

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

## **AGENDA ITEM REQUEST**

for Withdrawal from State Implementation Plan

**AGENDA REQUESTED:** July 23, 2025

**DATE OF REQUEST:** July 3, 2025

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

**CAPTION: Docket No. 2009-1400-RUL.** Consideration to withdraw from U.S. Environmental Protection Agency (EPA) review, Section 185 fee program rule provisions 30 TAC §101.118(a)(2) and §101.118(b), adopted by the commission on May 22, 2013, to address requirements under the revoked 1979 one-hour ozone National Ambient Air Quality Standard (NAAQS) (Rule Project No. 2009-009-101-AI).

The Section 185 fee program rules under consideration for withdrawal are no longer necessary or applicable since EPA has determined that the Houston-Galveston-Brazoria area met the federal Clean Air Act criteria for redesignation under the revoked one-hour ozone NAAQS and terminated all anti-backsliding obligations related to that standard, including the Section 185 fee (February 14, 2020; 85 FR 8411). (Lindsey Xiao, Terry Salem, John Minter; Non-Rule Project No. 2025-020-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:** July 3, 2025

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

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

**Docket No.:** 2009-1400-RUL

**Subject:** Commission Withdrawal of 30 Texas Administrative Code (TAC) §101.118(a)(2) and §101.118(b) from U.S. Environmental Protection Agency (EPA) Consideration as a State Implementation Plan (SIP) Revision.

One-hour Section 185 Fee Rule Partial SIP Revision Withdrawal  
Non-Rule Project No. 2025-020-OTH-NR

### **Background and reason(s) for the SIP revision withdrawal:**

Section 185 of the federal Clean Air Act (FCAA) requires a penalty fee to be assessed on stationary sources that are classified as a major source for nitrogen oxides (NO<sub>x</sub>) or volatile organic compounds (VOC) when a severe or extreme ozone nonattainment area fails to attain the applicable National Ambient Air Quality Standards (NAAQS) by the specified attainment date. Under the 1979 one-hour ozone NAAQS, the Houston-Galveston-Brazoria (HGB) severe nonattainment area (consisting of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties) failed to attain by the November 15, 2007, deadline.

On May 22, 2013, the commission adopted Section 185 fee program rules to address the 1979 one-hour ozone NAAQS (Rule Project No. 2009-009-101-AI). The Texas Commission on Environmental Quality (TCEQ) submitted these Section 185 fee program rules to EPA on November 27, 2018, as a SIP revision. EPA issued final approval of TCEQ's one-hour ozone NAAQS Section 185 fee rules on February 14, 2020 (85 *Federal Register* (FR) 8411) but took no action on 30 TAC §101.118(a)(2) or §101.118(b), provisions related to cessation of Section 185 fee collection.

EPA revoked the one-hour ozone NAAQS in 2005 and determined that the HGB area met the five criteria in the FCAA for redesignation on February 14, 2020 (80 FR 12264). As a result, the one-hour ozone NAAQS Section 185 fee rules are no longer applicable.

EPA is subject to a consent decree settlement agreement that requires final action on 30 TAC §101.118(a)(2) and §101.118(b) by September 30, 2025. On December 19, 2024, EPA proposed to disapprove 30 TAC §101.118(a)(2) and §101.118(b) (89 FR 103734). Therefore, staff recommend withdrawing 30 TAC §101.118(a)(2) and §101.118(b) from EPA's consideration prior to EPA taking final action.

### **Scope of the request:**

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

If approved by the commission, two previously submitted provisions in TCEQ's one-hour ozone NAAQS Section 185 fee rule, 30 TAC §101.118(a)(2) and (b), would be withdrawn from EPA's consideration as a revision to the SIP. This action would not remove the rule provisions from the TCEQ's rules but would remove EPA's obligation to take final action on its proposed disapproval of these rule provisions.

Re: Docket No. 2009-1400-RUL

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

Because the rules are no longer required and have not been approved by EPA as part of the SIP, no public hearing is necessary for the commission to withdraw the submittal from EPA consideration.

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

None.

**Statutory authority:**

This request to withdraw 30 TAC §101.118(a)(2) and §101.118(b) is made under the commission's authority in Texas Water Code (TWC) §5.102, General Powers; TWC, §5.103, Rules; TWC, §5.105, General Policy; TWC, §5.013, General Jurisdiction of Commission. The withdrawal request is also made under Texas Health & Safety Code (THSC), §382.002, Policy and Purpose; THSC, §382.011, General Powers and Duties; THSC, §382.012, State Air Control Plan; and THSC, §382.017, Rules.

**Effect on the:**

**A.) Regulated community:**

EPA revoked the one-hour ozone NAAQS and determined that the HGB area met the five criteria in the FCAA for redesignation. As a result, the one-hour ozone NAAQS Section 185 fee rules are no longer applicable, and the withdrawal of these provisions will have no impact on the regulated community.

**B.) Public:**

None.

**D.) Agency programs:**

The withdrawal of these provisions will have no impact on agency programs.

**Stakeholder meetings:**

None were held.

**Public Involvement Plan**

Yes.

**Alternative Language Requirements**

Yes. Spanish.

**Potential controversial concerns and legislative interest:**

None.

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

No.

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

The commission could choose not to withdraw 30 TAC §101.118(a)(2) and §101.118(b) from EPA consideration as a SIP revision. However, if these provisions are not withdrawn, EPA will be required to comply with the consent decree and may disapprove these provisions.

**Key points in the SIP withdrawal schedule:**

Anticipated adoption date: July 23, 2025

Commissioners

Page 3

July 3, 2025

Re: Docket No. 2009-1400-RUL

**Agency contacts:**

Lindsey Xiao, Project Manager, Air Quality Division, (512) 239-1272

Terry Salem, Staff Attorney, Environmental Law Division, (512) 239-0663

John Minter, 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  
Jessie Powell  
Krista Kyle  
Patrick Lopez  
Office of General Counsel  
Lindsey Xiao  
Terry Salem  
John Minter  
Jamie Zech