

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** March 25, 2022

Thru: Laurie Gharis, Chief Clerk
Toby Baker, Executive Director

From: Tonya Baer, Director
Office of Air

Docket No.: 2021-1435-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 112, Control of Air Pollution from Sulfur Compounds
Rules for Round Four Sulfur Dioxide Nonattainment Areas
Rule Project No. 2021-035-112-AI

Background and reason(s) for the rulemaking:

On April 30, 2021, the Environmental Protection Agency (EPA) designated parts of Howard, Hutchinson, and Navarro Counties as nonattainment for the Sulfur Dioxide (SO₂) National Ambient Air Quality Standard (NAAQS). The attainment date for all three nonattainment areas is April 30, 2026. Air dispersion modeling of authorized emissions showed that certain sources in each nonattainment area contribute to violations of the SO₂ NAAQS. The rules are intended to make enforceable the emission rates and stack parameters that attainment demonstration modeling show will model attainment by the compliance date (January 1, 2025). The rules, if adopted, will be submitted with the three state implementation plan (SIP) revisions being proposed concurrently for the nonattainment areas.

Scope of the rulemaking:

The rules provide new Subchapters E, F, and G in 30 Texas Administrative Code (TAC) Chapter 112, with a new subchapter for each nonattainment area. Because the attainment demonstration modeling required specific limits at individual sources at applicable sites to demonstrate attainment, the rules apply only to specified emission points and emission caps at specified sites in the nonattainment areas.

A.) Summary of what the rulemaking would do:

For the site to which it applies, each new division provides the following:

- **Applicability** - Specifies each site in the nonattainment area that is subject to the rules and the emission points and caps at each site.
- **Definitions** - Provides definitions of terms in the division that may require clarification or that are used frequently. Some definitions are for specific sites or sources, and others are generally applicable within the division.
- **Control Requirements** - Provides the emission rate limits, fuel and raw material sulfur content limits, and stack parameters that attainment demonstration modeling indicated are needed to model attainment. Certain sources are prohibited from operation after the compliance date. For some sites, multiple options are provided to allow compliance flexibility.
- **Monitoring Requirements** - Specifies the monitoring needed to document that the emission rate limits are not exceeded.
- **Testing Requirements** - Where needed, requires compliance or performance testing to verify the efficiency of the emission controls or testing of fuels, raw materials, and/or finished products needed to calculate actual SO₂ emissions.
- **Approved Test Methods** - Specifies the methods for the testing requirements with a provision for alternate testing if approved by the executive director and the EPA.
- **Recordkeeping Requirements** - Specifies the records that are to be maintained on site to document compliance with emission rate limits and stack parameter requirements.

Re: Docket No. 2021-1435-RUL

- Reporting Requirements – Requires an annual report, documenting each exceedance that occurred and corrective actions and requires submitting copies of test reports and records for stack tests and performance tests within 60 days of the test. For the one fugitive emission source, an annual report on temperature testing is required to indicate if the testing done to establish the emission limit is valid.
- Compliance Schedule – Specifies that the compliance date for all sites in all nonattainment areas is January 1, 2025, which is one full calendar year before the attainment date for each nonattainment area.

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

The rules are intended to make enforceable the emission rate limits and other requirements that are needed to demonstrate attainment.

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

None.

Statutory authority:

Sections 382.002, 382.011, and 382.012 of the Texas Clean Air Act (TCAA), which is codified as Texas Health & Safety Code, (THSC), Chapter 382, provide authority for the commission's purpose to safeguard the state's air resources, as well as 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; Sections 382.014, 382.015, 382.016, and 382.021 of the TCAA, provide for the collection of emission inventory information, the power to enter property, requirements for monitoring and examination of records, and sampling requirements. The Texas Water Code (TWC) Section 5.102 provides general authority for the commission necessary for it to exercise its jurisdiction and discharge its duties; and the TCAA, §382.017 and TWC, §5.105 provide authority for the adoption of rules.

The authority to propose and adopt the proposed SIP revision is derived from federal Clean Air Act, 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 THSC, Chapter 382.

Effect on the:

A.) Regulated community:

Each provision in the rules would impact only the specific company and source to which it applies. In the Howard County SO₂ Nonattainment Area, the sites are the Delek US Holdings' Big Spring Refinery site and the Tokai Carbon CB LTD's Big Spring Carbon Black Plant. In the Hutchinson County SO₂ Nonattainment Area, the sites are the Chevron Phillips Chemical LP's Borger Plant site, IACX Rock Creek LLC's Rock Creek Gas Plant site, Orion Engineered Carbon LLC's Borger Carbon Black Plant site, Phillips 66 Company's Borger Refinery site, and Tokai Carbon CB LTD's Borger

Re: Docket No. 2021-1435-RUL

Carbon Black Plant site. In the Navarro County SO₂ Nonattainment Area, the site is the Arcosa LWA LLC's Streetman Plant site.

B.) Public:

The public would benefit from improved air quality in each nonattainment area.

C.) Agency programs:

The regional offices in Regions 1, 4, and 7 would receive annual reports of exceedances or testing and may have a slight increase in inspections needed. No other impact on agency programs is anticipated.

Stakeholder meetings:

If this proposed rulemaking and associated proposed SIP revisions are approved by the commission for public comment and public hearing, then a public comment period will be opened, and a public hearing will be offered. **Potential controversial concerns and legislative interest:** There is no known legislative interest on these rules.

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

No.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking? Enforceable emission rate limits and other requirements are needed for the three concurrently proposed SIP revisions to be approvable. Agreed orders could be used instead of rules, but there is limited time to secure agreement from the several companies before the deadline for submitting the SIP revisions to the EPA.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: April 13, 2022

Anticipated *Texas Register* publication date: April 29, 2022

Anticipated public hearing dates: May 18, 19, and 23, 2022

Anticipated public comment period: April 15 - June 2, 2022

Anticipated adoption date: October 5, 2022

Agency contacts:

Joseph Thomas, Rule Project Manager, Air Quality Division, (512) 239-3934

John Minter, Staff Attorney, (512) 239-0663

Terry Salem, Staff Attorney, (512) 239-0469

Cecilia Mena, Texas Register Rule/Agenda Coordinator, (512) 239-6098

Attachments:

None.

cc: Chief Clerk, 2 copies
Executive Director's Office
Jim Rizk
Morgan Johnson
Krista Kyle
Office of General Counsel
Joseph Thomas
John Minter
Terry Salem
Cecilia Mena