

US EPA ARCHIVE DOCUMENT

Lisa P. Jackson, Administrator
U.S. Environmental Protection Agency
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Washington, D.C. 20004

Petition by Targa Resources Corp. for reconsideration and stay of "Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards," Docket ID EPA-HQ-OAR-2008-0476, with respect to Wise County, Texas

Targa Resources Corp. ("Targa") respectfully submits this petition for reconsideration and a stay of the above-referenced final rule, in which EPA designated Wise County, Texas as nonattainment for the 2008 ozone standard. 77 Fed. Reg. 30,088 (May 21, 2012).

I. Targa's Interest in the Matter

Targa¹ owns and operates midstream energy assets predominately in EPA Region 6. Targa's assets in Wise County include a 265 MMcf/day gas processing plant and 7 compressor stations, with an additional gas plant and compressor station planned for the future. 90 employees who live in or around Wise County are dedicated to these assets, along with local contractors and other vendors. Targa's Wise County assets are currently regulated under the federal Clean Air Act, various EPA regulations, and the Texas State Implementation Plan. Wise County's ozone nonattainment designation further impacts Targa, through its Wise County assets, in the following ways:

- An ozone reduction strategy for Wise County would likely call for new emissions reductions from Targa's Wise County assets.
- An ozone reduction strategy for Wise County would likely call for new emissions reductions from oil and gas production facilities in Wise County, which are some of Targa's suppliers. This would likely have an adverse impact on local oil and gas production and the businesses (including Targa) that are linked to oil and gas production.
- A nonattainment designation for Wise County will lead to stringent air permitting requirements that would hinder development or expansion of various industrial facilities, including the types of assets operated by Targa. For example, it will likely be difficult to comply with the requirement to "offset" emission increases associated with new projects.

Targa believed this issue important enough that it participated in EPA's public comment process for developing ozone nonattainment designations by providing its own

¹ Through Targa Resources Partners LP and its subsidiaries and affiliates.

comments as well as assisting the Texas Pipeline Association ("TPA") and the Gas Processors Association ("GPA") in preparing their comments.

II. Reconsideration and a Stay are Legally Available to EPA

EPA may legally reconsider the Wise County nonattainment designation and stay the designation pending its reconsideration. The Clean Air Act provides that EPA "shall convene a proceeding for reconsideration" where an objection arises after the public comment period and is of central relevance to the rule. 42 U.S.C. § 7607(d)(7)(B). In addition, a petition for reconsideration is within Targa's "right to petition for the issuance, amendment, or repeal of a rule" under the Administrative Procedure Act. 5 U.S.C. § 553(e). Finally, "[w]hen an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review."² 5 U.S.C. § 705.

III. Targa is Entitled to Reconsideration of the Wise County Nonattainment Designation

Because the Wise County nonattainment designation is not expressly made subject to Clean Air Act rulemaking procedures (*see* 42 U.S.C. § 7607(d)(1)), Targa is within its rights to petition EPA for reconsideration under the Administrative Procedure Act. However, even if the Clean Air Act framework was applied by analogy, Targa would be entitled to reconsideration, as well as a stay, for the following reasons:

A. HYSPLIT Data

EPA should reconsider and stay the Wise County designation because EPA did not provide its HYSPLIT data in sufficient time for Targa to address the data in its comments effectively, and the HYSPLIT data do not support the designation.

In addition, EPA's decision to designate Wise County nonattainment appears to have rested heavily on analysis of HYSPLIT back trajectories. *See* EPA Technical Support Document, "Dallas-Fort Worth, Texas Final Area Designations for the 2008 Ozone National Ambient Air Quality Standards" ("Final TSD") at 15, 23; EPA Technical Support Document, "Texas Area Designations for the 2008 Ozone National Ambient Air Quality Standards" ("Initial TSD") at 10, 13.

Moreover, TPA (a trade association of which Targa is a member) requested the HYSPLIT analysis from EPA so that it could be considered in developing comments. EPA shared the data 9 days before the public comment period closed, which was insufficient time for TPA or its members such as Targa to thoroughly analyze the data to respond to EPA's use of it with respect to Wise County.

Upon review, Targa believes that the HYSPLIT data does not support Wise County's designation as a nonattainment area:

² Targa and others have also filed petitions for judicial review of the designation in the U.S. Court of Appeals for the D.C. Circuit.

- The HYSPLIT trajectories show that Wise County emissions are rarely transported to high-ozone areas nearby, only 2 high-ozone days in 4 years.
- The HYSPLIT analysis overstates any potential ozone-forming effect of Wise County emissions. EPA relied on 24-hour HYSPLIT trajectories. Final TSD at 14-15. Even where a HYSPLIT trajectory shows Wise County emissions reaching a nearby high-ozone concentration, it remains likely that the ozone was caused by emissions upwind of Wise County and upwind of the starting point of the trajectory.
- EPA's HYSPLIT trajectories are unreliable because their starting height was too low. As explained by Texas' response to EPA's 120-day letter, EPA's 100 meter starting height "often left trajectories touching ground level and can result in erroneous back trajectories over time." Letter from Rick Perry, Governor, State of Texas, to Al Armendariz, Regional Administrator, EPA Region 6 (Feb. 29, 2012) (attachment, page 6).
- HYSPLIT trajectories by themselves do not establish a causal connection between Wise County emissions and ozone formation. Ozone formation is largely a function of factors that are not reflected by HYSPLIT modeling, such as atmospheric chemistry, deposition, and sunlight levels.
- EPA's use of the HYSPLIT data was inconsistent with prevailing historical wind data used in other EPA regional offices in promulgating designations. If anything, prevailing wind patterns and the HYSPLIT trajectories suggest that ozone-forming emissions from other counties flow into Wise County.

Thus, not only was Targa unable to incorporate the HYSPLIT data effectively into its comments, but the data is of central relevance to the designation because it appears to undercut EPA's basis for the designation.

B. One Percent of the NAAQS Threshold

EPA should reconsider and stay the Wise County nonattainment designation because EPA's reliance on a 1% of the NAAQS threshold was not identified during the public comment period, is legally inappropriate, and ultimately does not support the designation.

In the Final TSD, EPA indicated that it used 1% of the NAAQS level as a threshold for determining whether Wise County's contribution to downwind ozone levels was "significant." Final TSD at 17, 19, 23. However, EPA's Initial TSD gave no notice of this potential basis for the designation (*see generally* Initial TSD), and thus Targa had no opportunity to comment on it.

The use of the 1% threshold and its application to Wise County are of "central relevance" to, but ultimately do not support, the nonattainment designation:

- EPA's basis for using the 1% threshold was conclusory and appears to be limited to EPA's assessment (with no examples or authorities cited) that "a few tenths of a ppb change" is "[o]ften [relevant] in attainment demonstration modeling." Final TSD at 17.
- The 1% threshold is not legally relevant to the designation. EPA may only modify a state's recommended nonattainment designation (as EPA did for Wise County) if the modification is "necessary." 42 U.S.C. § 7407(d)(1)(B)(ii). No rationale is apparent for equating the 1% threshold with the legal determination that it was "necessary" for EPA to modify Texas' recommendation that Wise County be designated attainment.
- EPA's own analysis shows that the 1% threshold does not support designating Wise County nonattainment. Instead, EPA's analysis shows that Wise County's average contribution to high ozone levels in the Dallas-Fort Worth area is well below 1% of the NAAQS for all monitoring sites that are above the NAAQS. The monitoring sites below the NAAQS are irrelevant for this analysis, because they do not reflect ozone nonattainment to which Wise County could arguably be "contribut[ing]." *See* 42 U.S.C. § 7407(d)(1)(A)(i).

Thus, not only was Targa unable to address the 1% threshold in its comments, but the use of that threshold is arbitrary and capricious and reflects a sufficient basis for EPA to reverse the Wise County nonattainment designation.

C. Modeling That Overstated Wise County Emissions

EPA should reconsider and stay the Wise County designation because EPA did not take into account overstated emissions that were used in modeling which influenced the designation.

EPA's decision appears to have rested heavily on source apportionment modeling conducted by the state. Final TSD at 15-20. This modeling was submitted to EPA as an attachment to the State of Texas' official response to EPA's 120-day letter. Letter from Rick Perry, Governor, State of Texas, to Al Armendariz, Regional Administrator, EPA Region 6 (Feb. 29, 2012). Page 10 of the attachment stated that "[t]he TCEQ did not use the updated oil and gas sector pneumatic emissions submitted October 2011 to the EPA for the Periodic Emissions Inventory in this modeling and source apportionment analysis, therefore, the VOC emissions from this source category are likely overestimated in the modeling."

The overestimated emissions used in the model almost certainly resulted in an overestimated impact of Wise County emissions on ozone levels elsewhere in the region. However, EPA did not address this issue in the Final TSD and, instead, relied on its own re-analysis that magnified Wise County's expected contribution to regional ozone levels.

Because the modeling was made public on February 29 (after the comment period closed), Targa and others were not able to comment on it.

Accordingly, EPA's reliance on the model in this manner is properly subject to reconsideration and a stay.

D. Inconsistent Position on use of Future Emissions for Setting Nonattainment Area Boundaries

EPA should reconsider and stay the Wise County nonattainment designation because it rests on an inconsistent position with respect to Wise County's future emissions, and those emissions' relevance to a current nonattainment designation:

- On one hand, EPA indicated that emissions growth was a factor in the designation. The Initial TSD and Final TSD both indicated that "growth in emissions from Barnett Shale gas production development" and "growth in population" were factors in EPA's decision to designate Wise County nonattainment. Initial TSD at 13; Final TSD at 23.
- At the same time, EPA refused to consider analysis of factors that would tend to offset emissions growth. Targa and others commented that "EPA should take into account new and existing rules that are reducing ozone precursor emissions and that will result in further reductions in the future." EPA's responded, "We [EPA] agree that we did not consider the impact of new air regulations" and then asserted a legal basis for this position. EPA, Response to Significant Comments on the State and Tribal Designation Recommendations for the 2008 Ozone National Ambient Air Quality Standards (NAAQS) (April 2012) ("RTC"), at 58.

This inconsistency of position resulted in EPA only considering evidence that would favor a nonattainment designation, without considering evidence that weighed against that designation. The inconsistency also could not have been anticipated by Targa or other commenters. This inconsistency is, therefore, an appropriate basis for reconsideration and a stay.

E. "Necessity" of Modifying State Recommendation

EPA should reconsider and stay Wise County's nonattainment designation because EPA did not apply the correct legal standard, that it was "necessary" under 42 U.S.C. § 7407(d)(1)(B)(ii) to modify the state's recommended designation.

EPA's Final TSD indicates that the decision tracked a multi-factor analysis from agency guidance. Final TSD at 2. Notably, "[t]he guidance is not binding on states, tribes, the public, or EPA. Issues concerning nonattainment area boundaries will be addressed in EPA's action to designate areas under the 2008 ozone standard." Memorandum from Robert J. Meyers to Regional Administrators, Regions I-X, Area Designations for the 2008 Revised Ozone National Ambient Air Quality Standards (Dec. 4, 2008).

Targa and others commented that "EPA has not demonstrated that it is necessary to disregard Texas' recommendations concerning Wise County . . . and has otherwise failed to meet the legal standard necessary to overturn a state's recommended designations." Targa and

others also provided in their comments information demonstrating that adding Wise County to the state's recommended nonattainment areas would not be necessary to reduce ozone levels elsewhere, or for any other identifiable purpose.

EPA's official response appears to be that "EPA carefully considered . . . the CAA requirements, guidance and other relevant information as described in our TSD." RTC at 56. Absent from EPA's analysis, however, was any indication why it was "necessary" to add Wise County to Texas' recommended nonattainment area, or what standard was applied to identify the requisite "necessity." If anything, as articulated by Targa's and others' comments, the data provided by EPA in the Initial TSD (and again in the Final TSD) suggests that Texas' recommended nonattainment area boundaries were sufficient for air quality planning in the Dallas-Fort Worth area, rendering it unnecessary to include Wise County in the nonattainment area.

Further, Targa was (and remains) unable to comment effectively on any definition of "necessary" that EPA might have intended, because EPA has not stated its intended definition or how the standard was applied. Accordingly, the issue is a proper basis for reconsidering and staying the Wise County designation.

F. Deference to Texas to Achieve Attainment in the Dallas-Fort Worth Area

EPA should also stay and reconsider Wise County's designation out of deference to Texas' role in addressing ozone attainment issues. Instead of overriding Texas' recommended designation for Wise County, EPA should defer to the state's plan for bringing the nearby Dallas-Fort Worth area into attainment of the ozone standard. If Texas determines that emissions reductions from Wise County (or anywhere else) are necessary, then Texas can implement programs to require those emissions reductions. For EPA to include Wise County in the Dallas-Fort Worth nonattainment area unnecessarily intrudes into Texas' "primary responsibility" for air pollution prevention and control under the Clean Air Act, 42 U.S.C. § 7401(a)(3).

G. EPA's Factors for Setting Nonattainment Area Boundaries do not Support Designating Wise County Nonattainment

EPA should stay and reconsider the Wise County designation because, as discussed in Targa's and others' comments, the application of EPA's multi-factor analysis to Wise County does not support including it in the Dallas-Fort Worth nonattainment area. Wise County's ozone precursor emissions, population, and traffic levels are inconsequential in comparison to the group of counties recommended by Texas for inclusion in the nonattainment area. In addition, as discussed above, meteorological analysis - including EPA's analysis in the TSD - suggests that even if Wise County's emissions were to increase significantly in the future, the emissions would be unlikely to flow toward the Dallas-Fort Worth area.

IV. Conclusion

For the reasons stated above, Targa requests that EPA reconsider its ozone nonattainment designation for Wise County, and stay the effectiveness of the designation

pending reconsideration. If you have any questions or would like to discuss this petition for reconsideration and a stay, please contact me at 713.584.1000.

Regards,



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