

US EPA ARCHIVE DOCUMENT



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

DEC 14 2012

THE ADMINISTRATOR

Mr. Don Erwin
President
Runaway Bay Economic Development Corporation
101 Runaway Bay Drive
Runaway Bay, Texas 76426

Dear Mr. Erwin:

I am pleased to respond to your July 12, 2012, letter in which you filed a petition for reconsideration on behalf of the Runaway Bay Economic Development Corporation concerning the Environmental Protection Agency's final rule titled, "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, the EPA is denying your petition. The EPA continues to believe that Wise County is properly designated nonattainment based on our conclusion that it is an area that contributes to ozone nonattainment in the Dallas-Fort Worth area.

The enclosure also addresses the specific issues raised in your petition and provides the basis for this denial. It explains the EPA's conclusion 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.

Please know that 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 the Runaway Bay Economic Development Corporation

By letter dated July 12, 2012, the Runaway Bay Economic Development Corporation 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 12, 2012 petition.

I. Emissions and Emissions-Related Data

Issue: Petitioner asserts that emission and meteorological factors did not include revised data submitted by the Texas Commission on Environmental Quality (TCEQ). Additionally, TCEQ modeling submitted during the comment period did not include such revised data and likely overestimated emissions of volatile organic compounds (VOC).

Response: This issue was raised during the comment period and we did address it in our Technical Support Document (TSD) and our Response to Comments (RTC) document. Thus it is not an appropriate basis for reconsideration. *See* our final DFW TSD titled, "Dallas-Fort Worth, Texas Final Area Designations for the 2008 Ozone National Ambient Air Quality Standards" and "Responses to Comments Document (RTC) on the State and Tribal Designation Recommendations for the 2008 Ozone National Ambient Air Quality Standards (NAAQS)" in the docket for this action.

As stated in our RTC document, we considered revised VOC emissions data submitted by TCEQ for the 2008 National Emissions Inventory in October, 2011 as part of our final designation decision. *See* RTC pages 55-56 (the EPA "reviewed the updated emissions data reported by the TCEQ"). In addition, the state and TCEQ provided new VOC and nitrogen oxide (NO_x) emissions inventory data to the EPA in subsequent comment letters to the EPA. TCEQ submitted a letter to the EPA dated January 11, 2012. The State of Texas submitted a letter on February 29, 2012, that included TCEQ's January 11, 2012, comment letter. The February 29, 2012 letter also included source apportionment modeling (SAM) results and indicated that the modeling was not conducted using the new lower VOC emission estimates that TCEQ had submitted to the EPA in October, 2011. The February 29, 2012 letter indicates: "[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" (page 10 of the referenced TCEQ letter). We took into account these updates and concerns in our final decision as indicated in the Final TSD and RTC. In our RTC, we explain that notwithstanding the new emission inventory data provided by Texas and TCEQ during the comment period, that "even with the reduced 2009 VOC emissions data, the emissions from Wise County still contribute to measured violations of the 2008 ozone NAAQS at monitors in neighboring counties." *See* page 56 of the RTC.

Specifically, we considered this new information in our evaluation of SAM results as discussed in the Hood and Wise County evaluations on page 20 of the TSD. We indicated in the RTC and other supporting materials that DFW is a NO_x-limited area and VOC reductions have not shown significant benefit in past modeling conducted by TCEQ. Furthermore, we recognized that the VOC emissions that are potentially overestimated in the SAM modeling are from oil and gas operations, and that these VOC

emissions “are relatively nonreactive,” i.e., they are less likely to result in ozone formation than VOCs that are more reactive. As a result, we concluded the potential impact of the new reported VOC emission levels on our interpretation of the SAM results for Wise, Hood and Matagorda Counties, would be negligible.¹

Issue: Petitioner claims that because of Wise County’s small population and vehicle miles traveled (VMT), it is unexpected that these types of emissions would have any significant contribution to ozone formation.

Response: This issue was raised during the comment period and we did address it in our TSD and our RTC document. Thus it is not an appropriate basis for reconsideration. Petitioner raised the issue over the use of population and VMT data as indicators for determining “contribution” during the public comment period and we did address those comments in the record, as detailed below. While we acknowledged that Wise County’s population and VMT are smaller in comparison to that of other parts of the DFW nonattainment area,² we explain in our record that emissions from the area and distance from the violating monitors were two of the compelling factors for determining “contribution” of Wise County. The total emissions from Wise County are significant and rank comparatively high against the emissions from other counties in the area. The 2008 EI of all Wise County sources (with revisions submitted by Texas) lists the County’s emissions as 11,911 tons per year (tpy) for NOx and 17,609 tpy for VOC (TSD, table 3).³ Wise County’s population and VMT data indicated that Wise County’s relatively high total emissions derive more from point and area sources associated with oil and gas production activities in the county. Lastly, the close proximity of Wise County’s comparatively high emissions to violating monitors provided further support that the county should be included in the nonattainment area (TSD, page 23).

II. Meteorological Analysis

Issue: Petitioner claims that Wise County is downwind and unlikely to contribute to high ozone values. The DFW area emissions are sufficient to produce high ozone days, without considering contributions from Wise County. Wise County population, VMT and oil and gas activities are not expected to contribute significantly to ozone formation in the DFW area.

Response: This issue could have been raised during the public comment period and other parties did raise similar issues that we addressed in our TSDs and our RTC document. Thus it is not an appropriate basis for reconsideration. The EPA acknowledges that Wise County is often downwind of the DFW

¹ DFW Final TSD, pages 6-8; Houston Final TSD, pages 5-7; RTC pages 52-56, “EPA has since reviewed the updated emissions data reported by the TCEQ and notes that the revised numbers do not affect the ranking of the counties for VOC emissions. EPA’s analysis indicates that even with the reduced 2009 VOC emissions data, the emissions from Wise County still contribute to measured violations of the 2008 ozone NAAQS at monitors in neighboring counties. In making our final decision, we considered the reduced emissions and the reduction in drilling activity since 2009.” Governor Perry’s comment letter dated February 29, 2012, pages 17-21, also referred to other TCEQ documents that further support that DFW area is a NOx limited regime and changes to VOC levels do not result in much impact in ozone levels: TCEQ 2011 DFW 1997 8-hour Ozone Attainment Demonstration SIP – “APPENDIX E: Protocol for the Eight-Hour Ozone Modeling of the Dallas-Fort Worth Area,” and “APPENDIX D: Conceptual Model For The DFW Attainment Demonstration SIP Revision For The 1997 Eight-Hour Ozone Standard.”

² See the final DFW TSD, which includes an evaluation of population data and traffic data for the 19 counties in the DFW CSA (TSD, pages 9-14). The TSD included data for Wise County and the DFW CSA (TSD, tables 6, 8 and 10).

³ Table 3 shows emissions of NOx and VOC (expressed in tpy) for violating and nearby counties that we considered for inclusion in the DFW area. The VOC emissions in Table 3 include revisions for Hood and Wise Counties submitted by TCEQ during the comment period.

area. However, as discussed in our TSDs and in the RTC document, general wind patterns over an entire season can be misleading, and are not as instructive as a more targeted, day-specific analysis of wind/transport patterns using tools such as HYSPLIT. Such analysis allows for developing a more detailed understanding of the exact wind/transport events that occur on days when high ozone levels are monitored.⁴

We note that, based on past research by TCEQ and the EPA, light winds with weak frontal passages and conversion zones are a common meteorological condition that often leads to high ambient ozone levels in the DFW area. (Final TSD page 14.) Our evaluation of the HYSPLIT figures (Final TSD pages 28-31) and the individual HYSPLIT modeling files indicates that light and variable winds occurred during some of the highest monitored ozone days and that some of these days included emissions transport patterns from Wise County to the sites of the monitored exceedances. We also note that a review of the individual trajectory files shows that several of the days during which 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. These individual trajectory files were included in the supporting materials for the EPA's preliminary and final designations.⁵

The Source Apportionment Modeling (Final TSD pages 15-20) indicates that for the limited number of days modeled (modeling did not cover a full ozone season for the DFW area) there are several occasions in which emissions from Wise County are transported to the nearby Eagle Mountain Lake and Keller monitoring sites (and other DFW area monitors) and contribute to the ozone exceedance levels. We note that this modeling incorporates all ozone precursor emissions from Wise County, including area and mobile source emissions and oil and gas activities. Moreover, as noted in our previous response the total emissions from Wise County are significant and rank comparatively high against the emissions from other counties in the area. As we previously indicated in our final *Federal Register* notice and in our TSDs and RTC, Section 107(d)(1) of the Clean Air Act (CAA) requires all areas to be designated nonattainment if they do not meet the standard or if they contribute to ambient air quality in a nearby area that does not meet the standard. While emissions from the nine counties in the DFW 1997 ozone nonattainment area may be capable of generating ozone exceedances without contribution from Wise County emissions, we have determined that Wise County emissions do contribute to exceedance levels in the nearby DFW area. See *Catawba County, North Carolina v. EPA*, 571 F.3d 20, 39 (D.C. Cir. 2009) (“Catawba”) (“Given that the statute uses the word ‘contribute’ and that a contribution may simply exacerbate a problem rather than cause it, we see no reason why the statute precludes EPA from determining that a county’s addition of PM_{2.5} into the atmosphere is significant even though a nearby county’s nonattainment problem would persist in its absence.”)

III. Opportunity to Comment

Issue: Petitioner claims that the citizens of Wise County were not provided with sufficient review of information submitted by Wise County and TCEQ, thus denying them with an opportunity to interact with state, local and industry representatives and other stakeholders regarding the designations. Additionally, Petitioner claims the EPA has not shared its data and justification for designating Wise County as nonattainment, and provided no rebuttal process for its conclusion.

⁴ Final TSD pages 14-15, and RTC page 58-61.

⁵ These data files were added to the electronic docket on January 24, 2012. The docket for this action is identified as EPA-HQ-OAR-2008-0476 at www.regulations.gov.

Response: This issue relates to an opportunity to comment on information submitted to the EPA during the comment period and the EPA's evaluation of that information in the final rulemaking, including the final TSD. 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). This is particularly true when the material does not substantively change the proposed action of the agency or does not significantly change the basis for the Agency's decision. With regard to the designation process, there is additional reason that an additional opportunity for public comment is not warranted. For designations, section 107(d) of the Clean Air Act (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. 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). In addition, if an interested party requested to meet with the EPA, we provided such an opportunity.

We further disagree that the EPA has not shared its justification for including Wise County as part of the designated nonattainment area. By its initial recommendation letter of March 10, 2009, the State of Texas recommended that the EPA designate the following counties as nonattainment for the DFW Area: Collin, Dallas, Denton, Ellis, Hood, Johnson, Kaufman, Parker, Rockwall and Tarrant. In a second letter of October 31, 2011, Texas revised its initial recommendation for the DFW area to exclude Hood County based on an assessment of 2008-2010 air quality data. On December 9, 2011, the EPA notified Texas of its preliminary response to recommendations from Texas indicating that it intended to modify the state's recommended area designations and boundaries for the DFW to include Hood and Wise Counties as nonattainment. The initial TSD provided an analysis to support the EPA's intended designations. (See "Texas Area Designations for the 2008 Ozone National Ambient Air Quality Standards," December 11, 2011). We asked the state to submit any additional information by February 29, 2012, for the EPA to consider before it made final decisions on designations.

Based on comments received from several parties, including the State of Texas, and additional information received during the public comment process for the designations, the EPA ultimately excluded Hood County and included Wise County in the DFW nonattainment area, as detailed in the TSD accompanying the final designations rule that was published in the *Federal Register* on April 30, 2012, and (“Dallas-Fort Worth, Texas Final Area Designations for the 2008 Ozone National Ambient Air Quality Standards”).⁶

IV. Economic Harm

Issue: Petitioner claims that a nonattainment designation would impose significant economic ramifications on citizens and businesses in Wise County.

Response: This issue could have been raised during the comment period and in fact was raised by other parties, such as the State of Texas. Thus it is not an appropriate basis for reconsideration. As stated in the RTC, “under section 107(d) of the CAA, the EPA is required to designate as nonattainment an area that is violating a new or revised national ambient air quality standard or that contributes to a nearby violation. . . . In determining whether an area should be designated nonattainment, the EPA does not consider economic impacts because that is not relevant for determining whether an included area is violating the NAAQS or is a nearby area that is contributing to a violation as provided under CAA section 107(d).” See RTC pages 14-15. As such, the criteria for designations in Section 107 of the CAA do not provide for the EPA to consider economic effects. See RTC, pages 52-53. As we stated in our RTC document, we intend for the implementation rulemaking for the 2008 ozone NAAQS to address the minimum planning and emissions control obligations for areas designated nonattainment. As the EPA considers the required elements of implementation for the 2008 ozone NAAQS, it is our goal to propose approaches that provide flexibility and opportunity for efficiency to the extent such approaches are consistent with the CAA and will not jeopardize expeditious attainment of the public health and welfare goals of the CAA. To the extent the CAA does not mandate specific control measures, states may consider economic concerns in development of their state implementation plans to address air quality. (See RTC pages 14-15, 52-53, and 61). Finally, we note that DFW counties designated nonattainment, such as Dallas, Denton, Collin, Parker, Tarrant, etc., have continued to grow despite their nonattainment designations (see TSD page 10, Table 6).

⁶ Regarding the data used to inform our decision and the justification for the decision, we refer the petitioner to our TSD (for air quality, emissions, and meteorological data) and RTC in the docket for this rulemaking, which provide our reasoning for the inclusion of Wise County. Our decisions concerning nonattainment designations for the DFW area are based on technical facts pertaining to these specific counties, information supplied by the TCEQ, and the EPA’s independent evaluation as explained in the TSD. [RTC page 52, see, TSD pages 1-31]

