

US EPA ARCHIVE DOCUMENT



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 15 2006

THE ADMINISTRATOR

Mr. Glenn Shankle
Executive Director
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Dear Mr. Shankle:

The Environmental Protection Agency has considered the July 11, 2005 petition you submitted on behalf of the Texas Commission on Environmental Air Quality (TCEQ) that asks EPA to reconsider the inclusion of the whole State of Texas in the Clean Air Interstate Rule (CAIR). EPA received numerous petitions for reconsideration of the CAIR, and initiated processes to reconsider several aspects of the rule. After careful consideration and for the reasons explained below, EPA denies the TCEQ petition for reconsideration.

The CAIR, published in the Federal Register on May 12, 2005 (70 FR 25162), is a powerful component of the Bush Administration's plan to help over 450 counties in the eastern United States meet air quality standards for ozone and fine particles. EPA determined that reductions in upwind precursor emissions will assist downwind areas in meeting the national ambient air quality standards (NAAQS). EPA also determined that attainment would be achieved in a more equitable, cost-effective manner than if each nonattainment area attempted to achieve attainment with the ozone and fine particles NAAQS by implementing local emissions reductions alone. The CAIR was developed through a process that involved extensive public participation. We received and responded to thousands of comments and held public hearings in February and June of 2005. The robust public dialogue was an important part of the rulemaking process.

EPA recognizes the continuing significant public interest in the CAIR. Following publication of the CAIR, EPA received twelve separate petitions for reconsideration, including the one you submitted. In response, EPA granted reconsideration and, through Federal Register actions, reopened public comment on the following six issues:

- (1) definition of "electric generating unit" as it relates to solid waste incinerators (70 FR 49708, 49738; August 24, 2005);

- (2) claims that inequities result from the sulfur dioxide (SO₂) allocation methodology to be used by States participating in the EPA-administered trading program (70 FR 72268, 72272; December 2, 2005);
- (3) EPA's use of fuel adjustment factors (1.0 for coal, 0.6 for oil, and 0.4 for gas) in establishing State nitrogen oxides (NO_x) budgets (70 FR 72268, 72276; December 2, 2005);
- (4) certain inputs to the fine particle (PM_{2.5}) modeling used to determine whether Minnesota should be included in the CAIR region for PM_{2.5} (70 FR 72268, 72279; December 2, 2005);
- (5) EPA's determination that Florida should be included in the CAIR ozone region (70 FR 72268, 72280; December 2, 2005); and,
- (6) the impact of New York v. EPA on certain analyses prepared for the final CAIR (70 FR 77101; December 29, 2005).

EPA published Federal Register notices announcing the reconsideration processes and requested public comment on the issues under reconsideration. EPA is taking final action on reconsideration of these issues in a separate rulemaking signed today.

Your Petition raises one additional issue. It asks EPA to reconsider its decision to include the entire State of Texas in the CAIR PM_{2.5} region, and argues that EPA should exclude the western portion of Texas. However, TCEQ has not submitted information to EPA sufficient to show that reconsideration of this issue is warranted under section 307(d)(7)(B) of the Clean Air Act. Therefore, EPA denies your request for reconsideration.

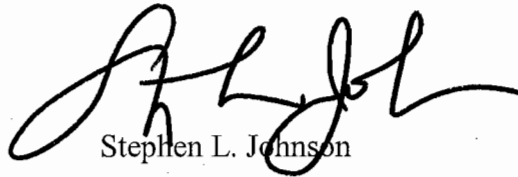
The TCEQ Petition contends that reconsideration is warranted because EPA did not provide sufficient explanation of its basis for conducting whole-State modeling to allow adequate opportunity for public comment. EPA does not agree that TCEQ has met the standard for reconsideration because TCEQ has not shown it was impracticable for them to comment during the comment period or that their objection arose after the close of the comment period. EPA believes that TCEQ had ample opportunity to comment, during the comment period, on EPA's decision to determine significant contribution on a Statewide basis and on EPA's decision that the State of Texas should be included in the CAIR region for PM_{2.5}. EPA proposed to include Texas in CAIR for PM_{2.5} in its January 2004 CAIR proposal and again in the Agency's June 2004 supplemental proposal (69 FR 4566; January 30, 2004 and 69 FR 32684; June 10, 2004). EPA also provided an additional opportunity to comment on the modeling platform to be used for the final CAIR through a notice of data availability published on August 6, 2004 (69 FR 47828).

Indeed, TCEQ did submit comments on EPA's decision to determine significant contribution on a Statewide basis and asked EPA to exclude West Texas (albeit without modeling seeking to demonstrate that West Texas does not significantly contribute to downwind nonattainment). Further, EPA considered and responded to these comments on the Statewide

modeling issue. EPA has consistently defended its decision to determine contribution on a Statewide basis and did not change this position in the final rule. TCEQ had ample opportunity to object to EPA's decision to determine contribution on a Statewide basis, to comment on the modeling platform used by EPA, to comment on specific geographic characteristics, meteorology, wind patterns and demographics in the State of Texas, and to comment on or object to all aspects of EPA's determination that the State of Texas as a whole contributes significantly to downwind nonattainment. For these reasons, TCEQ has failed to show that reconsideration is warranted under section 307(d)(7)(B) of the Clean Air Act.

Thank you for your interest in the final CAIR. EPA looks forward to working with you as implementation of the rule proceeds. If you have any questions about this letter, please contact Sonja Rodman in the Office of General Counsel at 202-564-4079.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. L. Johnson', is written over the printed name.

Stephen L. Johnson