

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** August 22, 2014

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: Steve Hagle, P.E., Deputy Director
Office of Air

Subject: Consideration of a Petition for Rulemaking

Docket No.: 2014-1017-PET

Project No.: 2014-030-PET-NR

Who Submitted the Petition:

Jed Anderson (petitioner) submitted a petition for rulemaking under 30 Texas Administrative Code (TAC) §20.15 to the executive director on July 16, 2014.

What the Petitioner Requests:

The petitioner requests that the commission submit a Federal Clean Air Act (FCAA), §179B petition (Section 179B petition) to the United States Environmental Protection Agency (EPA) to revise the state implementation plan (SIP) for all ozone National Ambient Air Quality Standard (NAAQS) nonattainment areas in the State of Texas to recognize the effect of greenhouse gas emissions originating from outside the United States (U.S.) on the nonattainment areas. Section 179B of the FCAA, 42 United States Code (USC), §7509a, provides:

Notwithstanding any other provision of law, an implementation plan or plan revision required under this chapter shall be approved by the Administrator if ... the submitting State establishes to the satisfaction of the Administrator that the implementation plan of such State would be adequate to attain and maintain the relevant national ambient air quality standards by the attainment date specified under the applicable provision of this chapter, or in a regulation promulgated under such provision, *but for emissions emanating from outside of the United States* (emphasis added).

The petitioner also requests that, once the Section 179B petition is approved by the EPA, the commission initiate rulemaking to reduce compliance burdens in impacted nonattainment areas for the purpose of rectifying the offsetting of foreign greenhouse gas pollution by Texas citizens and to ensure that future SIPs incorporate a Section 179B demonstration. As support for the request, the petitioner includes excerpts and citations to a number of different studies indicating that Texas is requiring businesses and citizens to offset foreign greenhouse gas pollution.

As text for the proposed rule, the petitioner provides the following language to be included in the applicable SIP revision once the underlying Section 179B petition is approved but does not provide language for the requested Section 179B petition:

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Foreign Pollutant Transport

The Federal Clean Air Act provides that the State of Texas 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). In order to properly reflect the impacts of foreign pollution on the ability of the State of Texas to achieve attainment, and to rectify any situation where Texas citizens and businesses are paying for the cost of offsetting foreign pollution in order to attain the NAAQS, the Commission has submitted and received approval for a Section 179B petition from EPA. The modeling and control strategies in the SIP have therefore been adjusted to properly reflect the contribution from foreign pollution to the States ability to achieve the ozone NAAQS in Texas.

Recommended Action and Justification:

The executive director recommends denial of the petition for the reasons discussed below.

The petition does not meet the requirements of a Petition for Adoption of Rules pursuant to 30 TAC §20.15. The petitioner does provide “a statement of the statutory or other authority under which the proposed rule is to be promulgated,” but fails to provide complete information regarding the “brief explanation of the proposed rule,” and the petitioner also does not provide adequate “text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the text of the current rule, if any,” as required by §20.15(a)(1)(B). Additionally, with respect to the “alleged injury or inequity” required by §20.15(a)(1)(D), the petitioner asserts that Texas is currently requiring citizens and businesses to offset foreign greenhouse gas pollution and that this impact is expected to increase over the next 40 years. The petitioner does not indicate specifically how Texas’ current or future ozone regulations will unfairly or unequally burden its citizens or businesses due to greenhouse gas emissions emanating from outside the state.

The petitioner suggests a two-step process of submitting Section 179B petitions to the EPA and then conducting rulemaking ostensibly regarding control strategies for greenhouse gas emissions originating from outside the U.S. but fails to provide adequate or complete information to support these requests, and thus does not meet the requirements of §20.15.

The FCAA, §179B provides that notwithstanding any other provision of law, an implementation plan or plan revision required under this chapter shall be approved by the EPA administrator if the plan otherwise meets all applicable requirements of the FCAA and the state satisfies the administrator that the plan would be adequate to attain and maintain the NAAQS by the attainment date but for emissions emanating outside the U.S.

The executive director’s staff reviews information relating to the probable contribution to nonattainment or interference with maintenance for the NAAQS as part of the regularly

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required review after a revision of a NAAQS. The petitioner requests review of foreign transported greenhouse gas pollution impacting ozone nonattainment in Texas. The EPA most recently revised the ozone NAAQS in 2008; however, the latest EPA guidance for attainment demonstrations, "Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, PM_{2.5}, and Regional Haze," includes no discussion of anthropogenic greenhouse gas-induced climate change. It is currently not a requirement for attainment demonstration modeling. Furthermore, a recent EPA document cited by the petitioner demonstrates that any review of foreign transported greenhouse gas emission contribution to ozone in the state is premature at this time:

Second, the science of modeling climate and atmospheric chemistry for the purposes of understanding the sensitivity of regional air quality to climate change is in its early stages. This effort highlights a number of uncertainties that limit the information that can be provided to support decision-making, as well as what work is needed (some currently underway) to begin addressing these uncertainties.¹

From a technical standpoint, the petitioner's premise also lacks support. The petition cites many papers from scientific literature, in an effort to show that ozone concentrations in Texas are currently higher now than they would be if no foreign greenhouse gas-induced climate change were present. However, the review and analysis of these papers is superficial. The sentences quoted from each paper support the assertions of the petitioner, but they are quoted uncritically, without any assessment of whether they adequately describe the data and analysis presented in the papers, or whether the paper in question is of greater or lesser value. For example, a number of the cited studies discuss the results of ensemble modeling, i.e., climate simulations using several different models and input data sets. These studies are likely to give more reliable results than those with only one model type, but no distinction is made in the petition between the results of ensemble studies and single-model studies. In fact, the ensemble studies tend to show a wide variation in projected effects of regional greenhouse gas-induced climate change on ozone in Texas (e.g., Weaver *et al.*, 2009). Some models even show a projected decrease in ozone concentrations in eastern Texas as a result of climate change (Weaver *et al.* 2009). The petitioner has not shown whether there is a scientific consensus about how greenhouse gases emitted from a foreign country may affect ozone concentrations in Texas. Climate change models are run on a global scale, and the predicted effects of climate change on a local area are uncertain. It is currently impractical to precisely quantify climate change-induced effects on temperature, humidity, winds, air pollution, etc. in small geographic regions the size of a nonattainment area. In summary, the technical justification for this petition is inadequate to the task of evaluating the effects of foreign greenhouse gas emissions upon Texas ozone concentrations.

¹ U.S. EPA Global Change Research Program, *Assessment of the Impacts of Global Change on Regional U.S. Air Quality: A Synthesis of Climate Change Impacts on Ground-Level Ozone*, xviii (April 2009).

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Applicable Law:

- Texas Government Code, §2001.021, establishes the procedures by which an interested person may petition a state agency for the adoption of a rule;
- 30 TAC §20.15, provides such procedures specific to the commission;
- Texas Clean Air Act, Texas Health and Safety Code, §382.0172, provides that the commission, in developing rules and control programs to be included in a SIP for an international border area, shall ensure that the SIP meets the requirements of the FCAA, and provides additional authority that the commission may consider additional reductions outside the U.S., to the extent allowed by federal law; and
- FCAA, 42 USC, §§7401, *et.seq.*

Agency contacts:

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Attachment

Petition

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