) SIP submissions on September 25, 2009, which was four days after the September 21, 2009, deadline to submit those SIPs. Further, the guidance indicated that the state's SIP was required to include a technical analysis, although the EPA was at that time working on a similar technical analysis for the CAIR replacement rule. The guidance stated that states could not wait for the CAIR replacement rule without receiving a finding of failure to submit notice, but that states could also not rely on the existing CAIR rule to address transport obligations for the 2006 24-hour PM_{2.5} NAAQS. The TCEQ believes that it is unreasonable for the EPA to require a technical analysis without providing explicit guidance as to how states would be expected to complete such analysis considering the transition between the remand of an existing program and the implementation of a replacement program. The CAIR program was, and currently is, still in place in Texas, and the controls for that program are effectively reducing PM_{2.5} emissions in the state. It is unreasonable for the EPA to require a technical analysis that excludes existing controls while states wait for the results of the replacement rule analysis without providing detailed guidance concerning the necessary components of an effective technical analysis in such a situation. Completion of a technical analysis would also have been particularly challenging given Texas had no indication whether that analysis would be promptly negated by any potential CAIR replacement rule analysis.

If the finalized Transport Rule serves as the Federal Implementation Plan (FIP) that the EPA intends to implement for Texas, the TCEQ strongly objects to the EPA proposing a rule that might apply to Texas at finalization without providing adequate notice and information necessary for meaningful comment in the Transport Rule proposal.

The EPA indicates that the Transport Rule may serve as the FIP that EPA intends to implement for Texas. If so, Texas could be made subject to the annual NO_x and SO₂ Group 2 trading programs at finalization of the Transport Rule proposal rather than at finalization of a future proposal. The proposal of the Transport Rule did not provide adequate information for the

TCEQ to comment regarding whether or not Texas should be included in the rule for PM_{2.5}. Annual NO_x and SO₂ budgets, new unit set-aside, and variability limits for Texas were not provided in the proposal; therefore, the TCEQ could not adequately comment as to the potential implications of including Texas under that portion of the proposed Transport Rule. If the EPA wanted to consider including Texas in the annual NO_x and SO₂ Group 2 trading programs because of assumed future concerns with PM_{2.5}, then the EPA should have proposed the rule in that manner or proposed an alternative that included Texas so that affected entities would be given adequate notice to comment. If the final rule does include Texas in the annual NO_x and SO₂ Group 2 trading programs at adoption of the Transport Rule, potentially regulated entities would have been denied the opportunity to comment on the adequacy of the state and unit-level budgets, new unit set-aside, and variability limits.

Because the Transport Rule is the EPA's intended remedy for certain states' §110(a)(2)(D)(i)(I) SIP deficiencies, the TCEQ reiterates its request first stated in comments for the proposed Transport Rule that the EPA should provide guidance for states whose participation in the Transport Rule program is fundamentally different from their participation in the CAIR program.

The EPA has stated that the Transport Rule may be the FIP that it uses to correct a potential disapproval of Texas' section 110(a)(2)(D)(i)(I) SIP for the 2006 PM_{2.5} standard. If the EPA does not intend to include Texas in the finalized Transport Rule for PM_{2.5}, they have not provided any further information regarding what the EPA will require in order for the state to address this disapproval, or any possible pending SIP obligation for the 1997 PM_{2.5} standard, via the SIP process rather than the FIP process, or what type of alternative FIP the EPA might consider in lieu of the Transport Rule. Without any information about these possible alternatives, it is impossible for Texas to provide meaningful comment on the appropriateness or potential difficulties with any such procedures or to evaluate their potential impact.

Texas was previously included only in the CAIR annual SO₂ and NO_x trading program (for interstate pollution from PM_{2.5}), but is now proposed for inclusion in the Transport Rule only for the ozone-season NO_x trading program. A number of other states' inclusion has changed from that required in the CAIR. To the extent that Texas and other states relied upon CAIR to address section 110(a)(2)(D)(i)(I) obligations, or to fulfill certain other SIP obligations, the EPA should provide specific guidance, in a timely manner, to address any potentially outstanding SIP obligations for such states.