

Bryan W. Shaw, Ph.D., P.E., *Chairman*
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Zak Covar, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 25, 2014

Mary Henigin, Acting Director
Office of Air Quality Planning and Standards
Environmental Protection Agency
Mail Code: 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

Attn: Docket ID No. EPA-HQ-OAR-2012-0918

Re: EPA Responses to State and Tribal 2012 Primary Annual Fine Particle Designation Recommendations

Dear Ms. Henigin:

The Texas Commission on Environmental Quality (TCEQ) appreciates the opportunity to respond to the United States Environmental Protection Agency's (EPA) announcement of a public comment period for the proposed responses to state and tribal 2012 primary annual fine particle (PM_{2.5}) designation recommendations. As noted in the November 26, 2013 correspondence from Texas Governor Rick Perry to EPA Region 6 Administrator Ron Curry (enclosed), 11 Texas counties should be designated attainment for the 2012 primary annual PM_{2.5} National Ambient Air Quality Standard (NAAQS), based on actual regulatory monitoring data. The rest of the counties in Texas should be designated unclassifiable/attainment. The Texas counties with PM_{2.5} regulatory monitors that have 2012 and 2013 design values demonstrating attainment are Bexar, Bowie, Dallas, Ellis, El Paso, Harris, Harrison, Hidalgo, Nueces, Tarrant, and Travis.

If there are any questions concerning the TCEQ's comments, please contact Mr. Steve Hagle, P.E., Deputy Director, Office of Air, at 512-239-1295 or steve.hagle@tceq.texas.gov. We look forward to working with EPA throughout this process.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard A. Hyde".

Richard A. Hyde, P.E.
Executive Director

Enclosure

**COMMENTS BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
REGARDING THE EPA RESPONSES TO STATE AND TRIBAL 2012 PRIMARY
ANNUAL FINE PARTICLE DESIGNATION RECOMMENDATIONS**

EPA DOCKET ID NO. EPA-HQ-OAR-2012-0918

I. Summary of Proposed Action

On August 29, 2014, the United States Environmental Protection Agency (EPA) published in the *Federal Register* (79 FR 51517) proposed responses to certain state and tribal designation recommendations for the 2012 primary annual fine particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS).

In this notice, the EPA identifies areas where available monitoring data from 2011 through 2013 indicate violations of the 2012 primary annual PM_{2.5} NAAQS. As none of these areas are in Texas, the notice does not directly respond to the Texas designation recommendation sent by Governor Perry to the EPA on April 20, 2012. Instead, the EPA notified Texas, via an August 19, 2014 letter to Governor Perry, that the agency “intends to modify the State of Texas recommendation of attainment for some areas of the state and unclassifiable/attainment for the remainder of the state and designate all areas of the state as unclassifiable/attainment.”

II. Comments

A. Designation Recommendations for the Primary Annual PM_{2.5} NAAQS

The Texas Commission on Environmental Quality (TCEQ) does not support the proposed designation of all areas in Texas as unclassifiable/attainment for the primary annual PM_{2.5} NAAQS.

The Federal Clean Air Act (FCAA) §107 (d)(1)(A)(ii) and (iii) defines an attainment area as “any area...that meets the national primary or secondary ambient air quality standard for the pollutant” and an unclassifiable area as “any area that cannot be classified on the basis of the available information as meeting or not meeting the national primary or secondary ambient air quality standard for the pollutant.” As a practical matter, monitoring data provides a real-world determination of ambient air quality and should be the first measure relied on to determine an area’s classification status when such data is available. The EPA has historically treated monitoring data in this way, and it is arbitrary of the EPA to refuse to designate as attainment an area with actual monitoring data showing compliance with the standard.

Texas has submitted actual monitoring data showing attainment for 11 Texas counties (Bexar, Bowie, Dallas, Ellis, El Paso, Harris, Harrison, Hidalgo, Nueces, Tarrant, and Travis). The design values were calculated with certified 2010 through 2012 data, excluding data from the Clinton Drive monitor in Harris County that were influenced by exceptional events. The TCEQ submitted exceptional events demonstrations for the Houston Clinton Drive monitor to the EPA for 2010 in July 2013 and for 2011 and 2012 in October 2013. Based on these data, these 11 counties should be designated as attainment for the primary annual PM_{2.5} standard with all other areas of the state designated as unclassifiable/attainment. The table below displays the design values for 2011 through 2013, all of which fall below the NAAQS without any consideration of exceptional events.

Table 1: Design Values by County for Primary Annual PM_{2.5}

| County | 2011-2013 Design Value (µg/m ³) |
|----------|---|
| Bexar | 8.9 |
| Bowie | 10.6 |
| Dallas | 10.8 |
| Ellis | 9.7 |
| El Paso | 11.6 |
| Harris | 11.8 |
| Harrison | 10.5 |
| Hidalgo | 10.3 |
| Nueces | 10.2 |
| Tarrant | 10.6 |
| Travis | 9.6 |

Source: The EPA Air Quality System database (<http://www.epa.gov/ttn/airs/airsaqs>)

Although there are no areas in Texas currently designated nonattainment for PM_{2.5}, the TCEQ is concerned with the implications that may arise in the future for nonattainment areas seeking redesignation to attainment, regardless of pollutant. If the EPA continues to designate areas as “unclassifiable/attainment” despite a demonstration that they meet the standard through monitoring data, then a nonattainment area may have difficulties when it attempts to be redesignated as attainment. If an area cannot be redesignated as attainment, there are real-world consequences for the state and the industries located in those areas within that state, including nonattainment permitting requirements that can be costly and stifle growth.

The EPA has failed to explain adequately the methods by which it has identified its recommended designations.

In the *Federal Register* notice published on August 29, 2014 (79 FR 51517), the EPA fails to provide a rational basis for its method or criteria for determining attainment areas and unclassifiable/attainment areas. In the EPA’s April 16, 2013 memorandum regarding initial area designations,¹ the agency noted that it had used the designation category of “unclassifiable/attainment” for areas that “are monitoring attainment and for areas that do not have monitors but for which the EPA has reason to believe are likely attainment and are not contributing to nearby violations.” It indicated that states could continue to submit recommendations identifying areas as “attainment” but that the use of the “unclassifiable/attainment” category for designations of the 2012 primary annual PM_{2.5} NAAQS was expected to continue. Unlike the designations of “attainment,” “nonattainment,” and “unclassifiable,” specified by the FCAA, the EPA is using an undefined category without clear definition, criteria, or statutory basis. Furthermore, the EPA has offered no rational explanation

¹ Memorandum from Gina McCarthy, Assistant Administrator, April 16, 2013, *Initial Area Designations for the 2012 Revised Primary Annual Fine Particle National Ambient Air Quality Standard*. EPA Office of Air and Radiation. <http://www.epa.gov/pmdesignations/2012standards/docs/april2013guidance.pdf>

for refusing to designate as “attainment” those areas with monitor data demonstrating that an area is actually meeting the relevant standard.

It is the EPA’s responsibility to set the requirements for, and approve of, the monitoring network and states should be able to rely on the data from these networks for attainment determinations. Additionally, for the PM_{2.5} NAAQS, EPA specifies in 40 CFR §§50.13 and 50.18 that the NAAQS is met when monitor values meet criteria specified in the noted Appendices to 40 CFR Part 50.

It is the EPA’s responsibility to set the requirements for, and approve of, the monitoring network and states should be able to rely on the data from these networks for attainment determinations. The TCEQ operates an extensive network of monitors supporting the PM_{2.5} network established to meet regulatory requirements of the NAAQS. All PM_{2.5} monitors are sited according to 40 CFR Part 58, Appendix D and E. The majority of network PM_{2.5} monitors are sited at a neighborhood scale. Title 40 CFR part 58, Appendix D 4.7.1(c) states the most effective characterization of particulate matter from both mobile and stationary sources is the neighborhood scale for PM_{2.5}. Federal monitoring requirements are exceeded or met for all areas in Texas. The TCEQ submits an Annual Monitoring Network Plan (AMNP) for the EPA review and approval, detailing the current network and any proposed changes. The EPA’s annual approval of the AMNP signifies that the plan is sufficient to meet attainment/nonattainment classification monitoring requirements. The EPA has offered no comments or criticisms of the Texas AMNP with respect to PM_{2.5} requirements.

EPA also specifies the criteria for determining when the primary and secondary PM_{2.5} NAAQS are met. The criteria are specified in 40 CFR §§50.13 and 50.18. Unless these criteria are not met, areas with monitor values that meet the specified criteria should be designated attainment.



National Comments

Executive Review Summary

TCEQ Proposed Comments On:

Federal Register, Vol. 79, No. 168, August 29, 2014, EPA Responses to State and Tribal 2012 Primary Annual Fine Particle Designation Recommendations: Notice of Availability and Public Comment, Docket ID No. EPA-HQ-OAR-2012-0918.

Overview of Proposal:

On August 29, 2014, the United States Environmental Protection Agency (EPA) published in the *Federal Register* proposed responses to certain state and tribal designation recommendations for the 2012 primary annual fine particle (PM_{2.5}) National Ambient Air Quality Standard (NAAQS). In this notice, the EPA identifies areas where available monitoring data from 2011 through 2013 indicate violations of the 2012 primary annual PM_{2.5} NAAQS. As none of these areas are in Texas, the notice does not directly respond to the Texas designation recommendation (sent by Governor Perry to the EPA on November 26, 2013). Instead, the EPA notified Texas, via an August 19, 2014 letter to Governor Perry, that the EPA “intends to modify the state of Texas recommendation of attainment for some areas of the state and unclassifiable/attainment for the remainder of the state and designate all areas of the state as unclassifiable/attainment.”

Summary of Comments:

- The TCEQ continues to support Governor Perry’s attainment designation recommendation:
 - Eleven Texas counties (Bexar, Bowie, Dallas, Ellis, El Paso, Harris, Harrison, Hidalgo, Nueces, Tarrant, and Travis) should be designated attainment for the 2012 primary annual PM_{2.5} NAAQS based on both 2012 and 2013 actual measured design values; and
 - All remaining counties in Texas should be designated unclassifiable/attainment.
- The EPA has failed to explain adequately the methods by which it has identified its recommended designations and has offered no rational explanation for refusing to designate as “attainment” those areas with monitor data demonstrating that an area is actually meeting the relevant standard.
- It is the EPA’s responsibility to set the requirements for, and approve of, the monitoring network and states should be able to rely on the data from these networks for attainment determinations. Additionally, for the PM_{2.5} NAAQS, EPA specifies in 40 CFR §§50.13 and 50.18 that the NAAQS is met when monitor values meet criteria specified in the noted Appendices to 40 CFR Part 50.

Lead Office: Office of Legal Services/Environmental Law Division

Internal Coordination: Terry Salem/OLS/Environmental Law Division and Walker Williamson/OA/AQD

Office of Legal Services: Terry Salem and Amy Browning/OLS/Environmental Law Division

Deputy Director Approval: Caroline Sweeney/OLS and Steve Hagle, P.E./Office of Air

Deadline: September 29, 2014