

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 This draft guidance indicates that the submittal may be a certification in the form of a letter to the EPA from the governor or the governor's designee but that the state must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.

Agency contacts:

Shelley Naik, SIP Project Manager, 239-1536, Air Quality Division
Amy Browning, Staff Attorney, 239-0891, Environmental Law Division

cc: Chief Clerk, 2 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Anne Idsal
Curtis Seaton
Ashley Morgan
Office of General Counsel
Shelley Naik
Joyce Spencer

REVISIONS TO THE STATE OF TEXAS AIR QUALITY
IMPLEMENTATION PLAN CONCERNING FEDERAL CLEAN AIR
ACT SECTIONS 110(a)(1) AND (2) INFRASTRUCTURE

INFRASTRUCTURE DEMONSTRATION FOR LEAD



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
P.O. BOX 13087
AUSTIN, TEXAS 78711-3087

**INFRASTRUCTURE DEMONSTRATION FOR THE 2008
LEAD NATIONAL AMBIENT AIR QUALITY STANDARD**

PROJECT NUMBER 2011-016-SIP-NR

Adoption
October 5, 2011

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EXECUTIVE SUMMARY

This revision to the state implementation plan (SIP) for lead infrastructure is being submitted to meet the Federal Clean Air Act (FCAA), §110(a)(1) requirement for states to submit SIP revisions within three years after the promulgation of new or revised National Ambient Air Quality Standards (NAAQS) to meet the infrastructure requirements of FCAA, §110(a)(2). On October 15, 2008, the United States Environmental Protection Agency 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. The purpose of this SIP revision is to document that the Texas SIP documented at 40 Code of Federal Regulations Part 52, Subpart SS contains all the infrastructure elements required by FCAA, §110(a)(2) for the implementation, maintenance, and enforcement of the 2008 lead NAAQS. Because the infrastructure demonstration explains how the existing Texas statutes and rules will allow the state to meet its obligations under the FCAA, the infrastructure SIP has been developed as an expansion of the existing Section V: *Legal Authority* section of Texas' SIP. This expanded section is unique to infrastructure SIP revisions that are submitted to meet the requirements of FCAA, §110(a)(1), and demonstrates that the state can provide for the implementation, maintenance, and enforcement of the NAAQS.

This infrastructure demonstration outlines the requirements of FCAA, §110(a)(2)(A) through (M) and the Texas statutes and rules that allow the Texas Commission on Environmental Quality 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. Documentation of Texas' ability to meet the requirements of FCAA, §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.

SECTION V: LEGAL AUTHORITY

- A. General (Revised)
- B. Infrastructure Demonstration for Lead (Revised)
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LIST OF ACRONYMS

CFR	Code of Federal Regulations
EPA	United States Environmental Protection Agency
FCAA	Federal Clean Air Act
FR	<i>Federal Register</i>
NAAQS	National Ambient Air Quality Standards
NSR	New Source Review
PM _{2.5}	particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers
PSD	Prevention of Significant Deterioration
SIP	state implementation plan
TAC	Texas Administrative Code
TACB	Texas Air Control Board
TCAA	Texas Clean Air Act
TCEQ	Texas Commission on Environmental Quality (commission)
TNRCC	Texas Natural Resource Conservation Commission
TR	<i>Texas Register</i>
µg/m ³	micrograms per cubic meter

SECTION V-A: LEGAL AUTHORITY

A. General

The Texas Commission on Environmental Quality (TCEQ) has the legal authority to implement, maintain, and enforce the National Ambient Air Quality Standards (NAAQS) and to control the quality of the state's air, including maintaining adequate visibility.

The first air pollution control act, known as the Clean Air Act of Texas, was passed by the Texas Legislature in 1965. In 1967, the Clean Air Act of Texas was superseded by a more comprehensive statute, the Texas Clean Air Act (TCAA), found in Article 4477-5, Vernon's Texas Civil Statutes. The legislature amended the TCAA in 1969, 1971, 1973, 1979, 1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009, and 2011. In 1989, the TCAA was codified as Chapter 382 of the Texas Health and Safety Code.

Originally, the TCAA stated that the Texas Air Control Board (TACB) is the state air pollution control agency and is the principal authority in the state on matters relating to the quality of air resources. In 1991, the legislature abolished the TACB effective September 1, 1993, and its powers, duties, responsibilities, and functions were transferred to the Texas Natural Resource Conservation Commission (TNRCC). With the creation of the TNRCC, the authority over air quality is found in both the Texas Water Code and the TCAA. Specifically, the authority of the TNRCC is found in Chapters 5 and 7. Chapter 5, Subchapters A - F, H - J, and L, include the general provisions, organization, and general powers and duties of the TNRCC, and the responsibilities and authority of the executive director. Chapter 5 also authorizes the TNRCC to implement action when emergency conditions arise and to conduct hearings. Chapter 7 gives the TNRCC enforcement authority. In 2001, the 77th Texas Legislature continued the existence of the TNRCC until September 1, 2013, and changed the name of the TNRCC to the TCEQ. In 2009, the 81st Texas Legislature, during a special session, amended section 5.014 of the Texas Water Code, changing the expiration date of the TCEQ to September 1, 2011, unless continued in existence by the Texas Sunset Act. In 2011, the 82nd Texas Legislature continued the existence of the TCEQ until 2023.

The TCAA specifically authorizes the TCEQ to establish the level of quality to be maintained in the state's air and to control the quality of the state's air by preparing and developing a general, comprehensive plan. The TCAA, Subchapters A - D, also authorize the TCEQ to collect information to enable the commission to develop an inventory of emissions; to conduct research and investigations; to enter property and examine records; to prescribe monitoring requirements; to institute enforcement proceedings; to enter into contracts and execute instruments; to formulate rules; to issue orders taking into consideration factors bearing upon health, welfare, social and economic factors, and practicability and reasonableness; to conduct hearings; to establish air quality control regions; to encourage cooperation with citizens' groups and other agencies and political subdivisions of the state as well as with industries and the federal government; and to establish and operate a system of permits for construction or modification of facilities.

Local government authority is found in Subchapter E of the TCAA. Local governments have the same power as the TCEQ to enter property and make inspections. They also may make recommendations to the commission concerning any action of the TCEQ that affects their territorial jurisdiction, may bring enforcement actions, and may execute cooperative agreements with the TCEQ or other local governments. In addition, a city or town may enact and enforce ordinances for the control and abatement of air pollution not inconsistent with the provisions of the TCAA and the rules or orders of the commission.

Subchapters G and H of the TCAA authorize the TCEQ to establish vehicle inspection and maintenance programs in certain areas of the state, consistent with the requirements of the Federal Clean Air Act; coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and measures necessary to attain and maintain the NAAQS; establish gasoline volatility and low emission diesel standards; and fund and authorize participating counties to implement vehicle repair assistance, retrofit, and accelerated vehicle retirement programs.

B. Applicable Law

The following statutes and rules provide necessary authority to adopt and implement the state implementation plan (SIP). The rules listed below have previously been submitted as part of the SIP.

Statutes

All sections of each subchapter are included, unless otherwise noted.

TEXAS HEALTH & SAFETY CODE, Chapter 382

September 1, 2011

TEXAS WATER CODE

September 1, 2011

Chapter 5: Texas Natural Resource Conservation Commission

Subchapter A: General Provisions

Subchapter B: Organization of the Texas Natural Resource Conservation Commission

Subchapter C: Texas Natural Resource Conservation Commission

Subchapter D: General Powers and Duties of the Commission

Subchapter E: Administrative Provisions for Commission

Subchapter F: Executive Director (except §§5.225, 5.226, 5.227, 5.2275, 5.231, 5.232, and 5.236)

Subchapter H: Delegation of Hearings

Subchapter I: Judicial Review

Subchapter J: Consolidated Permit Processing

Subchapter L: Emergency and Temporary Orders (§§5.514, 5.5145, and 5.515 only)

Subchapter M: Environmental Permitting Procedures (§5.558 only)

Chapter 7: Enforcement

Subchapter A: General Provisions (§§7.001, 7.002, 7.0025, 7.004, and 7.005 only)

Subchapter B: Corrective Action and Injunctive Relief (§7.032 only)

Subchapter C: Administrative Penalties

Subchapter D: Civil Penalties (except §7.109)

Subchapter E: Criminal Offenses and Penalties: §§7.177, 7.179-7.183

Rules

All of the following rules are found in 30 Texas Administrative Code, as of the following latest effective dates:

Chapter 7: Memoranda of Understanding, §§7.110 and 7.119

December 13, 1996 and May 2, 2002

Chapter 19: Electronic Reporting

March 15, 2007

Chapter 35: Subchapters A-C, K: Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions

July 20, 2006

Chapter 39: Public Notice, §§39.201; 39.401; 39.403(a) and (b)(8)-(10); 39.405(f)(1) and (g); 39.409; 39.411 (a), (b)(1)-(6), and (8)-(10) and (c)(1)-(6) and (d); 39.413(9), (11), (12), and (14); 39.418(a) and (b)(3) and (4); 39.419(a), (b), (d), and (e); 39.420(a), (b) and (c)(3) and (4); 39.423 (a) and (b); 39.601-39.605	June 24, 2010
Chapter 55: Requests for Reconsideration and Contested Case Hearings; Public Comment, §§55.1; 55.21(a) - (d), (e)(2), (3), and (12), (f) and (g); 55.101(a), (b), and (c)(6) - (8); 55.103; 55.150; 55.152(a)(1), (2), and (6) and (b); 55.154; 55.156; 55.200; 55.201(a) - (h); 55.203; 55.205; 55.209, and 55.211	June 24, 2010
Chapter 101: General Air Quality Rules	May 15, 2011
Chapter 106: Permits by Rule, Subchapter A	May 15, 2011
Chapter 111: Control of Air Pollution from Visible Emissions and Particulate Matter	July 19, 2006
Chapter 112: Control of Air Pollution from Sulfur Compounds	July 16, 1997
Chapter 113: Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants	May 14, 2009
Chapter 114: Control of Air Pollution from Motor Vehicles	August 11, 2011
Chapter 115: Control of Air Pollution from Volatile Organic Compounds	February 17, 2011
Chapter 116: Permits for New Construction or Modification	March 17, 2011
Chapter 117: Control of Air Pollution from Nitrogen Compounds	May 15, 2011
Chapter 118: Control of Air Pollution Episodes	March 5, 2000
Chapter 122: §122.122: Potential to Emit	December 11, 2002
Chapter 122: §122.215: Minor Permit Revisions	June 3, 2001
Chapter 122: §122.216: Applications for Minor Permit Revisions	June 3, 2001
Chapter 122: §122.217: Procedures for Minor Permit Revisions	December 11, 2002
Chapter 122: §122.218: Minor Permit Revision Procedures for Permit Revisions Involving the Use of Economic Incentives, Marketable Permits, and Emissions Trading	June 3, 2001

SECTION V-B-1: INFRASTRUCTURE DEMONSTRATION FOR THE 2008 LEAD NATIONAL AMBIENT AIR QUALITY STANDARD

CHAPTER 1: INTRODUCTION

1.1 BACKGROUND

Section 110(a)(1) of the Federal Clean Air Act (FCAA) requires states to submit a state implementation plan (SIP) revision to provide for the implementation, maintenance, and enforcement of the National Ambient Air Quality Standards (NAAQS). States are required to submit the infrastructure portion of this SIP requirement to the United States Environmental Protection Agency (EPA) to demonstrate that basic program elements have been addressed within three years of the promulgation of any new or revised NAAQS. FCAA, §110(a)(2) lists the elements that these SIP submissions must contain.

On October 15, 2008, the 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. This SIP revision is being submitted to provide an update of the FCAA, §110(a)(2) infrastructure requirements for the 2008 lead NAAQS within three years after the promulgation of the revised NAAQS, or by October 15, 2011. This chapter outlines FCAA, §110(a)(2)(A) through (M) with various Texas provisions supporting the requirements. The federally enforceable SIP for Texas is documented at 40 Code of Federal Regulations Part 52, Subpart SS.

The infrastructure demonstration is an expansion of the Legal Authority section of Texas' SIP that provides additional information about how the existing statutes and rules allow Texas to meet the §110(a)(2) infrastructure requirements of the FCAA. Therefore, this SIP revision contains an expanded infrastructure section under the SIP Legal Authority. This infrastructure section is intended to satisfy the FCAA, §110(a)(1) requirement to provide for the implementation, maintenance, and enforcement of the NAAQS. It will, therefore, be updated as part of the infrastructure SIP revisions that Texas is required to submit as new or revised NAAQS are promulgated, but it will not otherwise be included in other Texas SIP revisions. Section A of the Legal Authority contains the basic listing of Texas' legal framework for adopting SIP revisions, and will be the default Legal Authority for Texas SIP revisions that are not specifically submitted to meet the FCAA, §110(a)(1) infrastructure demonstration requirement.

The October 2, 2007, EPA *Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour ozone and $\text{PM}_{2.5}$ National Ambient Air Quality Standards*, and the September 25, 2009, *Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($\text{PM}_{2.5}$) National Ambient Air Quality Standards (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, in February 2011, the EPA Region 6 informed the Texas Commission on Environmental Quality (TCEQ) that the new guidance for lead infrastructure SIP revisions would require that the infrastructure demonstration undergo a notice and comment period as a formal SIP revision. The EPA Region 6 staff sent a draft 2008 lead NAAQS infrastructure guidance document to the TCEQ dated 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. This SIP revision meets these requirements. Because the new lead NAAQS was promulgated on October 15, 2008, the infrastructure SIP submittal for the 2008 lead NAAQS is due to the EPA by October 15, 2011. To meet this deadline, the TCEQ had to propose this SIP revision by June 2011 to be able to meet all federal and state notice requirements. The draft EPA guidance was not available at the time the SIP revision was developed, but the TCEQ must adopt this SIP revision despite the lack of finalized EPA guidance.

The TCEQ acknowledges that proposed changes to federal regulations may have future impacts on how the TCEQ meets the requirements of FCAA, §110(a)(2), however, this current SIP revision reflects the methods and means by which Texas meets these requirements at the time of this SIP revision. Should future federal rule changes necessitate state rule changes, the TCEQ will act as appropriate at that time.

1.2 PUBLIC HEARING AND COMMENT INFORMATION

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 hearing. The hearing was not officially opened because no party indicated a desire to give comment.

The public comment period opened on June 24, 2011, and closed on July 29, 2011. Written comments were accepted via mail, fax, and through the [eComments](http://www5.tceq.state.tx.us/rules/ecomments) (<http://www5.tceq.state.tx.us/rules/ecomments>) system. A comment letter was received from the EPA Region 6. A summary of the comments and the TCEQ response is provided as part of this SIP revision in the Response to Comments.

Copies of the proposed SIP revision can be obtained from the [TCEQ Web site](http://www.tceq.texas.gov/airquality/sip/) (<http://www.tceq.texas.gov/airquality/sip/>).

1.3 SOCIAL AND ECONOMIC CONSIDERATIONS

Because rulemaking is not a part of this SIP revision, there are no changes that would impact society or the economy.

1.4 FISCAL AND MANPOWER RESOURCES

The TCEQ has determined that its fiscal and manpower resources are adequate and will not be adversely affected through the implementation of this plan.

1.5 COORDINATION WITH LOCAL AGENCIES

The TCEQ has determined that there will be no assignment to local agencies. However, pre-existing assignments to local agencies regarding various enforcement activities remain in effect and could be used if enforcement activities are delegated to the TCEQ from the EPA.

1.6 ORGANIZATIONS RESPONSIBLE FOR DEVELOPMENT, IMPLEMENTATION, AND ENFORCEMENT

The TCEQ is the agency delegated authority by the Texas Legislature regarding the protection of air quality in the State of Texas. Other local government entities have limited authority regarding air quality matters in the State of Texas.

CHAPTER 2: TEXAS STATUTORY AUTHORITY

The Texas Commission on Environmental Quality (TCEQ) has the legal authority to implement, maintain, and enforce the National Ambient Air Quality Standards (NAAQS). Texas' legal authority has been submitted to the United States Environmental Protection Agency (EPA) as part of various state implementation plan (SIP) revisions that have been approved by the EPA.

2.1 BACKGROUND

The first air pollution control act, known as the Clean Air Act of Texas, was passed by the Texas Legislature in 1965. In 1967, the Clean Air Act of Texas was superseded by a more comprehensive statute, the Texas Clean Air Act (TCAA), found in Article 4477-5, Vernon's Texas Civil Statutes. The Legislature amended the TCAA in 1969, 1971, 1973, 1979, 1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009, and 2011. In 1989, the TCAA was codified as Chapter 382 of the Texas Health and Safety Code.

Originally, the TCAA stated that the Texas Air Control Board (TACB) was the state air pollution control agency and was the principal authority in the state on matters relating to the quality of air resources. In 1991, the legislature abolished the TACB effective September 1, 1993, and its powers, duties, responsibilities, and functions were transferred to the Texas Natural Resource Conservation Commission (TNRCC). With the creation of the TNRCC, the authority over air quality is found in both the Texas Water Code and the TCAA. Specifically, the authority of the commission is found in Texas Water Code, Chapters 5 and 7. Chapter 5, Subchapters A through F, H through J, and L, include the general provisions, organization, and general powers and duties of the commission, and the responsibilities and authority of the executive director. Chapter 5 also authorizes the commission to implement action when emergency conditions arise and to conduct hearings. Chapter 7 gives the commission enforcement authority. In 2001, the 77th Texas Legislature continued the existence of the commission until September 1, 2013, and changed the name of the TNRCC to the TCEQ. In 2009, the 81st Texas Legislature, during a special session, amended the Texas Water Code, §5.014, changing the expiration date of the TCEQ to September 1, 2011, unless continued in existence by the Texas Sunset Act. In 2011, the 82nd Texas Legislature continued the existence of the TCEQ until 2023.

The TCAA specifically authorizes the TCEQ to establish the level of quality to be maintained in the state's air and to control the quality of the state's air by preparing and developing a general, comprehensive plan. The TCAA, Subchapters A through D, also authorize the TCEQ to collect information to enable the commission to develop an inventory of emissions; conduct research and investigations; enter property and examine records; prescribe monitoring requirements; institute enforcement proceedings; enter into contracts and execute instruments; formulate rules; issue orders taking into consideration factors bearing upon health, welfare, social and economic factors, and practicability and reasonableness; conduct hearings; establish air quality control regions; encourage cooperation with citizens' groups and other agencies and political subdivisions of the state as well as with industries and the federal government; and establish and operate a system of permits for construction or modification of facilities.

Local government authority concerning air quality matters is found in Subchapter E of the TCAA. Local governments have the same power as the TCEQ to enter property and make inspections. Local governments may also make recommendations to the commission concerning any action of the TCEQ that affects their territorial jurisdiction, may bring enforcement actions, and may execute cooperative agreements with the TCEQ or other local governments. In addition, a city or town may enact and enforce ordinances for the control and abatement of air pollution consistent with the provisions of the TCAA or the rules or orders of the commission.

Subchapters G and H of the TCAA authorize the TCEQ to establish vehicle inspection and maintenance programs in certain areas of the state, consistent with the requirements of the Federal Clean Air Act; coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and measures necessary to attain and maintain the NAAQS; and fund and authorize participating counties to implement vehicle repair assistance, retrofit and accelerated vehicle retirement programs.

2.2 STATUTORY AUTHORITY

The following statutory authority allows for the establishment and operation of the TCEQ and the adoption and implementation of all FCAA, §110(a)(2) requirements.

Texas Clean Air Act, Texas Health and Safety Code, Chapter 382, except Subchapter I.

Texas Water Code:

§5.013(a)(11) & (13)	GENERAL JURISDICTION OF COMMISSION
§5.051.	COMMISSION
§5.052.	MEMBERS OF THE COMMISSION; APPOINTMENT
§5.053.	ELIGIBILITY FOR MEMBERSHIP
§5.054.	REMOVAL OF COMMISSION MEMBERS
§5.059.	CONFLICT OF INTEREST
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CHAPTER 3: TEXAS REGULATORY AUTHORITY

3.1 REGULATORY AUTHORITY

The Texas Commission on Environmental Quality (TCEQ) has promulgated rules implementing statutory authority to meet the requirements of both the Federal Clean Air Act (FCAA) and the Texas Clean Air Act. These rules were submitted to the United States Environmental Protection Agency (EPA) in various state implementation plan (SIP) revisions and have been approved in the *Federal Register* (FR) or are pending EPA review. Rules that are relevant for each FCAA, §110(a)(2) requirement are noted below.

3.1.1 FCAA, §110(a)(2)(A)

Federal Requirement

- (A) include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter;

Texas Requirement

The TCEQ has promulgated rules to implement and enforce the National Ambient Air Quality Standards (NAAQS) and other air quality standards. These rules include programs for banking and trading of emissions, as well as permits and fees. Periodic revisions to the SIP establish timetables and schedules for improving the air quality in nonattainment areas.

The following chapters of 30 Texas Administrative Code (TAC) contain rules relevant for this federal requirement:

Chap. 7	Memoranda of Understanding
Chap. 101	General Air Quality Rules
Chap. 106	Permits by Rule, Subchapter A, General Requirements
Chap. 111	Control of Air Pollution from Visible Emissions and Particulate Matter
Chap. 112	Control of Air Pollution from Sulfur Compounds
Chap. 113	Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants
Chap. 114	Control of Air Pollution from Motor Vehicles
Chap. 115	Control of Air Pollution from Volatile Organic Compounds
Chap. 116	Control of Air Pollution by Permits for New Construction or Modification
Chap. 117	Control of Air Pollution from Nitrogen Compounds
Chap. 118	Control of Air Pollution Episodes

3.1.2 FCAA, §110(a)(2)(B)

Federal Requirement

- (B) provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator;

Texas Requirement

The TCEQ maintains a network of air quality monitors to collect air emissions data that is reported to the EPA on a regular basis. Texas submits annual monitoring plans to the EPA that

describe how the state has complied with monitoring requirements and explains any proposed changes.

The following chapters of 30 TAC contain rules relevant for this federal requirement:

Chap. 101	General Air Quality Rules
Chap. 106	Permits by Rule, Subchapter A, General Requirements
Chap. 111	Control of Air Pollution from Visible Emissions and Particulate Matter
Chap. 112	Control of Air Pollution from Sulfur Compounds
Chap. 115	Control of Air Pollution from Volatile Organic Compounds
Chap. 116	Control of Air Pollution by Permits for New Construction or Modification
Chap. 117	Control of Air Pollution from Nitrogen Compounds

3.1.3 FCAA, §110(a)(2)(C)

Federal Requirement

- (C) include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of this subchapter;

Texas Requirement

The TCEQ has established rules governing the enforcement of control measures, including attainment plans and permitting programs that regulate construction and modification of stationary sources.¹

The following chapters of 30 TAC contain rules relevant for this federal requirement:

Chap. 5	Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Subchapters A, B, C, K
Chap. 39	Public Notice
Chap. 55	Requests for Reconsideration and Contested Case Hearings; Public Notice
Chap. 101	General Air Quality Rules
Chap. 106	Permits by Rule, Subchapter A, General Requirements
Chap. 112	Control of Air Pollution from Sulfur Compounds
Chap. 115	Control of Air Pollution from Volatile Organic Compounds
Chap. 116	Control of Air Pollution by Permits for New Construction or Modification
Chap. 117	Control of Air Pollution from Nitrogen Compounds

¹ Texas has permitting rules for Prevention of Significant Deterioration (PSD), as required by the FCAA. The EPA has recently promulgated regulations for the permitting of greenhouse gases under the PSD program. Although Texas has not amended or proposed amendments to its permitting program to include greenhouse gases, Texas is meeting its obligations under the FCAA to provide for permitting of facilities that emit criteria pollutants. Greenhouse gases are not criteria pollutants, with NAAQS that must be met, and therefore a lack of permitting requirements in Texas rules for greenhouse gas emissions does not constitute a lack in the required infrastructure elements of FCAA, §110(a)(2).

3.1.4 FCAA, §110(a)(2)(D)

Federal Requirement

- (D) contain adequate provisions (i) prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will (I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C of this subchapter to prevent significant deterioration of air quality or to protect visibility, (ii) insuring compliance with the applicable requirements of sections 7426 [126] and 7415 [115] of this title (relating to interstate and international pollution abatement);

Texas Requirement

Texas submitted a separate SIP revision to meet the requirements of FCAA, §110(a)(2)(D), relating to the interstate transport of lead under the 2008 lead NAAQS. That SIP revision references existing control strategies as well as dispersion modeling of major lead sources in Texas. Additionally, the revision verifies that the PSD and nonattainment New Source Review (NSR) permitting programs are being implemented in Texas and that lead is not considered a visibility-impairing pollutant. The Lead Transport Plan for the 2008 Lead National Ambient Air Quality Standard (Project Number 2011-005-SIP-NR) was proposed on April 6, 2011, and was adopted on August 17, 2011.

Texas has a SIP-approved PSD and nonattainment NSR permitting program that contains requirements for sources of air pollutants to obtain an approved permit before beginning construction of a facility and before modifying an existing facility (see requirements for FCAA, §110(a)(2)(C) previously listed).

The following chapter of 30 TAC contains rules relevant for this federal requirement:

Chap. 101 General Air Quality Rules

3.1.5 FCAA, §110(a)(2)(E)

Federal Requirement

- (E) provide (i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with the requirements respecting State boards under section 7428 [128] of this title, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision;

Texas Requirement

The TCEQ has consistently included assurances in SIP revisions that the state has adequate personnel, funding, and authority under state law to carry out the SIP. The TCEQ has various Memoranda of Understanding and Memoranda of Agreement with other state and local agencies. Local governments have their own responsibilities and privileges regarding the protection of air quality as established by the Texas legislature.

The TCEQ relies on the complete statutory and regulatory authority as referenced throughout this document. This statutory authority ensures that Texas can meet the requirements of this section, including the requirements of section 7428 [128] of the FCAA. The TCEQ also regularly submits a legal authority with SIP revisions submitted to the EPA.

3.1.6 FCAA, §110(a)(2)(F)

Federal Requirement

- (F) require, as may be prescribed by the Administrator (i) the installation, maintenance, and replacement of equipment, and implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection;

Texas Requirement

The TCEQ requires monitoring for air pollutants as part of its NSR permit program. Certain emission sources are required to submit annual emission inventories and periodic reporting of emissions, which provides data that is used in air quality modeling to help Texas prepare SIP revisions. Emissions data are available at reasonable times for public inspection, with some information also available on the agency Web site.

The following chapters of 30 TAC contain rules relevant for this federal requirement:

Chap. 101	General Air Quality Rules
Chap. 106	Permits by Rule, Subchapter A, General Requirements
Chap. 111	Control of Air Pollution from Visible Emissions and Particulate Matter
Chap. 112	Control of Air Pollution from Sulfur Compounds
Chap. 115	Control of Air Pollution from Volatile Organic Compounds
Chap. 116	Control of Air Pollution by Permits for New Construction or Modification
Chap. 117	Control of Air Pollution from Nitrogen Compounds

3.1.7 FCAA, §110(a)(2)(G)

Federal Requirement

- (G) provide for authority comparable to that in section 7603 [303] of this title and adequate contingency plans to implement such authority;

Texas Requirement

The TCEQ may issue emergency orders, or issue or suspend air permits as required by an air pollution emergency. In addition, the TCEQ also maintains air pollution information in a form readily available to the public on the TCEQ's [Today's Texas Air Quality Forecast Web site](http://www.tceq.texas.gov/compliance/monitoring/air/monops/forecast_today.html) (http://www.tceq.texas.gov/compliance/monitoring/air/monops/forecast_today.html). Local weather forecasts regularly warn the public about poor air quality days, including ozone alerts in all major metropolitan areas.

The following chapters of 30 TAC contain rules relevant for this federal requirement:

- Chap. 35 Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Subchapters A, B, C, K
- Chap. 118 Control of Air Pollution Episodes

3.1.8 FCAA, §110(a)(2)(H)

Federal Requirement

- (H) provide for revision of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this chapter;

Texas Requirement

The TCEQ regularly revises the Texas SIP in response to revisions in the NAAQS and the EPA rules. See FCAA, §110(a)(2)(A) above.

3.1.9 FCAA, §110(a)(2)(I)

Federal Requirement

- (I) in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D of this subchapter (relating to nonattainment areas);

Texas Requirement

SIP revisions that implement the control strategies necessary to bring a nonattainment area into attainment of the NAAQS are not required by the FCAA to be submitted within three years of the promulgation of new or revised NAAQS. Therefore, FCAA, §110(a)(1) does not require this element to be demonstrated as part of an infrastructure SIP submittal. (See 73 FR 16205, at 16206) Texas is in the process of developing an attainment demonstration SIP revision for the single area of the state that has been designated nonattainment for the 2008 lead NAAQS. The attainment demonstration will be submitted to the EPA by June 30, 2012, after undergoing the required notice and public comment period, and will include control strategies designed to bring the area into attainment of the 2008 lead NAAQS no later than the attainment date of December 31, 2015.

3.1.10 FCAA, §110(a)(2)(J)

Federal Requirement

- (J) meet the applicable requirements of section 7421 [121] of this title (relating to consultation), section 7427 [127] of this title (relating to public notification), and part C of this subchapter (relating to prevention of significant deterioration and visibility protection);

Texas Requirement

The TCEQ has an established public participation process for all SIP revisions and permitting programs. The EPA has proposed limited approval/limited disapproval of the rules regarding public participation for air quality NSR permits.² Texas has withdrawn from EPA consideration most of the rules that were the subject of the proposed limited approval/limited disapproval, and has submitted new and revised public participation rules to the EPA as a new SIP revision to address the EPA's published concerns regarding these requirements.³ On October 28, 2010, the EPA signed a notice withdrawing its limited approval/limited disapproval of the SIP revisions relating to public participation because those revisions are no longer before the EPA for review (75 FR 68291). The TCEQ consults with other state agencies, local agencies, and non-governmental organizations, as well as with the environmental agencies of other states regarding air quality concerns. All major sources in Texas are subject to Texas' SIP-approved PSD program. Texas submitted a SIP revision to address Regional Haze, including a long-term strategy to address visibility impairment for each Class I area that may be impacted by emissions from Texas facilities.

The following chapters of 30 TAC contain rules relevant for this federal requirement:

Chap. 7	Memoranda of Understanding
Chap. 35	Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Subchapters H and K
Chap. 101	General Air Quality Rules
Chap. 116	Control of Air Pollution for New Construction or Modification

3.1.11 FCAA, §110(a)(2)(K)

Federal Requirement

- (K) provide for (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator;

Texas Requirement

Air quality modeling is conducted during development of revisions to the Texas SIP, as appropriate for the state to demonstrate attainment with required NAAQS. Modeling is also a part of the NSR permitting program.

The following chapter of 30 TAC contains rules relevant for this federal requirement:

Chap. 116	Control of Air Pollution for New Construction or Modification
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3.1.12 FCAA, §110(a)(2)(L)

Federal Requirement

² Approval and Promulgation of Implementation Plans; Texas; Revisions to Chapters 39, 55, and 116 Which Relate to Public Participation on Permits for New and Modified Sources, 73 FR 72001 (November 26, 2008).

³ The TCEQ adopted this rulemaking on June 2, 2010, and the adopted rules were published in the *Texas Register* (TR) on June 18, 2010 (35 TR 5198). These rules became effective on June 24, 2010, and were submitted to the EPA on July 2, 2010, but the EPA has not yet taken any action on these rules.

- (L) require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this chapter, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under subchapter V of this chapter;

Texas Requirement

The TCEQ assesses fees for reviewing permit applications and for enforcing the terms and conditions of permits.

The following chapters of 30 TAC contain rules relevant for this federal requirement:

Chap. 12	Payment of Fees
Chap. 101	General Air Quality Rules
Chap. 106	Permits by Rule, Subchapter A, General Requirements
Chap. 116	Control of Air Pollution by Permits for New Construction or Modification

3.1.13 FCAA, §110(a)(2)(M)

Federal Requirement

- (M) provide for consultation and participation by local political subdivisions affected by the plan.

Texas Requirement

The TCEQ has several cooperative agreements and Memoranda of Understanding with various other state and local agencies and organizations. Consultation with a variety of different organizations is a regular part of the TCEQ's process of developing SIP revisions.

3.2 CONCLUSION

The foregoing demonstrates that Texas has the necessary regulatory and statutory authority to meet the infrastructure requirements of FCAA, §110(a)(1) and (2) for the 2008 lead NAAQS.

**RESPONSE TO COMMENTS RECEIVED REGARDING THE LEAD
INFRASTRUCTURE DEMONSTRATION FOR THE 2008 LEAD NATIONAL
AMBIENT AIR QUALITY STANDARD**

The commission offered a public hearing for the proposed state implementation plan (SIP) revision on July 25, 2011, at 10:00 a.m. at the Texas Commission on Environmental Quality (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 on June 24, 2011, and closed on July 29, 2011. The commission received written comments from the United States Environmental Protection Agency (EPA) Region 6.

GENERAL COMMENTS

The EPA requested that the section of the infrastructure demonstration concerning Federal Clean Air Act (FCAA), §110(a)(2)(B), include the statement, "Texas submits annual monitoring plans to EPA which describe how the State has complied with the monitoring requirements and explain any proposed changes."

The TCEQ submits annual monitoring reports to the EPA, and agrees with this comment. This statement has been added to the §110(a)(2)(B) section of the infrastructure demonstration.

The EPA indicated that, if appropriate, the section of the infrastructure demonstration concerning FCAA, §110(a)(2)(E), should note that the state complies with the requirements of FCAA, §128 concerning State Boards and Executive Agency heads, and include any relevant citations.

The TCEQ has clarified that the statutory authority listed in an earlier section of the infrastructure demonstration ensures that Texas can meet the requirements of §128 of the FCAA. The infrastructure demonstration states for §110(a)(2)(E) that "The TCEQ relies on the complete statutory and regulatory authority as referenced throughout this document." The statutory authority includes Texas Water Code, Chapter C: Texas Natural Resources Commission, which includes the statutory requirements for the eligibility and selection of the commissioners of the TCEQ. These requirements ensure that Texas is in compliance with the FCAA, §128. The section of the demonstration referenced by the EPA, however, is the listing of TCEQ rule chapters that have been submitted to the SIP. Therefore, a specific statutory citation in this section of the document is unnecessary.