

January 29, 2008

Clean Air Act Reclassification of Houston/Galveston/Brazoria Ozone Nonattainment
Area; Proposed Rule
Docket ID No. EPA-R06-OAR-2007-0554

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Re: Clean Air Act Reclassification of Houston/Galveston/Brazoria (HGB) Ozone
Nonattainment Area: Texas; Proposed Rule
COMMENTS

Via e-mail: donaldson.guy@epa.gov
Via Fax: 214-665-7263
Via U.S. Mail: addresses noted above

Dear Mayor Greene:

The above listed proposal was published in the Federal Register on December 31, 2007 (72 Fed. Reg. 74,252). The deadline for filing comments is January 30, 2008. The subject of the proposal is the two-step reclassification of the HGB Ozone Nonattainment Area requested by the Governor of Texas and the timing of the submission of the State Implementation Plan ("SIP") by Texas. The SIP will be submitted to USEPA to show how the HGB Ozone Nonattainment area will achieve the National Ambient Air Quality Standard ("NAAQS") for Ozone. Our comments on the rulemaking follow below.

TWO-STEP RECLASSIFICATION

Harris County ("the County") and the City of Houston ("the City") sent a letter to the Governor on April 3, 2007, which recognized that HGB could not reach the 8-hour attainment standard by the 2010 deadline. That letter is attached for your information. However, to ensure that the NAAQS was achieved "as expeditiously as practicable," the City and the County requested that the Governor request reclassification to "serious"; that is, that the classification of the area be changed by one category, not two. Reclassification to "serious" would have required the HGB Region to attain the 8-hour standard by 2013.

Whether EPA determines that a single or double bump up in classification for the HGB Region is appropriate, our concern remains the timely attainment of the NAAQS. The control measures included in the SIP must ensure that the NAAQS is attained as expeditiously as practicable as required by the Clean Air Act.

SIP DEADLINE

In addition to proposing to grant a reclassification to "severe," the proposal requested comments on the timing of filing the State Implementation Plan ("SIP"). In the December 31 *Federal Register*, EPA provided a range of dates from December 2008 to April 2010. The December 2008 date is based on the 18-month period allowed for SIP submissions pursuant to a SIP call under the Clean Air Act. The April 2010 date is based on a time line submitted by the Texas Commission on Environmental Quality ("TCEQ"), on August 21, 2007. TCEQ has made the argument that this almost 3-year period from the requested reclassification is necessary for TCEQ to evaluate relatively recent modeling and monitoring data so that the TCEQ can develop the most effective SIP.

In our letter to the Governor, the City and Harris County recommended that a mid-course review SIP could be submitted in 2008 or 2009 if a designation of "serious" was requested. While the City and County are concerned that the SIP submittal date of 2010 could delay achieving attainment, the TCEQ believes that this extended period will allow

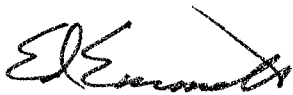
TCEQ to develop the most effective SIP possible. This up front investment of time should result in a SIP that will not have to be significantly changed or corrected to include revised data. Developing a quality SIP should avoid delays in implementation.

CONTROL MEASURES

Finally, and most importantly, the SIP should be comprehensive and include substantive control measures similar to those outlined in the City and Harris County's April 3, 2007 letter to the TCEQ dated February 12, 2007.¹ Although the region might have as long as 2019 to achieve attainment of the ozone NAAQS, the SIP, in accordance with the Clean Air Act and as noted in the December 31, 2007 Federal Register Notice, should provide that these measures must be implemented as soon as possible so that HGB meets the NAAQS 8-hour standard as "expeditiously as practicable." If the proposed control measures are implemented as soon as possible, HGB would likely reach attainment far sooner than the 2019 deadline.

Thank you for your consideration of the City of Houston and Harris County's comments.

Sincerely,



Ed Emmett, County Judge
Harris County



Bill White, Mayor
City of Houston

Attachment

¹ See attachment to letter from City of Houston to Gov. Rick Perry, dated April 3, 2007.



Ed Emmett
COUNTY JUDGE



April 3, 2007

The Honorable Rick Perry, Governor
State of Texas
P.O. Box. 12428
Austin, Texas 78711

Dear Governor Perry:

Harris County and the City of Houston hereby respectively request that you submit a proposal to the Environmental Protection Agency (EPA) for the Houston-Galveston-Brazoria (HGB) region to be reclassified from a "moderate" to a "serious" nonattainment area. This reclassification, if approved by the EPA, would extend the HGB region's attainment date from 2010 to 2013. The bases of our request are outlined below.

Background

Harris County, the City of Houston, and various other stakeholders in the region worked closely with the Texas Commission on Environmental Quality (TCEQ) from 2002 – 2004 to develop an attainment State Implementation Plan (SIP) for the HGB region regarding the one-hour ozone standard. We succeeded in achieving this goal after twenty-five years of effort in 2006 when the EPA approved the SIP as it had been submitted by the TCEQ.

The TCEQ and the HGB region then had to immediately turn their attention to the development of an attainment SIP for the more stringent, eight-hour ozone standard that the EPA had finalized in 2005. Air quality modeling completed by the TCEQ demonstrated the significant challenges the HGB region would face in order to attain this standard when it concluded that the far-reaching and substantial reductions in Nitrogen Oxides (NOx) and Volatile Organic Compounds (VOCs) included in the one-hour SIP would have to be reduced by another 50% or more in order to attain the eight-hour standard, which was scheduled to occur just two years after the 2007 attainment for the one-hour standard.

Consistent with the EPA's timelines, the TCEQ has proposed a revised SIP regarding the eight-hour ozone standard for submittal to the EPA on June 15, 2007. The City of Houston and Harris County have three key concerns about the SIP the TCEQ has proposed, which are:

1. It contains only a small proportion of the NOx and VOC reductions that are necessary to attain the eight-hour ozone standard;
2. On its face, the proposed SIP does not appear to meet the EPA's criteria for administrative completeness and approvability; and
3. An administratively incomplete and/or unapproveable SIP by the EPA would prompt needless litigation and the imposition of sanctions that would result in the loss of highway funds in the region and strict limits on economic growth.

Harris County, the City of Houston and others have submitted a comprehensive set of recommendations to the TCEQ to amend the SIP that it has proposed to assure as much progress as is possible in reducing ozone levels in the region by 2010. A copy of the City and County's request to the TCEQ is attached for your review and information.

The Reclassification Imperative

There is broad-based agreement that it is not feasible for the HGB region to attain the eight-hour ozone standard in 2010. Federal preemption is the fundamental reason, particularly with regard to emissions from diesel fueled vehicles and equipment. These emission sources, which account for almost 60% of the region's remaining NOx levels, may only be regulated by the EPA. The engine standards that the EPA has finalized, which will be fully implemented in 2010, are effectively reducing NOx emissions from diesel vehicles but not at the rate needed to attain the eight-hour ozone standard by 2010.

Harris County and the City of Houston's specific request regarding reclassification are as follows:

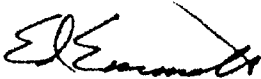
- Submittal of a request to the EPA to reclassify the HGB region from a "moderate" to a "serious" nonattainment area as part of the June 2007 SIP submittal;
- Provisions for submittal of a mid-course review SIP in 2008 or 2009 demonstrating attainment; and
- Prompt development and implementation of an air quality research agenda by the TCEQ and the Texas Environmental Research Consortium to analyze the large quantities of data collected during the 2006 Air Quality Study II to support development and finalization of the mid-course review SIP in 2008 or 2009.

Some have argued that a double bump-up to "severe nonattainment" status with an attainment date of 2018 is appropriate. We believe this action is imprudent at this time for several reasons. First, an eleven-year delay in attaining the eight-hour ozone standard is unacceptable to our citizens at this time, and until there is a clear demonstration that even with our best efforts such a delay is necessary. Additionally, preliminary data collected during the Texas Air Quality Study 2006 suggest that reductions in formaldehyde, a pollutant that has not been targeted for reductions to date, could reduce the region's ozone by a significant amount. These potential ozone reductions, coupled by those that may be achieved through the EPA engine standards, the Texas Emission Reduction Plan and the various additional control measures that Harris County and the City of Houston have proposed to the TCEQ may enable the HGB region to attain the eight-hour ozone standard by 2013. Finally, reclassification of the HGB region to a "severe

nonattainment" area could be requested at a later date, perhaps in 2011 or 2012, if the region really is unable to attain the ozone standard by 2013.

Governor, there is broad-based and bipartisan support for our request to reclassify the HGB region from a "moderate" to a "serious" nonattainment area at the earliest opportunity. Accordingly, we respectfully request your favorable consideration of this request.

Sincerely,

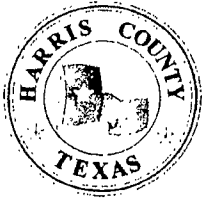


Ed Emmett, County Judge
Harris County



Bill White, Mayor
City of Houston

Attachment



February 12, 2007

The Honorable Kathleen White, Chairman
The Honorable Larry Soward, Commissioner
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, Texas 78711

Dear Chairman White and Commissioner Soward:

The Texas Commission on Environmental Quality (TCEQ) completed an exemplary effort in 2004 when it developed and submitted an attainment State Implementation Plan (SIP) for the Houston-Galveston-Brazoria (HGB) region to the Environmental Protection Agency (EPA) for the one-hour ozone standard. That SIP contained cost-effective and scientifically valid emission reduction strategies that positioned the Houston-Galveston region as a national leader in ozone reductions. The EPA, of course, followed up and approved this far-reaching SIP.

Harris County and the City of Houston had been optimistic that the TCEQ would develop an equally effective SIP for the region for the 8-hour ozone standard. In light of the public health and economic issues at stake, Harris County and the City of Houston are concerned that the proposed SIP falls short of what is really needed to meet federal requirements.

Harris County and the City of Houston's concerns over the proposed SIP include:

- It contains less than 2 % of the NOx reductions the TCEQ's staff has indicated are necessary to attain the standard;
- Because of the very small and insignificant emission reductions it contains, the proposed SIP does not ensure the steady, continuous improvements in the region's air quality that are sorely needed; and
- On its face, the proposed SIP does not meet the EPA's criteria for administrative completeness and approvability.

The proposed SIP's failure to meet EPA completeness and approvability criteria sets the Houston-Galveston region up for an economic catastrophe. As proposed, it would prompt needless and costly litigation. It also would assure the loss of billions of dollars in transportation funds and impede the significant efforts under way to address key regional transportation challenges. In addition, it would lead to strict restrictions on economic growth and job creation, with serious consequences for the more than 5 million Texans living in this region.

As the County Judge of Harris County and the Mayor of Houston, we urge you to amend the proposed SIP so that it will meet two critically important criteria (1) demonstrate continued, steady progress in reducing the region's ozone levels and (2) realistically address the region's ability to attain the 8-hour ozone standard in 2009.

To help in this effort, we have developed a comprehensive set of potential control strategies that we believe would be broadly supported by citizens and stakeholders in the region. These potential control measures are outlined and discussed in Exhibit A, which is attached. The strategies we suggest are prudent, cost-effective and technologically achievable. They meet the following key principles:

- They are fair. They call upon all counties and economic sectors to do their part to reduce the region's ozone levels;
- They level the playing field by eliminating various exemptions in current regulations;
- They emphasize technology-based solutions while minimizing lifestyle changes; and
- They continue progress in reducing ozone levels.

Potential Control Strategies for Inclusion in Amended SIP

We urge the TCEQ to amend the proposed SIP to include the various control measures that are delineated in Exhibit A. Harris County and the City of Houston are specifically urging the TCEQ to take the following actions to enhance the HGB proposed SIP:

- Amend the SIP to include the control measures that are presented in Exhibit A, Part I, including the timely development and adoption of the necessary regulations for inclusion in the proposed SIP;
- Publication and solicitation of comments on the potential control measures outlined in Exhibit A, Part II, which require legislative authorization so they may be timely added to the proposed SIP; and
- Technical support to the region to assure inclusion in the SIP of the local control measures that are outlined in Exhibit A, Part III.

The control strategies that are included in Attachment A encompass point, mobile and area sources, including the operations of local governmental entities. They call for NOx and VOC reductions. Part I of Exhibit A contains the potential control measures that we believe the TCEQ already has authority to develop and adopt regulations for implementation. Part II of Exhibit A includes the measures that require legislative approval for full implementation. And, Part III of the attachment includes several potential control measures that require concerted action from local governments in the region.

Harris County and the City of Houston, in conjunction with the Houston-Galveston Area Council (H-GAC), are committed to pursuing various local measures to support ozone attainment efforts. Our commitments in this area are evident in the already proposed SIP as the voluntary measures proposed by the H-GAC accounts for most of the NOx and VOC reductions that are included in the TCEQ's current proposal. We will seek to identify additional NOx and VOC reductions

measures that could be included in the SIP over the next 90 days. The potential control measures that we will target for inclusion are:

- **Transportation Control Measures (TCMs):** Include more TCMs in the SIP, including portions of the METRO Solutions transit plan and use of congestion pricing on toll roads.
- **Truck Lane Restrictions:** Support adoption of a program that limits heavy-duty vehicles to certain highway lanes.
- **Construction Contractor Incentives:** There are several entities in the Houston-Galveston region that account for the bulk of the offroad NOx emissions in the region. They are TxDOT, the City of Houston, the Port of Houston and various other ports, Harris County, the Toll Road Authority, Houston METRO and the petrochemical industry. TxDOT and the City of Houston have already established voluntary construction contractor incentives to reduce NOx in the offroad sector. Harris County, the City of Houston and the H-GAC will seek to strengthen this voluntary initiative and extend its to the various entities outlined above as its first priority. Our second priority will be to extend the effort to various to other cities, counties and school districts in the region.
- Idling restrictions also will be explored on a priority basis.

Facing the Bump-Up Challenge

The EPA's existing regulations allow nonattainment areas to be reclassified if additional time is legitimately needed to attain an established standard. This potential action is commonly referred to as "bump up."

While Harris County and the City of Houston strongly support a sustained, genuine effort to maximize ozone reductions by 2009 in accordance with the principles outlined above, we recognize that a bump-up in classification may be warranted due to the substantial impacts of federal preemption. Unfortunately, reductions achieved through federal controls are out of sync with ozone classification dates. Pre-empted sources of emissions, particularly diesel fueled vehicles and equipment, have not been regulated as efficiently and effectively as point sources and the various other areas that the TCEQ may regulate. This result is evident from the fact that approximately 60% of the HGB region's residual NOx emissions are coming from diesel fueled vehicles and equipment which only the federal government may regulate. The engine standards that the EPA has finalized for diesel vehicles and equipment in 2010 will result in significant NOx and ozone reductions over the next 10 to 15 years. Emission reductions from these standards by 2009 will fall short of what is needed, however, to attain the 8-hour ozone standard.

Air quality modeling by the TCEQ staff that is included in the proposed SIP indicates that the EPA's engine standards may generate NOx reductions of approximately 100 tons per day by 2018 and thereby significantly reduce the region's ozone levels. The proposed SIP suggests that 2018 may, therefore, be an appropriate attainment date for the region.

However, preliminary analysis by our staffs indicates that we may be able to attain the standard before 2018. We are convinced that extended delay beyond what is absolutely necessary is inappropriate and unwarranted. A study recently completed by the Texas Environmental

Research Consortium, indicates, for example, that NOx reductions of 45 - 50 tons per day may be conservatively achieved from 2008 to 2012 through the Texas Emission Reduction Plan if it is extended to 2013 by the Texas Legislature. These potential reductions, coupled by the NOx reductions that will accrue from the EPA's engine standards by 2012 would approximate the NOx reduction impacts of the EPA engine standards by 2018. Hence, Harris County and the City of Houston believe that a SIP which includes the various recommended control measures outlined above the combined impacts of the TERP and the EPA engine standards by 2012, and various additional measures which may be evident as data for the Texas Air Quality Study II are analyzed, will enable the Houston-Galveston region to attain the 8-hour ozone standard before 2018. Accordingly, Harris County and the City of Houston urge the TCEQ to adopt a SIP that also includes the following:

- Control measures outlined in Exhibit A to ensure continued, steady ozone reductions as soon as possible; Provision for a mid-course review SIP as soon as is practicable to appropriately revise the SIP on the basis of the scientific breakthroughs which may result as data collected during the 2006 field study are analyzed and considered; and
- Reclassification of the region to a serious nonattainment area with an attainment date which is supported by photochemical modeling. We will be submitting a request to Governor Perry asking that he submit a proposal to the EPA to reclassify the HGB region's nonattainment status as part of the SIP in June 2007.

Modeling and Air Quality Research

There are three key preliminary findings from the recently completed Texas Air Quality Study II. They are:

- Formaldehyde may be a significant contributor to the region's ozone level;
- Ozone caused by HRVOCs from the Ship Channel industries is a key contributor to the high ozone readings at the Bayland Park monitor; and
- HRVOCs are still understated in the emission inventory.

Harris County and the City of Houston urge the TCEQ, in conjunction with TERC, to promptly initiate the needed air quality research and modeling improvements to address the key findings from the recent field study. These critically important issues must be resolved in order to develop an attainment SIP for the region.

Additionally, the TCEQ should commission an independent assessment to determine the cost-effectiveness of point sources achieving 90% NOx reductions, with a particular focus on developments in new technologies such as ultra-low NOx burners.

Conclusion

The recommendations outlined above to develop an attainment SIP for the HGB region as soon as possible are prudent, fair, cost-effective and technologically feasible. They would ensure continued progress in ozone reductions over the next five to six years. Also, they provide the five million Texans who live in the HGB region with the clean air they deserve as quickly as possible without creating the economic catastrophe we believe would occur if the proposed SIP were adopted.

We respectfully request your favorable consideration of these prudent recommendations.

Sincerely,



Robert Eckels, County Judge
Harris County



Bill White, Mayor
City of Houston

Attachment

cc: The Honorable Glenn Shankle, Executive Director

Exhibit A: Potential Additional State and Local Control Measures for Consideration

I. TCEQ Actionable Control Measures

Control Measure	Description	Estimated Reduction	Action Needed
Point source controls	This may include: <ul style="list-style-type: none"> Expand HRVOC controls beyond Harris County. Add to the list of chemicals subject to the HRVOC rules to include the following: acetaldehyde, 1,3-butadiene, all butenes, ethylene, all ethyltoluenes, formaldehyde, isoprene, all pentanes, propylene, toluene, all trimethylbenzenes, and all xylenes. 	Not determined at this time	TCEQ administrative action required.
NOx controls on exempt sources	Place 80% NOx controls on sources currently exempted	12 tons/day NOx reduction	TCEQ administrative action required.
Energy efficiency/CHP	A variety of measures can be implemented in this region that will increase energy efficiency and result in a reduction of locally produced NOx.	5.1 tons/day NOx reduction	TCEQ administrative action required.
Reduce household VOC sources	Adopt and/or implement various rules adopted by other states to reduce VOC's from solvents, paints and various household and cosmetic products.	Not determined at this time	TCEQ administrative action required.
Expedite highway diesel phase-in	Expedite the phase-in period of the 2007 engines in the Houston-Galveston-Brazoria region to 100% of engine sales in 2007, ahead of the 2010 time frame.	7 tons/day NOx reduction	TCEQ Administrative and Local action required
Voluntary engine reflash	While already credited in the model, this will result in real-world reductions in NOx concentrations	Not determined at this time	TCEQ Administrative and Local action required
Control heavy-duty vehicle idling	This could include any combination of these three items: <ul style="list-style-type: none"> Enabling existing state no-idling rules by municipalities through Memorandums of Agreement with the TCEQ. Mandating or providing incentives for truck stop electrification. 	1 ton/day NOx reduction	TCEQ administrative action and/or local government efforts required for development of MOAs.

II. Control Measures Requiring Legislative Action

Control Measure	Description	Estimated Reduction	Action Needed
Texas Emission Reduction Program (TERP) Extension & Appropriation	Extend TERP through at least 2013 and enhance it through full appropriation of TERP revenues.	Estimated 15 tons/day NOx reduction by 2009 and 45 – 50 tons/day by 2012	State legislative action required
Adopt California Low Emission Vehicle (LEV II) Standard	Adopt California light-duty vehicle standards, which are more stringent than the current federal standards.	Up to 2.5 tons/day NOx and 5.8 tons/day VOC over 10 years.	State legislative action required
Clean School Bus funding	Allocate necessary funding to support and expand the program, which retrofits or replaces aging school buses.	Not determined at this time	State legislative action required.
Create Texas Diesel Testing Center to expedite development and verification of new technologies.	Amend the New Technology Research and Development program (NTRD) funding to include creation of a Diesel Testing Center, and authorizing funds to go towards this project.	Not determined at this time	State legislative action required.
Provide additional incentives or mandates for government clean fleet programs	Encouraging/mandating rapid turnover to newer, cleaner technologies among government fleets via greater incentives and/or the adoption of California rules.	Estimated 1.5 tons/day NOx for clean fleet mandate.	State legislative action required.
Improvements to Low-Income Repair & Assistance Program (LIRAP) Fund	Fully appropriate LIRAP revenues to assist with suggested program enhancements	Not determined at this time	State legislative action required.
Control heavy-duty vehicle idling	Adoption of California idling control measures which require all 2008 or later model year heavy-duty diesel trucks to be equipped with automatic idling shut-off devices.	Credits of all Idling measures rolled into earlier description	State legislative action required.

Control Measure	Description	Estimated Reduction	Action Needed
<p>Improvements to Low-Income Repair & Assistance Program (LIRAP) Fund and Vehicle Inspection & Maintenance (I/M) Program</p>	<p>It is possible to increase the emission reductions achieved by the LIRAP and I/M programs through several updates to the present system:</p> <ul style="list-style-type: none"> • Increase vehicle replacement incentives (currently at \$1000). H-GAC believes that this has the potential to significantly increase program participation. (Requires legislation) • Increase stringency of I/M program by requiring vehicles to meet a higher emission standard than that which is currently required. • Increase stringency of I/M program by decreasing the number of waivers given to non-compliant vehicles and increasing LIRAP funding. • Adopt rules to mandate the use of evaporative tank testers for the regional I/M program; will be in use in California beginning in 2007. • Allocate LIRAP and/or TERP funds to create a revolving loan program to support investments in anti-idling technologies (such as auxiliary power units and truck stop electrification) and/or SmartWay Upgrade Kits (control device/equipment). 	<p>Not determined at this time</p> <p>0.8 tons/day NOx reductions by 2009 and 0.3 tons/day NOx reductions by 2012.</p> <p>0.2 tons/day NOx for a 1% waiver rate and 0.3 tons/day NOx for a 0% waiver rate</p> <p>Calif. estimates VOC reduction of 14 tons/day by 2010; vendor projects 2.13 tons/day reductions for the HGB region</p> <p>0.4 tons/day NOx reduction</p>	<p>State legislative action required.</p> <p>State legislative action required.</p> <p>State legislative action required.</p> <p>State legislative action required.</p> <p>State legislative action may be required.</p>

III. Control Measures Requiring Local/Regional Action

Control Measure	Description	Estimated Reduction	Action Needed
Truck lane restrictions	Support adoption of a truck lane restriction program that would limit heavy-duty trucks to certain highway lanes	0.1 tons/day NOx reduction	Local and state government administrative action required.
Transportation Control Measures (TCMs)	Including TCMs in the SIP in the event that the region's attainment date is extended; TCMs may include portions of the METRO Solutions transit plan and use of congestion pricing on toll roads.	Not determined at this time	Local government administrative action required.
Provide additional incentives or mandates for government clean contracting programs	Adopting TxDOT "clean contracting" principles, which provide incentives for contractors to use cleaner diesel equipment.	Up to 1 ton/day NOx reduction for clean contracting. Depends on incentive	Local government administrative action required.