

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 16, 2011

The Honorable Samuel T. Biscoe
Travis County Judge
Travis County Administration Building
Commissioners Courtroom, 1st Floor
314 W. 11th
Austin, Texas 78701

Dear Judge Biscoe:

Thank you for your January 18, 2011 letter requesting the Texas Commission on Environmental Quality (TCEQ) revise its initial recommendation regarding Travis County's attainment status under the United States Environmental Protection Agency's (EPA) 2008 eight-hour ozone standard (2008 standard).

Although the EPA stated in the January 19, 2010 *Federal Register* (75 FR 2936) that it would extend the deadline for promulgating area designations for the 2008 standard to March 12, 2011, and would proceed with such designations if the reconsidered standard was not finalized in 2010, EPA Region 6 staff recently indicated to the TCEQ that they will not promulgate designations for the 2008 standard. It is our understanding that the EPA has also shared this information with the Clean Air Coalition Advisory Committee.

Because it does not appear that the EPA will promulgate designations under the 2008 standard, the TCEQ does not believe a formal revision to the state's designation recommendation is necessary at this time. However, TCEQ notified the EPA in the enclosed February 2, 2011 letter that several areas in Texas, including Travis County, are currently attaining the 2008 standard based on certified 2007 through 2009 and preliminary 2008 through 2010 monitoring data. Should the EPA's position regarding implementation of the 2008 standard change, we are committed to ensuring that the most accurate, up-to-date monitoring data are made available for consideration in finalizing designations.

I would like to thank Travis County for its continued efforts to improve air quality in the Austin-Round Rock area and look forward to your continued partnership with the TCEQ. If you have any additional questions or concerns, please contact Ms. Susana M. Hildebrand, P.E., Chief Engineer, at (512) 239-4696.

Sincerely,

A handwritten signature in black ink that reads "Bryan W. Shaw".

Bryan W. Shaw, Ph.D.
Chairman

Enclosure

cc: The Honorable Ron Davis, Travis County Commissioner, Precinct One
The Honorable Sarah Eckhardt, Travis County Commissioner, Precinct Two
The Honorable Karen Huber, Travis County Commissioner, Precinct Three
The Honorable Margaret J. Gomez, Travis County Commissioner, Precinct Four

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 2, 2011

Mr. Lawrence E. Starfield
Deputy Regional Administrator
United States Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Subject: Reconsideration of the ozone air quality standards

Dear Mr. Starfield:

In light of the significant budget and resource challenges which Texas faces, clarification is needed to ensure that the state's limited resources are appropriately focused on areas that result in the greatest environmental benefit. The delay in establishing 2010 ozone air quality standards raises several questions. This letter spells out areas where clarification is needed. Additionally, I am alerting you that several counties in Texas have now attained the 2008 ozone air quality standards.

First, the good news. As a follow-up to Governor Perry's March 2009 designation recommendation, I am pleased to report that through effective local programs and state coordination, the following six areas (and/or counties) now attain the 2008 ozone air quality standards based on the most recent design values: Austin-Round Rock (Travis); Beaumont-Port Arthur (Hardin, Jefferson, Orange); El Paso County excluding tribal lands; Hood County; Northeast Texas (Gregg, Rusk, Smith); and San Antonio (Bexar).

With the delay in the 2010 ozone standard, the EPA appears to have inadvertently activated some deadlines associated with the 2008 standard. Please clarify how the EPA will resolve the following concerns:

- **Does the United States Environmental Protection Agency (EPA) intend to meet the Federal Clean Air Act (FCAA) designation schedule published in the January 19, 2010 *Federal Register* (75 FR 2936) for the 2008 ozone standards?** States will not have received the FCAA required 120-day notice from the EPA regarding its designations that are due March 12, 2011, as stated in the *Federal Register*. The 120-day notice offers states an opportunity to submit updated information, such as that reported above, before the EPA issues its designations.
- **Does the EPA intend that Texas develop and submit infrastructure and transport state implementation plan (SIP) revisions under the 2008 ozone standards?** Section 110(a) of the FCAA and the March 27, 2008 *Federal Register* notice (73 FR 16503) require that these SIP revisions be submitted by March 12, 2011, a date that is now impossible to meet with respect to the transport SIP revision.

Furthermore, without implementation guidance, approvable SIP revisions would not only be difficult to develop but also possibly result in wasted resources if rework becomes necessary. If the EPA intends to require infrastructure and transport SIP revisions, then implementation guidance from the EPA is necessary to provide states direction and deadlines.

- **Does the EPA intend to expedite the designation process and SIP submittal schedule for the 2010 (2011) standards?** The *Federal Register* notice for the proposed 2010 (2011) standards indicates attainment SIP revisions are due by December 2013, an expedited schedule, in order to limit delays in health protections. While EPA continues to delay their actions regarding the ozone standard and add more time to the EPA process, the deadlines for states continue to shorten, reducing the amount of time that a state has to evaluate and develop plans that would make meaningful reductions in air pollution. The extension in establishing the health-based ozone standards should also allow a corresponding extension in SIP due dates by providing the full three-year timeline to develop health-protective SIP revisions and associated rules.
- **Does the EPA intend that states and businesses implement Stage II vapor recovery even though an area or state can demonstrate Onboard Refueling Vapor Recovery (ORVR) widespread use?** The EPA Region 6 and the EPA Office of Air Quality Planning and Standards had a conference call with TCEQ staff on May 14, 2010, to discuss how the EPA was considering allowing states to demonstrate ORVR widespread use and that the formula would be included in the 2010 ozone implementation rule. At the time of the call, the EPA was considering that widespread use would occur when the emissions reductions from ORVR alone are equal to those from Stage II alone. The delay in establishing the 2010 (2011) ozone standards and implementation rule has now also delayed EPA's policy on allowing states to demonstrate ORVR widespread. The EPA delay will require businesses, in particular additional counties in the Dallas-Fort Worth area as a result of reclassification, to unnecessarily install and operate expensive equipment. Accordingly, state air quality staff and technologies would also be required to unnecessarily implement and enforce a program that yields little to no benefit. The EPA should issue a guidance memo that allows states to demonstrate ORVR widespread use.
- **Does the EPA intend that states should revise already submitted SIP revisions using the Motor Vehicle Emissions Simulator (MOVES) model?** The uncertainty surrounding the implementation of the 2008 ozone standards and the delay in establishing 2010 (2011) ozone standards, without a corresponding extension of the MOVES conformity grace period, will result in states allocating air quality staff and technologies to re-open SIP revisions that address 1997 ozone standards, and potentially, long ago-approved control strategies solely for the purpose of incorporating MOVES data, an unnecessary diversion away from technical groundwork on 2011 primary and secondary ozone standards. An extension of the MOVES grace period would allow metropolitan planning organizations the continued flexibility to add and/or modify congestion- and emission-reducing transportation projects, while allowing states to point forward (rather than backward) towards addressing the new standards.
- **Is the EPA still considering two options for designations under the ozone secondary standard?** The *Federal Register* notice for the proposed 2010 (2011) secondary standard indicates attainment SIP revisions would be due by December 2013, an expedited schedule. Furthermore, there is uncertainty about whether transport and

infrastructure SIP revisions would be due prior to attainment demonstration SIP revisions. The extension in establishing a separate secondary standard should also correspond with an extension in SIP revision due dates, and implementation guidance should be issued in time so that decision makers can efficiently allocate staff time and technologies.

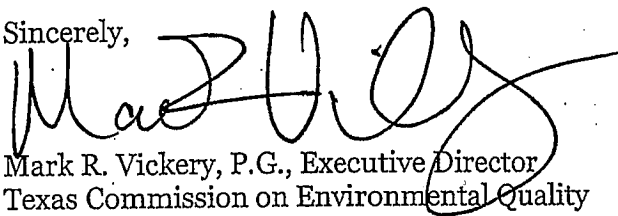
- **Does the EPA intend to act on the Texas Clean Air Interstate Rule (CAIR) SIP revision, submitted March 4, 2010?** Without EPA action on Texas' allocation methodology for CAIR Phase II (which was required by the Texas Legislature), there is significant uncertainty for staff and affected facilities with allocations being due to the EPA by October 31, 2011. This work will either prove to have been unnecessary once the transport rule is finalized on schedule or will prove to be extremely necessary to ensure transport obligations are met should the federal transport rule be delayed. Given that EPA cannot guarantee the on-time finalization of the federal transport rule, TCEQ requests that EPA act on the Texas CAIR SIP revision well in advance of the Phase II submittal deadline to provide states and stakeholders some clarification and certainty.

We support keeping the standard as is. The bureaucratic uncertainty that EPA has created has certainly tied states' hands and slowed down innovative state programs that improve ozone concentrations.

Finally, because of the risk associated with any litigation concerning the ozone standard, the TCEQ requests that EPA set a detailed schedule for decision making and guidance so that states may effectively expend their limited resources.

I have asked my staff to discuss each of these issues in more detail with your staff in the very near future. As you know, critical budget decisions are imminent. Clarity is required so that Texas air quality staff and technologies can be targeted to meet air quality standards as expeditiously as possible. If you have questions about these concerns, please contact me at 512-239-5105, or the TCEQ Chief Engineer, Susana M. Hildebrand, P.E., at 512-239-4696.

Sincerely,



Mark R. Vickery, P.G., Executive Director
Texas Commission on Environmental Quality

Travis County Commissioners Court

SAMUEL T. BISCOE
County Judge

RON DAVIS
Commissioner, Pct. 1

SARAH ECKHARDT
Commissioner, Pct. 2

KAREN L. HUBER
Commissioner, Pct. 3



MARGARET J. GÓMEZ
Commissioner, Pct. 4

Travis County Administration Building, 314 W. 11th, Commissioners Courtroom, 1st Floor, Austin, Tx 78701

January 18, 2011

Dr. Bryan Shaw, Ph.D.
Chairman
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

RECEIVED BY OPA
TRACKING # 17345
ASSIGNED TO: Chief Eng

FEB 07 2011

DUE DATE: 2-15-11

Dear Chairman Shaw:

Travis County requests that the Texas Commission on Environmental Quality (TCEQ) recommend to Governor Perry that the list of areas in Texas designated as nonattainment for the 2008 ozone National Ambient Air Quality Standard (NAAQS) be amended to remove Travis County. It is our understanding that the United States Environmental Protection Agency (EPA) must act by March 11, 2011 to establish nonattainment areas based on the 2008 standard. The area's 2009 and 2010 ozone design values (0.075 parts per million (ppm) and 0.074 ppm, respectively) both met the 0.075 ppm standard.

Travis County's ozone concentrations have been steadily decreasing and there is little risk of the area violating the 2008 ozone standard again in the foreseeable future. In fact, ambient ozone concentrations have steadily declined in Travis County over the last decade, from a high design value of 0.089 ppm in 2000 to 0.074 ppm in 2010. There is an 8-Hour Ozone Flex Program for the Austin-Round Rock Metropolitan Area (MSA), which has continued the area's proactive approach to improving air quality. The 8-Hour Ozone Flex Program does not expire until the end of 2013.

It is neither necessary nor constructive for Travis County to remain on the list of areas that should be designated nonattainment for the 2008 ozone standard. Given the uncertainty surrounding EPA's pending reconsideration of the 2008 standard and its March 12, 2011, deadline for issuing final designations for the 2008 ozone standard, Travis County believes that it is important to avoid the possibility of being unnecessarily designated nonattainment for the 2008 standard.

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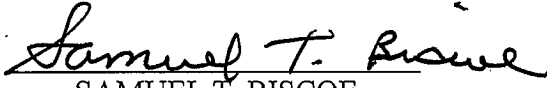
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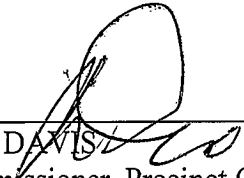
Texas Commission on Environmental Quality
Commissioners' Offices

There is recent precedent for submitting such a revised recommendation. On October 13, 2010, Governor Perry submitted a proposed modification of his recommended boundaries for a lead nonattainment area in Collin County. The USEPA then issued its final designations, which incorporated the Governor's revised recommendation for Collin County. Travis County believes that our situation also warrants a revised recommendation, in consideration of the most recent ozone ambient monitoring data and continued implementation of the 8-Hour Ozone Flex Program. Travis County requests that the TCEQ to make such a recommendation to the Governor.


Thank you for your prompt consideration of this matter. If you have any questions, please contact me at (512) 854-9555 or contact the Commissioners Court Environmental Officer, Mr. Jon White at 854-7212.

Sincerely,

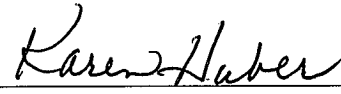

SAMUEL T. BISCOE
County Judge



RON DAVIS
Commissioner, Precinct One



SARAH ECKHARDT
Commissioner, Precinct Two



KAREN HUBER
Commissioner, Precinct Three

absent

MARGARET J. GÓMEZ
Commissioner, Precinct Four