

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Withdrawal from the State Implementation Plan

AGENDA REQUESTED: September 25, 2020

DATE OF REQUEST: September 4, 2020

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Jamie Zech, Agenda Coordinator, (512) 239-3935

CAPTION: Docket No. 2020-0867-SIP. Consideration to withdraw from the United States Environmental Protection Agency's review, the El Paso Redesignation Request and Maintenance Plan State Implementation Plan Revision for the One-Hour Ozone National Ambient Air Quality Standard (NAAQS), adopted by the commission on April 24, 2019. (Vanessa T. De Arman, Terry Salem) (Non-Rule Project No. 2020-040-SIP-NR)

Tonya Baer
Deputy Director

Donna F. Huff
Division Director

Jamie Zech
Agenda Coordinator

Copy to CCC Secretary? NO X YES

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** September 4, 2020

Thru: Bridget C. Bohac, Chief Clerk
Toby Baker, Executive Director

From: Tonya Baer, Deputy Director
Office of Air

Docket No.: 2020-0867-SIP

Subject: Commission Withdrawal of the El Paso Redesignation Request and Maintenance Plan State Implementation Plan (SIP) Revision for the One-Hour Ozone National Ambient Air Quality Standard (NAAQS) Submittal
El Paso One-Hour Ozone Redesignation Request and Maintenance Plan SIP Withdrawal
Non-Rule Project No. 2020-040-SIP-NR

Background and reason(s) for the SIP withdrawal:

The El Paso Redesignation Request and Maintenance Plan SIP Revision for the One-Hour Ozone NAAQS, adopted by the Texas Commission on Environmental Quality (commission) on April 24, 2019, was submitted to the United States Environmental Protection Agency (EPA) on May 10, 2019. The SIP revision included a request that the EPA redesignate the El Paso area to attainment for the revoked 1979 one-hour ozone NAAQS along with a plan to provide for maintenance of the one-hour ozone standard in the El Paso area through 2032. The SIP revision also included a request that the EPA consider this plan as a second 10-year maintenance plan for the one-hour ozone NAAQS. The EPA has taken no action on this submittal.

As stated in the EPA's final actions for the Houston-Galveston-Brazoria and Dallas-Fort Worth area redesignation request and maintenance plan SIP revisions for both the one-hour and 1997 eight-hour ozone standards,¹ the EPA has taken the position that it lacks the authority to redesignate areas to attainment under revoked standards.² Therefore, staff recommends withdrawing the one-hour ozone redesignation request and maintenance plan for the El Paso area from the EPA's consideration.

Scope of the request:

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

If approved by the commission, the previously submitted El Paso Redesignation Request and Maintenance Plan SIP Revision for the One-Hour Ozone NAAQS would be withdrawn from the EPA's consideration.

¹ The final actions for both the Houston-Galveston-Brazoria and Dallas-Fort Worth area redesignation request and maintenance plan SIP revisions for both the one-hour and 1997 eight-hour ozone standards were published on February 14, 2020 (85 FR 8411) and April 6, 2020 (85 FR 19096), respectively.

² In April 2004, the EPA published a rule governing implementation of the 1997 ozone NAAQS (Phase 1 Rule) (69 FR 23951). The Phase 1 Rule revoked the one-hour ozone NAAQS along with designations and classifications for that standard.

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

There are no required federal regulations or state statutes associated with this SIP withdrawal. Because the SIP revision has not been approved by the EPA, no public hearing is necessary for the commission to withdraw it from EPA consideration.

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

There are no additional staff recommendations.

Statutory authority:

This request to withdraw the previously submitted El Paso Redesignation Request and Maintenance Plan SIP Revision for the One-Hour Ozone NAAQS is made under the commission's authority in Texas Water Code (TWC), §5.102, General Powers, TWC, §5.103, Rules, and TWC, §5.105, General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory programs. The withdrawals are also adopted under Texas Health & Safety Code (THSC), §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; and THSC, §382.012, State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for the control of the state's air.

Effect on the:

A.) Regulated community:

None.

B.) Public:

None.

C.) Agency programs:

None.

Stakeholder meetings:

None were held.

Potential controversial concerns and legislative interest:

None expected.

Does this withdrawal affect any current policies or require development of new policies?

No.

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What are the consequences if this SIP withdrawal does not go forward? Are there alternatives to withdrawing?

If the commission does not approve this withdrawal, the EPA could disapprove or take no action on the El Paso Redesignation Request and Maintenance Plan SIP Revision for the One-Hour Ozone NAAQS.

Key points in the SIP withdrawal adoption schedule:

Anticipated adoption date: September 25, 2020

Agency contacts:

Vanessa T. De Arman, SIP Project Manager, Air Quality Division, (512) 239-5609
John M. Minter, Staff Attorney, Environmental Law Division, (512) 239-0663
Terry G. Salem, Staff Attorney, Environmental Law Division, (512) 239-0469
Jamie Zech, Agenda Coordinator, Air Quality Division, (512) 239-3935

cc: Chief Clerk, 2 copies
Executive Director's Office
Jim Rizk
Morgan Johnson
Brody Burks
Office of General Counsel
Vanessa T. De Arman
Jamie Zech
Terry G. Salem
John M. Minter

**ORDER ADOPTING WITHDRAWAL OF
REVISION TO THE STATE IMPLEMENTATION PLAN
FROM EPA CONSIDERATION FOR APPROVAL**

**Docket No. 2020-0867-SIP
Non-Rule Project No. 2020-040-SIP-NR**

On September 25, 2020, the Texas Commission on Environmental Quality (commission), during a public meeting, considered the withdrawal from consideration for United States Environmental Protection Agency (EPA) approval a previously submitted revision to the State Implementation Plan (SIP) for the El Paso 1979 one-hour ozone nonattainment area.

The El Paso Redesignation Request and Maintenance Plan SIP Revision for the One-Hour Ozone National Ambient Air Quality Standard (NAAQS) was adopted by the commission on April 24, 2019 and submitted to the EPA on May 10, 2019.

To date, the EPA has taken no action on this submittal, and it is the commission's understanding that EPA does not intend to act on redesignation requests and maintenance plans for the revoked 1979 one-hour ozone NAAQS.

Under Tex. Health & Safety Code Ann. §§382.011, 382.012, and 382.023 (West 2016), the commission has the authority to control the quality of the state's air and to issue orders consistent with the policies and purposes of the Texas Clean Air Act, Chapter 382 of the Tex. Health & Safety Code.

IT IS THEREFORE ORDERED BY THE COMMISSION that the El Paso Redesignation Request and Maintenance Plan SIP Revision for the One-Hour Ozone NAAQS adopted by the commission on April 24, 2019 and submitted to the EPA on May 10, 2019 is hereby withdrawn from submission to EPA as a revision to the SIP.

IT IS FURTHER ORDERED BY THE COMMISSION that on behalf of the commission, the Chairman should transmit a copy of this Order to the Regional Administrator of EPA, conveying this withdrawal.

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Jon Niermann, Chairman

Date Signed