COMMENTS BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY REGARDING THE DETERMINATIONS OF ATTAINMENT BY THE ATTAINMENT DATE, EXTENSIONS OF THE ATTAINMENT DATE, AND RECLASSIFICATION OF SEVERAL AREAS CLASSIFIED AS MODERATE FOR THE 2008 OZONE NATIONAL AMBIENT AIR QUALITY STANDARDS; EPA DOCKET ID NO. EPA-HQ-OAR-2018-0226

I. SUMMARY OF NOTICE

On November 14, 2018, the United States Environmental Protection Agency (EPA) published in the *Federal Register* a proposed determination that the Dallas-Fort Worth (DFW) and Houston-Galveston-Brazoria (HGB) areas failed to attain the 2008 eight-hour ozone National Ambient Air Quality Standard (NAAQS) by the applicable deadline of July 20, 2018. This results in a reclassification by operation of law to the designation of "serious." On December 14, 2018, the Texas Commission on Environmental Quality (TCEQ) submitted comments on this proposed action. However, in response to a request for public hearing, the EPA reopened the comment period and announced a public hearing for February 15, 2019. The TCEQ provides the following comments in addition to those already submitted by the TCEQ on December 14, 2018.

II. COMMENTS

Reclassification should be delayed allowing the EPA to work collaboratively with the TCEQ in reviewing air monitoring data from 2018 that would result in a 2018 design value that would attain the 2008 eight-hour ozone NAAQS.

Initial analysis indicates that ambient air monitoring data from several days in 2018 meet the criteria for approval as exceptional events, which would allow for the exclusion of the data from the 2018 design value. Exclusion of the exceptional event days would result in a 2018 design value that would attain the 2008 eight-hour ozone NAAQS, forming the basis for the TCEQ to submit a redesignation request and maintenance plan to the EPA for approval. Reclassification of the HGB area is therefore unnecessary and should be delayed allowing the EPA to work collaboratively with TCEQ in the development and review of the exceptional event demonstrations for the 2018 data.

The TCEQ recommends an 18-month submittal deadline for all reasonably available control measures (RACM), including reasonably available control technology (RACT), necessary for demonstrating attainment for the HGB and DFW reclassified nonattainment areas.

The TCEQ recommends at least 18 months to ensure thorough completion of the RACT and RACM analyses and to meet all rulemaking process requirements, including public participation, which would include: public notice, an assessment of a variety of regulatory analyses, an opportunity for public hearing and comment, a reasoned justification for the adoption of a rule, and a response to public comment. In its proposed notice, the EPA assumes that the RACT analysis could be done on an expedited timeline partially because it believes states would be primarily focused on new RACT measures for sources emitting between 50 and 100 tons per year (tpy) of volatile organic compounds or nitrogen oxides. However, the state is still required to complete full RACT and RACM analyses for the nonattainment areas. The additional time for completing full RACT and RACM analyses is necessary because the DFW and HGB areas include a wide variety of major and minor industrial, commercial, and institutional entities, and the TCEQ has already implemented

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stringent and innovative regulations that address precursor emissions under the 2008 and previous ozone standards. Additionally, the EPA has not issued a formal determination that RACT state implementation plan (SIP) submittals for these reclassifications that are limited to just sources between 50 and 100 tpy will satisfy Federal Clean Air Act, Section 172 and 182 RACT requirements. Therefore, states would be at legal risk of a finding of inadequacy by the EPA if they limit their RACT analyses to only those sources assumed by the EPA.

The TCEQ recommends that RACT SIP submission deadlines precede RACT implementation deadlines.

While the EPA's proposed reclassification notice indicates that SIP submission deadlines preceding implementation deadlines would be "ideal," the TCEQ argues that it is not only ideal but necessary to ensure full implementation of a control measure and associated rule requirements. A concurrent 12-month SIP submittal and implementation deadline would mean that affected entities would be expected to comply with the updated rule requirements immediately upon the effective date. There would be no time allowed for affected entities to determine the pollution control equipment it would employ, and then design, permit, construct, and commission the necessary equipment. Depending on the industry being regulated, there may also be associated process modification, operator training, new raw material supply requirements, testing requirements, and installation of monitoring equipment.

The TCEQ requests that the EPA expeditiously provide timely guidance for states regarding how to address the impact of background ozone on nonattainment areas.

The EPA is proactively acknowledging the significance of background ozone through workshops and white papers on the topic. In a 2015 white paper[1], the EPA stated there is a need for greater understanding of the technical and policy issues associated with background ozone. The TCEQ believes this to be true in dealing with the remaining challenges of attaining the 2008 eight-hour ozone standard. Researchers are more frequently recognizing that the difficulty in unraveling the origins of ozone is complicated by the presence of contributions from multiple sources including background sources like intrusion of stratospheric ozone, wildfires, biogenic precursors, and international anthropogenic pollution, in addition to U.S. anthropogenic sources.[2]

The TCEQ believes that Texas' nonattainment areas experience background ozone contributed by sources outside their jurisdiction, and that this contribution may in some circumstances prevent an area from reaching attainment of the 2008 eight-hour and the 2015 eight-hour ozone standards. Due to these challenges, the TCEQ requests that the EPA provide timely guidance on how to address these challenging issues to enable states to include these considerations in their attainment demonstration SIPs. Guidance is particularly needed in border states like Texas, where EPA has acknowledged that its "review of the science indicates the influence of international transport is likely to be largest in locations near the borders with Canada or Mexico."[3]

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[1] Implementation of the 2015 Primary Ozone NAAQS: Issues Associated with Background Ozone White Paper for Discussion, https://www.epa.gov/ground-level-ozone-pollution/background-ozone-workshop-and-information
[2] Jaffe, DA, et al. 2018. Scientific assessment of background ozone over the U.S.: Implications for air quality management. Elem Sci Anth, 6: 56. DOI: https://doi.org/10.1525/elementa.309
[3] EPA, Tools for Addressing Background Ozone at 5, https://www.epa.gov/sitest/production/files/2015-10/documents/20151001_background_ozone.pdf

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