

US EPA ARCHIVE DOCUMENT



THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

DEC 14 2012

Mr. Jeff Applekamp
Director
Government Affairs
Gas Processors Association
6526 East 60th Street
Tulsa, Oklahoma 74145

Dear Mr. Applekamp:

I am pleased to respond to your July 20, 2012, letter in which you filed a petition for reconsideration on behalf of the Gas Processors Association and the Texas Pipeline Association concerning the U.S. Environmental Protection Agency's final rule, "Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards." See *77 Federal Register* 30008 (May 21, 2012). The petition requests that the EPA reconsider the nonattainment designation for Wise County, Texas, as part of the Dallas-Fort Worth ozone nonattainment area.

The EPA has carefully evaluated the issues and information in your petition. For the reasons provided in the enclosure to this letter, the EPA is denying your petition. The EPA continues to believe that Wise County is properly designated nonattainment because of its contribution to ozone nonattainment in the Dallas-Fort Worth area.

The enclosure addresses the specific issues raised in your petition and provides the basis for this denial. The EPA hopes that the responses will help to explain the agency's conclusions so that you will better understand our final decision. The EPA considers the designation of nonattainment areas with appropriate boundaries to be an important step in implementing the 2008 ozone standards.

We look forward to working with the state of Texas and those in the Dallas-Fort Worth area to ensure achievement of the 2008 ozone standards.

In the meantime, I thank you for your interest in protecting the quality of our environment.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa P. Jackson".

Lisa P. Jackson

Enclosure

Enclosure

EPA Response to Petition for Reconsideration from Gas Processors Association and Texas Pipeline Association

On July 20, 2012, the Gas Processors Association and Texas Pipeline Association petitioned the EPA to reconsider the final area designation for Wise County in the Dallas-Fort Worth (DFW) area. For the reasons discussed below, the EPA is denying the Petition. For the sake of clarity, we have organized this response according to the structure of the July 20, 2012 petition.

I. Emissions Trends and Inventories

Issue: The Petition states that the EPA should consider more fully emissions trends and inventories. The Petitioner also claims that a new study by Texas Commission on Environmental Quality (TCEQ) indicates that volatile organic compounds (VOC) emissions from condensate storage tanks are likely much lower than reflected in the emissions estimates that the EPA used.

Response: This issue was raised during the comment period, and we responded to these comments in our Response to Comment (RTC). Thus it is not an appropriate basis for reconsideration. We did not look at future trends, such as future reductions that may result from new air regulations, in this designation process because that is not an appropriate consideration under the Clean Air Act. *See* RTC at page 58 (“[w]e agree that we did not consider the impact of new air regulations. The implementation of new and existing regulations should result in lower ozone precursor emissions in the future; however, for purposes of designating areas, we consider whether such areas are “currently contributing” (i.e., current activities) to violations of the 2008 ozone National Ambient Air Quality Standards (NAAQS) and do not assess or predict future source emissions”). Our evaluation found that Wise County is currently contributing to violations of the 2008 ozone NAAQS.

To clarify, we do consider past trends such as growth rates and patterns.¹ As an example, we state in the final DFW Technical Support Document (TSD) that “[r]apid growth in population or vehicle miles traveled (VMT) in a county on the urban perimeter signifies increasing integration with the core urban area, and indicates that it may be appropriate to include such perimeter area(s) as part of the nonattainment area” *See* TSD page 9. This information is helpful in the five factor analysis to determine if an area is contributing to a violation.

With regards to condensate emissions, we considered the most recent data available at the time that we issued the designations. We considered potential overestimation of emissions from condensate storage tanks in Texas in the context of concerns raised by Matagorda County officials in March/April 2012. At that time, TCEQ indicated to the EPA they were conducting a further study that would be available in draft form in Fall 2012.² In October 2012, TCEQ provided the EPA with a report on condensate tank emission estimates but that report has not yet been finalized. This new technical information is not an appropriate basis for reconsideration. As noted by the Court in *Catawba v. EPA*, 571 F.3d 20 at 23, “Congress imposed deadlines on the EPA and thus clearly envisioned an end to the designation process.” We do not agree that information that was not available in time for the EPA to consider while complying

¹ *See* “Factors EPA Plans to Consider in Determining Nonattainment Boundaries in Designations for the 2008 Ozone NAAQS”, Attachment 2 to the December 4, 2008, EPA memorandum “Area Designations for the 2008 Revised Ozone National Ambient Air Quality Standards” from Robert J. Meyers, Principal Deputy Assistant Administrator to Regional Administrators, Regions I-X.

² Final HGB TSD, pages 6-7.

with the procedural requirements of the Clean Air Act (Act or CAA) provides an appropriate basis for reconsidering the designations. It is important that states are able to rely on the completed designations and to move forward with the planning now required for the area.

Finally, we note, as discussed in the TSD, the DFW area is nitrogen oxide (NO_x) limited; thus we believe it is unlikely that changes in the VOC inventory would affect EPA's determination that that Wise County emissions contribute to nonattainment.

II. Adequacy of Record

Issue: The Petitioner states that generally Wise County is indistinguishable from Hood County, which was excluded from the nonattainment area, and that the rationale for excluding Hood County should also apply to Wise County.

Response: As documented in the final DFW TSD, Wise County is distinguishable from Hood County in several ways. The 2008 Emissions Inventory (EI) with revisions submitted by Texas in October 2011 shows that Wise County has approximately twice the amount of NO_x and VOC emissions. Wise County's emissions are 11,911 tpy NO_x and 17,609 tpy VOC. Hood County's emissions are 5,515 tpy NO_x and 8,739 tons per year (tpy) VOC. TSD at 7. Additionally, Hood County is further from violating monitors than Wise County (figure 1, page 3). We also summarized the EPA's evaluation of the Source Apportionment Modeling (SAM) that indicated significant differences between contributions to ozone from Hood and Wise County in terms of both the maximum impact at a violating monitor (2008-2010 Design Value (DV)) and the number days with impacts greater than 0.75 ppb (parts per billion). See TSD at pages 6 – 14 and RTC pages 51 - 61.

III. Response To Comments

Issue: Petitioner claims that the EPA did not respond to all significant comments, particularly the detailed examples of inconsistencies provided by them in their comment letter dated February 2, 2012.

Response: While we did not provide responses to certain comments raised during the comment period, and as referenced in your Petition, we do not believe this supports reconsideration. As provided below, as to the technical concerns raised, our record supports and fully explains our decision. Furthermore, certain of these concerns did not address whether the EPA's five factor analysis for the identified areas resulted in disparate treatment, but instead made comparisons between counties in other nonattainment areas and the three Texas Counties (Wise, Hood, and Matagorda Counties) only with regard to one or two factors out of the five factors the EPA analyzed. Comparing counties from different areas based only on one or two of the factors from the five-factor analyses is not sufficient to support a disparate treatment argument. See *Catawba County, North Carolina v. EPA*, 571 F.3d 20 (D.C. Cir. 2009) (“petitioners seize upon discrete data points and ignore the very nature of the nine-factor test, which is designed to analyze a wide variety of data on a ‘case-by-case basis.’”)

We also note that unlike most other rulemaking actions under the CAA, Congress did not provide a participatory role for parties other than the states and tribes. For designations, section 107(d) of the CAA sets forth a detailed and specific process between the EPA and the states. This provision provides: (i) that Governors of states make the initial recommendations to the EPA for designations and boundaries; and (ii) that the EPA provide the states with 120 days notice of any intended modifications to the state recommendation prior to finalizing the designation. The 120 day notification process is for the purpose of providing “such State with an opportunity to demonstrate why any proposed modification is

inappropriate.” The CAA does not expressly provide a role for any other entity (including local governments) and, moreover, expressly waives the notice and public comment process of the Administrative Procedure Act for initial designations for new or revised NAAQS. Although no public comment period is required, the EPA opted to provide such a comment period for the 2012 ozone designations.

Specific issues raised by the Petitioner are identified below. We note that a number of the comments raised issues about the differences between the way Wise, Matagorda and Hood Counties were treated. In the final designations, the EPA designated Hood and Matagorda Counties as attainment and the present Petition raises issues solely with regard to Wise County. Thus, we summarize the issues and present our responses below only with regard to Wise County.

Issue: Petitioner claims that there is no correlation between increased Barnett Shale exploration and production and increased ozone. The data illustrate that even with increased production, ozone design values are generally down.

Response: This comment was raised during the comment period. While we did not specifically respond to this comment for the DFW area, the comment was considered by the EPA. Thus it is not appropriate for reconsideration. The central issue is whether emissions from Wise County contribute to ozone violations in nearby areas. As the record indicates, monitors in the Dallas CSA are violating the ozone standard and the EPA is required to designate areas as nonattainment if they violate the standard or contribute to a violation in a nearby area. As discussed in the RTC and TSD, some of the highest days during the 2006-2010 period included transport of Wise County emissions (including any Barnett Shale-related emissions) to some of the highest ozone exceedances at the Eagle Mountain Lake and Keller monitors, which are two of the DFW area’s monitors with the highest ozone levels. The TCEQ’s SAM also shows that emissions from Wise County (which would include Barnett Shale-related emissions) are transported to the violating monitors and that the amount of contribution could be as high as 50% of the total impact on certain days with high ozone levels.³

Design values and design value trends are a product of a number of variables, not simply the emissions of one or more types of emissions sources, which is why we perform a five-factor analysis in determining whether an area contributes to a violation of the standard in a nearby area. Decreases in design values over time can occur due to many variables, including decreases in ozone precursor emissions (such as in the DFW Nonattainment area due to federal measures and measures implemented by TCEQ in past ozone attainment demonstration SIPs). The fact that the design value is lower (i.e., that ozone has not “increased”) does not preclude a determination that emissions from Wise County contribute to exceedances at violating monitors in the DFW CSA.

Issue: Petitioner claims that TCEQ has demonstrated through complex modeling that it is NO_x, not man-made VOCs that drive ozone formation in the DFW area and the DFW nonattainment area (NAA) is generally NO_x limited. Emissions from the Barnett Shale are primarily VOCs and further the VOC species emitted by oil and gas industry are primarily straight alkanes, and not the highly reactive alkenes that are linked to ozone formation.

Response: As discussed in a previous response, we recognize in the TSD and RTC that the DFW Area is NO_x limited and that reductions in man-made VOC emissions only have small effects on ozone levels in

³ See the TCEQ source apportionment modeling files, including the Excel Spreadsheet that was placed in the record during the final action. (Hood-Wise_DVf_Contribution_wPies.xls)

the DFW area. We also recognized that VOC emissions from Barnett Shale activities are predominantly in the form of VOCs that have low reactivity, but would not classify them as non-reactive.⁴ However, contrary to the Petitioner's assertion, and as documented in our emissions analysis in the preliminary and final TSDs and in TCEQ's SAM, oil and gas production activity in Wise County does result in significant NOx emissions. It is primarily these NOx emissions that supported our determination that Wise County emissions contribute to ozone formation in the DFW area.

Issue: Petitioner claims that wind rose charts demonstrate that, on a yearly basis, the winds rarely blow into the DFW area from Wise County. The TCEQ's findings based on the HYSPLIT model with their endpoint analysis, demonstrate that "at most 2.87% of the trajectory endpoints from Wise County impact violating monitors."

Response: Our response below on the HYSPLIT section of this enclosure address the concern about the trajectory endpoints, and also discuss why HYSPLIT modeling can be a more useful tool than annualized wind patterns especially in an area like DFW that experiences light wind speeds and winds from variable directions. While the percentage of days when the wind carried air from Wise County was relatively low overall, our analysis indicated that the days when the air did come from Wise County, the downwind monitors had some of the highest ozone readings during the time period evaluated.

Issue: Petitioner claims that other EPA Regions have declined nonattainment designations based simply on prevailing winds. For example, TSDs from various Regions make generalized references to prevailing wind patterns, 30-year wind history, wind roses showing yearly average wind direction, and references to "predominant" wind direction.

Response: These comments did not address whether the EPA's five factor analysis for the identified areas resulted in disparate treatment, but instead focused only on meteorology. Therefore, this does not warrant reconsideration on this issue. As we have explained earlier, the designation process involves a five factor analysis conducted for each individual area. We cannot look at just one or two factors in isolation to conclude there has been disparate or inconsistent treatment. Many of the specific issues raised by the Petitioner, and discussed below, focus on only one or two factors, without a full comparison of how the five factors were applied. EPA will not repeat this full explanation in each instance, but it applies throughout this response.

Issue: Petitioner's comments include a list of 13 counties in other areas of the country that were designated as attainment/unclassifiable. Petitioners claim that these counties are upwind of nonattainment counties and violating monitors over 20% of the time. Petitioner asserts that Wise, Hood, and Matagorda Counties would not be included in a nonattainment area if another EPA region had made the decision.

Response: Petitioner's comments identify only the percentage of time a county is upwind and they do not address how this information, when considered as part of a more comprehensive five factor analysis suggests that EPA treated Wise County in a manner inconsistent with the way we treated other areas. Therefore, this does not warrant reconsideration on this issue.

Issue: The Petitioner indicates that the EPA Region 6 incorrectly and conclusively relied on HYSPLIT modeling and used it in a selective manner, while another Region correctly disregarded HYSPLIT modeling (e.g., EPA Region 3 in the TSD for the Pittsburgh area) and based meteorological

⁴DFW Final TSD, pages 6-8; Houston Final TSD, pages 5-7; RTC pages 52-56.

analyses on general historical wind patterns. The Petitioner further indicates that the EPA failed to provide record support adequately justifying its conclusion that HYSPLIT modeling is a proper basis for a nonattainment designation in Wise County. The Petitioner indicated that the EPA Region 6 conducted a ‘nit-picking’ analysis by focusing on only the days with violations with HYSPLIT instead of using general wind patterns as have been used in other preliminary TSDs. The Petitioner listed preliminary TSDs for the areas that did not use HYSPLIT to indicate disparate treatment of wind patterns by Region 6 in Texas.

Response: We refer generally to our responses addressing the use of the HYSPLIT modeling for the DFW area. Wise County was not treated disparately by the EPA’s use of HYSPLIT modeling results. HYSPLIT was used in 16 areas where it was either submitted to the EPA or the EPA performed the modeling because we believed it could provide additional insight into the factors that contribute to nonattainment.⁵ For example, we explained in our TSD that HYSPLIT modeling is particularly useful for areas, such as Dallas, where wind speeds can be light and wind direction variable.

Each of our designations decisions were based on a five-factor analysis of the unique circumstances relevant to each area. The level of detail for meteorological analysis can vary area-to-area. For example, in cases where counties did not have significant emissions compared to other counties in a specific area a more general meteorological approach may have been sufficient.

With regard to the claim that Region 3 disregarded HYSPLIT modeling, this is an incorrect characterization. In the preliminary TSD for Pennsylvania, the EPA stated that:

“Further analysis of backward trajectories could prove helpful in resolving the affect of meteorology on this area. Pennsylvania’s March 2009 ozone recommendation did contain some NOAA HYSPLIT model backward trajectory information, but not for monitors in the Pittsburgh area. The supplied information for a monitor in eastern Pennsylvania indicated that HYSPLIT 24-hour period back trajectories were highly variable based upon the episode in question. Therefore, this information was not useful in determining the impact of meteorology on the Pittsburgh-New Castle CSA.”⁶

EPA only determined that a HYSPLIT run in eastern Pennsylvania was not useful for evaluating the Pittsburgh area, which is located in the western portion of the state. Subsequently, as part of the analysis for the final designation decision, the EPA Region 3 used the HYSPLIT model to further understand the meteorological transport conditions within the region around Pittsburgh and other areas of Pennsylvania.⁷

⁵ The EPA considered HYSPLIT analyses in the following 16 areas for the 2008 ozone designation process: Allentown-Bethlehem-Easton, PA; Baltimore, MD; Baton Rouge, LA; Charlotte-Rock Hill, NC-SC; Chicago-Naperville, IL-IN-WI; Dallas-Fort Worth, TX; Denver-Boulder-Greeley-Ft Collins-Loveland, CO; Houston-Galveston-Brazoria, TX; Knoxville, TN; Lancaster, PA; Memphis, TN-MS-AR; Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE; Pittsburgh-Beaver Valley, PA; Reading, PA; San Luis Obispo (Eastern San Luis Obispo), CA; and Washington, DC-MD-VA. The TSDs for ozone designation decisions for each of these areas can be found in the public docket and on the EPA’s ozone designations website. Docket No. EPA-HQ-OAR-2008-0476 and <http://epa.gov/ozonedesignations/2008standards/tsd.htm>.

⁶ Pennsylvania Preliminary TSD “Pennsylvania Area Designations for the 2008 Ozone National Ambient Air Quality Standards,” December 2011, page 41 (Docket ID No. EPA-HQ-OAR-2008-0476-0237). We note that Pittsburgh is in Western Pennsylvania and the March 2009 HYSPLIT analysis included in Pennsylvania’s 2009 recommendation was for an ozone episode in Eastern Pennsylvania.

⁷ Pennsylvania Final TSD “Pennsylvania Area Designations for the 2008 Ozone National Ambient Air Quality Standards,” April 2012, pages 10-13, 24-28, 41-45, and 73-79 (Docket ID No. EPA-HQ-OAR-2008-0476-0632).

Issue: Petitioner claims that the EPA Region 6 incorrectly and inconsistently applied HYSPLIT to justify a nonattainment designation for Wise County. The Petitioner further claims that HYSPLIT cannot establish a causal connection between winds in one area and ozone formation in another.

Response: We agree that HYSPLIT modeling has limits and that its primary use is in showing where air has traveled before reaching a certain location at a given time, thus giving an indication of what pollution sources may have contributed to the monitored pollution level. As noted throughout the designation process, however, the EPA analyzes meteorology, including HYSPLIT where available, as one component of the meteorology factor in the five-factor analysis. The EPA indicated in the preliminary and Final TSDs for the DFW area that the combination of back trajectories and the close proximity of large emissions of ozone precursors to the monitor supported its decision to include Wise County. TCEQ's SAM modeling, which is based on a wide array of information, including meteorology and emissions, further confirmed that Wise County emissions yield increased ozone levels at monitors in DFW.⁸

Issue: Petitioner claims that EPA Region 6's approach to performing HYSPLIT analyses was inconsistent. Specifically, Petitioner claims that Region 6's use of HYSPLIT was inconsistent with other regions, as detailed below:

Response: We do note that some of the HYSPLIT analyses were conducted at different times, and the EPA used some slightly different approaches for the different HYSPLIT analyses. For example, we varied start time for the back trajectories dependent upon when the 8-hour exceedances occurred at the monitor being evaluated. To obtain additional insight, we also separated HYSPLIT runs for several different hours for some of the monitors that make up the 8-hour exceedance period since the exceedance period is made up of 8 consecutive 1-hour ozone readings. We noted our methodologies for conducting the HYSPLIT analyses in the TSD and in the individual electronic HYSPLIT output files. The meteorological data on which EPA based its HYSPLIT model analysis was available to the public.⁹ On December 20, 2011 (76 FR 78872), the EPA published a notice in the *Federal Register* inviting public comment from interested parties other than states and tribes on the letters sent to states with the intended designations. The notice provided that any comments should be received on or before January 19, 2012, but in response to requests from several parties, including Wise County, the EPA extended the public comment period to February 3, 2012. (See 77 FR 2678, January 19, 2012). TPA requested a copy of the HYSPLIT data from the EPA on January 17, 2012. The EPA provided a copy of the meteorological and ambient monitoring data on January 19 – 24, 2012, and also posted copies of the data to the rulemaking docket.

County 1 - Issue: (Lebanon County, PA) Petitioner claims that Lebanon County was considered as part of the Berks County (Reading) Pennsylvania area but was designated attainment even though the winds blew from Lebanon County into Berks County 40 percent of the time during the summer, which was far more often than prevailing winds blew from Wise County to the violating monitors in the DFW area. TPA recognized that Lebanon County had somewhat lower emissions than Wise County.

⁸ Page 13 of TCEQ attachment to Governor Perry's comment letter dated February 29, 2012. Source apportionment modeling files provided by TCEQ to EPA demonstrate that Wise County NOx emission impacts at other DFW monitors including Eagle Mountain Lake and Keller monitors is what makes up almost all of the ozone level changes due to Wise County emissions. Electronic files are available in the electronic record for the Final designation. (EPA Document ID: EPA-HQ-OAR-2008-0476-0633)

⁹The meteorological data on which EPA based its HYSPLIT model analysis was accessible to the public at the NCAR FTP site at <ftp://arlftp.arlhq.noaa.gov/pub/archives/edas40/>.

County 1 - Response: (Lebanon County, PA) The Petitioner only discusses aspects of two factors, meteorology and emissions, and did not address how the EPA's five factor analysis resulted in disparate treatment of Wise County. As to the emission factor, the comment recognizes that emissions in Lebanon County were low and relies solely on the meteorology factor to suggest that Wise County was treated differently than Lebanon County. With regard to the meteorology, we note two things. First, the 40% of the time for wind direction from Lebanon County is a summertime predominant wind analysis and not specific to days on which the violating monitor was experiencing ozone exceedances. Second, based on comments received, the EPA more closely examined the meteorology using HYSPLIT and the analysis results were included for this area in the Final PA TSD. The EPA concluded that air flow was primarily from the Southerly direction, rather than from the Westerly direction where Lebanon County is located, at times when the monitor was recording ozone exceedances.

County 2 - Issue: (Lawrence County, PA) Petitioner summarized information from the EPA Region 3's preliminary TSD that Lawrence County had 8,960 tpy NO_x and 3,814 tpy VOC and is located to the west and northwest of violating monitors in the Pittsburgh area. Although Region 3 noted that winds in the area had strong westerly components, Lawrence County was designated attainment.

County 2 - Response: (Lawrence County, PA) Petitioner only discusses aspects of two factors, meteorology and emissions. This is not sufficient to demonstrate how the EPA's five factor analysis resulted in disparate treatment of Wise County.

County 3 - Issue: (Kent County, DE) Petitioner summarized information from the EPA Region 3's preliminary TSD that winds during ozone season come predominantly from the southwest. The comment also noted that Kent County's ozone design value was 74 ppb; that its NO_x and VOC tpy figures were 7,667 and 5,381, respectively; that its VMT was 1,565,000; and that its population growth was +28 percent; and that the EPA was proposing to designate the county attainment/unclassifiable because it is "unlikely to contribute to downwind violations during *most* of the ozone season." The comment concluded that the facts supporting nonattainment designation of Kent County were significantly stronger than those supporting the nonattainment designation of Wise County. Nonetheless, Region 3 concluded that Kent County should be proposed to be designated unclassifiable/attainment. The comment concluded that there is no doubt that under the Region 6 method of analysis, Kent County would have been designated nonattainment.

County 3 - Response: Petitioner examined aspects of three of the factors: meteorology based on general wind patterns during the ozone season, emissions/emission related data and air quality monitoring data. As an initial matter, we note the circumstances regarding Kent County raised complex issues that are not relevant for the DFW area. There are only three counties in Delaware. The northernmost county, New Castle, is part of the Philadelphia-Camden-Vineland, PA-NJ-MD-DE CSA. Delaware TSD at page 4. The middle county, Kent is the Dover, DE metropolitan statistical area and the southern county, Sussex, is the Seaford micropolitan statistical area. See Delaware TSD at page 18. All three Delaware Counties were designated nonattainment as part of the Philadelphia area for the 1997 ozone NAAQS. Thus, for purposes of our analysis, we evaluated all counties within the CSA and the two additional Delaware Counties that are outside the CSA but were included as part of the Philadelphia nonattainment area for the 1997 ozone NAAQS. In addition, we also evaluated several counties in New Jersey that are also outside the CSA but that were included as part of the designated nonattainment area for the 1997 ozone NAAQS. See Delaware TSD at pages 6 & 18.

The five-factor analysis for the counties being considered for inclusion in one nonattainment area will always be different than a five-factor analysis for the counties being considered for inclusion in another area. This is because the facts vary significantly among the areas. For example, the number of counties being considered can vary from one to more than 40. Additionally, the geographic extent of an area under consideration can vary greatly as well, with some CSAs being as large as 100 or more miles from north to south or east to west or both and some being significantly smaller. For that reason, it is difficult to draw direct comparisons between two counties in different CSAs with regard to one factor, such as absolute emissions. As noted above, one distinguishing factor between Kent County and Wise County is that Kent County is not part of the Philadelphia CSA while Wise County is part of the DFW CSA. We also identify some differences between Kent County and Wise County below with regard to two of the factors raised in the comment. We emphasize, however, that we do not consider this information conclusive outside the five factor analysis. We present it simply to rebut the comment suggesting that two areas are similar. We evaluated both Wise and Kent Counties based on whether their emissions were contributing to a nearby violation of a monitor, not on whether there was a monitor violating the standard in the county. We note that the distance to the closest violating monitor is 20 miles for Kent County and 0.5 miles for Wise County. *See* final DFW TSD at page 3 and final Delaware TSD at page 4.

With regard to meteorology, based on comments on the adequacy of general surface wind roses, the EPA conducted HYSPLIT analysis to further examine meteorology. The more detailed HYSPLIT analysis indicated a wider range of wind directions for transport to exceedances in the Philadelphia-Wilmington-Atlantic City PA-NJ-DE-MD nonattainment area. The HYSPLIT analysis also showed that the winds are mostly from the south to northwest directions, with the strongest direction being from the southwest during monitored ozone exceedances from 2007-2011. *See* Delaware TSD at pages 13-17.

With regard to emissions, out of the 19 counties evaluated in the Philadelphia area, Kent County ranked 14 for NO_x and 17 for VOCs. Kent County ranks 14 out of 19 in VMT. While Kent County did have the highest growth rate of the counties considered, it has a relatively small population base and it had a low proportion of commuters from the county to the Philadelphia area. In comparison, Wise County's total emissions of NO_x and VOC are 11,911 tpy and 17,609 tpy, respectively. Wise County ranks 6 out of 19 counties in the Dallas CSA for NO_x emissions and 4 out of 19 for VOC emissions. Population and VMT rankings are similar between Wise County and Kent County. *See* final DFW TSD, pages 6-14.

County 4 - Issue: (Roane County, TN) Petitioner summarized information from the EPA Region 4's preliminary TSD that Roane County had emissions of 10,711 tpy NO_x and 3,006 tpy VOC and was predominately upwind of nearby violating monitors.

County 4 - Response: (Roane County, TN) Petitioner only examined aspects of two factors, meteorology and emissions. This is not sufficient to demonstrate how the EPA's five factor analysis resulted in disparate treatment of Wise County.

County 5 - Issue: (Pointe Coupee Parish, LA) Petitioner also claimed disparate treatment with regard to Pointe Coupee Parish, which was considered for inclusion in the Baton Rouge nonattainment area. TPA notes that Pointe Coupee Parish's NO_x and VOC emissions tpy figures were 15,733 and 2,560 respectively and that its NO_x emissions are higher than those for Wise County. Petitioner also notes that Pointe Coupee Parish's population density was roughly equivalent with that of Wise County. Petitioner points out that Region 6 stated that "for the five-year 2006-2010 time period only 5 percent of all days with ozone concentrations greater than 75 ppb at the LSU site had wind back trajectories that went back through Pointe Coupee Parish." The EPA Region 6 proposed a nonattainment determination for Wise

County even though the winds blew across Wise County toward violating monitors far less often than the "only 5 percent" figure upon which Region 6 based its proposed attainment/unclassifiable designation for Pointe Coupee Parish in Louisiana.

County 5 - Response: (Pointe Coupee Parish, LA) Petitioner examined aspects of three factors, meteorology, air quality and emissions. In the Final Louisiana TSD, we indicated that the Big Cajun Power Plant (which we noted in our preliminary TSD is already controlled) emitted 12,119 tpy in 2008 and the rest of the Parish's emissions of man-made NO_x were only 3,614 tpy. Furthermore, we indicated that for the 5 years of back trajectories for ozone exceedances at the LSU monitor only two back trajectories passed over Pointe Coupee Parish. Of the two back trajectories, one of the back trajectories barely went through the southwest corner of Pointe Coupee Parish on the opposite corner of the Parish from the Big Cajun Power plant in the northeast portion of the Parish. Therefore, it is unlikely that emissions from the main point source in Pointe Coupee Parish contributed to the violating monitor for this ozone exceedance, leaving only one back trajectory in 5 years that indicates potential contribution. In comparison, 7 trajectories in 5 years for the Eagle Mountain Lake monitor in DFW passed through areas with emissions in Wise County, and five of these days were the highest monitored ozone days that helped set the monitor's DV. We note in the RTC (page 56) that we weighed the combination of emissions and distance to a violating monitor in our evaluation comparing Hood and Wise and put more weight on contribution from Wise County due to Wise County's larger emissions and closer proximity to a violating monitor. Similarly, the distance to the only Baton Rouge area violating monitor (2008-2010 DV of 78 ppb) is approximately 18 miles for Pointe Coupee Parish (26 miles from Big Cajun) in comparison to Wise County's distance of 0.5 miles to the Eagle Mountain Lake monitor (2008-2010 DV of 85 ppb).

County 6 - Issue: (Dutchess, Putnam, Orange, and Ulster Counties, NY) Petitioner compared Wise County with Dutchess, Putnam, Orange and Ulster Counties, which are in the New York – New Jersey – Long Island, NY-NJ-CT nonattainment area. Petitioner pointed out that the EPA Region 2's preliminary TSD indicated that Dutchess County was upwind 23 percent during the summer; Putnam County 24 percent; Ulster County 29 percent; and Orange County 25 percent.

County 6 - Response: Petitioner only examined meteorology and did not address how the EPA's five factor analysis resulted in disparate treatment of Wise County.

County 7-Issue: (Stafford County, VA) Petitioner also cited Stafford County Virginia, which the EPA evaluated for inclusion as part of the Washington, DC-MD-VA nonattainment area. Specifically, Petitioner pointed to the EPA Region 3's preliminary TSD for Maryland that indicated Stafford County is upwind 22 percent of the time and that Stafford County should be designated attainment/unclassifiable.

County 7 - Response: Petitioner generally discussed aspects of only two factors – meteorology and emissions, and did not address how the EPA's five factor analysis resulted in disparate treatment of Wise County.

County 8 - Issue: (Cattaraugus Reservation – Seneca Nation) Petitioner cites meteorological and emissions data from the EPA Region 2's preliminary TSD that indicates that the Cattaraugus Reservation could have a small impact on the Jamestown, NY nonattainment area. However, the EPA proposed that the Reservation should be designated attainment/unclassifiable.

County 8 - Response: (Cattaraugus Reservation – Seneca Nation) In determining whether a county should be included as part of the designated nonattainment area, we look at whether the county contributes to nonattainment in the area. Our analysis looks at whether the area's contribution is at a level to have a significant effect on ambient ozone levels. *See Catawba v. EPA* at 39 (recognizing that "contribute" under section 107(d) is ambiguous and does not necessarily mean any level of contribution.) In looking at our 5 factors, we note that in the Jamestown Area TSD that there were no known permitted sources on the Reservation and that the population was sparse. We also noted that the Reservation is downwind of Jamestown and transport to the nonattainment area is likely to be low or nonexistent. Based on our full analysis of all of the factors, we concluded that tribal lands are not contributing to the nonattainment area. Jamestown TSD at 4, 9, 12.

County 9 - Issue: (Sussex County, DE; Berks County, PA; Calvert, Fredrick, Montgomery, Prince George's and Loudon Counties, Washington DC-MD-VA) Petitioner summarized information from several of the EPA Region 3's preliminary TSDs regarding counties that the EPA proposed to designate as nonattainment and claimed that they show disparate treatment for Wise County.¹⁰

County 9 - Response: The issue for each of these counties was not whether the area should be designated as nonattainment but rather in which nonattainment area the county should be included. We note that each of these counties is located in the northeast U.S. corridor where nonattainment areas frequently adjoin, and the associated CSA and CBSA can include 40 or more counties. Our consideration of which nonattainment area a county should be affiliated raises different issues than the issue of whether an area should be designated nonattainment based on contribution. For example, the jurisdictional factor often plays a more significant role in these cases and, in the absence of a five-factor analysis supporting a contrary conclusion, we generally will defer to the state's recommendation as to which of the two nonattainment areas should include the county. *See e.g., Pennsylvania Department of Environmental Protection v. EPA*, 429 F.3d 1125, 1129 (D.C. Cir. 2005). Our decisions for these counties do not show disparate treatment for Wise.

County 10 - Issue: (Dauphin and York Counties, PA) Petitioner generally referred to discussion of the EPA's meteorology factor in the EPA Region 3's preliminary TSD. The EPA proposed to designate these counties attainment/unclassifiable even though meteorology indicates that Lebanon and Dauphin may contribute to violations in Lancaster.

County 10 - Response: (Dauphin and York Counties, PA) Petitioner only discussed one factor, meteorology, and did not address how the EPA's five factor analysis resulted in disparate treatment of Wise County.

County 11 - Issue: (Dorchester, Wicomico, and Worcester Counties, MD) Petitioner generally referred to the EPA's emissions and meteorology factors discussion in the EPA Region 3's preliminary TSD. The EPA proposed to designate three Maryland counties attainment/unclassifiable even though emissions from these counties would contribute little to violations in downwind Sussex County, Delaware.

¹⁰ These counties are: (1) Sussex County, Delaware, which was designated as a single county nonattainment area and not included as part of the Philadelphia nonattainment area; (2) Berks County, Pennsylvania, which was designated as a single county nonattainment area and not included as part of the Philadelphia nonattainment area; and (3) Calvert, Fredrick, Montgomery, Prince George's and Loudon Counties which were included in the Washington DC-MD-VA nonattainment area and not the Baltimore nonattainment area.

County 11 - Response: (Dorchester, Wicomico, and Worcester Counties, MD) After a review of the EPA's five factors, the EPA concluded in the Final TSD "[a]lthough emissions from those counties might contribute to violations in downwind Sussex County, Delaware, the emissions levels from those counties are so low that little actual contribution is expected." The EPA determined after weighing all five factors that these counties do not in fact contribute to ozone at a violating monitor.

County 12 - Issue: (Carroll and Hall Counties, GA) Petitioner generally discussed distances separating emissions sources from the violating monitors. The EPA Region 4's preliminary TSD proposed a designation of attainment/unclassifiable for these counties because their distance from violating monitors limited their impact on such violating monitors.

County 12 - Response: Petitioner only discussed one aspect relating to ambient air and distance to a violating monitor, and thus did not address how the EPA's five factor analysis resulted in disparate treatment of Wise County.

Issue: Petitioner (on page 20 of their comment letter) indicated that TCEQ has already determined, in a study done in connection with the East Texas Combustion rule, that the imposition of controls on sources in six counties, including Wise and Hood, would have such a negligible effect on conditions in the DFW nonattainment area; therefore, the Combustion rule was not justified. Modeling sensitivity runs were conducted by TCEQ in connection with the East Texas Combustion rule in order to assess the potential benefit of including six counties, including Wise and Hood, in the rule. According to TCEQ, "[t]hese sensitivity runs indicate that the Dallas-Fort Worth eight-hour ozone nonattainment area would only benefit approximately 0.05 ppb reduction in ozone from including these six counties under the rule." See 32 Texas Register 3303 (June 8, 2007).

Response: Section 107(d) of the CAA requires the EPA to designate as nonattainment any area that does not meet the air quality standard or that contributes to a violation of the air quality standard in a nearby area. Based on our analysis of contribution in the DFW TSD, we determined that Wise County contributed to monitored violations of the 2008 ozone NAAQS and included Wise County in the ozone nonattainment area. We further note here, that in evaluating whether an area is contributing to a current violation of the ozone NAAQS, we do not evaluate how the implementation of individual, specific measures, or the failure to implement such measures, might affect ozone levels within the area. The issue of which measures are appropriate for reducing ozone levels in an area violating the standard will be addressed by the states during the post-designation attainment planning process.

We also note that the modeling the Petitioner cites was in relation to an older ozone standard (85 ppb versus the current 75 ppb) and is comprised of an older meteorological episode with fewer days. Additionally, the emission estimates in the modeling do not account for the growth in emissions due to the Oil and Gas developments in north Texas since 2005/6. The modeling Petitioner discussed is older modeling that was for an older limited number of days episode (10 days) that did not have as many meteorological regimes as the more recent SAM modeling provided by TCEQ (with over 30 days) to the EPA as part of their comments for the designations of the 2007 8-hour standard. The older modeling only was conducted for evaluations of potential controls to help the DFW area attain the 1997 8-hour standard (85 ppb) and the conclusions would likely be different if the analysis was done for the current 75 ppb standard. The modeling and associated emission inventory cited by the Petitioner did not include revised emissions reflecting the growth of oil and gas emissions in Wise County and other North Texas counties since 2005/6. Since that time, these counties have seen increased emissions due to oil and gas field developments.

IV. Analysis of HYSPLIT and Potential Impact of Wise County Emissions

Issue: The Petitioner claims that the EPA's HYSPLIT analysis was not conclusive and given undue weight. Specifically, the Petition claims that the HYSPLIT modeling gives only an indication of possible contribution to downwind nonattainment. Further, Petitioner claims that the EPA should provide greater clarity as to how HYSPLIT is applied and what weight HYSPLIT results are given in making the Wise County designation decision.

Response: Petitioner raised the HYSPLIT issue during the comment period and the EPA responded to those comments. See RTC pages 59, 60. Therefore, reconsideration is not appropriate. Our record fully supports our decision. The EPA's record explains that HYSPLIT is a useful tool for determining areas where air originates or passes through on the way to a monitored ozone exceedance. As we stated in the RTC, "[i]n terms of identifying potential local and regional source-receptor patterns, HYSPLIT wind trajectory or other modeling based tools are excellent tools for determining the frequencies for which areas potentially contribute to high ozone levels and are preferred over more basic assessments of wind speed and direction at a given point locations (e.g., wind roses, or pollution roses). The basic assessments, such as wind roses, are potentially misleading in cases where wind speeds are light and the wind direction is variable. . ."¹¹ The light and variable meteorological regime is one of the classic meteorological types that results in high ozone in the DFW area.

We conducted HYSPLIT analysis for several monitors in DFW for purposes of both the Preliminary TSD (December 2011) and the Final TSD (April 2012). In the Final TSD, we noted that "[t]he HYSPLIT model yields an estimate of the path an air mass has traveled before reaching a monitor at a specific location and time. Specifically, the model provides the centerline of the probable path. By knowing where an air mass has traveled before reaching a monitor where an exceedance has occurred, one can consider what potential areas and emission sources could have contributed to the exceedance." In the Final TSD at page 14, we stated, "[w]e focused on the Keller and Eagle Mountain Lake monitors in Tarrant County and the Parker County monitor because the Keller and Eagle Mountain Lake monitors have recorded some of the highest ozone levels in the region, and inclusion of the Parker County monitor provided a good cross-section of the monitors in the western DFW area that experienced exceedances in the 2006-2010 period." The EPA included trajectory plot maps for the Keller and Eagle Mountain Lake monitors in both the Preliminary and Final TSDs and also made the individual back trajectory files available for review during the comment period. Analysis of the plots in the TSDs indicates that 3 trajectory 'centerlines' directly traversed Wise County for the Keller monitor, and at least 7 trajectory 'centerlines' traversed Wise County for the Eagle Mountain Lake monitor. In addition, some other back trajectories that did not directly traverse Wise County had centerlines near enough to Wise County to suggest a path of upwind influence involving Wise County emissions. Accordingly, we concluded that there are a number of days (not just two) with back trajectories that suggest influence from Wise County emissions.

As provided in the Final DFW TSD, a review of the individual trajectory files shows that several of the days that trajectories passed through Wise County were also days that made up the 1st to 4th highest monitored values, which are the values used in establishing the design value at the Eagle Mountain Lake and Keller monitors during the periods evaluated. In fact, five of the seven back trajectories that traversed Wise County occurred on days that contributed the Eagle Mountain Lake Design value

¹¹ See page 59 of the RTC.

calculation.¹² The individual trajectory files were included in the supporting materials for the EPA's intended and final designations.

V. Source Apportionment Modeling (SAM) and Opportunity for Public Comment:

Issue: The Petitioner claims that the EPA did not provide opportunity for public comments on the use of TCEQ's SAM modeling. Specifically, the Petition claims that the 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.

Response: While we agree that our analysis of the state's SAM modeling was not available for comment at the time of proposal, we do not believe this issue warrants reconsideration. First, in response to the EPA's 120-day letter notifying it of the intended designations, the state submitted, among other things, the SAM data and results. Our evaluation of the SAM was in response to such submittal and was consistent with the process established by Congress in section 107(d) of the Act. For initial area designations for a new or revised NAAQS, section 107(d)(1) of the CAA sets forth a detailed and specific process between the EPA and the states. This provision provides: (i) that Governors of states make the initial recommendations to the EPA for designations and boundaries; and (ii) that the EPA provide the states with 120 days notice of any intended modifications to the state recommendation prior to finalizing the designation. The 120-day notification process is for the purpose of providing "such state with an opportunity to demonstrate why any proposed modification is inappropriate." The CAA does not expressly provide a role for any other entity and, moreover, expressly waives the notice and public comment process of the Administrative Procedure Act for initial designations for new or revised NAAQS. *See* CAA section 107(d)(2)(B). Although no public comment period is required, the EPA opted to provide such a comment period for the ozone designations for the 2008 ozone NAAQS. We appropriately followed the process specifically contemplated by the Act. The EPA's response to TCEQ's SAM is detailed in the EPA's final TSD. *See* Final DFW TSD at 15-20.

Second, and as a general matter, agencies are not required to provide an additional opportunity for public comment on material supporting a final rule, such as responses to comments or on information supporting a response to a comment. Such an approach would result in an unworkable endless rulemaking process. *See Catawba*, 571 F.3d at 50-51 (In rejecting a claim by New York that it should have been allowed additional input into the EPA's decision to rely on a different monitor for evaluating contribution for the final designation than it did for the intended designation the court noted that such an ongoing exchange with the states is inconsistent with the CAA and that "Congress imposed deadlines on EPA and thus clearly envisioned an end to the designation process.") *See also International Fabricare Institute v. EPA*, 972 F.2d 384, 399 (D.C. Cir. 1992) (notice and comment is not intended to result in "interminable back-and-forth") and *Community Nutrition Institute v. Block*, 749 F.2d 50, 58 (D.C. Cir. 1984) (agency is not required to provide additional opportunity to comment on its response to comments).

¹² We note that all this data is available in the record. For the Eagle Mountain Lake Monitor, the following days were the 1st thru 4th High values that set the monitor's DV. Highlighted in BOLD are the days that EPA's HYSPLIT analysis indicates potential contribution from Wise County emissions. 2006 (6/14 – 107 ppb, 6/9 – 106 ppb, 6/28 – 98 ppb, 7/18 – 98 ppb); 2007 (**8/14 – 121 ppb**, 8/15 – 101 ppb, 10/04 – 86 ppb, **9/22 – 84 ppb**, 7/25 – 84 ppb); 2008 (8/04 – 98 ppb, **6/18 – 92 ppb**, 6/23 – 86 ppb, 6/19 – 85 ppb); 2009 (**6/25 – 100 ppb**, 6/5 – 92 ppb, 6/26 – 92 ppb, **8/26 – 91 ppb**, **7/2 – 91 ppb**); 2010 (6/4 – 94 ppb, 8/27 – 91 ppb, 8/28 – 83 ppb, 5/29 – 81 ppb). When there was a tie for the fourth high value we looked at trajectories for both days.

Issue: The Petitioner claims that as part of the final rule the EPA used a new 1% standard in analyzing the source apportionment modeling (SAM), and it did not offer a rational basis for its use or opportunity for comment. Furthermore, the Petition claims that EPA was inconsistent in our use of the 1% standard and specifically raises concerns with the EPA's review and conclusions of SAM analysis for three counties in the Chicago area.

Response: The EPA considered SAM in its decision making only in areas where it was provided by states or others during the public process. Since the SAM was provided during the comment period, as discussed above, our evaluation consequently could not be available for public comment. SAM results were available for the EPA consideration in the designation process for only three areas, Dallas, Houston and Chicago, because those were the only areas where it was developed and submitted by states or other entities. The EPA does not have specific guidance on how to evaluate the impact of emissions from a county on a nearby violating monitor in the context of a designation decision. Moreover, in the few instances where SAM was submitted for our consideration, the form and type of the information varied between areas. The EPA evaluated each submission of SAM on a case-by-case basis, carefully evaluating a number of issues including how the modeling was conducted, model performance, and available data from the analysis in order to determine how to appropriately evaluate the results.

For the SAM submitted for Dallas and Houston, we considered other recent modeling work that could serve as a guide. Our basis for identifying days with a non-trivial impacts is discussed on page 17 of the TSD where we explained, "Often in attainment demonstration modeling, controlling of sources is evaluated and results in only a few tenths of a ppb change, therefore we used a 1% of the standard cut point for the days where we would consider Hood or Wise County's emissions to be significant." We also note that modeling from TCEQ in a 2007 8-hour Ozone Attainment Demonstration for DFW included multiple analyses of individual control strategies and the resultant impacts on monitors in DFW area, where Texas had chosen controls that provided changes of a few tenths of a ppb.¹³ In addition, we also note that the EPA concluded in the recent Cross State Air Pollution Rule, that a "one percent of the NAAQS" impact result in the source apportionment modeling was appropriate to determine if a state's emissions significantly impacted a downwind state's nonattainment or maintenance area.¹⁴ Thus we believe it was reasonable to examine the frequency of a modeled impact of 0.75 ppb, or one percent of the 2008 ozone standard, as a metric to identify days with a nontrivial impact.¹⁵

In addition, the number of days exceeding the one percent (0.75 ppb) cut point is only one of the metrics evaluated from the SAM results. In the DFW Final TSD and in supporting files, we discussed all of the metrics used in our assessment of the SAM results, and the unique factors that we weighed in our analysis of SAM results for DFW. Using the detailed daily information available to the EPA for analyzing SAM for the DFW and Houston areas designations, we evaluated the average impact, maximum impact, as well as the number of modeled days exceeding 0.75 and 0.70 ppm where the Wise County impact was above 0.75 ppb. These other model output metrics also help explain the impact of Wise County. For example, on some specific modeled days the impact of Wise County was much larger than 0.5 ppb and as much as 5 ppb at the Eagle Mountain Lake Monitor which is one of the monitors in

¹³ See the sensitivity runs in TCEQ's 2007 DFW 1997 8-hour ozone Attainment Demonstration SIP - APPENDIX D: DFW Future Case (2009) Sensitivity Tests.

¹⁴ See Cross State Air Pollution Rule and the Technical Support Document for the rule(Docket ID: EPA-HQ-OAR-2009-0491 at www.regulations.gov)

¹⁵ TSD page 17, TCEQ's 2007 DFW 1997 8-hour ozone Attainment Demonstration SIP - Appendix D: DFW Future Case (2009) Sensitivity Tests.

DFW that sets the DV for the DFW nonattainment area.¹⁶ Also, it is important to remember that the SAM results were only piece of information that we considered in our five factor analysis that resulted in our determination that Wise County contributes to nonattainment in the DFW area.

Our decision to use 1 % of the NAAQS or 0.75 ppb, as a cut point to identify days with a non-trivial impact is supported by our record and a count of such days is only one of the metrics we evaluated from the SAM results. As stated in our TSD, the 2008 Emissions Inventory for Wise County shows that Wise County's nitrogen oxide emissions of 11,911 tpy are the 6th highest of the 19-county DFW Combined Statistical Area (CSA) and the County's volatile organic compound emissions of 17,609 tpy are the fourth highest of the 19 counties. See TSD pages 6-7. The TSD demonstrates that there are six ozone monitors violating the standard in the two counties adjacent to Wise County (TSD Figure 1, page 3) and notes that Wise County is less than ½ mile from a violating monitor with a design value of 0.085 parts per million (TSD 2008 to 2010 data, pages 5 and 23). We also evaluated meteorological transport patterns during exceedances using NOAA's HYSPLIT model. These patterns indicate that emissions from Wise County are transported to the DFW ozone monitors violating the standard based on 2008-2010 data, and we conclude that the Wise County emissions are large enough that they can contribute to ozone exceedances on certain days. See TSD pages 14-17, 19, 20, and 23.

Finally, the Region 6 evaluation of SAM was not inconsistent with actions taken by other Regional offices. Again, our record supports our decision on this issue. The EPA considered SAM for the Houston area in the same way we considered it for Dallas because the SAM submitted for both areas was similar in how it was performed and the type of information provided. The only other area for which the EPA had SAM results was for the Chicago area. The SAM submitted for the Chicago area was sufficiently different that direct comparisons to the DFW area analysis are not generally appropriate. In the Chicago area SAM, the EPA was provided the average modeled impact levels on estimated exceedances for an entire ozone season. Emphasis on the average modeled impact is more appropriate when a full ozone season of model results is available. A full season of modeling results was not available for the DFW area. Indiana had provided SAM modeling that evaluated the impact of three Indiana counties on a monitor in the greater Chicago area. The reported impacts from two Counties (Lake and Porter) were about 2 ppb and 4 ppb. The SAM result for the third Indiana County (Jasper) indicated less than 0.5 ppb impact. In evaluating this result, the EPA was aware that the modeling did not reflect reductions that had been achieved at a large power plant in Jasper County, reducing the Jasper County total emissions of NO_x by more than 50%.¹⁷ Based on the analysis of all the factors, including the SAM and additional emission reductions, the EPA decided to include Lake and Porter counties, and not to include Jasper County, Indiana within the nonattainment area. As with the contribution level evaluated for Wise County, the contribution levels discussed in the Region 5 Chicago Final TSD do not represent a bright line criterion for inclusion or exclusion of a county. Moreover, the inclusion of two counties with an average contribution of 2 and 4 ppb and exclusion of a county with 0.5 ppb in the Chicago area is not inconsistent with inclusion of Wise County based in part on a count of days with greater than 0.75 ppb contribution in the Dallas area. As noted above, however, for both the Chicago and Dallas areas, this consideration was simply one element of one of the five factors the EPA considered in determining whether to include counties as part of the designated nonattainment area.

¹⁶ TSD page 20

¹⁷ Region 5 TSD, Original 2008 NO_x emissions quantified as 19,788 tons/year and value was footnoted as "... updated emissions data were provided for Jasper County showing 2011 NO_x emission levels of 9,791 tons."

VI. Concern About Treatment of the Oil and Gas Industry

Issue: The Petitioner claims that the designation of Wise County should be reconsidered because of a perceived bias by former Regional Administrator Dr. Armendariz against the oil and gas industry that may have played an undue role in the designation process.

Response: The EPA's final designation decision for the DFW area was based on the EPA's evaluation of the data and technical information, extensive and thoughtful consideration of input from TCEQ and other interested parties. The EPA's national Office of Air and Radiation works closely with technical staff in EPA's regional offices to ensure that decisions are based on the factual record and are consistent across the country. As demonstrated in the TSD accompanying the EPA's intended designations issued in December, 2011 and the TSD accompanying the final designation on April 30, 2012, the EPA performed a thorough assessment of information relevant to five designations-related factors in determining which areas should be included as part of the DFW nonattainment area. The final decision was made by Administrator Lisa Jackson based on the record before the EPA. We further note that there are other Texas counties where oil and gas production and activity occur that were initially considered for inclusion into a nonattainment area, but were ultimately not included. For example Hood County, Texas and Matagorda County, Texas were considered and proposed for inclusion in their respective areas. However, following a review of comments from Texas and from public commenters and upon further evaluation of all available data relevant to their contribution to ozone violations, we determined those counties should not be included as part of a nonattainment area. Our record details those decisions.