

US EPA ARCHIVE DOCUMENT



THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

DEC 14 2012

The Honorable Bill McElhaney
County Judge
Wise County
P.O. Box 393
Decatur, Texas 76234

Dear Judge McElhaney:

I am pleased to respond to your June 15, 2012, letter in which you filed a petition for reconsideration on behalf of Wise County, Texas, 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 presented 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 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 other interests in the Dallas-Fort Worth area to ensure achievement of the 2008 ozone standards in the Dallas-Fort Worth area.

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", with a long horizontal line extending to the right.

Lisa P. Jackson

Enclosure

Enclosure

EPA Response to Petition for Reconsideration from Wise County, Office of the County Judge

By letter dated June 15, 2012, the Office of the County Judge of Wise County, Texas petitioned the EPA to reconsider the final area designation for Wise County in the 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 below general headings.

I. Emissions and Emissions-Related Data

Issue: Petitioner asserts that Wise County and the Texas Commission on Environmental Quality (TCEQ) presented the EPA with additional information (before and after the public comment period) demonstrating that the EPA's assessment of its multi-factor analysis, including emissions and emissions-related data was in error. Further, Petitioner claims that the EPA's analysis did not include certain scientific and monitored TCEQ report revisions related to the oil and gas sector pneumatic emissions for the periodic emissions inventory. Furthermore, the source apportionment modeling (SAM) submitted by TCEQ and relied upon by the EPA did not use the updated oil and gas sector pneumatic emissions and therefore most likely overestimated these emissions in the modeling.

Response: Petitioner raised the consideration of such additional emissions related data in two comment letters submitted during the public comment period; thus these issues are not an appropriate basis for reconsideration. We addressed these comments in our record, as detailed below. In October 2011 TCEQ submitted a revised 2008 emissions inventory for oil and gas sector pneumatic VOC emissions, and we did consider the revised VOC emissions data as part of our final designation decision (*see* Technical Support Document, herein referred to as the TSD, pages 6-7). *See* also page 55 of the Response to Comment (RTC) document on the State and Tribal Designation Recommendations for the 2008 Ozone National Ambient Air Quality Standards (NAAQS) in the docket for this action where we explain that we "reviewed the updated emissions data reported by the TCEQ...." In the RTC, we further state that "even with the reduced 2009 VOC emissions data, the emissions from Wise County still contribute to measured violations of the 2008 ozone National Ambient Air Quality Standards (NAAQS) at monitors in neighboring counties." [RTC page 56]. The TCEQ submitted additional SAM modeling data on February 29, 2012 to the EPA that did not include the October 2011 revised oil and gas sector pneumatic VOC emissions data. However, we did review the October 2011 revised data, before making our final designation decision, and concluded that it did not have a significant effect on Wise County's contribution.

In support of those conclusions, it is indicated in the record that DFW is a nitrogen oxide (NO_x)-limited area and VOC reductions have not shown as much benefit as corresponding NO_x reductions in past modeling conducted by TCEQ. Furthermore, we recognized that the VOCs that are potentially overestimated 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. Accordingly, we did consider the potential impact of the new reported VOC emission levels on our

interpretation of the SAM results for Wise, Hood, and Matagorda Counties and concluded that the impacts 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: Petitioner raised the issue of the use of population and VMT data as indicators for determining "contribution" during the public comment period, thus it is not an appropriate basis for reconsideration. We addressed those comments in the record, as detailed below. While we acknowledged that Wise'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 other factors, such as the total emissions from the area, meteorology, and proximity to violating monitors supported our determination that Wise County contributes to violations of the NAAQS in the DFW area. As stated in our TSD, the 2008 Emissions Inventory for Wise County shows that Wise County's nitrogen oxide emissions of 11,911 tons per year (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, table 3.³ 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. 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.

II. Meteorological Analysis

Issue: Petitioner claims that Wise County is unlikely to contribute to high ozone days in the DFW area because the conditions conducive to ozone formation in the DFW area occur on days that are sunny, warm, and where winds are predominantly from the east or southeast or winds speeds are slow. Furthermore, "the DFW area produces enough emissions" to result in violations on high ozone days without considering contributions from Wise County.

¹ Final TSD, pages 6-8; Houston Final TSD, pages 5-7; RTC pages 52-56, including "...the VOC emissions resulting from oil & gas production activities are relatively nonreactive in the photochemical generation of ground-level ozone and that additionally the DFW area is NOx-limited such that VOC emissions in general do not contribute as much as NOx emissions to the generation of ground-level ozone." And "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." The Governor'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 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).

Response: Petitioner raised the use of meteorological data during the public comment period and thus it is not an appropriate basis for reconsideration. We addressed this comment in the record, as detailed below. While we agree that Wise County is downwind of the violating monitors on some high ozone days in the DFW area, our analysis shows that it is upwind on other high ozone days. Therefore we believe that Wise County does contribute to violations of the ozone standard at nearby monitors.

As our record states, “EPA evaluated available meteorological data to help determine how meteorological conditions, such as weather, transport patterns and stagnation conditions, would affect the fate and transport of precursor emissions contributing to ozone formation.” 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 ozone 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 the transport of emissions from Wise County to the sites of the monitored exceedances. We also note that a review of the individual trajectory files, available in the docket, shows that several of the days during which trajectories passed through Wise County were also days that made up the first to fourth 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; these individual trajectory files were included in the supporting materials for the EPA’s preliminary and final designations. The Source Apportionment Modeling (Final TSD pages 15-20) also indicates that for a limited number of days during the period of the modeling analysis there were several occasions in which emissions from Wise County were transported to the nearby Eagle Mountain Lake and Keller monitoring sites (and other DFW area monitors) and contributed to the ozone exceedance levels. We note that the modeling analysis incorporates all NO_x and VOC emissions from Wise County.

While it is unclear precisely what portion of the Combined Statistical Area (CSA) the Petitioner is referring to when it suggests that “DFW area” produces enough emissions to result in a violation of the standard on high ozone days, we assume the Petitioner is referring to the portion of the DFW CSA designated nonattainment for the 1997 ozone NAAQS. While this may be true, it is not the sole factor we must evaluate as it does not address whether emissions from another county (such as Wise County) may also contribute to that violation. *See Catawba County v. EPA*, 571 F.3d 20 (D.C. Cir. 2009).

III. Opportunity to Comment

Issue: Petitioner claims that Wise County was not provided a sufficient review of the information that Wise County and TCEQ submitted. Further, the EPA did not offer a lawful opportunity for Wise County and others to be involved in the decision-making process or air quality analysis. Finally, the EPA has not directly shared its data and justification for designating Wise County as nonattainment, and there was no rebuttal process.

Response: This issue relates to an opportunity to comment on information submitted to 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”).⁴

⁴ 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

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 previous nonattainment designations (*see* TSD page 10, Table 6).

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]