UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 15 2006

THE ADMINISTRATOR

Mr. William M. Bumpers
Baker Botts L.L.P.
The Warner
1299 Pennsylvania Ave, NW
Washington, DC 20004-2400

Dear Mr. Bumpers:

The Environmental Protection Agency has received the July 12, 2005 petition you filed on behalf of the City of Amarillo, Texas; El Paso Electric Company; Occidental Permian LTD.; and Southwestern Public Service Company, d/b/a Xcel Energy (collectively, Petitioners). The petition asks EPA to reconsider the inclusion of the whole State of Texas in the Clean Air Interstate Rule (CAIR). EPA received numerous petitions for reconsideration of the CAIR and initiated processes to reconsider several aspects of the rule. After careful consideration and for the reasons explained below, EPA denies Petitioners' request for reconsideration.

The CAIR, published in the Federal Register on May 12, 2005 (70 FR 25162), is a powerful component of the Bush Administration's plan to help over 450 counties in the eastern United States meet air quality standards for ozone and fine particles. EPA determined that reductions in upwind precursor emissions will assist downwind areas in meeting the national ambient air quality standards (NAAQS) for ozone and fine particles. EPA also determined that attainment will be achieved in a more equitable, cost-effective manner than if each non-attainment area attempted to achieve attainment with the ozone and particulate matter NAAQS by implementing local emissions reductions alone. The CAIR was developed through a process that involved extensive public participation. We received and responded to thousands of comments and held public hearings in February and June 2005. The robust public dialogue was an important part of the rulemaking process.

EPA recognizes the continuing significant public interest in the CAIR. Following publication of the rule, EPA received twelve separate petitions for reconsideration, including the one you submitted. In response, EPA granted reconsideration and, through Federal Register actions, reopened public comment on the following six issues:

(1) definition of "electric generating unit" as it relates to solid waste incinerators (70 FR 49708, 49728; August 24, 2005);

(2) claims that inequities result from the sulfur dioxide (SO2) allocation methodology to be used by States participating in the EPA-administered trading program (70 FR 72268, 72272; December 2, 2005);

(3) EPA's use of fuel adjustment factors (1.0 for coal, 0.6 for oil, and 0.4 for gas) in establishing State nitrogen oxides (NOx) budgets (70 FR 72268, 72276; December 2, 2005);

(4) certain inputs to the fine particle (PM2.5) modeling used to determine whether Minnesota should be included in the CAIR region for PM2.5 (70 FR 72268, 72279; December 2, 2005);

(5) EPA's determination that Florida should be included in the CAIR ozone region (70 FR 72268, 72280; December 2, 2005); and

(6) the impact of New York v. EPA on certain analyses prepared for the final CAIR (70 FR 77101; December 29, 2005).

EPA published Federal Register notices announcing the reconsideration process and requested public comment on the issues under reconsideration. EPA is taking final action on the reconsideration of these issues in a separate rulemaking signed today.

Your petition raises one additional issue. It asks EPA to reconsider the Agency's decision to include the entire State of Texas in CAIR. Petitioners argue that all Texas counties west of Interstate Highways 35 and 37 (collectively, West Texas) should be excluded from CAIR. However, Petitioners have not submitted information to EPA sufficient to show that reconsideration of this issue is warranted under section 307(d)(7)(B) of the Clean Air Act (CAA). Therefore, EPA denies Petitioners' request to reconsider this issue for the reasons explained below.

As grounds for reconsideration, Petitioners argue that the circumstances on which the petition is based arose after the close of the comment period. Petitioners argue that it was not evident, until after the final rule was promulgated, that EPA had not conducted sub-regional (i.e., partial-State) modeling to evaluate contributions from East and West Texas separately. Moreover, Petitioners claim it would have been impractical to obtain data from EPA and conduct the sub-regional modeling themselves before the close of the comment period.

EPA does not agree that Petitioners have met the standard for reconsideration because Petitioners have not shown it was impracticable for them to comment during the comment period or that the issue arose after the close of the comment period. EPA believes that Petitioners had ample opportunity to comment, during the comment period, on EPA's decision to determine significant contribution on a Statewide basis and on EPA's decision to include the State of Texas in the CAIR region for PM2.5. EPA proposed to include Texas in CAIR for PM2.5 in its January 2004 initial CAIR proposal and again in the Agency's June 2004 supplemental proposal (69 FR 4566; January 30, 2004 and 69 FR 32684; June 10, 2004). EPA also provided an additional opportunity to comment on the modeling platform to be used for the final CAIR

through a Notice of Data Availability (NODA) published on August 6, 2004 (69 FR 47828).

Indeed, Petitioners did comment, in response to both the initial CAIR proposal and the August 2004 NODA, on EPA's decision to determine significant contribution on a statewide basis and asked EPA to perform the sub-regional modeling that it deemed necessary to show that West Texas does not significantly contribute to downwind non-attainment. In response, EPA explained why its choice of a Statewide significant contribution determination and Statewide controls were reasonable. (Corrected Response to Significant Public Comments-March 2005, corrected April 2005, pp. 228-31). Thus, EPA declined to perform the additional modeling requested. Without addressing whether Petitioners could have duplicated EPA's modeling results during the requisite time frames,[1] EPA disagrees with Petitioners' premise that it was not practical for them to submit comments on the issues in question without first duplicating EPA's final CAIR modeling results. The fundamental issue Petitioners ask EPA to reconsider is EPA's decision to determine significant contribution for Texas on a statewide basis. Petitioners stated their objection to this decision during the rulemaking process (albeit without modeling seeking to demonstrate that West Texas does not contribute to downwind non-attainment).

Further, EPA considered and responded to Petitioners' comments on the Statewide modeling issue. EPA consistently defended its decision to determine contribution on a Statewide basis and did not change this position in the final rule. In sum, Petitioners had ample opportunity to comment on this issue. They had ample opportunity to comment on and object to EPA's decision to determine contribution on a Statewide basis; the modeling platform used by EPA; specific geographic characteristics, meteorology, wind patterns and demographics in West Texas and the State of Texas; and, on all aspects of EPA's determination that the State of Texas as a whole contributes significantly to downwind non-attainment for the ozone and fine particle NAAQS. Therefore, Petitioners have failed to show that reconsideration is warranted under section 307(d) (7)(B) of the CAA.

---

[1] The modeling used for the CAIR proposals and the final CAIR is extremely complex and relies on data compiled from numerous sources. EPA provided notice and an opportunity to comment on the modeling platform to be used for the final CAIR in a notice of data availability published on August 6, 2004 (60 FR 47828). EPA recognizes the difficulties inherent in duplicating such complex modeling operations and is willing to work with stakeholders seeking additional information about its modeling platforms and inputs. EPA notes that Petitioner's first request for assistance in duplicating EPA's modeling results was received after the final CAIR was published.

Thank you for your interest in the final CAIR. EPA looks forward to working with you as implementation of the rule proceeds. If you have any questions about this letter, please contact Sonja Rodman in the Office of General Counsel at 202-564-4079.

Sincerely,

Stephen L. Johnson