

March 15, 2012

Chairman Brian Shaw,
Commissioner Buddy Garcia,
Commissioner Carlos Rubinstein
Texas Commission on Environmental Quality
MC100
P.O. Box 13087
Austin, TX 78711-3087

Re: **Request for Reconsideration of Petition for Rulemaking to Address Foreign Pollution Impacts on Texas Citizens and Businesses – TCEQ Docket No. 2011-0779-RUL** (see http://www.tceq.texas.gov/assets/public/legal/rules/hist_rules/Complete.11s/11022PET/11022PET_petition.pdf)

To the Honorable Chairman Shaw, Commissioner Garcia, and Commissioner Rubinstein:

I am writing to request reconsideration of the Petition for Rulemaking to recognize the impact of foreign pollution on the health and economy of Texas citizens and businesses (*TCEQ Docket No. 2011-0779-RUL*). The proposed 60-70 ppb ozone standard has not materialized. It will be at least 4 years before a new demonstration SIP is prepared for the 75 ppb standard—assuming the 75 ppb standard timely survives judicial scrutiny. In the meantime foreign pollution is increasingly impacting the health and economy of Texas citizens and businesses. Justice can no longer be set aside to wait for a more convenient time or for someone else to act. The Commission's leadership is needed.

A few additional points for your consideration—which are explained further below:

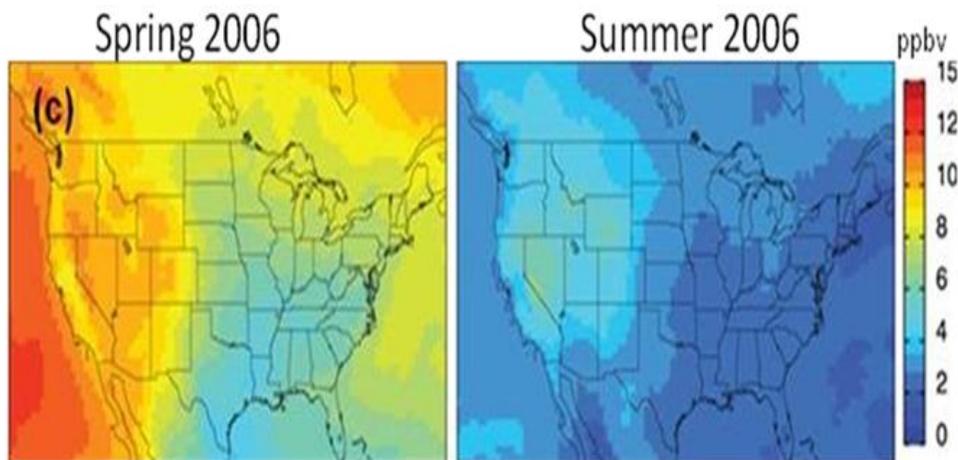
- The State of Texas unknowingly, but now knowingly, is requiring its own citizens to offset foreign pollution impacts with additional controls on local sources.
- Both Congress and EPA indicated that States should not make their own citizens responsible for offsetting foreign pollution impacts—yet the State of Texas is doing just that.
- The additional cost to Texas citizens and businesses to offset foreign pollution appears to be in the hundreds of millions of dollars.
- New scientific studies since the 2011 Petition for Rulemaking reconfirm the impact of foreign pollution on Texas citizens and businesses.

The State of Texas unknowingly, but now knowingly, is requiring its own citizens to offset foreign pollution impacts with additional controls on local sources

Example: In 2008 the State of Texas chose to tax its citizens \$150 million to reduce 0.434 ppb of ozone in the Dallas area using the TERP Program (TCEQ Project No. 2008-016-SIP-NR). It

appears however that at least 0.434 ppb of ozone was coming from foreign pollution during this timeframe (see below). That means that the State of Texas unknowingly, but now knowingly, has chosen to require its own citizens to pay for offsetting foreign pollution impacts.

Foreign Ozone Pollution Influence in 2006



(see Atmospheric Environment 45 (2011) 6769e6776 at <http://acmg.seas.harvard.edu/publications/zhang2011.pdf>)

Both Congress and EPA indicated that States should not make their own citizens responsible for offsetting foreign pollution impacts—yet the State of Texas is doing just that.

- *Congress said . . .* “A SIP shall be approved if “the submitting State establishes to the satisfaction of [EPA] that the implementation plan of such State would be adequate to attain [the NAAQS] . . . **but for emissions emanating from outside the United States.**” (42 USC § 7509a).
- *EPA said . . .* “Congress clearly wanted to avoid penalizing such areas by not **making them responsible for control of emissions emanating from a foreign country over which they have no jurisdiction.**” (see http://www.epa.gov/ttncaaa1/t1/fr_notices/pm-add.pdf)

The additional cost to Texas citizens and businesses to offset foreign pollution appears to be in the hundreds of millions of dollars.

According to EPA and TCEQ calculations, it appears that it cost around \$150 million to reduce 0.434 ppb of ozone in the Dallas area using the TERP program (see below). That’s about \$350 million per ppb of ozone reduced. If the EPA, United Nations, Harvard, NOAA and other studies are right that foreign pollution is impacting the State of Texas—**even if that impact is only 1ppb**—that means that the State of Texas is currently requiring its own citizens and

businesses to spend about **\$345.6 million** offsetting foreign pollution with additional controls on local citizens and businesses through the SIP process.

Excerpts from EPA and TCEQ on Cost-Effectiveness of TERP Program in the DFW Area:

► Air quality benefits over and above those modeled for the SIP are expected from the additional TERP funding. [. . .] A model-based analysis indicating a 14.2 tpd change in NOX, using the EPA's duplication of the TCEQ's Combo 10 and the EPA's sensitivity test, results in an estimated ozone reduction of 0.487 ppb at the Frisco monitor and 0.650 ppb at the Denton monitor. When evaluated over all the DFW monitors, the average reduction is 0.434 ppb. Attachment C: Model-Based Ozone Response Calculations provides additional information about these estimated ozone reductions. (see http://www.tceq.state.tx.us/assets/public/implementation/air/sip/dfw/TCEQ_Response.pdf).

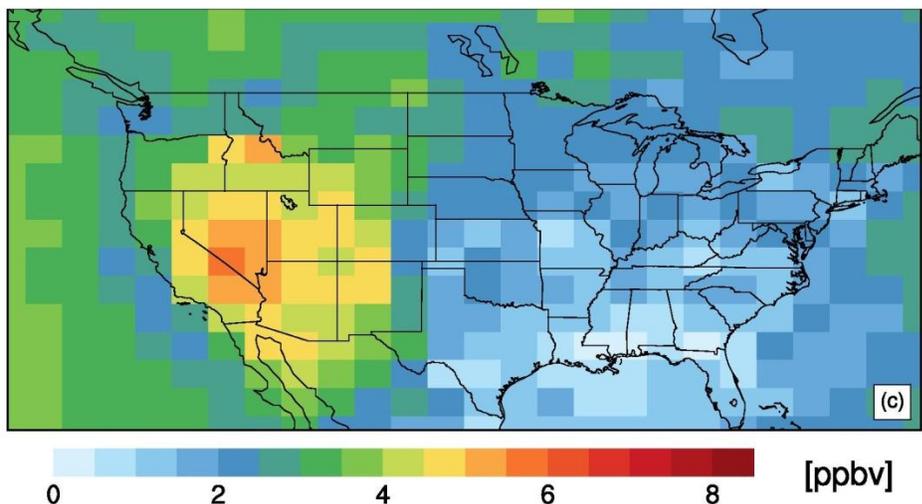
► In the April 2008 submittal, the TCEQ posited that it could achieve the additional 14.2 tpd of TERP NOX reductions by spending in the DFW area 50% of the FY2008 TERP funds and 70% of the FY2009 TERP funds. Whether funds are spent in exactly these percentages each year however, is not the issue; the essential point is that TCEQ enters into TERP grant contracts worth at least \$149,100,000 in the DFW area for projects to achieve 14.2 tpd in calendar years 2008 and early 2009. (see <http://www.gpo.gov/fdsys/pkg/FR-2009-01-14/html/E9-118.htm>).

New scientific studies since the 2011 Petition for Rulemaking reconfirm the impact of foreign pollution on Texas citizens and businesses.

► **2012 NOAA Study – “Transport of Asian ozone pollution into surface air over the western United States in spring”**

The study found that Asian pollution contributes up to 20% of the total ozone in the western U.S. The study also found that, but for Asian emissions, 53% of the ozone standard violations in the west would not have occurred. (*Journal of Geophysical Research-Atmospheres*, [doi:10.1029/2011JD016961](https://doi.org/10.1029/2011JD016961))

**Mean Asian impacts on U.S. surface O₃ in spring:
high-resolution model spatially refines estimates**

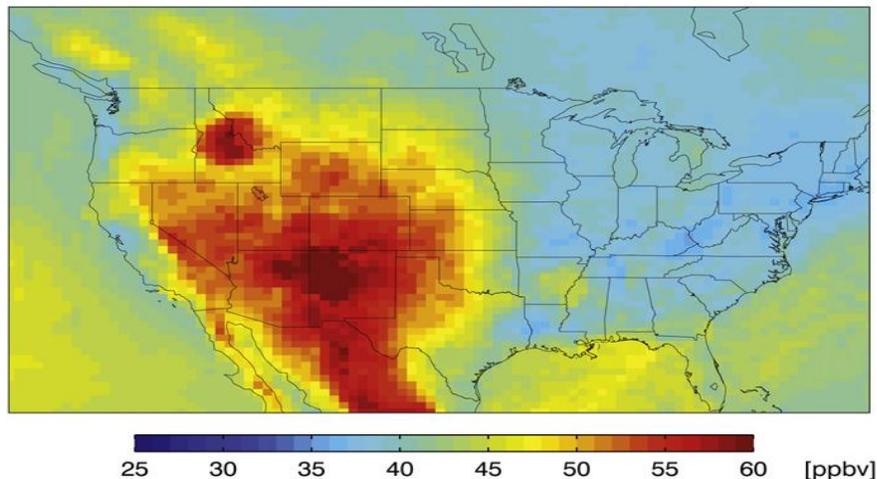


► **2011 Harvard Study – “Improved estimate of the policy-relevant background ozone in the United States using the GEOS-Chem global model with horizontal resolution”** (see Atmospheric Environment 45 (2011)

6769e6776 at <http://acmg.seas.harvard.edu/publications/zhang2011.pdf>)

“Our PRB estimates are on average 4 ppbv higher than in previous GEOS-Chem studies (Fiore et al., 2003; Wang et al., 2009) and we attribute this to a combination of increasing Asian emissions, higher model lightning, and higher model resolution.”

Annual 4th highest PRB ozone for 2006-2008



Request for Relief

Thank you very much for your reconsideration of this Petition. I would urge the State of Texas to proceed as soon as possible with filing a Section 179B Petition. The Commission’s leadership is needed to ensure that Texas citizens do not unfairly, or at least without notice, continue paying for offsetting foreign pollution impacts.

In preparing this Section 179B petition I would recommend that the State of Texas not spend years and hundreds of thousands preparing this document. No rules exist that require the State of Texas to spend years and hundreds of thousands of dollars demonstrating to EPA what the State cannot effectively do (e.g. control foreign emissions). EPA has more information on foreign emissions. The State of Texas’ resources would be better spent on reducing pollution than justifying what the State cannot effectively do. The information in the studies I have cited, and the work that TCEQ has already done to date, should be enough to prepare an initial Section 179B petition and begin the wheels of justice rolling.

I hope the State of Texas also uses this opportunity to help address the SIP problem at its root. The SIP process under the Clean Air Act must be transformed to reflect the new realities of our world (see www.sipreform.com and <http://www.breakingthelogjam.org/>). The world is changing. We must change with it.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Jed Anderson". The signature is written in a cursive style with a large initial "J" and "A".

Jed Anderson
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cc: U.S. Senator John Cornyn
U.S. Senator Kay Bailey Hutchison
U.S. Congressman Joe Barton
U.S. Congressman Gene Green
Texas Senator Troy Fraser, Chair, Committee on Natural Resources
Texas Representative Wayne Smith, Chair, Environmental Regulation Committee
Administrator Lisa P. Jackson, U.S. Environmental Protection Agency