

2023-2024 TEXAS ENVIRO UPDATE: NEWS YOU CAN USE

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2023-2024 TEXAS ENVIRO UPDATE: NEWS YOU CAN USE - TOPICS COVERED

- **88th Texas Legislature (2023): TCEQ Sunset Review**
 - ❑ SB 1397 extends the life of the TCEQ following the completion of the multi-year Sunset review – until September 1, 2035
 - ❑ New Provisions Relating to Transparency, Public Input, Compliance, Office of Public Interest Counsel, Permits and Public Notice, Governance
- **88th Texas Legislature (2023): Other Attention Grabbers**
 - ❑ Electric Vehicle, Environmental and General Business New Statutes
- **TCEQ Air Permits Update**
 - ❑ NSR, Title V, PBRs, Standard Permits, Permits Streamlining Projects, EPA Actions Relating to Permits
- **Recent Federal Actions Relating To Texas Air Quality And Climate Change**
 - ❑ TCEQ Air Quality Planning Status (Ozone, PM, SO₂, CO, Pb, NO₂)

88TH TEXAS LEGISLATURE (2023): TCEQ SUNSET REVIEW

- **SB 1397 extends the life of the TCEQ following the completion of the multi-year Sunset review – until September 1, 2035**

88TH TEXAS LEGISLATURE (2023): TCEQ SUNSET REVIEW (CONTINUED)

Transparency

- Directed TCEQ to develop a guidance document that explains what information the commission needs to evaluate whether a person is potentially affected by a permit application and states that each request is reviewed on a case-by-case basis, including — but not limited to — distance **(Management action — nonstatutory)**
- Required TCEQ-regulated entities with temporary or open-ended permits to annually confirm their operational status. i.e, Permits by Rule (PBR)

88TH TEXAS LEGISLATURE (2023): TCEQ SUNSET REVIEW (CONTINUED)

Transparency

- Required TCEQ to review and update its website to improve accessibility and functionality, including by posting all permit applications and associated materials on TCEQ's website
- Directed TCEQ to evaluate its current use of advisory committees to provide more public involvement in rulemaking, et cetera

88TH TEXAS LEGISLATURE (2023): TCEQ SUNSET REVIEW (CONTINUED)

Public Input

- Required TCEQ to provide outreach and education to the public on participating in the permitting process
- Directed TCEQ, upon receiving public comments that are not under the jurisdiction of the agency, to answer the comment with information on the agency with the relevant jurisdiction (**Management action — nonstatutory**)

88TH TEXAS LEGISLATURE (2023): TCEQ SUNSET REVIEW (CONTINUED)

Permit Application and Notice Requirements

- Required TCEQ to electronically publish notices of permit application, in addition to current physical posting requirements
- Required the public comment period for a permit application, and deadline to request a contested case hearing, remain open for at least 36 hours after the conclusion of a public meeting for air permit applications
- Required TCEQ, when posting or sending out notices, the name of the applicant, type of permit, and address of the site must be included

88TH TEXAS LEGISLATURE (2023): TCEQ SUNSET REVIEW (CONTINUED)

Permit Application and Notice Requirements

- Required TCEQ to provide notice to state representatives and senators that represent any portion of the proposed applicant's boundaries
- Required applicants who publish notice of a permit application to provide a copy of the notice and a publisher's affidavit to TCEQ (being done in all my permit applications)
- Authorized TCEQ to request an applicant provide uniformed security at a public meeting or hearing **to provide for the safety of all attendees**

88TH TEXAS LEGISLATURE (2023): TCEQ SUNSET REVIEW (CONTINUED)

Compliance and Enforcement

- Increased statutory limits on administrative penalties for all violations with a current cap of \$25,000 per day to \$40,000 per day, in some cases **when the TCEQ determines the entity could have reasonably avoided the violation**

88TH TEXAS LEGISLATURE (2023): TCEQ SUNSET REVIEW (CONTINUED)

Compliance and Enforcement (Continued)

- Directed TCEQ to develop and implement clear guidance to evaluate affirmative defense requests for unauthorized air pollution emissions and to establish a centralized committee of agency staff to review and approve all applications for an affirmative defense **(Management action — nonstatutory)**
- Directed TCEQ to modify its approach to nuisance complaints to make better use of the agency's investigative resources **(Management action — nonstatutory)**

88TH TEXAS LEGISLATURE (2023): OTHER ATTENTION GRABBERS

Electric Vehicles

- **HB3014 amends Section 548.051 of the Transportation Code to** excludes electric vehicles from the inspection requirements relating to emissions exhaust systems **Effective 9.1.23.**
- **SB505 amends Section 502.198(a) of the Transportation Code to** imposes an additional fee of \$400 for the registration of a new electric vehicle, and \$200 for the renewal of registration of said car

88TH TEXAS LEGISLATURE (2023): OTHER ATTENTION GRABBERS (CONTINUED)

General Business and Other Environmental

- **HB19** creates a Texas business court designated to resolve corporate and commercial disputes. **The judges will be appointed by the Texas governor, with the advice and consent of the Senate, to serve for a two-year term. The Court will hear cases commenced on or after September 1, 2024 Effective 9.1.23.**
- **SB471 amends Section 5.176 of the Water Code to** requires the TCEQ to not investigate a complaint that was filed by an individual when there is not a reasonable probability that the commission can substantiate the complaint and the complaint is redundant of other complaints concerning the same site investigated in the preceding 12 months that were not substantiated **Effective 9.1.23.**
- **SB784 amends Section 382 of the Health and Safety Code to add Section 382.005** relates to the exclusive jurisdiction of the state to regulate greenhouse gas emissions and the express preemption of local regulations to the extent not preempted by **federal law Effective 9.1.23.**

88TH TEXAS LEGISLATURE (2023): OTHER ATTENTION GRABBERS (CONTINUED)

General Business and Other Environmental (Continued)

- **HB 33** is described as strengthening an executive order protecting the Texas oil and gas industry from “harmful federal actions.” The Natural Resources Code is amended prohibits state employees from providing assistance to federal authorities that desire to impose a federal requirement that does not have a counterpart under the laws of the State of Texas
- **SB 1017 amends Chapter 247 of the Local Government Code** to prohibit cities, counties and political subdivisions in Texas from banning gasoline engines or fueling stations with certain specified exceptions

TCEQ AIR PERMITS UPDATE

APD Tools and Procedures

- **STEERs ePermits system must be used for Title V applications effective January 1, 2023**

TCEQ AIR PERMITS UPDATE (CONTINUED)

Federal Rule Updates

- **Project Emissions Accounting (PEA)**
 - ❑ **EPA Proposed approval posted in federal register March 6, 2023**
 - ❑ **Allowed reductions not just increases to be considered in step 1 of major NSR and PSD applicability determinations for existing major sources**
 - ❑ **Comment period ended April 5, 2023 (EPA Still Evaluating the Comments)**

TCEQ AIR PERMITS UPDATE (CONTINUED)

Federal Rule Updates (Continued)

- **Proposed reconsideration of PM_{2.5} standard**
 - ❑ **Posted in Federal Register on January 27, 2023**
 - ❑ **Proposal revises annual standard by lowering the level from 12.0 µg/m³ to within the range of 9.0 to 10.0 µg/m³**
 - ❑ **Comment period ended March 28, 2023 (Scheduled Adoption: December 2023)**

TCEQ AIR PERMITS UPDATE (CONTINUED)

Issues Having an Impact on Title V Permitting Process

- PBR Supplemental Tables (OP-PBRSUP)
- EPA Orders
- NAAQS reclassification

TCEQ AIR PERMITS UPDATE (CONTINUED)

Issues Having an Impact on Title V Permitting Process (Continued)

- **PBR Supplemental Tables (OP-PBRSUP)**
 - ❑ **Required for both Title V initial and renewal projects**
 - ❑ **OP-PBRSUP tables includes**
 - **Registered PBRs (Table A), Claimed (not-registered) PBRs (Table B), and Claimed (not-registered) PBRs for insignificant sources (Table C)**
 - **Monitoring requirements for PBRs included in Tables A and B are listed in Table D**
 - ❑ **OP-PBRSUP tables are a part of a Title V permit record and is cross-referenced in the SOP and SOB**

TCEQ AIR PERMITS UPDATE (CONTINUED)

Issues Having an Impact on Title V Permitting Process (Continued)

- There is ongoing discussions with EPA on the following NSR and PSD permitting:
 - ❑ Monitoring (Flares [DRE] and Otherwise)
 - ❑ Use of Confidential Business Information (CBI)
 - ❑ Permit-by-Rule (PBR) codification

TCEQ AIR PERMITS UPDATE (CONTINUED)

Issues Having an Impact on Title V Permitting Process (Continued)

- **NAAQS reclassification**
 - ❑ **On November 7, 2022, HGB and DFW areas were reclassified from “serious” to “severe” nonattainment areas**
 - ❑ **Threshold for criteria pollutants changed from 50 tpy to 25 tpy**
 - ❑ **Deadline for affected areas to submit Title V action is November 7, 2023**

RECENT FEDERAL ACTIONS RELATING TO TEXAS AIR QUALITY AND CLIMATE CHANGE (CONTINUED)

Startup, Shutdown, and Malfunction (SSM) SIP Call:

- In February 2023, EPA proposed to reinstate its 2015 SSM SIP call and finding of substantial inadequacy for the Texas SIP based on TCEQ's affirmative defense provisions at 30 TAC 101.222
- **The EPA's proposal asserts that these provisions are substantially inadequate to meet the requirements of the Clean Air Act**
- EPA asserts that the affirmative defense alters or eliminates federal court jurisdiction and conflicts with the Clean Air Act requirements for continuous controls on a source

RECENT FEDERAL ACTIONS RELATING TO TEXAS AIR QUALITY AND CLIMATE CHANGE (CONTINUED)

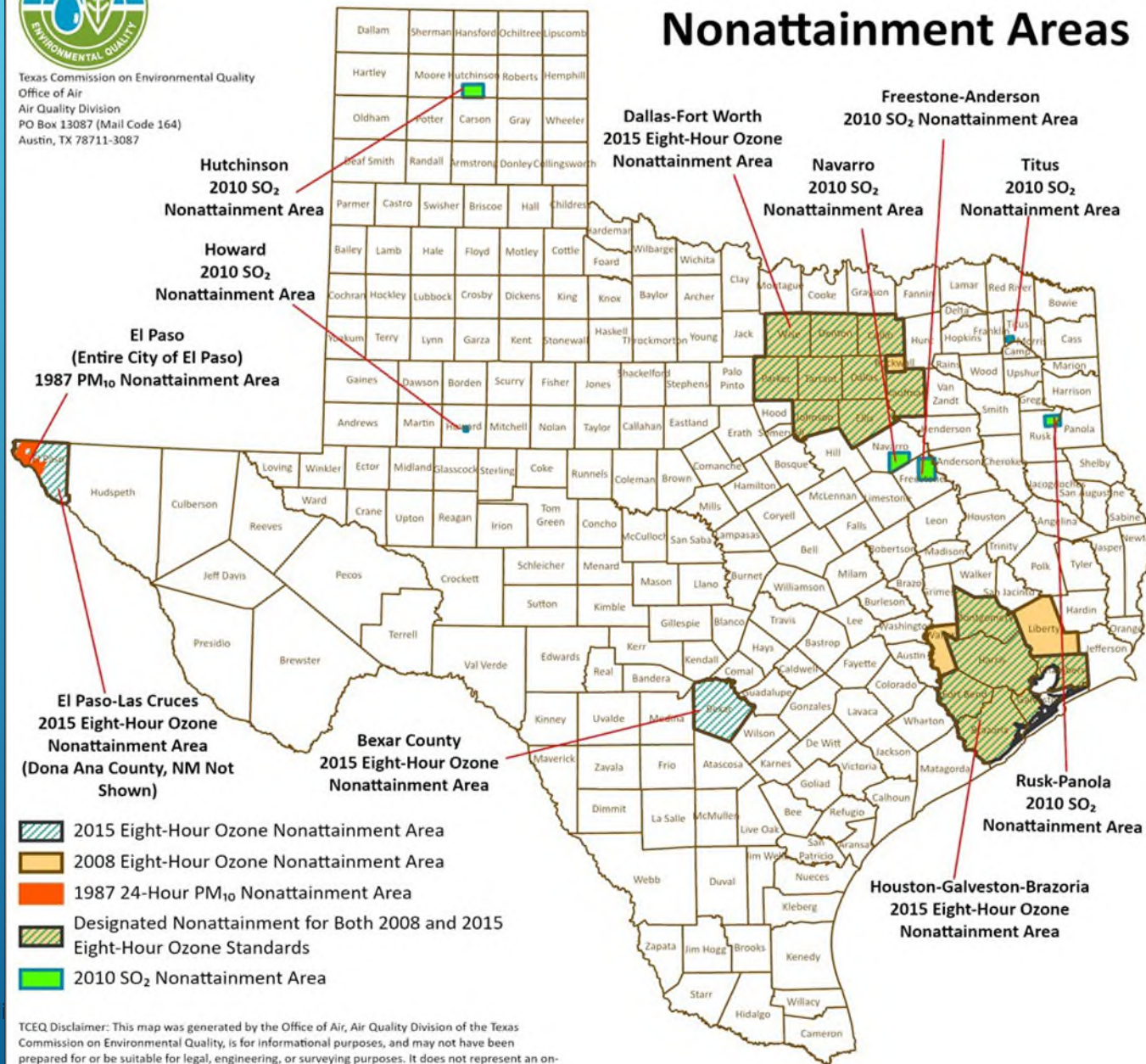
TCEQ Air Quality Planning Status:

- **2008 Eight-Hour Ozone NAAQS**
 - ❑ Standard is 0.075 parts per million (ppm)
 - ❑ EPA finalized designations effective July 20, 2012
 - ❑ The initial nonattainment designations consist of:
 - ❑ Houston-Galveston-Brazoria (HGB) Marginal Nonattainment Area includes Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties
 - ❑ HGB Area reclassified to moderate effective, December 14, 2016
 - ❑ HGB Area reclassified to serious, effective September 23, 2019



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Texas Air Quality Nonattainment Areas



TCEQ Disclaimer: This map was generated by the Office of Air, Air Quality Division of the Texas Commission on Environmental Quality, is for informational purposes, and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For information concerning this map, contact the Air Quality Division at (512) 239-1459.

Made by: Kasey Savanich December 3, 2021

RECENT FEDERAL ACTIONS RELATING TO TEXAS AIR QUALITY AND CLIMATE CHANGE (CONTINUED)

TCEQ Air Quality Planning Status (Continued):

- **2008 Eight-Hour Ozone NAAQS Severe Reclassification**
 - ❑ HGB serious nonattainment areas did not attain by the end of 2020
 - ❑ In October 2022, the EPA reclassified the HGB area to severe, effective November 7, 2022
 - ❑ SIP revisions due by May 7, 2024
 - ❑ **Attainment by the end of 2026**

RECENT FEDERAL ACTIONS RELATING TO TEXAS AIR QUALITY AND CLIMATE CHANGE (CONTINUED)

TCEQ Air Quality Planning Status (Continued):

- **2015 Eight-Hour Ozone NAAQS Initial Nonattainment Designations**
 - ❑ Standard is 0.070 ppm
 - ❑ **Final EPA designation effective August 3, 2018**
 - ❑ **Six-county HGB marginal nonattainment area includes:**
 - ❑ **Brazoria, Chambers, Fort Bend, Galveston, Harris, and Montgomery Counties (Liberty and Waller Counties removed)**

RECENT FEDERAL ACTIONS RELATING TO TEXAS AIR QUALITY AND CLIMATE CHANGE (CONTINUED)

TCEQ Air Quality Planning Status (Continued):

- 2015 Eight-Hour Ozone Moderate Reclassification
 - ❑ **The HGB marginal area did not attain by the end of 2020**
 - ❑ In October 2022, the EPA proposed to reclassify HGB to moderate nonattainment, effective November 7, 2022
 - ❑ Attainment required by the end of 2023

RECENT FEDERAL ACTIONS RELATING TO TEXAS AIR QUALITY AND CLIMATE CHANGE (CONTINUED)

TCEQ Air Quality Planning Status (Continued):

- **2015 Eight-Hour Ozone Moderate Reclassification (Continued)**
 - ❑ If HGB does not reach attainment by the 2023 attainment dates, EPA will likely propose to redesignate the areas from moderate to serious nonattainment, with a 2026 attainment year
 - ❑ **Redesignation to serious nonattainment carries further requirements, including more stringent RFP targets**

RECENT FEDERAL ACTIONS RELATING TO TEXAS AIR QUALITY AND CLIMATE CHANGE (CONTINUED)

TCEQ Air Quality Planning Status (Continued):

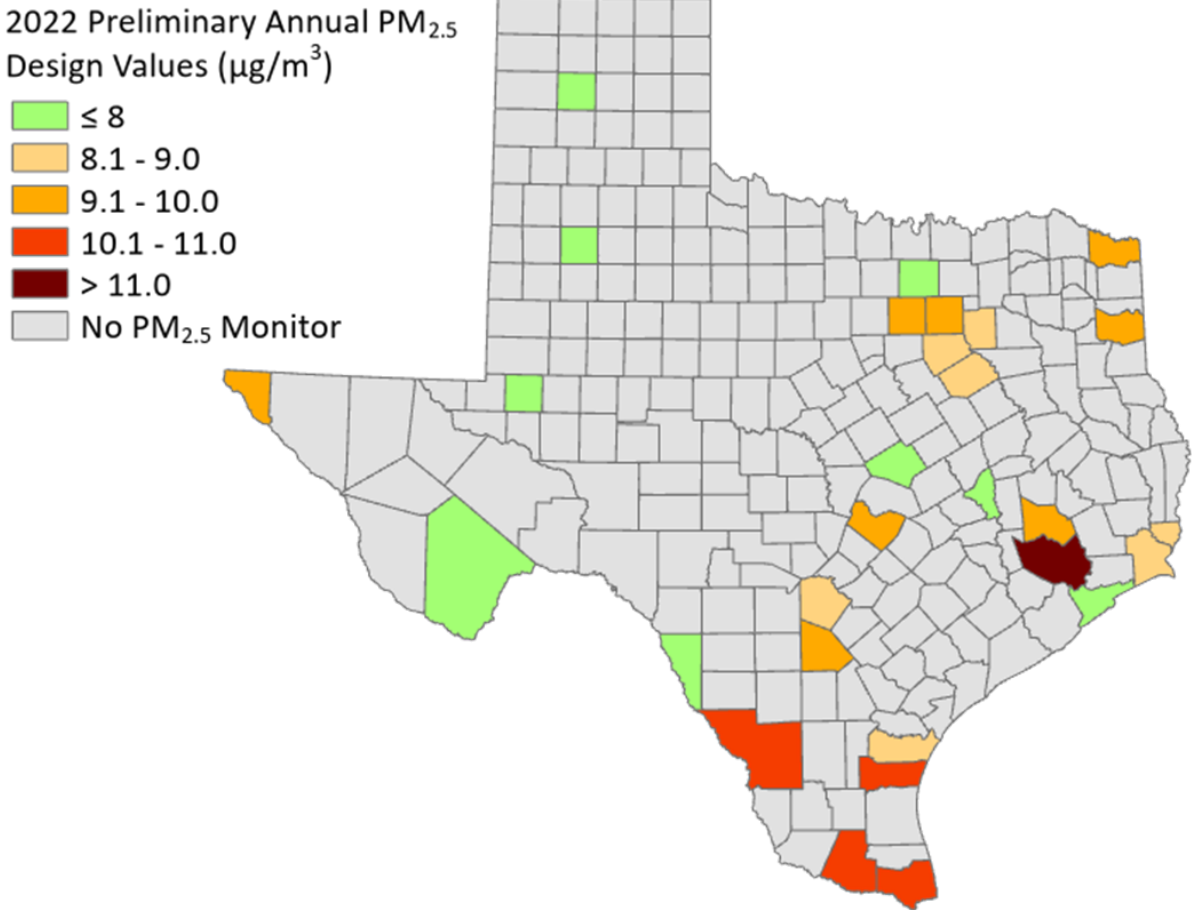
- **Current PM NAAQS**
 - ❑ **2012 PM_{2.5} NAAQS**
 - ❑ **Primary Annual Standard: 12 micrograms per cubic meter (µg/m³)**
 - ❑ **Primary and Secondary 24-Hour Standard: 35 µg/m³**
 - ❑ **2012 PM₁₀ NAAQS**
 - ❑ **24-Hour Primary and Secondary Standard: 150 µg/m³**

RECENT FEDERAL ACTIONS RELATING TO TEXAS AIR QUALITY AND CLIMATE CHANGE (CONTINUED)

TCEQ Air Quality Planning Status (Continued):

- **Proposed PM_{2.5} NAAQS**
 - ❑ **On January 27, 2023, the EPA published a proposal to revise the annual PM_{2.5} NAAQS**
 - ❑ **Would lower the primary annual standard to between 9 and 10 µg/m³**
 - ❑ **Would retain the 24-hour standard of 35 µg/m³**
 - ❑ **Potential impact of a lower standard:**
 - **13 counties greater than 9 µg/m³**
 - **Five counties greater than 10 µg/m³**
 - ❑ **Public comment period closed on March 28, 2023**

Potentially Affected Counties Map



Potential PM_{2.5} NAAQS Implementation Timeline

Date	Event
December 2023	PM _{2.5} NAAQS revision finalized
December 2024	State designation recommendations
August 2025	120-day Letter from EPA to Governor
Early 2026	Final designations effective
December 2026	Infrastructure and Transport SIPs due
July 2027	Nonattainment area SIPs due
December 2032	Attainment date

RECENT FEDERAL ACTIONS RELATING TO TEXAS AIR QUALITY AND CLIMATE CHANGE (CONTINUED)

TCEQ Air Quality Planning Status (Continued):

- **PM₁₀ NAAQS**
 - ❑ All areas except for El Paso in Texas are designated as attainment/unclassifiable for PM₁₀

- **SO₂ NAAQS**
 - ❑ All areas in Texas proposed for designation as attainment/unclassifiable for SO₂

RECENT FEDERAL ACTIONS RELATING TO TEXAS AIR QUALITY AND CLIMATE CHANGE (CONTINUED)

TCEQ Air Quality Planning Status (Continued):

▪ Other NAAQS Updates

□ Lead

- All areas in Texas are designated attainment
- The Collin County lead nonattainment area was redesignated effective September 27, 2017

□ CO

- All areas in Texas are designated attainment
- The El Paso CO nonattainment area was redesignated effective October 3, 2008
- EPA approved a second 10-year limited maintenance plan SIP revision effective October 10, 2017

□ NO₂

- All areas in Texas are designated attainment

Questions?

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