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January 16, 2024

Submitted via TCEQ Comment Portal

Texas Commission on Environmental Quality

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**HARRIS COUNTY'S COMMENTS ON THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY'S PROPOSED RULEMAKING FOR CHAPTER 115,
CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS RULE
REVISIONS FOR OZONE NONATTAINMENT AREAS**

RE: Rule Project No. 2023-116-115-AI; Docket No. 2023-1456-RUL

To Whom It May Concern:

The Texas Commission on Environmental Quality ("TCEQ") has proposed to revise Chapter 115 to implement the rules needed to meet the federal State Implementation Plan ("SIP") requirements in Dallas-Fort Worth ("DFW") and Houston-Galveston-Brazoria ("HGB") 2008 ozone National Ambient Air Quality ("NAAQS") severe nonattainment areas.¹ TCEQ provided a public comment period from December 1, 2023 to January 16, 2023.² Harris County appreciates the opportunity to comment on this matter.

General Ozone History for the HGB Area

In 1970, Congress passed the Clean Air Act ("CAA"), which authorized the establishment of the NAAQS.³ Congress passed these standards to protect the public health and welfare and to regulate emissions of hazardous air pollutants.⁴ HGB has never met any of the ozone standards at the time

¹ TCEQ, *Chapter 115 – Control of Air Pollution from Volatile Organic Compounds*, Rule Project No. 2023-116-115-AI

² TCEQ, *Rule Proposals*, www.tceq.texas.gov/rules/prop.html#2023-117-117-AI (last visited January 11, 2023).

³ EPA, *Summary of the Clean Air Act*, Laws & Regulations, <https://www.epa.gov/laws-regulations/summary-clean-air-act> (last visited January 11, 2024).

⁴ *Id.*

of their initial implementation. Nearly 54 years later, the residents of Harris County continue to breathe unhealthy air because the State of Texas, TCEQ Commissioners, and TCEQ staff refuse to implement the necessary standards to get the job done. The first ozone NAAQS became a legally required standard in 1979 and Texas has failed to attain each of the standards in Harris County every single year since then. See the excerpt below of Texas’ Nonattainment.⁵

| County | NAAQS | Area Name | Nonattainment in Year | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---------------|-----------------------------------|--------------------------------|-----------------------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| TEXAS | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Harris County | 1-Hour Ozone (1979)-NAAQS revoked | Houston-Galveston-Brazoria, TX | 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 00 | 01 | 02 | 03 | 04 | | | | | | | | | | | | | | | | | | | |
| Harris County | 8-Hour Ozone (1997)-NAAQS revoked | Houston-Galveston-Brazoria, TX | | | | | | | | | | | | | 04 | 05 | 06 | 07 | 08 | 09 | 10 | 11 | 12 | 13 | 14 | | | | | | | | | |
| Harris County | 8-Hour Ozone (2008) | Houston-Galveston-Brazoria, TX | | | | | | | | | | | | | | | | | | | | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | |
| Harris County | 8-Hour Ozone (2015) | Houston-Galveston-Brazoria, TX | | | | | | | | | | | | | | | | | | | | | | | | | | | 18 | 19 | 20 | 21 | 22 | 23 |

HGB 2008 Eight-Hour Ozone NAAQS History

In particular, Harris County and the entire HGB area have historically failed to attain for the 2008 eight-hour ozone NAAQS. On March 10, 2009, the Texas governor recommended to the Environmental Protection Agency (“EPA”) that Harris County, among others, be designated nonattainment for the 2008 eight-hour ozone NAAQS. Between 2009 and 2011, EPA reexamined and reconsidered the 2008 ozone NAAQS and in September of 2011 announced that EPA would be proceeding with the recommendations states made in 2009. On May 21, 2012, EPA published its final designations for the 2008 eight-hour ozone NAAQS. This included Harris County being designated as nonattainment and classified as marginal under this standard. This redesignation became effective on July 20, 2012.

In 2014, the HGB area failed to attain for the 2008 eight-hour ozone standard but was granted a one-year extension. However, the HGB areas was ultimately found to be in nonattainment and reclassified from marginal to moderate on December 14, 2016.

On August 23, 2019, EPA reclassified the HGB area from moderate to serious nonattainment for the 2008 eight-hour ozone NAAQS. The HGB area was reclassified from serious to severe nonattainment in 2022. The HGB area has been in nonattainment for the 2008 eight-hour ozone practically since 2009.

HGB’s ozone problem has continued to worsen, and Houston saw one of its worst ozone seasons

⁵ EPA, *Texas Nonattainment/Maintenance Status for Each County by Year for All Criteria Pollutants*, Green Book, https://www3.epa.gov/airquality/greenbook/anayo_tx.html (last visited January 11, 2024).

in years in 2023.⁶ Notably, a recent study found that people of color and low-income residents of Harris County were disproportionately likely to be impacted by ozone pollution.⁷ TCEQ has failed all Harris County residents for almost 15 years by failing to provide them clean air.

New TCEQ Proposed Volatile Organic Compounds Control Requirement

TCEQ has proposed new volatile organic compounds (“VOC”) control requirements applicable in the DFW and HGB 2008 ozone nonattainment areas implemented as SIP contingency measures if areas fail to make reasonable further progress (“RFP”) or attain the 2008 ozone NAAQS.⁸ These proposed control measures are trivial and insignificant. TCEQ states that the rulemaking adds provisions for six measures to be implemented if needed for SIP contingency purposes in DFW and/or HGB 2008 ozone NAAQS nonattainment areas.⁹ These contingency measures will take effect if an area fails to attain a NAAQS by the attainment date or fails to demonstrate Reasonable Further Progress (“RFP”).¹⁰ The following are the contingency measures proposed in Subchapters E:

- **Contingency Measure: Degreasing VOC Limit**

The commission proposes to amend Subchapter E, Division 1 to establish a new limit for VOC-containing solvent for cold solvent degreasing processes, open-top vapor degreasing processes, and conveyORIZED degreasing processes. The purpose limit would be implemented in the DFW and/or HGB 2008 ozone NAAQS nonattainment areas when triggered for SIP contingency purposes.¹¹

- **Control Requirements for Surface Coating Processes**

The commission proposes to amend Subchapter E, Division 5 to establish new traffic marking coating provisions that would be implemented in the DFW and/or HGB 2008 ozone NAAQS nonattainment areas when triggered for SIP contingency purposes. The commission proposes to make the current surface coating process VOC RACT requirements in this division applicable to affected sources in the Bexar County area.¹²

- **Miscellaneous Industrial Adhesives**

The commission proposes to amend Subchapter E, Division 7 to establish a new limit for industrial adhesives to be implemented in the DFW and/or HGB 2008 ozone NAAQS nonattainment areas when triggered for SIP contingency purposes.¹³

⁶ Rebekah F. Ward & Alexandra Kanik, *Houston is having its worst ozone season in years, data shows*, Hou. Chron., (Oct. 15, 2023) <https://www.houstonchronicle.com/news/houston-texas/environment/article/ozone-worst-season-houston-texas-18418288.php>

⁷ Environmental Integrity Project, *Increase in Houston Ozone Violations Hits Communities of Color Hardest* (2023) https://environmentalintegrity.org/wp-content/uploads/2023/11/EIP_Report_HoustonOzone_Embargoed11.30.pdf.

⁸ *Chapter 115*, Rule Project No. 2023-116-115-AI at 5.

⁹ *Id.* at 6.

¹⁰ *Id.*

¹¹ *Id.* at 57.

¹² *Id.* at 86.

¹³ *Id.* at 92.

- **Contingency Measure: Emulsified Asphalt**

The commission proposes to amend Subchapter F, Division 1 to define and establish a new contingency rule limit for emulsified asphalt in the DFW and/or HGB 2008 ozone nonattainment areas that trigger SIP contingency requirements.¹⁴

These contingency measures proposed by TCEQ are not enough to make a substantial impact. This revision is nothing more than TCEQ simply being able to check a box stating that contingency measures are included. In order to reach attainment in the HGB area, TCEQ needs to make more stringent and meaningful revisions.

TCEQ Proposed Time Frame for CMs

Implementation of the contingency measures would be triggered upon EPA’s publication of notice in the Federal Register that the area has failed to attain and TCEQ’s subsequent publication in the Texas Register that compliance with the contingency measures is required.¹⁵ The affected sources would then be required to comply with the contingency rules no later than nine months after the Texas Register publication.¹⁶

Last year, on March 17, 2023, the Environmental Protection Agency released a document entitled “Draft Guidance on the Preparation of State Implementation Plan Provisions that Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter”.¹⁷ This document serves as guidance to air agencies for contingency measure requirements for the preparation of ozone and particulate matter (“PM”) plans.¹⁸ EPA focuses on revising its approach to estimating the amount of emissions reductions that Contingency Measures should achieve.¹⁹ The guidance also addresses, but does not alter, the time period in which reductions from Contingency Measures (“CMs”) should take effect.²⁰

According to EPA, full implementation of Contingency Measures should occur within 60 days after the State is notified of the failure to attain NAAQS by the attainment date or has failed to meet RFP.²¹ Generally, the actual emission reductions from the CMs should occur the following year.²² As stated above, TCEQ’s proposed rule states that affected sources would be required to comply with the contingency rules no later than nine months after the publication in the Texas Register. However, this proposed rule does not follow the guidance put out by the EPA, in which contingency measures should take effect within 60 days, not nine months. EPA’s guidance is supported by the Clean Air Act, which imply call for prompt emission reductions in the event CMs are triggered and considered the intended purpose for CMs.²³ Basically, the intended purpose of

¹⁴ *Id.* at 96.

¹⁵ *Id.*

¹⁶ *Id.* at 7.

¹⁷ EPA, DRAFT: Guidance on the Preparation of State Implementation Plan Provisions that Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter (March 16, 2023).

¹⁸ *Id.* at 2.

¹⁹ *Id.*

²⁰ *Id.* at 3.

²¹ *Id.* at 8.

²² *Id.*

²³ *Id.*

CMs is to provide emissions reductions and to continue to make progress towards RFP and/or attainment and to bridge the gap after a triggering event.²⁴

Conclusion

The revised rules put forth by TCEQ fall short. TCEQ failed to provide contingency measures that are significant enough to help the HGB area attain the 2008 ozone NAAQS. Additionally, the proposed rules fail to conform to EPA's guidance on contingency measure requirements for ozone. Harris County asks TCEQ to amend their proposed rules by adding substantial and meaningful contingency measures. Harris County also requests that the rules are revised to align with EPA's guidance and the intended purpose of contingency measures.

Thank you for the opportunity to comment and raise our concerns. The County looks forward to seeing changes to the proposed rule to comply with EPA guidance. If you have any questions, please feel free to reach out.

Sincerely,

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²⁴ *Id.*

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