

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** April 5, 2024

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

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

Docket No.: 2023-1457-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 117, Control of Air Pollution from Nitrogen Compounds
NO_x Rule Revisions for DFW and HGB Ozone Nonattainment Areas
Rule Project No. 2023-117-117-AI

Background and reason(s) for the rulemaking:

Effective November 7, 2022, the U.S. Environmental Protection Agency (EPA) reclassified Bexar County, nine counties in the Dallas-Fort Worth (DFW) area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Tarrant, and Wise Counties), and six counties in the Houston-Galveston-Brazoria (HGB) area (Brazoria, Chambers, Fort Bend, Galveston, Harris, and Montgomery Counties) from marginal to moderate for the 2015 eight-hour ozone National Ambient Air Quality Standard (NAAQS) (87 Federal Register (FR) 60897). The attainment date for the Bexar County 2015 ozone NAAQS moderate nonattainment area is September 24, 2024, and the attainment date for the DFW and HGB 2015 ozone NAAQS moderate nonattainment areas is August 3, 2024. Also, effective November 7, 2022, EPA reclassified 10 counties in the DFW area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties) and eight counties in the HGB area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties) from serious to severe for the 2008 eight-hour ozone NAAQS (87 FR 60926). The attainment date for the DFW and HGB 2008 ozone NAAQS severe nonattainment areas is July 20, 2027.

Nonattainment areas classified as moderate and above are required to meet the mandates of the federal Clean Air Act (FCAA) under §172(c)(1) and §182(b)(2) and (f). FCAA, §172(c)(1) requires that the State Implementation Plan (SIP) incorporate all reasonably available control measures (RACT), including reasonably available control technology (RACT), as expeditiously as practicable. FCAA, §182(b)(2) requires the state to implement RACT requirement rules for all categories of stationary sources identified by the EPA in an alternative control technique (ACT) document or a control techniques guideline (CTG) document as well as any non-ACT/CTG category sources that are classified as major stationary sources of nitrogen oxides (NO_x) or volatile organic compounds (VOC). This adopted rulemaking implements RACT requirements for major sources of NO_x in Bexar County and extend existing RACT to new major sources of NO_x in the DFW area due to the reclassification from serious to severe nonattainment for the 2008 ozone NAAQS.

On May 10, 2023, the commissioners directed the Executive Director to initiate a rulemaking to examine the issues raised in a rulemaking petition filed with Texas Commission on Environmental Quality (TCEQ) on March 13, 2023, by Baker Botts LLP, on behalf of the Texas Industry Project under 30 Texas Administrative Code (TAC) §20.15. As directed by TCEQ, the executive director reviewed the issues raised in the March 13, 2023 rulemaking petition. This adopted rulemaking revises 30 TAC Chapter 117 to remove the requirements for certain engines to monitor NO_x emissions using continuous emissions monitoring systems (CEMS) or a predictive emissions monitoring system (PEMS), to adjust the applicable ammonia emission limit to be consistent with typical operation of diesel engines, and to remove the ammonia monitoring requirements for these engines.

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Neither the Chapter 117 nor the concurrent 30 TAC Chapter 115 rule project (Project No. 2023-116-115-AI) has RACT updates affecting new sites in the HGB nonattainment area. Both rules have RACT updates for DFW due to a reduced 2008 ozone NAAQS major source threshold (from 50 tons per year (tpy) down to 25 tpy). This resulted from the change from a serious to severe nonattainment classification for the 2008 ozone NAAQS. Sites in DFW with NO_x and certain VOC emissions between 25 and 50 tpy will have newly applicable major source regulations in Chapters 115 and 117. The HGB area has the same severe classification for the 2008 ozone NAAQS, but it is not new to HGB since the area was already severe for the 1997 eight-hour ozone NAAQS, and rules are already in place in HGB for the severe level.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The adopted rulemaking implements RACT requirements for major sources of NO_x in Bexar County as necessary for the 2015 eight-hour ozone moderate classification. In Bexar County, a major source is any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit at least 100 tpy of NO_x. The adopted provisions include emission standards, exemptions, monitoring, recordkeeping, reporting, and testing requirements that will apply to engines, turbines, boilers, and cement kilns at major sources of NO_x emissions in Bexar County. Affected sources will be required to comply by January 1, 2025. The adopted rulemaking includes new divisions or sections in 30 TAC Chapter 117, Subchapter B, Combustion Control at Major Industrial, Commercial, and Institutional Sources in Ozone Nonattainment Areas; Subchapter C, Combustion Control at Major Utility Electric Generation Sources in Ozone Nonattainment Areas; and Subchapter H, Administrative Provisions, Division 1, Compliance Schedule. In support of the new requirements, revisions are also adopted to Subchapter A, Definitions; Subchapter E, Multi-Region Combustion Control; and Subchapter H, Administrative Provisions, Division 2, Compliance Flexibility.

The adopted rulemaking implements RACT requirements for major sources of NO_x in the DFW area as necessary for the 2008 eight-hour ozone severe classification. In the DFW 2008 severe ozone nonattainment area, a major source is any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit at least 25 tpy of NO_x. The adopted rulemaking revises the definitions in Chapter 117, Subchapter A and compliance schedules in Subchapter H, Division 1 to lower the major source threshold from 50 tpy NO_x to 25 tpy of NO_x. The adopted rulemaking requires major sources of NO_x to comply with new emission limits, control requirements, or operating requirements as well as other associated rule provisions necessary to implement any required NO_x control measures, such as monitoring, testing, recordkeeping, reporting, exemptions, no later than November 7, 2025.

The adopted rulemaking also revises 30 TAC Chapter 117 to remove the requirements for stationary diesel engines that meet federal Tier 4 standards to monitor NO_x emissions using CEMS or PEMS, to adjust the applicable ammonia emission limit to be consistent with typical operation of diesel engines, and to remove the ammonia monitoring requirements for these engines. Although the Chapter 117 ammonia standards are not part of the SIP, both the NO_x and ammonia monitoring requirements are included as part of the SIP. Therefore, these rule changes are being submitted as part of the SIP.

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

The rulemaking adopts new and/or amended NO_x rules determined to be necessary to implement RACT as required to meet the mandates of FCAA §172(c)(1) and §182(b)(2)(f) for the Bexar County and DFW ozone nonattainment areas based on an evaluation of sources in the area. The adopted

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rulemaking includes revisions to incorporate new emission limits, control requirements, or operating requirements as well as other associated rule provisions necessary to implement any required NO_x control measures, such as monitoring, testing, recordkeeping, reporting, exemptions, and compliance schedules.

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

The rulemaking adoption also amends Chapter 117 requirements for stationary diesel engines that meet federal Tier 4 standards as described above. The rulemaking includes other non-substantive revisions to Chapter 117 to remove obsolete language, use consistent terminology, and update the rule language to current *Texas Register* and TCEQ style and format requirements.

Statutory authority:

The rule amendments will be adopted under Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize TCEQ to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes TCEQ to enforce the provisions of the Water Code and the Health and Safety Code within TCEQ's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes TCEQ to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The rules will also be adopted under THSC, §382.002, concerning Policy and Purpose, that establishes TCEQ's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes TCEQ to control the quality of the state's air; §382.012, concerning State Air Control Plan, that authorizes TCEQ to prepare and develop a general, comprehensive plan for the control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes TCEQ to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.021, concerning Sampling Methods and Procedures, that authorizes TCEQ to prescribe the sampling methods and procedures to determine compliance with its rules. The rule amendments will also be adopted under 42 United States Code, §§7420 et seq., which 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. The EPA published the final rule establishing the NAAQS for ozone in the Federal Register on March 27, 2008 (73 FR 16436).

Effect on the:

A.) Regulated community:

The adopted rulemaking affects owners or operators of major stationary sources of NO_x located in the DFW and Bexar County ozone nonattainment areas. The adopted rulemaking requires owners or operators of affected sources to comply with the emission standards, conduct initial emissions testing or continuous emissions monitoring to demonstrate compliance, install and operate a totalizing fuel flow meter, perform quarterly and periodic annual emissions compliance testing on stationary engines, submit compliance reports to TCEQ, and maintain the appropriate records demonstrating compliance with the adopted rules, including but not limited to fuel usage, produced emissions, emissions-related control system maintenance, and emissions performance testing. The adopted rulemaking also affects the owners or operators of stationary diesel engines in the DFW and HGB ozone nonattainment areas.

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B.) Public:

The public in the DFW and Bexar County ozone nonattainment areas may benefit from ultimately meeting the applicable ozone NAAQS and the areas being redesignated to attainment.

C.) Agency programs:

The adopted rulemaking may increase the workload for Office of Compliance and Enforcement staff when inspecting affected facilities to verify compliance with any new or revised Chapter 117 requirements. Staff from the Environmental Law Division will be solicited for legal advice, and Air Permits Division will be required to update permits for sources affected by Chapter 117 revisions.

Stakeholder meetings:

TCEQ hosted virtual stakeholder meetings for Bexar County on June 8, 2022, for DFW on September 6, 2022 and September 7, 2022, and for HGB on September 7, 2022 and September 8, 2022. These meetings provided a brief overview of the areas' air quality status, plan requirements for ozone nonattainment areas, and to discuss what emission reduction strategies are being or could be implemented by different source sectors. The meetings were open to the public, but the focus was on stationary sources. TCEQ also held Technical Information Meetings for Bexar County on August 16, 2021 and August 22, 2022, for DFW on August 24, 2022, and for HGB on July 28, 2022. The purpose of these meetings was for TCEQ to have an open, consultative forum regarding the technical work associated with upcoming ozone SIP development.

Public Involvement Plan

Yes

Alternative Language Requirements

Yes. Spanish

Public comment:

The public comment period opened on December 1, 2023 and closed on January 16, 2024. The commission offered three public hearings for the proposed rulemaking: in Houston on January 4, 2024; in San Antonio on January 9, 2024; and in Arlington on January 11, 2024. Notice of the public hearings was published in English in the *Dallas Morning News* newspaper, the *Houston Chronicle*, and the *San Antonio Express-News* newspapers on December 1, 2023. Notice of the public hearings was published in Spanish in *Al Día* newspaper and *Conexion* newspaper on December 6, 2023, and in *La Voz* newspaper on December 13, 2023. Notices in English and Spanish were also distributed to subscribers through GovDelivery and posted to TCEQ's website, and notices were published in English in the *Texas Register* on December 15, 2023 (48 TexReg 7643-7644). A plain language summary of the rulemaking was provided in both English and Spanish.

TCEQ staff were present and opened the Houston and Arlington hearings for public comment on this project as well as the concurrently proposed DFW 2008 Ozone NAAQS Severe AD SIP Revision (Project No. 2023-107-SIP-NR), HGB 2008 Ozone NAAQS Severe AD SIP Revision (Project No. 2023-110-SIP-NR), DFW-HGB 2008 Ozone NAAQS Severe RFP SIP Revision (Project No. 2023-108-SIP-NR), and 30 TAC Chapter 115 Rulemaking (Project No. 2023-116-115-AD). Spanish language interpreters were available at the hearings, the comments were recorded, and transcripts were prepared.

TCEQ staff were present and ready to open the San Antonio hearing for public comment on this project as well as the concurrently proposed Bexar County RACT SIP Revision (Project No. 2023-132-SIP-NR) and 30 TAC Chapter 115 Rulemaking (Project No. 2023-116-115-AD); however, none of the attendees signed up to make comments on the record. Therefore, the San Antonio public hearing was not formally opened for comment and a transcript was not prepared.

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During the comment period, the commission received comments from CPS Energy, EPA, Sierra Club, and Baker Botts LLP, on behalf of the Texas Industry Project. The comments expressed support for the proposal and provided suggested changes to the rules, including changes to the notification and reporting requirements, changes to the system cap for electric generation sources for shutdown units, and changes to the RACT limits for certain sources.

Significant changes from proposal:

In response to comments, §117.1120(f) was revised to require the owner or operator to report any exceedance of the system cap emission limit within three calendar days, instead of the proposed 48 hours, and to require a follow-up report to be submitted no later than 60 calendar days after the exceedance, instead of the proposed 21 days. Also in response to comment, §117.1140(f)(2) was revised to clarify that for any unit complying with the system cap in §117.1120, non-operating days should be included when calculating the rolling 30-day average NO_x emissions from all units included in the system cap.

Potential controversial concerns and legislative interest:

The adopted rules addressing RACT requirements for the Bexar County 2015 ozone NAAQS moderate nonattainment area were due to the EPA by January 1, 2023. This adopted rulemaking will be submitted to EPA no later than May 7, 2024. Missing the January 1, 2023 submittal deadline has led to EPA issuing a finding of failure to submit, which started clocks for sanctions and a federal implementation plan (FIP) effective November 17, 2023 (88 FR 71757). EPA is required to promulgate a FIP anytime within two years of finding TCEQ failed to make the required submission unless TCEQ submits, and EPA approves, a plan revision correcting the deficiency prior to promulgating the FIP. Sanctions could include transportation funding restrictions, grant withholdings, and 2-to-1 emissions offset requirements for new construction and major modifications of stationary sources in the Bexar County 2015 ozone NAAQS nonattainment area.

Will 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?

On October 18, 2023, EPA issued a finding of failure to submit required SIP revisions for the 2015 eight-hour ozone NAAQS moderate nonattainment areas, effective November 17, 2023 (88 FR 71757). On October 12, 2023, Texas Governor Greg Abbott signed and submitted a letter to EPA to reclassify the Bexar County, DFW, and HGB moderate 2015 eight-hour ozone NAAQS nonattainment areas to serious. EPA's proposal to reclassify these areas to serious in accordance with Governor Abbott's letter was published on January 26, 2024 (89 FR 5145). EPA proposes that a number of moderate classification requirements are still due, including a RACT demonstration for Bexar County. This rulemaking and the concurrent Bexar County RACT SIP revision (Project No. 2023-132-SIP-NR) satisfy the NO_x RACT demonstration portion of the outstanding moderate area classification requirements for the 2015 eight-hour ozone NAAQS. The commission could choose to not comply with the requirements to develop and submit the required moderate RACT rule elements for Bexar County to EPA. However, a 2-to-1 emissions offset sanction will apply in the Bexar County nonattainment area 18 months after the effective date of EPA's finding unless TCEQ submits, and EPA deems complete, a plan revision that resolves the deficiency. Highway funding sanctions will apply six months after the offset sanction begins if a complete plan revision has not been submitted to resolve the deficiency. In addition, EPA is required to promulgate a FIP within

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24 months of the effective date of the finding of failure to submit if TCEQ does not submit, or if TCEQ submits but EPA does not approve, the required rules within the 24-month period.

The commission could also choose to not comply with requirements to develop and submit the Chapter 117 rulemaking to EPA to address requirements for the DFW 2008 ozone NAAQS nonattainment area. However, if the rulemaking is not submitted to EPA, EPA will issue a finding of failure to submit, requiring that TCEQ submit the required submission within a specified time period, which will start the sanctions clock (18 months) and FIP clock (24 months) for the DFW 2008 ozone NAAQS nonattainment area. EPA will impose such sanctions and implement a FIP until the state submits, and EPA approves, rules sufficient to address SIP requirements in this area.

Key points in the adoption rulemaking schedule:

***Texas Register* publication date:** December 15, 2023

Anticipated *Texas Register* adoption publication date: May 10, 2024

Anticipated effective date: May 16, 2024

Six-month *Texas Register* filing deadline: June 15, 2024

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