

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Adoption of Agreed Order with TXI Operations, LP

AGENDA REQUESTED: August 8, 2018

DATE OF REQUEST: July 20, 2018

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Paige Bond, (512) 239-2678

CAPTION: Docket No. 2017-1648-SIP. Consideration of the adoption of the Voluntary Agreed Order with TXI Operations, LP; and corresponding revisions to the State Implementation Plan.

The Voluntary Agreed Order identifies the federally enforceable emission limit for TXI Operations, LP, Portland Cement Plant in Midlothian, Ellis, County (Kiln Number 5) as satisfying the reasonably available control technology (RACT) requirement for nitrogen oxides (NO_x) for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard to address the United States Environmental Protection Agency's final conditional approval of NO_x RACT for the Dallas-Fort Worth 2008 eight-hour ozone standard nonattainment area. Notice was published in the April 6, 2018, issue of the *Texas Register* (43 TexReg 2482). (Terry Salem) (Non-Rule Project No. 2018-010-SIP-NR)

Margaret Ligarde

Robert Martinez

Deputy Director

Division Director

Paige Bond

Agenda Coordinator

Copy to CCC Secretary? NO YES X

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** July 20, 2018

Thru: Bridget C. Bohac, Chief Clerk
Stephanie Bergeron Perdue, Interim Executive Director

From: Margaret Ligarde, Deputy Director
Office of Legal Services

Docket No.: 2017-1648-SIP

Subject: Commission Approval for Adoption of Voluntary Agreed Order with TXI Operations, LP in Ellis County
Non-Rule Project No. 2018-010-SIP-NR

Accompanying SIP project: DFW RACT Update SIP Revision
SIP Project No. 2017-001-SIP-NR

Background and reason(s) for the Voluntary Agreed Order:

The Federal Clean Air Act (FCAA) requires states to submit plans to demonstrate attainment of the National Ambient Air Quality Standards (NAAQS) for nonattainment areas within the state. On May 1, 2012, the ten-county Dallas-Fort Worth (DFW) area, consisting of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties, was designated a moderate nonattainment area for the 2008 eight-hour ozone standard.

On July 10, 2015, the Texas Commission on Environmental Quality (TCEQ, agency, or commission) submitted a state implementation plan (SIP) revision that included RACT determinations for sources in the DFW 2008 ozone nonattainment area. After the submittal, in discussions with TCEQ staff, the United States Environmental Protection Agency (EPA) Region 6 staff stated they could not approve the TCEQ's nitrogen oxides (NO_x) reasonably available control technology (RACT) determination for Kiln No. 5 at the TXI Operations, LP, (TXI) Portland cement kiln facility located in Ellis County. However, EPA Region 6 indicated that if the TCEQ acted to make the 1.95 pounds (lb) of NO_x per ton of clinker emission limit contained in TXI's new source review (NSR) permit (Permit No. 1360A) directly enforceable via an enforceable mechanism such as a voluntary agreed order or rule, it could be considered by EPA as satisfying RACT.

The TCEQ submitted a letter to the EPA on July 29, 2016 stating that, if adopted by the commission, the TCEQ commits to submit an updated DFW RACT SIP revision by no later than one year from the effective date of final conditional approval to address NO_x RACT for TXI Kiln No. 5. On September 22, 2017, the EPA published final conditional approval of the NO_x RACT for the DFW 2008 eight-hour ozone standard nonattainment area (82 FR 33026), based on this commitment. The effective date of the EPA's final conditional approval was October 23, 2017.

Scope of the Voluntary Agreed Order:

Re: Docket No. 2017-1648-SIP

A.) Summary of what the Voluntary Agreed Order will do:

This memo applies to the Voluntary Agreed Order No. 2017-1648-SIP (Project No. 2018-010-SIP-NR), which would be adopted in conjunction with the DFW 2008 eight-hour Ozone Standard Nonattainment Area RACT Update SIP Revision, (SIP Project No. 2017-001-SIP-NR), the details of which are covered in a separate memo.

This adopted Voluntary Agreed Order would address the EPA's final conditional approval of RACT for NO_x for the DFW 2008 eight-hour ozone standard nonattainment area by incorporating certain permit conditions for the TXI Portland cement manufacturing plant in Ellis County to limit NO_x emissions to 1.95 lb NO_x/ton of clinker from Kiln No. 5 to make that limit federally enforceable as NO_x RACT. If adopted by the commission, the TCEQ would submit the Voluntary Agreed Order and the updated DFW RACT SIP revision to the EPA by no later than October 23, 2018.

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

The Voluntary Agreed Order and accompanying SIP revision is necessary to satisfy the EPA's interpretation of FCAA, §172 and §182 requirements for RACT. The TCEQ and TXI propose the accompanying voluntary Agreed Order and accompanying SIP revision for the purpose of establishing the state and federally enforceable applicable NO_x emission limit for Kiln No. 5 located at the TXI site in Midlothian, Ellis County, Texas that will meet the requirements of the FCAA for NO_x RACT.

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

None.

Statutory authority:

The authority to adopt the Voluntary Agreed Order is derived from FCAA, 42 United States Code, §7410, which requires states to submit SIP revisions that contain enforceable measures to achieve the NAAQS and other general and specific authority in Texas Water Code, Chapters 5 and 7 and Texas Health and Safety Code, Chapter 382.

Effect on the:

A.) Regulated community:

The 1.95 lb NO_x/ton of clinker emission limit contained in TXI's NSR permit (Permit No. 1360A) would be made directly enforceable under the SIP via a voluntary agreed order which would be submitted to the EPA concurrent with this SIP revision. TXI is already complying with the permitted emission limit and no additional controls or costs are expected to be necessary to comply with a voluntary agreed order to make the limit enforceable under the SIP.

B.) Public:

None.

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C.) Agency programs:

No impact on agency programs is anticipated. If a SIP revision is not submitted addressing RACT for the TXI Kiln No. 5 then the EPA has indicated that it will disapprove the TCEQ's RACT determination for TXI Kiln No. 5.

Stakeholder meetings:

TCEQ staff have reached out to TXI representatives to discuss this issue. The proposed DFW RACT Update SIP revision was approved by the commission for public comment and public hearing.

Public comment:

The public comment period opened on April 6, 2018, and closed on May 11, 2018. The commission offered a public hearing in Arlington on May 10, 2018 at 2:00 p.m. The public hearing was not opened because there were no attendees who signed in to speak. During the comment period, staff received comments from the EPA regarding the agreed order.

Significant changes from proposal:

None.

Potential controversial concerns and legislative interest:

Historically, environmental groups have contended that RACT for cement kilns in this area should be a control level based on the installation of selective catalytic reduction NO_x control technology.

Does this Voluntary Agreed Order affect any current policies or require development of new policies?

No.

What are the consequences if this Voluntary Agreed Order does not go forward? Are there alternatives to the Voluntary Agreed Order?

The TCEQ could choose not to proceed with the RACT update, which would result in a disapproval of NO_x RACT for the DFW area by the EPA of the NO_x RACT determination, submitted to the EPA on July 10, 2015, for the TXI Portland cement kiln facility Kiln No. 5, located in Ellis County. Disapproval of RACT for the site could result in the EPA issuing a federal implementation plan to implement RACT for TXI and potentially federal highway sanctions against the state.

Key points in the adoption Voluntary Agreed Order schedule:

Texas Register proposal publication date: April 20, 2018

SIP revision due to the EPA: October 23, 2018.

Agency contacts:

Terry Salem, Staff Attorney, Environmental Law Division, (512) 239-0469

Kathy Singleton, SIP Project Manager, Air Quality Division, (512) 239-0703

Paige Bond, Texas Register Rule/Agenda Coordinator, (512) 239-2678

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July 20, 2018

Re: Docket No. 2017-1648-SIP

Attachments:

Draft Voluntary Agreed Order

cc: Chief Clerk, 2 copies
Executive Director's Office
Jim Rizk
Office of General Counsel
Terry Salem
Paige Bond
Kathy Singleton
Joyce Spencer-Nelson

IN THE MATTER OF AN	§	BEFORE THE
AGREED ORDER CONCERNING	§	
TXI OPERATIONS, LP	§	TEXAS COMMISSION
CN 600125157	§	
TXI OPERATIONS	§	ON
RN 100217199	§	
ACCOUNT NO. ED0066B	§	ENVIRONMENTAL QUALITY

**AGREED ORDER
DOCKET NO. 2017-1648-SIP**

The Texas Commission on Environmental Quality (Commission or TCEQ) and TXI Operations, LP (TXI or the Company) enter into this voluntary Agreed Order for the purpose of establishing the state and federally enforceable applicable nitrogen oxide (NO_x) emission limit for Kiln No. 5 located at the Company site in Midlothian, Ellis County, Texas that will meet the requirements of the Federal Clean Air Act (FCAA) for NO_x reasonably available control technology (RACT) for the Dallas-Fort Worth (DFW) 2008 8-hour ozone nonattainment area. For areas designated nonattainment for the ozone National Ambient Air Quality Standard (NAAQS), sections 182(b)(2)(A) and (B) of the FCAA require that states ensure that RACT is in place for each source category for which the U.S. Environmental Protection Agency (EPA) has issued a control techniques guideline (CTG), and for any major source not covered by a CTG.

The Executive Director of the Commission (the Executive Director) and the Company have agreed on the NO_x emission limitation specified herein to fulfill a FCAA NO_x RACT requirement for the 2008 8-hour ozone NAAQS, and to the submission of this Agreed Order to the EPA as a State Implementation Plan (SIP) revision, subject to the approval of the Commission.

The Commission hereby orders the Company, and the Company agrees, that it shall comply with the requirements herein regarding the control of NO_x from the facility referenced below, pursuant to §§382.011, 382.012, 382.023, 382.024, and 382.025 of the Texas Clean Air Act (TCAA or the Act), Texas Health & Safety Code, Chapter 382, and the Federal Clean Air Act (FCAA), 42 U.S.C. §7401 et seq., for the purpose of revising the Texas SIP for Ozone Control.

I. STIPULATIONS

For the purpose of this Agreed Order, the parties have agreed and stipulated as follows:

1. Section 110 of the FCAA, 42 U.S.C. §7410, *et seq.*, requires Texas to submit SIP revisions to the EPA for approval and to demonstrate that such SIP revisions provide for protection of the NAAQS.
2. Section 171 of the FCAA, 42 U.S.C. §7501, requires that all SIPs contain nonattainment plans for areas designated nonattainment for any NAAQS.
3. Section 172 of the FCAA, 42 U.S.C. §7502, requires that all nonattainment plans include provisions requiring reductions in emissions from existing sources in the area from the application of RACT.
4. Sections 182(b)(2)(A) and (B) of the FCAA, 42 U.S.C. §§7511a(b)(2)(A) and (B) require that states ensure that RACT is in place for each source category for which EPA has issued a CTG and for any major source not covered by a CTG.
5. Sections 382.011 and 382.012 of the TCAA provide authority for the Commission to control the quality of the state's air and prepare and develop a general, comprehensive plan for the proper control of the state's air; and §§382.023, 382.024, and 382.025 of the TCAA provide the Commission with authority to issue orders. The issuance of this Agreed Order complies with the TCAA.
6. The Commission and the Company agree that the Commission has jurisdiction to enter this Agreed Order and the Company is subject to the Commission's jurisdiction.
7. The Commission and the Company acknowledge that the Company is entering into this Agreed Order voluntarily, and not as the result of any enforcement action. This Agreed Order makes no findings regarding Company compliance or non-compliance, and nothing in this Agreed Order shall be interpreted as evidence that the Company is either in compliance or is in any respect non-compliant with any federal, state, or local law, or is causing or contributing to a violation of the NAAQS. This Agreed Order shall not be considered as part of the Company's compliance history under 30 T.A.C. Chapter 60 or the Commission's Penalty Policy.
8. Nothing in this Agreed Order supersedes any requirement of the TCAA or the rules and requirements of the Commission, except as explicitly provided herein.
9. The DFW area, which includes Ellis County, was designated nonattainment for the 2008 8-hour ozone NAAQS and classified as moderate by the EPA effective

on July 20, 2012 as published in the *Federal Register* on May 21, 2012, 77 *Fed. Reg.* 30088.

10. Based on the moderate classification of the DFW area for the 2008 8-hour ozone NAAQS, under FCAA, §182(b), a major stationary source is one that emits, or has the potential to emit, 100 tons per year (tpy) or more of volatile organic compounds (VOCs) or NO_x.
11. The Company owns and operates a Portland cement manufacturing plant located at 245 Ward Rd., Midlothian, Ellis County, Texas.
12. The plant consists of one or more sources as defined in TCAA, §382.003(12), including Kiln No. 5, which is a dry preheater/precalciner cement kiln.
13. Kiln No. 5 is a major source of air emissions, with a potential to emit greater than 100 tpy of VOC or NO_x.
14. Kiln No. 5 is authorized to emit air contaminants as specified in new source review (NSR) permit 1360A (PSDTX632M1), as issued by the TCEQ on December 7, 2015. Unless otherwise specified, all references in this Agreed Order to NSR permit 1360A (PSDTX632M1) refer to the version of that permit issued on December 7, 2015.
15. NSR permit 1360A (PSDTX632M1) Special Condition 3.A.(1) authorizes Kiln No. 5 to emit 1.95 lb NO_x/ton of clinker on a 30-day rolling average.
16. The Kiln No. 5 NO_x CEMS is subject to the provisions in 30 TAC § 117.3140(b), which specifies compliance with 40 CFR Part 60 as follows: § 60.13; Appendix B, Performance Specification 2, for NO_x; and audits in accordance with Section 5.1 of Appendix F, quality assurance procedures, except that a cylinder gas audit or relative accuracy audit may be performed in lieu of the annual relative accuracy test audit. The Kiln No. 5 stack exhaust flow rate is subject to the provisions in 30 TAC § 117.3142(a)(2), which requires monitoring with a flow meter subject to 40 CFR Part 60, Appendix B, Performance Specification 6 or 40 CFR Part 75, Appendix A. The Company monitors and records clinker production rates, in tons per hour, tons per day, daily summed on a 30-day rolling basis, and monthly summed on a 12-month rolling basis. Hourly and daily clinker production rates may be based on the previous month's feed-to-clinker ratio multiplied by the measured hourly/daily kiln feed rate, as specified in 40 CFR Subpart F, § 60.63(b). Records in units of lb NO_x/ton of clinker produced are maintained on a 30-day rolling average.
17. On July 19, 2017, EPA published in the *Federal Register*, 82 *Fed. Reg.* 33026, a proposed conditional approval of NO_x RACT for the Company's Portland cement manufacturing plant in Ellis County, conditioned upon the Company and the Commission agreeing to incorporate NO_x RACT for the Company's Kiln No. 5 as the 1.95 lb NO_x/ton of clinker on a 30-day rolling average limit set forth NSR permit 1360A (PSDTX632M1) Special Condition 3.A.(1) into the Texas SIP by one year after the effective date of a final conditional approval. On September 22,

2017, EPA published in the Federal Register, 82 *Fed. Reg.* 44320, its final conditional approval of NO_x RACT for the Company's Portland cement manufacturing plant in Ellis County.

18. The Company and the Commission agree that effective upon the approval of this Agreed Order by the Commission, NO_x RACT required for the 2008 8-Hour ozone NAAQS for the Company's Kiln No. 5 will be the 1.95 lb NO_x/ton of clinker, 30-day rolling average, limit set forth in NSR permit 1360A (PSDTX632M1) Special Condition 3.A.(1), and as clarified in future revisions to the NSR permit as specified in this Agreed Order.
19. The Company and the Commission further agree that the 1.95 lb NO_x/ton of clinker, 30-day rolling average set forth in NSR permit 1360A (PSDTX632M1) Special Condition 3.A.(1) may not be modified to be greater than 1.95 lb NO_x/ton of clinker, 30-day rolling average, without an approved revised RACT determination in accordance with state and federal requirements for SIP revisions.
20. This Agreed Order does not authorize or prohibit any modification of the facility listed above, as long as such modification does not conflict with provision II.2 of this Agreed Order. The Company is ordered to submit the appropriate application or registration documentation to the TCEQ for any authorization, if any, necessary to implement the requirements of this Agreed Order. This Agreed Order does not prohibit the non-substantive renumbering or reorganization of the provisions of NSR permit 1360A (PSDTX632M1).

II. ORDER

In accordance with the Stipulations noted above, it is therefore ordered by the Commission that:

1. NO_x RACT for the Company's cement manufacturing plant Kiln No. 5 under the 2008 8-Hour ozone NAAQS is the 1.95 lb NO_x/ton of clinker, 30-day rolling average limit set forth in NSR permit 1360A (PSDTX632M1) Special Condition 3.A.(1). The Company shall continue to comply with Special Condition 3.A.(1) of NSR permit 1360A (PSDTX632M1), and shall not modify such emission limit to be greater than 1.95 lb NO_x/ton of clinker on a 30-day rolling average, effective upon the date of this Agreed Order, without an approved revised RACT determination in accordance with state and federal requirements for SIP revisions.
2. The Company shall demonstrate compliance with this Order as described in subparagraphs (1) - (3) below. Additionally, the Company shall revise its NSR permit 1360A (PSDTX632M1) as described herein. The renewal date for NSR permit 1360A (PSDTX632M1) is April 20, 2019. During the renewal process for permit 1360A (PSDTX632M1), or earlier if the Company so elects, and provided that the Commission grants the renewal, the following new Special Condition shall be incorporated under the Federal Applicability

section or as a separate Special Condition in NSR permit 1360A (PSDTX632M1):

- “(1) NO_x RACT for Kiln No. 5 is 1.95 lb NO_x/ton of clinker on a 30-day rolling average limit as set forth in Special Condition 3.A.(1) of NSR permit 1360A (PSDTX632M1), as issued by the Commission on December 7, 2015, which limit may not be modified to be greater than 1.95 lb NO_x/ton of clinker on a 30-day rolling average, without an approved revised RACT determination in accordance with state and federal requirements for SIP revisions.
 - “(2) Compliance with the 30-day rolling average in Special Condition 3.A.(1) shall be demonstrated by summing the hourly mass NO_x emissions over the previous 30 operating days, then dividing that sum by the total clinker production during the same period. An operating day means a 24-hour period beginning at 12:00 midnight during which the kiln produces clinker at any time, but does not include the hours of operation during initial and planned maintenance activities, startup or shutdown.
 - “(3) Hourly mass emissions of NO_x from Kiln No. 5 are determined using a NO_x CEMS and an exhaust flow rate monitor. The Kiln No. 5 NO_x CEMS is subject to the provisions in 30 TAC § 117.3140(b), which specifies compliance with 40 CFR Part 60 as follows: § 60.13; Appendix B, Performance Specification 2, for NO_x; and audits in accordance with Section 5.1 of Appendix F, quality assurance procedures, except that a cylinder gas audit or relative accuracy audit may be performed in lieu of the annual relative accuracy test audit. The Kiln No. 5 stack exhaust flow rate monitor is subject to the provisions in 30 TAC § 117.3142(a)(2), which requires monitoring with a flow meter that meets the specifications of 40 CFR Part 60, Appendix B, Performance Specification 6 or 40 CFR Part 75, Appendix A. The permittee monitors and records clinker production rates, in tons per hour, tons per day, daily summed on a 30-day rolling basis, and monthly summed on a 12-month rolling basis. Hourly and daily clinker production rates may be based on the previous month’s feed-to-clinker ratio multiplied by the measured hourly/daily kiln feed rate, as specified in 40 CFR Subpart F, § 60.63(b). Records in units of lb NO_x/ton of clinker produced are maintained on a 30-day rolling average as specified herein. The requirements of this paragraph shall not be modified without an approved revised RACT determination in accordance with state and federal requirements for SIP revisions. Nothing in this paragraph shall affect or prohibit the modification of monitoring and recordkeeping requirements not specified in this paragraph.”
3. The Company shall make records available upon request by the TCEQ or any other air pollution control agency with jurisdiction over the Company to

establish compliance with the 1.95 lb NO_x/ton of clinker, 30-day rolling average limit set forth in NSR permit 1360A (PSDTX632M1) Special Condition 3.A.(1) and this Agreed Order.

4. Any violation of NSR permit 1360A (PSDTX632M1) Special Condition 3.A.(1) shall not be considered as an additional violation of this Agreed Order for the purpose of calculating the amount of any administrative penalties assessed by the Commission.
5. The provisions of this Agreed Order shall apply to, and be binding upon, the Company, its successors, assigns, and upon those persons in active concert or participation with them who receive actual notice of this Agreed Order by personal service or otherwise. The Company is hereby ordered to give notice of this Agreed Order to any successor in interest prior to transfer of ownership of all or any part of the plant, located at 245 Ward Rd., Ellis County, Texas, and within ten (10) days of any such transfer, provide the TCEQ with written certification of such transfer, and that such notice has been given.

If any portion of this Agreed 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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission
Bryan W. Shaw, Ph.D.
Chairman
Texas Commission on Environmental Quality

Date

I, the undersigned, have read and understood the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein.

Roselyn R. Bar

6/14/2018

Roselyn R. Bar
Vice President and Secretary
TXI Operations, LP

Date

Margaret Ligarde

6/21/2018

Margaret Ligarde
Deputy Director
Office of Legal Services
Texas Commission on Environmental Quality

Date