

EPA ORGANIZATION

Internal deliberative pre-decisional - FOR USE BY 2024 PRESIDENT-ELECT TRANSITION TEAM MEMBERS ONLY

TEXAS REGIONAL HAZE ISSUE SUMMARY:

The EPA continues to work on first and second planning period actions for Texas Regional Haze. On April 19, 2023, EPA proposed withdrawing our 2017 Best Available Retrofit Technology (BART) Federal Implementation Plan (FIP) for Texas which implemented an intrastate trading program and proposed source-specific emission limits for sulfur dioxide (SO₂) and particulate matter (PM) at twelve electric generating units (EGUs) in Texas. On July 13, 2023, EPA proposed to address remanded portions of a 2016 final rule in which we partially approved and partially disapproved portions of the first planning period Regional Haze State Implementation Plans (SIPs) for Texas and Oklahoma related to the reasonable progress provisions and promulgated a FIP with SO₂ emission limits for Texas EGUs to address the SIP deficiencies. Additionally on October 15, 2024, the EPA proposed to partially approve and partially disapprove Texas's second planning period SIP. Pursuant to a consent decree, the EPA must sign a finalized Texas second planning period rulemaking by May 30, 2025.

KEY POINTS:

The 2016 Reasonable Progress final rule and 2017 Texas BART final rule are subject to ongoing litigation. We received adverse comments from industry, the State, and environmental groups on both 2023 proposed actions. On September 3, 2024, the EPA filed a motion for vacatur of the 2016 Reasonable Progress final rule in the Fifth Circuit. As of October 15, 2024, the court has not ruled on the EPA's motion.

The EPA has proposed a partial approval and partial disapproval of Texas's second planning period regional haze SIP. The EPA is under consent decree to finalize this action by May 30, 2025.

ONGOING/UPCOMING REVIEWS FOR FY2025:

First Planning Period Actions: Luminant's adverse comments on the 2023 BART proposed rule regarding our proposed controls for Martin Lake stated that the information we relied on is outdated, and that the proposed control upgrades are not technically feasible. To address these concerns and to correct part of the record, the EPA developed and sent an information request to Martin Lake. The EPA staff are currently reviewing the responses.

Second Planning Period: The comment period for the proposed action on the Texas Regional Haze plan for the second planning period ends November 14, 2024. The EPA must finalize this action by May 30, 2025.

KEY EXTERNAL STAKEHOLDERS:

<input type="checkbox"/> Congress	<input checked="" type="checkbox"/> Industry	<input checked="" type="checkbox"/> States	<input type="checkbox"/> Tribes	<input type="checkbox"/> Media	<input checked="" type="checkbox"/> Other Federal Agency
<input checked="" type="checkbox"/> NGO	<input type="checkbox"/> Local Governments	<input checked="" type="checkbox"/> Public			

MOVING FORWARD:

The 2017 Texas BART final rule has been challenged by the National Parks Conservation Association (NPCA), the Environmental Defense Fund (EDF) and the Sierra Club. The matter is being held in abeyance in the DC Circuit pending EPA's reconsideration of the 2017 Texas BART final rule. The State of Texas and industry parties challenged the 2016 Reasonable Progress final rule and filed motions to stay the rule in the Fifth Circuit Court of Appeals (Fifth Circuit). In July 2016, the Fifth Circuit granted the stay of the 2016 Reasonable Progress final rule. Following the Fifth Circuit's stay, the EPA took a voluntary remand on portions of the 2016 Reasonable Progress final rule. The Fifth Circuit had kept the case in abeyance since granting EPA's motion for a voluntary remand; however, on May 23, 2024, the Fifth Circuit issued a directive notifying the parties that the court planned to take the case out of abeyance on September 3, 2024, and proceed to resolution of the pending appeal. On September 3, 2024, the EPA filed a motion for vacatur of portions of the 2016 Reasonable Progress final rule in the Fifth Circuit. As of October 16, 2024, the court has not ruled on the EPA's motion.