

US EPA ARCHIVE DOCUMENT



Texas Pipeline Association

July 20, 2012

The Honorable Lisa P. Jackson, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Request for Administrative Reconsideration of EPA's Final Rule "Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards"

Dear Administrator Jackson:

The Gas Processors Association ("GPA") and the Texas Pipeline Association ("TPA") hereby request that the U.S. Environmental Protection Agency ("EPA" or "Agency") reconsider certain aspects of the recently-signed final rule entitled "Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards," published at 77 Fed. Reg. 30,088 (May 21, 2012) ("Ozone Designations Rule"). Pursuant to section 307(d)(7)(B) of the Clean Air Act ("CAA"), 42 U.S.C. § 7607(d)(7)(B), where it is impracticable to raise an objection during the period of public comment or if the grounds for such an objection arise after the public comment period (but within the time specified for judicial review), and if such objections are of central relevance to the outcome of the rule, EPA is authorized to reconsider a rule. While the Ozone Designations Rule was not issued pursuant to § 307(d), reconsideration nevertheless is appropriate here.

GPA is a non-profit trade organization made up of approximately 120 corporate members, all of whom are engaged in the processing of natural gas into merchantable pipeline gas, or in the manufacture, transportation, or further processing of liquid products from natural gas. GPA's membership accounts for approximately 92 percent of all natural gas liquids produced by the midstream energy sector in the United States. GPA members also produce, gather, transmit, and market natural gas and natural gas liquids, and include a number of Canadian and international companies that produce natural gas liquids on a global scale.

TPA is an organization consisting of over 40 members who gather, process, treat, and transport natural gas and hazardous liquids materials through intrastate pipelines in Texas. One or more TPA and GPA members currently own or operate, or in the future will construct or operate, stationary sources located in Wise County of Texas, an area adversely affected by EPA's Ozone Designations Rule.

We believe that EPA erred by including Wise County in the Dallas-Fort Worth (“DFW”) ozone nonattainment area. GPA, TPA, and other commenters on EPA’s proposed Ozone Designations Rule¹ provided the Agency with information demonstrating that Wise County should have been designated attainment/unclassifiable, but EPA misinterpreted or failed to consider that information fully, as reflected in the final rule.² In addition, EPA asserted new reasons in the final rule for including Wise County that we and other commenters did not have a chance to consider during the public comment period. As detailed below, EPA should address five particular issues in a reconsideration proceeding:

(1) EPA should consider more fully emissions trends and inventories.

There is good reason to believe that the indicators that EPA used as a proxy for emissions trends do not provide an accurate picture of where actual emissions in Wise County are going in the coming years. A more thorough analysis would reveal that Wise County does not need to be included in the DFW nonattainment area in order to ensure timely attainment in the area.

For example, EPA looked to population trends and traffic trends (in particular, assessment of VMT, vehicle miles traveled) to assess the potential impact of non-point source emissions on nonattainment in the DFW area. For Wise County, these data showed that the 2010 population was about 60,000, representing about a 20% increase over the prior ten years; population density was about 60 people per square mile, and VMT was about 969 million miles in 2008, a 16% increase over the prior 6-year period. *See* DFW TSD at 10 and 12. EPA cited these statistics as part of its conclusion that Wise County should be included in the DFW nonattainment area. *Id.* at 23.

Yet, these data and data trends are not shown to be correlated to actual, potential increases in, ozone precursor emissions. For example, emissions from motor vehicles and other mobile sources are predicted to decrease significantly over the coming years due to the onset of more stringent emissions controls and the turnover of the existing vehicle fleet. Therefore, a

¹ An opportunity for public comment on EPA’s responses to state and tribal 2008 ozone designation recommendations was provided at 76 Fed. Reg. 78872 (Dec. 20, 2011).

² *See* Comments of the Texas Commission on Environmental Quality, EPA Docket ID No. EPA-HQ-OAR-2008-0476-0296 (Jan. 11, 2012); Comments of the Gas Processors Association, EPA Docket ID No. EPA-HQ-OAR-2008-0476-0429 (Feb. 2, 2012) (hereinafter “GPA Comments”); Comments of the Texas Pipeline Association, EPA Docket ID No. EPA-HQ-OAR-2008-0476-0403 (Feb. 2, 2012) (hereinafter “TPA Comments”); Comments of Targa Resources Corp., Docket ID No. EPA-HQ-OAR-2008-0476-0484 (Feb. 3, 2012) (hereinafter “Targa Comments”); Letter from Rick Perry, Governor of Texas, to Dr. Al Armendariz, EPA Region 6 Regional Administrator, and attached Texas Commission on Environmental Quality Analysis, EPA-HQ-OAR-2008-0476-0509 (Feb. 29, 2012). These comments are hereby incorporated by reference.

modest increase in population or VMT does not necessarily indicate a corresponding trend in emissions.

EPA makes clear in its Response to Comments (“RTC”) document that it considered whether areas are “currently contributing” to nonattainment and that the Agency did not “assess or predict future source emissions.” See RTC at 58. This is puzzling because, as explained above, EPA clearly considered emissions trends in explaining its final decisions in the Technical Support Document (“TSD”). EPA also clearly stated that “growth rates and patterns” should expressly be considered in determining the extent of nonattainment areas. Meyers Memo at Attachment 2. We believe that a fuller assessment of relevant trends would show that ozone precursor emissions in Wise County are nominal in the first instance, do not generally impact the rest of the DFW area, and should not be expected to grow significantly over time. These issues and inconsistencies can and should be developed more fully on reconsideration.

Moreover, the National Emissions Inventory (“NEI”) inventory figures for VOC emissions in Wise County are artificially inflated because they result from the Texas Commission on Environmental Quality’s (“TCEQ”) use of a 33.3 lb/bbl emission factor applied to condensate production. That emission factor is demonstrably erroneous and far too conservative. The 33.3 lb/bbl emission factor was derived from a study prepared by URS Corporation for the Houston Advance Research Center (“HARC”). This study, which looked at flash emission from condensate in storage tanks at wellhead and gathering sites, concluded that a 33.3 lb/bbl emissions factor was appropriate. But the study’s conclusion in this regard was based on faulty data and its application has, unfortunately, led to an unrealistically high VOC emissions inventory from the oil and gas sector.

Responding to widespread criticism of the 33.3 lb/bbl emission factor, TCEQ recently contracted with Eastern Research Group (“ERG”) to conduct a study on condensate storage tank emissions. The purpose of the study is to develop updated county- and region-specific emission factors for estimating condensate storage tank emissions for each of the regions in Texas. These would replace the overly conservative estimates presently used in TCEQ’s statewide inventory, which are based on the flawed 33.3 lb/bbl factor. ERG will analyze additional information that has become available since the HARC report was issued, such as the Barnett Shale Phase II Special Inventory data. ERG is expected to complete its work by August 31, 2012. The fact that TCEQ is now embarking on a path to correct these emissions factors, which will result in more realistic VOC emissions data, presents yet another issue for EPA to explore on reconsideration.

(2) EPA should provide more explanation of the reasons for including Wise County in the DFW nonattainment area.

In most respects, Wise County is indistinguishable from Hood County, which EPA ultimately excluded from the nonattainment area. For example, the population, population density, and population growth rates for both counties are comparable. Emissions inventories for NOx and VOC from the two counties are comparable. Traffic data from the two counties are comparable. And, HYSPLIT and source apportionment modeling show comparable results. Yet,

the outcome was different for these two similarly situated counties. EPA was correct to designate Hood County as attainment/unclassifiable. Because Wise and Hood counties are similarly situated, the rationale for excluding Hood County should also apply to Wise County.

More generally, TPA provided detailed examples in its comments of inconsistency between EPA regions and within Region 6 itself as to how particular types of data were used in EPA's designation decisions. *See, e.g.*, TPA Comments at 8-10, 15, and 17-20. Notwithstanding these detailed examples of inconsistency, EPA responds to these comments by wrongly stating that the "commenter fails to point to any specific concerns to support its claim." *See* RTC at 59. EPA's only other response is that, "We disagree with the commenter that our designation criteria have been inconsistently applied and that our decisions are arbitrary and capricious." *Id.* These statements plainly are not responsive to the comments.

In short, the TSD fails to provide discernable decision making criteria and corresponding facts to justify the differing results for Hood and Wise Counties. Moreover, the RTC fails to provide any real response to comments detailing other inconsistencies in EPA's designation decisions. EPA should grant reconsideration to provide further explanation and opportunity for public comment on these critical points.

(3) EPA should develop a more robust assessment of the potential impact of emissions in Wise County on ozone levels in other parts of the DFW area.

The HYSPLIT modeling EPA presented in the Ozone Designations Rule provides only a qualitative indication of the potential downwind impacts of emissions from Wise County because HYSPLIT does not account for atmospheric chemistry or other confounding factors (*e.g.*, emissions from upwind of Wise County that simply pass through the country). EPA appears to agree, observing in the RTC that "HYSPLIT wind trajectory or other modeling-based tools are excellent tools for determining the frequencies for which areas *potentially* contribute to high ozone levels." RTC at 59 (emphasis added), *see also id.* at 60 (emphasis added) ("By applying HYSPLIT to show the tracks that air parcels traveled to monitors during exceedances of the standard, HYSPLIT does give a reliable indication of the areas that *could be* contributing to an exceedance.").

On the other hand, even though EPA admits that HYSPLIT modeling gives only an indication of a possible contribution to downwind nonattainment,³ EPA nonetheless clearly relies on the HYSPLIT modeling as one of the primary factors – if not the primary factor – in deciding

³ At best, HYSPLIT can provide only an indication of a possible contribution, as EPA has acknowledged in the past: "While trajectory analysis can be helpful it has significant limitations as it does not take into consideration atmospheric chemical processes, the injection of emissions, or the deposition of material along the trajectory path." Technical Support for State and Tribal Air Quality Designations and Classifications, April 2004, Chapter 3, at 3-202 (<http://www.epa.gov/ozonedesignations/1997standards/tech.htm>).

to include Wise County in the DFW nonattainment area. *See, e.g.*, DFW TSD at 23 (“Examination of back trajectories indicates that at times emissions from Wise County contribute to observed violations in the area...”). EPA should grant reconsideration to resolve these inconsistencies and provide greater clarity as to how HYSPLIT is applied and what weight HYSPLIT results are given in making the Wise County designation decision.

(4) EPA should have provided notice and an opportunity for public comment on its source apportionment modeling.

EPA did not present any source apportionment modeling in its proposed designation decision, yet relied on such modeling in making the final designation decision for Wise County. The use of such modeling had been suggested by TCEQ in its comments on the proposed designations. But, EPA considered TCEQ’s modeling to be inadequate and, therefore, “reanalyzed the data” and applied a 1% factor in assessing whether emissions on any given day might contribute to downwind nonattainment. *See* DFW TSD at 15-20. In making its final designation decision, EPA concluded that, “Source apportionment modeling for a portion of an ozone season indicates that emissions from Wise County can contribute to observed violations in the DFW nonattainment area.” *Id.* at 23. In short, source apportionment modeling was a significant factor in EPA’s final decision, but such modeling was unavailable during the comment period and therefore GPA and TPA had no notice that EPA would use such modeling and no opportunity to provide comments to the Agency on the use of such modeling. In addition, EPA failed to provide any explanation as to why use of the 1% factor was justified. Reconsideration would provide an opportunity for GPA, TPA, and other stakeholders to better understand these issues and provide meaningful comments to EPA.

(5) EPA should take extra steps to ensure that this decision was made in a transparent, objective, and unbiased way.

Commenters including GPA and TPA demonstrated that the approach taken by Region 6 in its analysis of Wise County was fundamentally different from, and far more exacting than, the approach employed by other regional offices. Indeed, when Region 6’s analysis of Wise County was compared to other Regions’ review of many similarly situated counties in other states and other EPA Regions – which were not designated nonattainment – one could have been left with the impression that Region 6 for some reason was determined from the beginning to add Wise County to the DFW nonattainment area, regardless of the facts.

What GPA and TPA did not know when they made those comments was that then-Region 6 Administrator Armendariz had appeared to admit in public statements that he harbored bias against the oil and gas industry. This public statement is consistent with an article written by Dr. Armendariz before joining EPA that inaccurately characterized emissions from oil and gas production in the Barnett Shale area, including Wise County.⁴ Dr. Armendariz’s public

⁴ *See* Al Armendariz, *Emissions from Natural Gas Production in the Barnett Shale Area and Opportunities for Cost-Effective Improvements* 3-4 (Jan. 26, 2009).

statements clearly precipitated his departure from the Agency. By all indications, Dr. Armendariz played a pivotal role in EPA's ozone designation decisions in Region 6, and it seems clear that EPA had decided to include Wise County in the DFW nonattainment area prior to his departure.

At a minimum, these facts and circumstances create an appearance of bias in the Agency's decision with regard to Wise County and suggest a lack of transparency in the Agency's decision making process. EPA can and should grant reconsideration of the Wise County decision to ensure that its final decision is free from any shadow of bias.

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For the reasons detailed above, EPA should grant reconsideration of the rule and take that opportunity to remove Wise County from the Dallas-Fort Worth nonattainment area consistent with the information presented in this petition and in comments on the record of this proceeding. GPA and TPA appreciate EPA's consideration of this petition. Under the present circumstances, reconsideration is needed in order to ensure a fair and accurate assessment of the facts and to ensure that the Agency's process is consistent with the principles set forth by the President in Executive Order 13563, which *inter alia* directs agencies to base decisions on the best available science and to use the least burdensome tools for achieving regulatory ends. If you have any questions about any of the matters raised in this petition, please do not hesitate to contact the undersigned.

Sincerely,



Jeff Applekamp
Director, Government Affairs
Gas Processors Association



Thure Cannon
Executive Director
Texas Pipeline Association

cc: Hon. Samuel J. Coleman
Carl E. Edlund
Scott Mathias
Rhea Jones
Jan Tierney