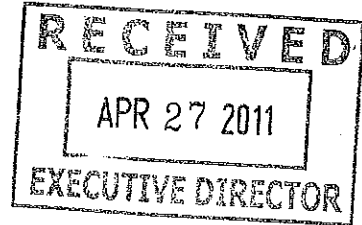




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION 6  
 1445 ROSS AVENUE, SUITE 1200  
 DALLAS TX 75202-2733  
 APR 21 2011

32845  
 Mark

Mark R. Vickery, P.G.  
 Executive Director  
 Texas Commission on Environmental Quality  
 Post Office Box 13087  
 Austin, TX 78711-3087



Dear Mr. Vickery:

Thank you for your letter dated February 2, 2011, to the U.S. Environmental Protection Agency (EPA) regarding the 2008 ozone standards and State Implementation Plan submittals. We are pleased that six areas, which were not meeting the 2008 ozone standard with 2006-2008 data, are now meeting that standard. We encourage the Texas Commission on Environmental Quality to continue its work to reduce ozone precursors throughout Texas.

EPA is working diligently to finalize the reconsideration of the 2008 ozone standard and appreciates the questions you raise. The enclosed document provides a restatement of your questions (in italics) followed by our responses.

I hope this is helpful in addressing your concerns. If you have any further questions, please contact me at (214) 665-2100, or your staff may contact Ms. Carrie Paige at (214) 665-6521.

Sincerely yours,

*(Handwritten signature: Lawrence E. Starfield)*  
 Lawrence E. Starfield  
 Deputy Regional Administrator

Enclosure

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 copy to  
 Susana  
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**EPA Responses for the Texas Commission on Environmental Quality**  
**Letter from Mark Vickery, submitted February 2, 2011**  
Questions and Answers

**1. 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 EPA issues its designations.**

No. EPA did not designate areas for the 2008 ozone standards by the March 12, 2011, deadline specified in the January 19, 2010, Federal Register (75 FR 2936). EPA is reconsidering the 2008 ozone standards and has proposed that they are insufficient to protect public health and welfare (75 FR 2938; January 19, 2010). EPA intends to take final action on the reconsideration by the end of July 2011 and will establish a new schedule for designations in that final action.

**2. 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.**

As we stated earlier, EPA has not implemented the 2008 ozone standards by the deadline specified in the Federal Register (75 FR 2936).<sup>1</sup> EPA has proposed that the 2008 ozone standards are insufficient to protect public health and welfare (75 FR 2938). EPA intends to take final action on the reconsideration by the end of July 2011 and at that time we will propose requirements for implementation, including the requisite infrastructure and transport elements.

**3. Does the EPA intend to expedite the designation process and SIP submittal schedule for the 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.**

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<sup>1</sup> EPA will continue to require permitting of new and modified air pollution sources under the Prevention of Significant Deterioration (PSD) program for the 2008 ozone standards.

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In the January 19, 2010, proposal for the National Ambient Air Quality Standard (NAAQS) for ozone (75 FR 2938), EPA proposed schedules for states to submit designation recommendations for any new ozone standards that would result from the reconsideration of the 2008 ozone NAAQS. EPA received numerous comments on the proposed designations schedules from states and local agencies, industry, environmental and health organizations and others. EPA is evaluating the comments and, when EPA promulgates new standards pursuant to the reconsideration, we will provide the schedules for state designation recommendations for such standards in the final reconsideration rule. EPA intends to issue that rule by the end of July 2011. EPA will address any new SIP submission deadlines for any newly designated nonattainment areas under the new standard (primary and/or secondary) through notice-and-comment rulemaking to address proper implementation of such standard.

*4. 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.*

No. States are welcome to submit their demonstrations of widespread use to EPA and request a waiver of the Stage II requirements at any time. In addition, once EPA has determined that widespread use has occurred, the Clean Air Act (CAA) provides that EPA may waive the statutory requirement for states to implement Stage II gasoline vapor recovery systems at gasoline dispensing facilities in areas classified serious and above for nonattainment of the ozone NAAQS. EPA is planning to propose, in an action separate from the ozone implementation rule, criteria for determining whether ORVR is in widespread use for purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet.

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*5. 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 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.*

EPA believes that the CAA does not require states that have already submitted SIPs to revise these SIPs simply because MOVES2010 has been released. However, EPA expects that during the conformity grace period, areas will use the interagency consultation process to examine how MOVES2010 will impact their future transportation plan and conformity determinations. Through this consultation process, areas may determine the need to establish MOVES-based motor vehicle emissions budgets in order to successfully demonstrate conformity after the end of the conformity grace period. We have heard concerns from various state and local transportation and air quality agencies that the 24-month conformity grace period, which ends on March 2, 2012, may not provide sufficient time to complete activities necessary to ensure that metropolitan planning organizations will be able to successfully demonstrate conformity after the grace period ends. In an effort to address stakeholder concerns, EPA has begun work on a rulemaking to extend the conformity grace period. Additionally, EPA is ensuring that the regional offices are aware of options that may be available to the states to establish MOVES-based motor vehicle emissions budgets without re-opening previously submitted attainment demonstrations. We are coordinating our efforts with the U.S. Department of Transportation. EPA also recognizes that a number of states may face unique circumstances and is committed to working with states to find solutions that minimize the impact on resources while fulfilling obligations to protect the health of all citizens.

*6. 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.*

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As a part of EPA's final reconsideration action, EPA will address any new SIP submission deadlines for any newly designated nonattainment areas under the new standard (primary and/or secondary). Any such deadlines will go through notice-and-comment rulemaking to address proper implementation of such standard. Please refer to the second response regarding transport and infrastructure questions.

*7. 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.*

Not at this time. EPA's focus has been on promulgating the Transport Rule by June 30, 2011, which will replace the CAIR starting with the 2012 control period. If the Transport Rule is not promulgated on schedule, EPA will re-prioritize the Texas CAIR SIP revision and approve it as expeditiously as possible. We believe that the existing SIP-approved program for the Texas CAIR along with the current state CAIR rules will allow Texas to submit timely and appropriate allocation allowances during the time that the March 4, 2010, CAIR SIP remains unapproved.