

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**  
for Agreed Order Withdrawal and Voidance

**AGENDA REQUESTED:** May 13, 2026

**DATE OF REQUEST:** April 24, 2026

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

**CAPTION: Docket No. 2021-0508-MIS.** Consideration to void an agreed order that was adopted by the commission on February 9, 2022. If voided, this agreed order will be withdrawn from U.S. Environmental Protection Agency (EPA) consideration as a revision to the State Implementation Plan (SIP). This agreed order with Luminant Generation Company, LLC was incorporated into the SIP to meet nonattainment area requirements for portions of Rusk and Panola Counties under the 2010 primary one-hour sulfur dioxide (SO<sub>2</sub>) National Ambient Air Quality Standard (NAAQS) by providing an enforceable control strategy for the Martin Lake Steam Electric Station (Non-Rule Project No. 2021-013-OTH-NR).

The agreed order under consideration for voidance and withdrawal from the SIP is no longer needed to meet the 2010 SO<sub>2</sub> NAAQS due to the remand of the Rusk-Panola area's nonattainment designation by the U.S. Court of Appeals for the Fifth Circuit on May 16, 2025, and subsequent acknowledgement from EPA that the nonattainment designation was vacated. (Alison Stokes, Terry Salem; Non-Rule Project No. 2026-015-OTH-NR)

Richard C. Chism  
**Director**

Donna F. Huff  
**Division Deputy Director**

Jamie Zech  
**Agenda Coordinator**

Copy to CCC Secretary? NO  YES

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** April 24, 2026

**Thru:** Laurie Gharis, Chief Clerk  
Kelly Keel, Executive Director

**From:** Richard C. Chism, Director *RCC*  
Office of Air

**Docket No.:** 2021-0508-MIS

**Subject:** Commission Voidance and Withdrawal of the Agreed Order with Luminant Generation, LLC (Luminant or the company) from U.S. Environmental Protection Agency (EPA) Consideration as a revision to the State Implementation Plan (SIP) for the 2010 Sulfur Dioxide (SO<sub>2</sub>) National Ambient Air Quality Standard (NAAQS)

Voidance and Withdrawal from EPA Consideration and Approval of SO<sub>2</sub> Agreed Order with Luminant  
Non-Rule Project No. 2026-015-OTH-NR

**Background and reason(s) for the agreed order voidance and withdrawal:**

On June 22, 2010, EPA published a final rule revising the SO<sub>2</sub> NAAQS to add a 75 parts per billion one-hour primary standard, effective August 23, 2010 (75 *Federal Register* (FR) 35520). On December 13, 2016, EPA published a nonattainment designation for portions of Rusk and Panola Counties (Rusk-Panola), effective January 12, 2017 (81 FR 89870). A SIP revision demonstrating attainment for the Rusk-Panola nonattainment area was due to EPA by July 13, 2018. However, the Texas Commission on Environmental Quality (TCEQ or the commission) did not submit the SIP revision at that time due to ongoing litigation. On August 10, 2020, EPA published a final notice of Texas' failure to submit required nonattainment SIP elements for the Rusk-Panola area under the 2010 SO<sub>2</sub> NAAQS (85 FR 48111).

On February 9, 2022, TCEQ adopted the Rusk-Panola Attainment Demonstration SIP Revision for the 2010 SO<sub>2</sub> NAAQS (Non-Rule Project No. 2020-057-SIP-NR), which contained all required SIP elements for nonattainment areas under the 2010 SO<sub>2</sub> NAAQS. The Martin Lake Steam Electric Station (Martin Lake), owned and operated by Luminant, is the only major SO<sub>2</sub> emissions source in the Rusk-Panola area. TCEQ and Luminant entered into an agreed order that documents the commission's order, and the company's agreement, to comply with the identified emission reduction requirements and provide an enforceable control strategy for Martin Lake (Agreed Order Docket No. 2021-0508-MIS, Non-Rule Project No. 2021-013-OTH-NR). The agreed order was also adopted and incorporated into the SIP by the commission on February 9, 2022. The SIP revision and associated agreed order were submitted to EPA on February 28, 2022. On December 17, 2024, EPA published a final notice of its finding of failure to attain by the area's attainment date of January 12, 2022 (89 FR 101894).

On May 16, 2025, the U.S. Court of Appeals for the Fifth Circuit (court) remanded EPA's designation of the Rusk-Panola area as nonattainment for reconsideration of the appropriate designation considering available monitoring data, *Texas v. EPA*, 137 F. 4th 353 (5th Cir. 2024). On September 5, 2025, EPA published a direct final rule withdrawing its finding of failure to submit required SIP elements and finding of failure to attain for the Rusk-Panola area resulting from the nonattainment designation, citing the court's decision and acknowledging vacatur of the nonattainment area designation (90 FR 42831). Due to the vacatur of the area's nonattainment designation, nonattainment SIP elements are no longer required for the Rusk-Panola area. Staff recommend the commission void the agreed order with Luminant and withdraw it from EPA's consideration.

Re: Docket No. 2021-0510-SIP

**Scope of the request:**

**A.) Summary of what the agreed order voidance and withdrawal will do:**

If approved by the commission, TCEQ would void and withdraw the previously submitted agreed order with Luminant (Agreed Order Docket No. 2021-0508-MIS; Non-Rule Project No. 2021-013-OTH-NR), as adopted February 9, 2022, from EPA's consideration for approval. The associated SIP revision would also be concurrently withdrawn (2026-014-OTH-NR).

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

There are no required federal regulations or state statutes associated with this agreed order voidance and withdrawal. Because this agreed order is no longer required, no public hearing is necessary for the commission to void the agreed order and withdraw the submittal from EPA consideration.

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

None.

**Statutory authority:**

The request to withdraw and void this agreed order is made under the commission's authority in:

- Texas Water Code, (TWC) §5.102, General Powers;
- TWC, §5.105, General Policy;
- TWC, §5.013, General Jurisdiction of Commission. Texas Health & Safety Code, (THSC), §382.002, Policy and Purpose;
- THSC, §382.011, General Powers and Duties;
- THSC, §382.012, State Air Control Plan;
- THSC, §382.023, Orders;
- THSC, §382.024, Factors in Issuing Orders and Determinations; and
- THSC, §382.025, Orders Relating to Controlling Air Pollution.

**Effect on the:**

**A.) Regulated community:**

As a result of the voidance and withdrawal of the agreed order, Luminant would no longer be required to adhere to the requirements of the agreed order.

**B.) Public:**

None.

**C.) Agency programs:**

None.

**Stakeholder meetings:**

TCEQ staff met with Luminant, as the signatory of the agreed order, to discuss the reasoning and impact of the potential withdrawal and voidance.

**Public Involvement Plan**

No.

**Alternative Language Requirements**

None.

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Re: Docket No. 2021-0510-SIP

**Potential controversial concerns and legislative interest:**

There are no known controversial concerns or legislative interests.

**Would this voidance and withdrawal affect any current policies or require development of new policies?**

No.

**What are the consequences if this voidance and withdrawal do not go forward? Are there alternatives to this action?**

The commission could choose not to void and withdraw the agreed order from EPA consideration for approval. However, if the agreed order is not voided, it remains enforceable by the state for a nonattainment designation and SIP requirements that no longer apply; if the submittal is not withdrawn, it would remain pending for EPA consideration for approval even though the area's nonattainment designation is no longer effective.

**Key points in the voidance and withdrawal schedule:**

**Anticipated adoption date:** May 13, 2026

**Agency contacts:**

Alison Stokes, SIP Project Manager, Air Quality Division, (512) 239-4902  
Terry Salem, Staff Attorney, Environmental Law Division, (512) 239-0663  
Jamie Zech, Agenda Coordinator, Air Quality Division, (512) 239-3935

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Patrick Lopez  
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Office of General Counsel  
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