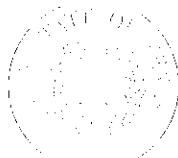


Bryan W. Shaw, Ph.D., *Chairman*  
Carlos Rubinstein, *Commissioner*  
Toby Baker, *Commissioner*  
Zak Covar, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

April 5, 2013

Catherine Allen  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave. NW.  
Washington, D.C. 20460

Attn: Docket Number EPA-HQ-OA-2012-0247

Re: Notice of Availability for Public Review and Comment: Draft EPA Climate Change Adaptation Plan

Dear Ms. Allen:

The Texas Commission on Environmental Quality (TCEQ) appreciates the opportunity to respond to the United States Environmental Protection Agency's (EPA) Notice of the "Draft EPA Climate Adaptation Plan," published in the February 8, 2013, *Federal Register*.

In general, the TCEQ does not support federal climate change policy in the absence of congressional action and cannot support this plan. The TCEQ recognizes the need to plan for extreme weather events regardless of cause and suggests that the draft EPA Climate Adaptation Plan be recast from that perspective rather than from the perspective of questionable, contentious, and presently debatable climate change science. Much of the science behind global warming theories continues to be hotly debated in the scientific community and the models used to predict global climate change are not sufficiently reliable to base policy decisions upon. Reliance on these models as a basis for even finer resolution models to predict changes on a local, regional, or state level is inappropriate.

Enclosed please find the TCEQ's detailed comments relating to the referenced document. If you have any questions concerning the enclosed comments, please contact Mr. Minor Hibbs at (512) 239-6590 or at [Minor.Hibbs@tceq.texas.gov](mailto:Minor.Hibbs@tceq.texas.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Zak Covar".

Zak Covar  
Executive Director

Enclosure

**Texas Commission on Environmental Quality (TCEQ)  
Comments in response to: United States Environmental  
Protection Agency's (EPA) Notice of the "Draft EPA Climate  
Adaptation Plan," published in the February 8, 2013,  
Federal Register (78 FR 9387)**

*It should be made clear that States are not obligated to implement the Climate Change Adaptation Plan or any other implementation plans developed under its umbrella.*

The Draft Climate Change Adaptation Plan comes with the disclaimer that states in part:

"Neither this document, nor any part of it, is itself a rule or a regulation. Thus, it cannot change or impose legally binding requirements on EPA, States, the public, or the regulated community. . . . Such implementation is contingent upon availability of resources and is subject to change."

The TCEQ finds this Climate Change Adaptation Plan is unnecessary. If the EPA elects to proceed with finalizing the document, the EPA should take all steps necessary to ensure that any activities under the Plan are consistent with the disclaimer and that States are not obligated to implement this document or any tasks that EPA devises pursuant to the Plan. This should be clear from the document itself and not just a disclaimer before the body of the document. TCEQ requests that EPA further emphasize and maintain the voluntary nature of the numerous actions identified in the plan.

On page 37, EPA acknowledges that its legal authority to incorporate climate adaptation measures into setting standards, issuing permits, and into the terms and conditions of financial assistance mechanisms, is questionable. The TCEQ agrees that requiring states to incorporate climate change adaptation measures into states' programmatic activities without express statutory authority is not only questionable but inappropriate. If EPA does proceed to finalize this overall climate adaptation plan or any subsequent plans under its umbrella, then at a minimum, EPA should only adopt changes to policies regarding climate adaptation and standard setting, permitting, and financial assistance after formal rule making that includes a process for receiving and considering public comments.

*The States and the public should be given the opportunity to comment on the implementation plans under development by the EPA's National Environmental Program Offices and Regional Offices.*

The EPA indicates in Section 3.3.10 of the draft Climate Change Adaptation Plan that implementation plans are being developed by the National Environmental Program Offices and the Regional Offices regarding how climate adaptation will be integrated into EPA planning and work. The implementation plans are scheduled to be completed

by June 28, 2013. However, the EPA does not indicate in the draft Climate Change Adaptation Plan whether these implementation plans will be made available for public review and comment. Draft implementation plans should be released to provide states and the public opportunity to comment on the plans similar to the EPA's request for comment on the current draft Climate Change Adaptation Plan. The draft Climate Change Adaptation Plan is a high-level statement of EPA's policy and has little direct effect on the states. However, these implementation plans will presumably contain the details of specific steps the EPA plans to take to incorporate climate change into programmatic operations and could have a significant direct impact on the states or other authorities implementing the Clean Air Act. It is vital that states be given an opportunity to comment on the details of these implementation plans.

*Reliance on IPCC climate models to predict extreme weather events on a regional or local level is scientifically invalid.*

There are many uncertainties associated with the various climate models currently in use. Once the decision is made to base some course of action on possible future climate scenarios, a choice must be made between the various competing climate models. These competing models predict different results. Among the many variables that produce differing results, the models are sensitive to initial conditions or the period of record used as a baseline. Climate change models are designed to account for large geographic and temporal scales with broad assumptions made across large grid size boxes within the model. These models are not an appropriate tool to scale to local conditions. Predictions of severity of precipitation are especially problematic. As the Climate Change Plan itself points out on page 17, projected effects on hydrology on a local scale are less certain. A key to using any climate change model is dealing with an expanded range of uncertainty in the predicted future. Yet the rest of the Plan speaks as if there is zero uncertainty about the effects of climate change.

A popular claim is that recent extreme weather events are caused by human-caused climate change. However, as Dr. John Christy, Alabama State Climatologist at the University of Alabama in Huntsville notes, "The earth is very large, the weather is very dynamic, especially on local scales, so that extreme events of one type or another will occur somewhere on the planet in every year. The recent extremes were exceeded in previous decades. ... The average warming rate of 34 CMIP5 IPCC models is greater than observations, suggesting models are too sensitive to CO<sub>2</sub>. Policy based on observations, where year-to-year variations cause the most harm, will likely be far more effective than policies based on speculative model output, no matter what the future climate does."<sup>1</sup> While it is prudent to plan for weather extremes, assigning them to human-caused climate change is not agreed upon by the scientific community. Given the uncertainty of climate change forecasts, it is best to leave to states and local governments how best to utilize scarce resources to address either present known problems or future scenarios based on uncertain climate predictions.

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<sup>1</sup> John R. Christy, PhD, Alabama State Climatologist, University of Alabama at Huntsville, Testimony to the Environment and Public Works Committee. August 1, 2012

*It is unnecessary and inappropriate for the EPA to attempt to account for climate change in the ozone state implementation plan (SIP) process. The Federal Clean Air Act (FCAA) and the current SIP process already take into consideration that factors in the future, regardless of the cause, may interfere with attainment and maintenance of the National Ambient Air Quality Standards (NAAQS).*

In Section 2.2.1 of the draft Climate Change Adaptation Plan, the EPA states that climate change will need to be taken into account when designing effective ozone precursor emission control programs based on studies indicating climate change could increase tropospheric ozone in sections of the United States. The EPA also states that federal, state, tribal, and local governments will need to respond by improving the effectiveness of existing emissions control programs for ozone precursors or by implementing new control measures that will ensure attainment of the ozone NAAQS. It is unnecessary for the EPA to implement additional policies and requirements regarding possible future factors that may exacerbate ozone formation and potentially interfere with attainment and maintenance of the NAAQS. The FCAA already takes this possibility into consideration in multiple ways. States' attainment demonstration SIP revisions are required to include contingency measures to be implemented should an area fail to attain the NAAQS. If a nonattainment area does fail to attain the NAAQS by the attainment date, the FCAA clearly spells out the EPA's and the state's obligations and actions. Once nonattainment areas meet the standard, the FCAA requires maintenance plans as part of the redesignation process.

Additionally, the EPA's presumption that additional or more effective controls will be needed due to climate change fails to consider that ozone control measures must be evaluated as reasonably available control measures (RACM) or reasonably available control technology (RACT) considering technology, economics, practicality, and many other factors. All control measures that meet the criteria to be considered RACM or RACT must be implemented to help ensure attainment of the NAAQS as expeditiously as practicable. The possible future effects of climate change will not make a control measure more technologically or economically feasible in the present. While reclassification can trigger more stringent requirements under the FCAA, such as lower emission thresholds for implementing RACT, the EPA cannot bypass the feasibility structure of the FCAA regardless of climate change presumptions. Furthermore, the evaluation of control measures for ozone SIP planning purposes is performed in the context of the attainment dates mandated by the FCAA. The EPA does not have the legal authority to require states to implement control measures in a SIP attainment demonstration beyond the attainment year to address model-based theoretical changes in climate conditions in the future.

Finally, climate change models are by nature run on a global scale, and the effect of climate change on any local area is highly unpredictable. Therefore, it is not practical to attempt to explicitly account for climate change-induced effects on temperature, humidity, winds, etc. in any given nonattainment area or any photochemical modeling of an area. The TCEQ believes it would not be appropriate use of the state's limited resources to conduct air-shed modeling based on speculative assumptions about future meteorological conditions applied to relatively small geographic areas. If the EPA

decides climate change should be accounted for in ozone SIP planning, it should develop guidance on how to do so in collaboration with states, academia, and industry experts and subject to an opportunity to provide comments on any final product.