Should Houston Continue Offsetting Foreign Pollution Impacts to Achieve Attainment?

Jed Anderson
The AL Law Group PLLC
RAQPC Presentation
March 30, 2017
The world has changed.

Our understanding has changed.

One world.

One atmosphere.
Ozone now a **Global** issue.
“It’s a Small Multi-Pollutant World After All”
The World is Growing Up Around Us

Ex./ Ozone Pollution Blowing into the U.S. from Overseas
Houston Impacts

Foreign pollution is affecting the Houston area’s health and attainment efforts
A Sign Post of this Presentation

❖ How the Clean Air Act deals with (doesn’t deal with) foreign pollution

❖ How foreign pollution is currently addressed in the Houston SIP

❖ Attempts to fix problem and suggested path forward
Foreign Pollution and the Clean Air Act
The Clean Air Act Assumes that Air Pollution is Largely a Local Problem

---“Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such state by submitting an implementation plan for such State which will specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained . . .” (Clean Air Act, Section 107(a))
More and More Pollution is Outside State/Local Control
“It’s Becoming a Small Multi-Pollutant World After All”

Interstate Pollutant Transport
Ex. CAIR/CSAPR

Federally Controlled Mobile Sources

International Pollutant Transport

Intrastate Pollutant Transport
Achieving the Ozone NAAQS in Houston

- 70 PPB NAAQS
- States Responsible for 100%!
  (42 USC §7407)

- 70% Federally Controlled
- 12% State Controlled
- 30% Federally Preempted Mobile
- 58% Background Pollution

State controlled sources are still significantly controlled by the Federal government via rollout of Federal programs and initiatives (ex. NSPS, MACT, GHG initiatives, CSAPR, NSR)
Foreign pollution is ultimately the responsibility of the States under the current Clean Air Act—but some tools available such as Section 179B and “exceptional event” demonstrations to remove this responsibility.

**Section 179B**

“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 and Congress have said that States do not need to accept responsibility for foreign pollution

- “The EPA does not expect States to restrict emissions from domestic sources to offset the impacts of international transport of pollution.” —U.S. EPA

- “[T]he EPA will not hold States responsible for developing strategies to “compensate” for the effects of emissions from foreign sources”. —U.S. EPA

- “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.” —U.S. EPA

- “The Clean Air Act does not ask States to reduce background levels.” —Gina McCarthy, EPA Administrator, Congressional Testimony, April 2, 2014
"The Clean Air Act does not ask States to reduce background levels."

—Gina McCarthy, U.S. EPA Administrator
“I will note that the Clean Air Act does not hold States responsible for pollution that they do not control.” — Janet McCabe, EPA, Congressional Testimony
“If we can document anything that is coming into nationally we certainly recognize that that’s not something the State will be responsible for.”

--Gina McCarthy, EPA Administrator, June 23, 2016 Congressional Testimony

See https://www.youtube.com/watch?v=FaA7YFS91XM&t=2m16s
EPA and other Studies Prove that Foreign Pollution is Blowing into the U.S. and Texas
Ozone Pollution Blowing into the U.S. from Overseas
If EPA tightens the ozone standard it will have no choice but to view ozone as a global pollution problem. —Daniel Jacob, Harvard University, E&E News, 11/17/14
“The level the EPA says is safe is getting closer and closer to what’s blowing across the ocean”

“To control pollution, Americans need to think globally.” — Dan Jaffe, University of Washington
“Ozone is a global issue.”

“The way that we deal with ozone today just no longer makes any sense.” — Jeff Holmstead, Bracewell & Giuliani, Former EPA Assistant Administrator for Air, Congressional Testimony 10/22/15
“International sources responsible for 68% of ozone pollution in Arizona nonattainment area”.
The Area is forced to put controls on local sources of pollution for “pollution that they did not create and that the state cannot regulate.”
Foreign Pollution Impact on the Health of Texans and the Texas SIP in 2006

**Harvard University, Dr. Lin Zhang, “Domestic and foreign source attribution of nitrogen deposition and surface ozone pollution over the United States”, March 2011**
TCEQ’s study indicated over 1 ppb contribution from overseas foreign pollution—excluding pollution impacts from Mexico.

EPA August 2014 Staff Report cited **Mexico Contributing Up to 12 ppb of Ozone to Texas**

(see [http://www.epa.gov/ttn/naaqs/standards/ozone/data/20140829pa.pdf](http://www.epa.gov/ttn/naaqs/standards/ozone/data/20140829pa.pdf))
Foreign Pollution and the Houston SIP
Houston SIP essentially assumes that not even one molecule of foreign pollution blows into the Houston area.*

* If we admit a molecule blows in, then we would need to admit that its being offset by additional local controls to demonstrate attainment.
The Truth that is Not Being Told

The Houston-Galveston Area is choosing to spend billions of dollars of extra local money to reduce foreign pollution impacts (in addition to spending money reducing local pollution impacts) by implementing extra controls on local sources.

[Demonstration]
States Requiring Citizens to Offset Billions of Dollars in Foreign Pollution Impacts

Foreign Pollution + Local Pollution Offsets < NAAQS Attainment Demonstration

X =  or  ?
Foreign Pollution and the SIP Process

Section 179B’s “But for” Test

These are the same. Just inversed.

TCEQ’s incorrect implementation
Correct implementation per EPA and Congress

This is the correct way to do it as EPA and Congress have explained.

NAAQS
EPA and Congress have indicated to States that States don’t need to offset foreign pollution— but that’s exactly what States are doing.

“The EPA does not expect States to restrict emissions from domestic sources to offset the impacts of international transport of pollution.” —-U.S. EPA

 “[T]he EPA will not hold States responsible for developing strategies to “compensate” for the effects of emissions from foreign sources”. —-U.S. EPA

“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.”---U.S. EPA
Efforts to Fix the Problem and the Future
Lawyer wants Texans not to pay for smog from Mexico

Outside polluters costing Texas industries
Lawyer wants state to stop paying for foreign smog

MATTHEW TRESAUGUE
, HOUSTON CHRONICLE  Published 5:30 am, Sunday, May 22, 2011
Best Way to Address Foreign Pollution?

* I would suggest that it’s not the current way . . . Option C (see 42 U.S.C. § 7407(a))
Who should be Responsible for Addressing Foreign Pollution Impacts to Houston?

Option A
The International Community

Option B
The U.S. Government

Option C
States and Local Governments via the SIP Process
A 21\textsuperscript{st} Century
Clean Air Act

We can make it happen.

The Clean Air Act Reauthorization of 2017
“The Accord on Global Air Pollution and the Environment” or (“Agape”)

The “Clean Air Act Reauthorization of 2017” calls for development and integration of an International Multi-Pollutant Agreement into the Clean Air Act
Ozone Bill and Foreign Pollution

"As communities across America try to navigate an ever changing standard process, we must have better information on how foreign sources of pollution impact our air quality," -- Rep. Pete Olson, February 1, 2017
The Relevance of Foreign Pollution to the U.S. is Expected to Increase in the Future

“For North America ground-level ozone concentrations [...] changes in emissions of ozone precursors outside the region may be as important as changes within the region.”

---2010 United Nation’s Hemispheric Transport of Air Pollution Report
Time for Houston to stop accepting responsibility for foreign pollution impacts, demand that those who can more effectively address this aspect of the problem address it, and adapt local attainment efforts to a changing world.