

Minutes
Alamo Area Council of Governments
Air Improvement Resources Technical Committee Meeting
Tuesday, April 14, 2008 1:30 p.m.
Al J. Notzon III Board Room
8700 Tesoro Drive, Suite 100
San Antonio, TX 78217-6228

Members Present

Renee Green, Bexar County, Chair
Tom Hornseth, Comal County, Vice Chair
Kristen Lagow Bettis, SA Metro Health District
Nidhi Santen, CPS Energy
Forrest Mims, Guadalupe County
Nick Page, Metropolitan Planning Organization
Mike Riley, City of Seguin
Peter Bella, AACOG
Ken Zigrang, TxDOT
Christina Castano, VIA Metropolitan Transit

Guests Present

Debra Engler, San Antonio Water System
Charles "Chaz" Gallagher, Alamo Cement
Max Frailey, Capitol Cement
Brian Pietruszewski, Gardner Law Firm
Gerald Lamping Northeast ISD
A. Brown, St Phillips College

AACOG Staff

Dean Danos, Deputy Director, AACOG
Steven Smeltzer, AACOG
Brenda Williams, AACOG
Parviz Nazem, AACOG
Donna Hessong, AACOG
Andrew Hudgins, AACOG
Berti Vaughan, Administrative Assistant

1. Meeting Called to Order

Chair Renee Green called the meeting to order.

2. Roll Call

Chair Green called roll and declared a quorum.

3. Citizens to be Heard

Verbatim comments made by Brian Pietrewski and Mark Langford can be found at the end of these minutes.

4. Approval of AIR Technical Committee Meeting Minutes for February 11, 2008.

Chair, Renee Green asked the committee for consideration of the February 11, 2008 minutes. Ms. Green asked for a motion to approve the minutes. Forrest Mims motioned for approval of the minutes. Nick Page seconded the motion. The Chair called for the vote. The motion passed unanimously.

5. Ozone & Particulate Matter Report

a. PM Report Update

Mr. Bella gave the Ozone and Particulate Matter Report. Referring to the handout, Mr. Bella pointed out that the ozone report had been modified to include the new standard. He explained that the first distinction in the report is the threshold that allows a design value of a three-year average of 75 where before 85 was a non-attainment value. On the particulate matter report, Mr. Bella reported that with the lowered annual standard there were some annual readings that started to look higher in the 24-hour average. He said the 24-hour average is now a 35 microgram per cubic meter standard. During a phone conversation with Brian Lambeth, from TCEQ, Mr. Lambeth commented that the data had been correlated with events that he was seeing excused. In this case, a Saharan dust episode or exceptional event occurred during those particular dates. Therefore, he flagged the PM data and sent it to EPA. Mr. Bella will continue to look into the matter.

b. 2008-2009 Ozone Monitoring Contract

Mr. Bella reported that Dios Dado had been selected for maintaining the 2008-2009 Ozone Monitoring. He thanked the sub-committee for their help in the selection process. Mrs. Green also extended her thanks for the sub committee's efforts.

6. Clean Air Plan Update

- a. EPA's re-designation for San Antonio Region and
- b. Overview: The New Ozone Standard

Mr. Bella presented several scenarios that could occur in the San Antonio Region under the new standards. Discussion was held on the implications under each scenario. In the meantime the region would have to wait on the new rules by the EPA and the region's attainment/non-attainment re-designation status.

Mr. Bella presented the following overview from the handout on the new ozone standard. On March 12, 2008, Administrator Stephen Johnson of the US Environmental Protection Agency signed EPA's revision to the 8-hour average ozone National Ambient Air Quality Standards. The revisions to the ozone standard are as follows:

- To attain the new standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.075 parts per million (ppm)¹.
- The new standard is expressed to the nearest thousandth ppm.
- Both bullets above contrast with the 1997 ozone standard, which stated that the same 3-year average must not exceed 0.08 ppm. In effect, the average could not exceed 0.084 ppm under the 1997 ozone standard. Equivalently, the old standard required that the average must be below 85 parts per billion to show attainment.
- The new secondary standard is no different from the new primary standard.
- The new standard is effective May 27, 2008.

Below is a timeline for the new 8-hour ozone NAAQS²

Milestone	Date
Signature—Final Rule	March 2008
Effective Day of Rule (60 days following publication in Federal Register)	Approximately June 2008

¹ <http://www.epa.gov/air/criteria.html>

² Source: <http://epa.gov/groundlevelozone/naaqrev2007.html>

State Recommendations to EPA	Designation	June 2009 (based on 2006-2008 monitoring data)
Final Designations Signature		Approximately June 2010
Effective Date of Designations		Approximately 2010
SIPs Due		Approximately 2013
Attainment Dates		2013-2030 depending on severity of problem

Mrs. Green presented a document, "Regional Air Quality Strategies" on behalf of Judge Nelson Wolff for discussion. The document is attached to these minutes.

Mrs. Green explained that Judge Wolff's strategies were being presented to the committee as a conceptual plan for discussion. It was hoped that the strategies could later be developed into a platform for future planning.

- c. **Action Item:** Consider and possible approval of proposal to develop a voluntary effort for the San Antonio Region
 - i. Ozone Flex Plan for the San Antonio Region
 - ii. Early Action Compact for the San Antonio Region
 - iii. Report: Other planning processes

Mr. Bella presented the following outline on 8-hour Ozone Flex Ideas and Early Action Compacts for the San Antonio Region for their consideration.

8-hour Ozone Flex Ideas: EPA is currently considering that 8-hour O3Flex plans under the 85 ppb standard will remain valid until 2013 or until a region would be declared in nonattainment of the new 76 ppb standard.

Air quality planners with the Capitol Area Planning Council (Austin region) are waiting to receive an answer from EPA given their request to allow the plan to go through 2013 or whenever the nonattainment SIP is due.

On April 8, 2008, EPA and Oklahoma DOEQ approved a new air quality plan for the Tulsa area under its 8-hour Ozone Flex (8-O3Flex) program.³

"The 8-O3Flex program allows communities that are currently meeting the national standard for ozone to implement proactive, voluntary measures that will reduce emissions of ozone-causing pollutants to improve air quality and stay within federal requirements. ... The Tulsa metro area has been an ozone attainment area since 1990 and currently has an ozone design value of 0.080 ppm. EPA approved a more protective 8-hour ozone standard of 0.075 parts per million (ppm) on March 12. The 8-O3Flex plan will remain in effect until 2013, unless the area is reclassified under the new ozone standard."

New Early Action Compact: A few of the key concepts:

- In an ideal setting, the San Antonio region would benefit from a new EAC with the active timeframe of the old EAC: signed in Dec. 2002, SIP handed over to TCEQ by March 2004 (first nonattainment designations under the new standard in April 2004), effective date deferral over 2005-2007.

³ EPA text sources quoted above and audio files on this story are available at http://www.epa.gov/region6/6xa/audio.htm#audio040808_tulsa

The parallel might be: a new EAC signed in Dec. 2008, SIP handed over to TCEQ by March 2010 (first nonattainment designations under the new standard in April 2010), effective date deferral over 2011-2013.

- The old EAC required showing attainment of the standard; we will not be showing attainment of the new standard.
- ACOG provide the modeling as was required under the old EAC. There is now no guarantee -- or even necessarily a likelihood -- that the model will show attainment in 2010 for the 75 ppb standard.
Implication: grappling with new control strategies; and
Assessment of the level of control we have, or don't have in fact, in creating our own attainment scenarios thru local controls.
- Demonstrate what level of reductions will be required to attain the new standard is a very good speaking point.
- Demonstration can be launched as a separate item, or it can be part of the new EAC effort.

Development of an Early Compact development within the Greater San Antonio Chamber of Commerce is possible. The Greater SA Chamber's SA to DC group will be traveling to Washington, DC, scheduled for June 22 - 25, 2008. There is perhaps popular support for the idea to judge from local press:

David Hendricks: S.A. deserves a 2nd chance on air quality

Web Posted: 04/01/2008

San Antonio Express-News

<http://www.mysanantonio.com/business/columnists/dhendricks/stories/MYSA040208.01D.hendricks.2f279a0.html>

The Chair pointed out that the EPA would not accept an EAC if the region could not show attainment. She reminded the committee that the basis of the EAC was two types of attainment; the attainment you show on paper and the attainment from the actual measurement. Consequently, if you start-off not being able to demonstrate attainment, the region would be demonstrating failure she explained.

After some discussion, Ms. Green said that if the point was being made that modeling was needed to see if an EAC was even achievable she supported the recommendation. Unless it could be shown that attainment was possible, she was not willing to sell the idea politically at the present time. She made the comment that the Flex Plan was dead. She suggested that Mr. Bella look into the feasibility of developing a new EAC protocol for the new standard.

Mr. Bella made a motion to study the feasibility of a new EAC to see if the San Antonio Region can achieve attainment to 2013 under the new standard with local control strategies. Tom Hornseth seconded the motion. The Chair called for the vote. The motion passed.

Mr. Bella said he was very encouraged by Judge Wolff's initiatives being presented to the AIR Tech and AIR Executive Committees. He was also encouraged by the activity by many local agencies that have many important ramifications to air quality. He listed the following:

- CPS Energy's announcement of their energy efficiency investments in the local region
- The award of the 2008 DOE Solar American Cities to the City of San Antonio
- Mayor Hardberger's state of the city address on the development of a comprehensive sustainable energy plan
- The Edward Aquifer Authority application to EPA for a smart growth implementation

Mr. Bella encouraged agencies to keep the committee informed of new ideas, projects, or new investments so that they can be incorporated into the region's air quality planning process. He proposed inclusion of an agenda item for agency reports in future meetings of the AIR Tech and AIR Executive Committees.

7. Other Issues

Air Quality Actions in Austin

Mr. Bella referred to a hand-out stipulating State Senator Watson and seventeen elected officials from Central Texas supporting a federal government study on the impacts coal fired power plants could have on Central Texas air quality.

In addition, Mr. Bella reviewed an article from the Star-Telegram on the possibility that Texas was preparing to sue the federal government to stop implementation of tough, new ozone standards. The question was raised in an e-mail sent to attorneys general in the 50 states indicating that Mississippi is looking for partners to take legal action against the environmental Protection Agency and that Texas has expressed an interest in joining the suit.

After some discussion based on this article, it was suggested that staff ask the Attorney General whether the state of Texas has been approached by Mississippi to join the law suit, whether Texas is going to join in the law suit, what are the key components of the law suit, and when does the Attorney General expect the suit to be filed.

Tiffany Pickens made a short presentation on the AACOG regional awards.

8. Information Items

No Informational items were discussed.

9. Adjournment

With no further business to conduct Ms. Green made the motion to adjourn the meeting.

Brian Pietruszewski Citizen to be Heard Verbatim Comments

My name is Brian Peituszewski and I am here to speak on agenda item six. I'll start with what I don't want you to spend that agenda item on, because I expect there will be significant discussion by just restating three realities under the Clean Air Act.

1. First being that EPA is authorized to set a standard "requisite to protect public health"
Congress has been barred from considering cost or localized effects
This administration agrees with at least some of the health evidence or they wouldn't have lowered it.
2. Compliance is required within specific geographies regardless of transport, regardless of background, no extensions
3. There will always be tension between requiring ambient compliance at a specific point and distributing that compliance burden geographically.
The point is, Congress has made its choices as I just described; you may not agree
But those choices are regularly upheld under a minimal rational basis standard, including the principles that:
The Act prescribes no source specific means of meeting the standard, and states can allocate the cost of compliance between sources however they choose.
Such as by making upwind sources accountable for downwind impacts, during permitting or otherwise, figuring out which downwind areas get to take credit for those reductions, and at what ratio, all of which is still to be worked out, if that choice is made.
Also the states can set intrastate geographies of compliance, and EPA can address interstate transport, based on any measurable contribution from any geographic unit. So you may see costs shift that way.

If the state makes those choices or if Congress makes new choices, great. But that and a million other things can happen between now and 2010, and it doesn't make sense to speculate on what those will be now. The same conceptual questions will still be there when EPA comes down from Mt. Sinai six months from now with the tablets—or should I say the 1,000 page ream of guidance on how they're going to implement the new standard and keep making designations under the old standard. But under either standard, we're waiting around.

And we can't afford to wait around. The task in front of us is to do what we can in the interim to build up credibility and creditability against whatever happens in the future. This means continuing and expanding the voluntary reduction efforts that have been successful to date.

It makes no sense to limit our focus to a third of the NOx sources, the permitted point sources. That sends the wrong message to outsiders and to those who are already here and may be looking to expand. Every voluntary reduction that can be made in this interim period, including from a non-point, area, or mobile source, will enhance San Antonio's competitiveness in the future and maybe even keep it out of non-attainment under the old standard.

But when you talk about non-point, area, or mobile sources there is a knee-jerk assumption that you're talking about an inspection and maintenance program—As it time had just stopped in 1990 and we hadn't figured out any other means to speed turnover of old emissions sources, to reduce trip miles, and encourage the purchase of cleaner technology, and as if local areas are powerless to help themselves.

Several of these mechanisms already exist at the state and federal level and are already being used by our region. We have also been given credit for greater investments in bike lanes, walking paths, congestion reduction and mass transit in the past and I am glad we are proposing to do more of that. But many more strategies are out there, and I'll give a few examples from Sacramento and Houston. Houston helpfully has done the legwork for us, which is what I've been asking for, and as of mid-2007 has reduced a list of over 600 on-road strategies to the 35 most effective, and a list of 89 off-road strategies to the 12 most effective. A few examples:

- Further investments at ports, airports and rail yards to reduce traffic, idling, and diesel engine use.
- Lower speed limits for heavy duty diesel vehicles
- Expansion of retrofit programs for construction equipment and water pumps
- Expanded green contracting, beyond what was in the EAC

- Reduction of diesel engine and diesel fuel use in transit, which has to be getting expensive

The results are a ton of NOx per day here, three quarters of a ton here, a quarter ton there, and it adds up, in a cost effective way for the region. These are exactly the sorts of measures that can and should be easily adopted in a Flex Plan or new EAC.

This I would urge is the task in front of you, not trying to get inside the mind of TCEQ or EPA, the Courts or Congress. Our region is the one with the track-record of success, and if we stay focused on that, the large conceptual issues will take care of themselves and, I think, ultimately be resolved in our favor.

Mark Langford Verbatim Comments
Air Tech Advisory Meeting 4-14-08

Good afternoon.

As members of the Air Tech Advisory Committee, I urge you to ask our city leaders to tell Governor Perry that the State of Texas should join South Carolina and six other states, including Georgia and Alabama, in filing suit against the EPA's decision to lower the 8 hr. ozone average to 75 ppb.

If extremist environment groups like Earth Justice can legally force the EPA to lower the 85ppb eight-hour ozone standard to 75 ppb. then Cities, States and Corporations should be able to file a suit to change that standard back to 85 ppb.

We all want cleaner air to save the lives of children, elderly and asthmatics (like myself), but this reduction is beyond what we, or most cities that will now fall into non-attainment can control through emissions reductions. It is this very important fact that gives us the basis for a lawsuit. The government is essentially asking cities to control something that is beyond our control, due to "background or transported" pollution. How can the government ask a city or a citizen to do something that can't be accomplishing? It would be like passing a law that would penalize people for having flat tires. You can try your best to keep your tires properly inflated and well maintained, but it is impossible to keep from occasionally driving over an unseen sharp object...especially on the highway.

Here are a few very important points to consider in a lawsuit:

1. As revealed by an internal study by AACOG in 2003, emissions testing will only lower our ozone average by no more than 1/2 of 1 part per billion of ozone. This small amount cannot even be measured by our current monitors. According to the EPA, our current fleet of vehicles is polluting 1/100th of what they were back in the 70s. Placing the blame on vehicles is "Old School" thinking. That's why cities like Houston and Dallas that have tried to correct their ozone problems by going after vehicles, have not been able to solve their ozone situation. The only thing they have accomplished is burdening their taxpayers with additional fees and fines.

2. Since 2000, San Antonio has gone over 74 ppb. for our 4th highest 8 hr. average every year, except 2007, which was our wettest summer ever recorded. As we all know, it takes sunlight to form ozone, and there was very little of that during last years' ozone season.

3. AACOG studies show that on most high ozone days, the four county San Antonio area usually contributes less than 10 ppb. during high ozone events and rarely contributes over 15 ppb.. Since we have had high ozone days with 8 hr. averages above 90 ppb., even if our entire 4 county area were to completely shut down, we would not be able to keep our ozone levels under the new 75 ppb. standard. This is evident in looking at monitors in our rural counties, like Seguin, TX. Under the new standard, Seguin will also go into non-attainment during most years, even though only 25,000 people live there.

4. As far as I know, there have not been any detailed studies on how big of an impact natural ozone sources play in "background" ozone levels. Depending on how wooded cities are, oak trees and other vegetation like kudzu, may be a much higher percentage of biological sources than we realize. A good way to prove this theory is to examine ozone monitors in National Parks. Joshua National Park, in the deserts of California, is a great example of an isolated area having high ozone during the summer. What if even half of the ozone we record is from natural sources? Without studies, we may never know if high ozone levels can even be dropped at all.

5. Cities in the lower latitudes are unfairly penalized with this new standard. Since ozone production is impacted by heat, clear skies and UV, cities that are in the southern half of the country are naturally going to have more days during a typical year that could be high ozone days. Where Houston averages 96 days a year over 90 degrees, Seattle only averages 3 days, yet both are under the same standard. It would be like playing football in an arena versus a normal stadium...which teams are most likely to score more often?

6. The EPA claims that more people are dying and being hospitalized during high ozone events. Where is the evidence in San Antonio? We need to quickly conduct a study and see if their information is true. As an asthmatic, I will take a high ozone any day over a high pollen day.

I hope that you see how unfair this new standard is and that you will carefully consider contacting other mayors and officials from other cities to start a class action lawsuit against the EPA ruling. It is the only way we can stop this from negatively impacting our area.

All of the information I have shared is from the pages of my website, www.ozoneinformation.com

Also, I sent Peter a reply and I would be more than happy to hear a response from him during the meeting if you have time but looking over the regional air quality strategies memo I noticed that the third paragraph mobile sources are considered the largest combined contributors of NOX and VOC emissions in our area and according to your own AACOG 2004 attainment demonstration the largest contributors of VOCs by far are biogenic sources not mobile sources. According to your information biogenic sources contribute 59% while on road sources contribute only 11%. On the NOX side mobile or on road sources are 36% but your report from then shows point sources at 32%, which is very very close. Once again cars are being singled out as the bad guys when emissions continue to drop every year in fact according to your 2007 Early Action Compact report NOX emissions from Mobile sources will decrease by one half from 1999 to 2012 despite a population increase. Because vehicles continue to contribute less NOX, every year lowering ozone through expensive mass transit strategies is debatable. As we've seen in the past high ozone days have occurred on Sundays when vehicular traffic is reduced by up to 57%. And for those people who favor emissions testing again we've talked about that. One other thing I went back during this weekend and reviewed weekend data from 1999 to 2007 and during that time we had a total of 37 high ozone days of over 75 ppb. That averages out to five days per year more than the needed four days for going over the fourth highest ozone eight-hour average. During this time, there was a Sunday that recorded an eight-hour ozone average of 97 parts per billion on a Sunday. I studied a Texas Transportation Institute study that says that on a typical 2007 weekend vehicular traffic reduction ranges from 40% on Saturdays to 57% on Sundays. And to me this perfectly illustrates why the new standard will not work. Even if San Antonio shuts down our polluting businesses and forces 50% of our drivers not to drive their cars we still won't make a dent under the new standard. I appreciate your time and I hope that you will lean on your leaders and have them really consider a law suit because I don't see any way . . .an Early Action Compact is simply going to delay this for another two or three years but there's no way we are going to be able to stay within this 75 parts per billion.

REGIONAL AIR QUALITY STRATEGIES

- With the lowering of the Federal Ozone Standard from 80 parts per billion to 75 parts per billion, announced by the EPA on March 12, 2008, we are now facing unavoidable violations of the Clean Air Act.
- Previous local and voluntary control strategies provided for the success of the Early Action Compact and implementation of those local controls allowed this area to avoid non-attainment for 5 years, however this new more stringent ozone standard has necessitated the need to approach this issue from a greater regional perspective.
- Given the fact that mobile sources (cars and trucks) are the largest combined contributor of NOX and VOC emissions which form ozone in our area,
- Focus should be shifted from localized solutions to the development of partnerships and funding plans to promote the following regional transportation programs which are design to remove traffic and congestion from our metropolitan area.

PUBLIC TRANSIT STRATEGIES

1. Private business commuter initiatives for employees
2. Bus Rapid Transit corridor development
3. Light Rail
4. Commuter Rail from San Antonio to Austin
5. Additional bus multimodal sites such as VIA's Westside Multimodal Facility

FREIGHT RAIL STRATEGIES

1. Legislative initiatives to fund the Texas Rail Relocation Fund (created 79th Legislative Session)
2. Freight rail relocation outside populated areas and adaptive reuse of tracks for commuter rail
3. Addition multimodal facilities such as the Union Pacific site - Old Pearsall Road to encourage the transport of freight by rail instead of trucks.

SMART GROWTH

1. Land Use Planning incentives for mixed-use, transit-oriented projects
2. Green Building Codes
3. Incentives for Energy Efficiency development

ENHANCED HIGHWAY SYSTEM INFRASTRUCTURE

2. Pass-Thru Financing Projects financed by local governments to advance construction
3. Expand boundaries of the Advanced Transportation District to include all of Bexar County
4. Complete remaining segments of State Hwy 130 from US183 in Travis County to IH10 in Guadalupe County