

From: Kurt Johnson, Sr., Williamson County Public Policy Coalition
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To: Members of Williamson County (Texas) Commissioners Court

Pct. 1 Commissioner Lisa Birkman
Pct. 2 Commissioner Cynthia Long
Pct. 3 Commissioner Valerie Covey
Pct. 4 Commissioner Ron Morrison
County Judge Dan Gattis

Connie Watson, Williamson County PIO
Gary Boyd, Williamson County staff

Date: April 7, 2010

As all of you know, I have a serious concern regarding the county's apparent misrepresentation to the Environmental Protection Agency (EPA) regarding the county's compliance with the Early Action Compact (EAC) and with commitments it made to reduce air pollution in Williamson County.

You will recall that on March 17, 2010, I sent you a memo strongly urging you to modify your draft comments to EPA involving your claimed track record in complying with your commitments. Comments made by Commissioner Covey to the EPA in February, as well as the draft of comments prepared by your consultant, Oris, to be submitted to the EPA on March 22, all contained the misrepresentation. However, you (or your committee, consisting of Commissioner Covey and Commissioner Morrison) submitted a statement for the March 22 comment deadline signed by Judge Gattis which perpetuated the misrepresentation, despite having received my March 17 memo. Based on documents on file with the Clean Air Coalition (CAC), the February comments submitted to the EPA by Commissioner Covey, the county's comments filed with the EPA on March 22, 2010, and the anti-idling Resolution passed by commissioners court on December 16, 2008, it is very clear that Williamson County sought to convey the impression to the public, the CAC, and the EPA that it was making a good-faith effort to enforce the anti-idling program. The facts show otherwise.

There are four indications that the county believes it has found (or established) a loophole by which it could justify not taking action on enforcement of anti-idling, despite having represented to the EPA and the CAC that it was implementing an effective program.

In a response to an open records request (ORR) which I sent to the county, asking for documents showing how the county complied with its commitment to “send mailings to area business, school districts and industry associations, targeting those most likely to be affected by enforcement”, the county stated on March 23, 2010: “Largest entities are in other jurisdictions, primarily cities, so the county has not sent out any mailings yet.”

In response to that same ORR in which I asked for documentation that the county complied with its commitment to “make periodic field visits” to areas where idling violations may occur to ensure compliance,” the county stated: “No field visits have been conducted as areas where idling violations are most likely to occur are in the cities.”

A deputy in the office of Precinct 3 Constable Bobby Gutierrez told me after inquiry that idling violations which occur at the Flying J truck stop (mile marker 275 on IH-35 and within Precinct 3) are not enforced by the constable's office because the truck stop is located within the City of Jarrell, so any enforcement would be delegated to the City of Jarrell.

In the anti-idling Resolution passed by commissioners court on December 16, 2008, it is stated:

The locally enforced motor vehicle idling limitation rules (30 TAC Chapter 114, Sections 114.510-114.512 and 114.517) prohibit vehicles with a gross vehicle weight over 14,000 pounds from idling for more than five consecutive minutes during the period April 1 through October 31, such period being known as the "ozone season;" i.e. that period of time during which the formation of ground level ozone is most likely likely to occur. The idling limitation rules are applicable only within the jurisdiction of a local government that has signed a Memorandum of Agreement (MOA) with TCEQ to delegate enforcement of the rules to that local government.

I spoke with Jarrell Police Chief Andres T. Gutierrez and with Taylor Police Chief Jeff Straub, and both told me that they have received no information or communication from the county regarding the existence or enforcement of the anti-idling provision. They were unaware that the county had made commitments to support such enforcement. Further, Detective John Foster, PIO for the Williamson County Sheriff's Department, and Marty Ruble, the Precinct 4 constable, both told me that they had received no communication from the county regarding the county's commitments to foster enforcement of the anti-idling statute. Further proof that the county has turned its back on the spirit of this commitment is found in its ORR response to the request for documents showing how the county has conducted “... peace officer training programs with information on regulatory requirements and compliance determination procedures.” That response stated, “No documents (have been) prepared at this time for supplemental peace officer training programs.” Even more significant is the statement, in response to the request for the list of citations actually issued by the county for anti-idling, the response was, “No violations during the period issued.”

Taken together, this body of detail clearly establishes that there is absolutely no area in which Williamson County has made even the most minimal effort to do something about the anti-idling commitment, and yet, in documents on file with the CAC and the EPA, along with the county's commitment in the EAC, the county represents that it has been fully on-board with the program. It is lame to claim that the county assumes that cities must be left to their own devices for enforcement when it is the county which has held itself out as taking the lead in doing something about the problem, even to the point of making a commitment to provide “peace officer training programs with information on regulatory requirements and compliance determination procedures.” Such training programs should have been established and made available to every peace officer in the county, including police departments in local cities. At the very least, the county should have used its so-called “education program” and exerted its influence with cities to enforce anti-idling if it intended to stake a claim with EPA as having done something about addressing the problem. Even worse, it has not disclosed to EPA its interpretation of the commitments so as to try to slide through the loophole. And even worse than that, the county has done absolutely nothing to address the very problem which it has specifically cited in public documents (and EPA comments) as being a priority.

There is no loophole within the substance of this issue. The county has an Interlocal Agreement with Jarrell (passed by commissioners court on May 27, 2003) in which the county committed to enforce laws within the Jarrell city limits. Even beyond that document, the county's failure to initiate an enforcement program through its own sheriff's department or any of the constable's offices is clear evidence that the county has not taken this program seriously, its conflicted public statements to the EPA and CAC notwithstanding.

Further, if violations of the anti-idling statute are indeed occurring outside of the cities and within Williamson County, the county is additionally disingenuous in failing to educate county law enforcement personnel as well as actually failing to actually enforce. In this instance, the county can't hide behind the loophole.

Very recently, I drove along I-35 north of Georgetown and found that, between the I-35 intersection with CR 146 and mile marker 273, at least a dozen diesel trucks were parked along the east side of the northbound frontage road, and seven of them were idling. I remained there for some 15 minutes, and observed the continued idling.

I called the City of Georgetown Planning Department and verified that the northmost corporate limits for the City of Georgetown run up to the CR 146 intersection with I-35. I also verified that the corporate limits for the City of Jarrell do not extend southward beyond mile marker 274 on I-35. Therefore, the stretch of I-35 between its intersection with CR 146 and mile marker 274 is not within any city's corporate limits. (ETJ is not an issue here, by the way.) So, without question, the idling trucks I observed were not within any city's corporate limits and therefore were in the county's jurisdiction. Therefore, it is obvious that significant diesel idling occurs outside of cities' jurisdictions.

Another request I submitted to the county within the ORR stated: "In the event Williamson County believes or alleges that it is exempt from implementing any of the above commitments, please provide the document or documents demonstrating or authorizing such exemptions." The county's response stated: "We do not believe we are exempt; however, there are no time limitations under the provisions of the Memorandum of Agreement, so we can initiate any of these items as needed."

This statement by the county cuts to the heart of the disingenuous nature of the county's position. In pleading its case to the EPA that measured ozone should be allowed up to 75 parts-per-billion (ppb) before reaching non-attainment, the county represented itself as having done everything possible to lower pollution locally. That representation specifically cited the anti-idling statute. By admitting that it had not initiated "these items" and elected to only initiate them "as needed", there is clear and compelling evidence that the county did not believe that fostering enforcement of the anti-idling ordinance was needed. Nonetheless, the county persisted in representing to the EPA and to its fellow CAC members that it was taking the anti-idling commitment seriously. The county has never stated to EPA nor disclosed to the public its belief that anti-idling programs were and are unneeded. In fact, the county has painted just the opposite picture in its comments to the EPA, suggesting that a program had been implemented.

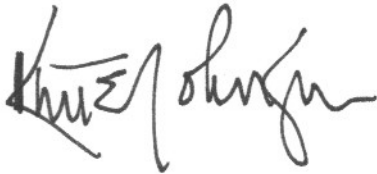
Anyone who believes that the analysis of this matter involving the facts on the ground and the alleged loophole amounts only to non-serious semantics or the exhaust output of a few idling trucks is clearly mistaken. A major problem arises because Williamson County, in making the misrepresentation in its comments to EPA, has damaged its own credibility and the credibility of its fellow members in the CAC. Without question, EPA could respond to this situation by validly pointing out that Williamson County made a misrepresentation and essentially tried to "cook the books" regarding its seriousness about reducing air pollution. Suddenly, the issue of credibility becomes a far more important matter than whatever contribution idling diesel trucks are imposing on Williamson County's air pollution problem. The county's failure to clearly and definitively disclose to the EPA what it has been doing involving the anti-idling provision is the *sine qua non* of being disingenuous. The bottom-line facts should have been disclosed.

While the burden or responsibility for this misrepresentation falls upon the Williamson County commissioners court, it falls particularly on Commissioner Ron Morrison and Commissioner Valerie Covey, who constitute the commissioners court's committee for constructing the comments to the EPA. It also is noted that County Judge Dan Gattis signed the document submitted for the March 22 deadline.

In particular, Commissioner Morrison, in comments made at more than one "power breakfast" meeting of the Hutto Economic Development Corporation, has emphasized his interest in addressing the air pollution problem, and yet he has never disclosed in any of those comments that the county has pulled its punches in failing to implement a program which it had made commitments to implement. He also should clarify the record publicly.

A clear obligation also now falls on CAC and those respective entities which are members of CAC. If Williamson County refuses to acknowledge or clarify publicly its true actions regarding the anti-idling program, then CAC and CAC members, in their own interest, should make the record clear by disclosing whether or not they support Williamson County's "loophole" approach to the local and regional air pollution problem.

Because of the loss of credibility created by Williamson County's approach to this matter, caution should be taken in complaining about any future decision by EPA to mandate a standard lower than 75 ppb for ozone. There may yet be time to pre-empt the adverse consequences of prospective non-attainment if Williamson County itself (or some other CAC-related entity) would correct the public record.

A handwritten signature in black ink, appearing to read "Dan Gattis". The signature is written in a cursive style with a large, sweeping initial "D".

Attached as separate document: Williamson County's comments to meet EPA's March 22, 2010 deadline. The document as released by Williamson County does not carry Judge Gattis' signature, though his name is entered at the signatory line. Also, there is no date on the document.

**Comments Submitted by Williamson County, Texas on EPA's
Proposed Revisions to the National Ambient Air Quality
Standard for Ozone**

Dan A. Gattis, County Judge

Assistance by

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Comments by Williamson County, Texas on EPA's Proposed Revisions to the National Ambient Air Quality Standard for Ozone

General/historical

- Williamson County, Texas appreciates this opportunity to review and comment on EPA's proposal to revisit the National Ambient Air Quality Standard for ozone. We appreciate the tremendous research efforts EPA staff have put into this issue, as evidenced by the support documents referenced in the Federal Register notice. We believe that policy decisions such as this must be guided by the best possible scientific underpinning available.
- Williamson County supports clean air for its citizens and the environment. The County has been very proactive since the 1997 8-hour ozone standard was promulgated. Nonattainment not only mandates programs to clean up an area's air quality, and but the resulting measures can also produce necessary lifestyle changes as well. Williamson County's commitment is easily demonstrated by its inclusion with Travis County in the 2004 Early Action Compact (EAC) SIP revision (TCEQ 2004). This ground-breaking voluntary program was designed to allow areas on the cusp of non-attainment to achieve clean air *faster* than the traditional command and control approach embodied in the Federal Clean Air Act Amendments of 1990. With that SIP revision, Williamson County adopted several voluntary control programs, including Transportation Emission Reduction Measures (TERMs), automobile inspection and maintenance (I&M), heavy-duty diesel truck idling restrictions, and the Texas Emission Reductions Program (TERP). (TCEQ 2004) Through the EAC process, the area achieved attainment of the 1997 ozone standard by 12/31/2007, as agreed to in the Compact. In a 2009 analysis of the all EAC programs, EPA believed that the EAC areas that did attain the standard did so because of federal emission reduction programs and rules, rather than EAC-mandated local control programs (EPA, June 2009). We take exception to this notion. We believe that the combination of federal control programs plus local initiatives provided the complete suite of reductions necessary to comply with the standard. Therefore, we respectfully request that EPA continue the EAC process in order to provide for clean air for our citizens in a timelier manner.
- In general, we would encourage EPA that, when setting a health-based ozone NAAQS, they do so at the threshold of a protective level. More stringent levels would certainly also be protective (but not "more protective"), but are not worth the additional lifestyle changes associated with trying to reduce ozone to background (not "policy-relevant background") levels.

Scientific evidence

- In its Federal Register (FR) notice, "*The EPA recognizes that there is no sharp breakpoint within the continuum from at and above 0.080 ppm down to 0.060 ppm.*" (FR 2010 pp. 2946 and 2977) With a level of uncertainty as to whether there is a bright line of health-based ozone effects between 80 ppb and 60 ppb, and with the current standard already at 75 ppb, there exists no

scientific rationale for revision to the current standard. Additional studies, including that of Dr. William Adams, call into question any statistical significance for health based ozone effects below the 80 ppb level. (Adams 2007) Accordingly, Williamson County believes that any reduction below the current standard of 75 ppb would be a result of policy-driven objectives, rather than a decision based on the preponderance of solid scientific evidence. Therefore, Williamson County believes that EPA should maintain the current primary standard of 75 ppb.

- Basic ozone chemistry depends a great deal on oxides of nitrogen (NO + NO₂):

- $\text{NO} + \text{O}_3 \rightarrow \text{NO}_2 + \text{O}_2$ (night time)
- $\text{NO}_2 + \text{sunlight} \rightarrow \text{NO} + \text{O}$
- $\text{O} + \text{O}_2 \rightarrow \text{O}_3$

EPA has recently promulgated a new 1-hour NAAQS for nitrogen dioxide (NO₂) which becomes effective in April 2010. Has EPA determined the effect of the new 1-hour NO₂ standard upon ambient ozone? Less NO means less titration of ozone at night. EPA should not proceed with setting any new ozone standards, much less try and designate ozone nonattainment areas, until it evaluates the effect of the new 1-hour NO₂ standard upon the current 8-hour ozone standard.

- We wish to echo some of the comments made by made by the Texas Commission on Environmental Quality (TCEQ) on the validity of the assumptions used as bases for some of the health studies. That is:

- Ozone levels recorded at outdoor monitors do not reflect ozone concentrations that people typically breathe over any given 8-hour period. (TCEQ 2010a)
- Hospital records do not show a correlation between increased ozone levels in the summer and asthma-related admissions. (TCEQ 2010a)
- In its OAQPS Staff Paper, EPA also used clinical studies published by Dr. William Adams as the basis for lowering the 0.08 ppm standard. EPA reanalyzed Dr. Adams' data inappropriately. (Adams 2007)
- Such a proposed standard (60-70 ppb) will be rejected by the public should it lead to drastic changes in personal lifestyles (TCEQ 2010a).

Transported/Background Ozone Issues

- There are no observed "home-grown" ozone episodes for the Austin-Round Rock area. A Conceptual Model of ozone formation in the Austin-Round Rock area specifically analyzed 19 high ozone (>75 ppb, 8-hour average) days occurring from 2004-2006. Although this is certainly not an exhaustive time frame, it certainly covers a representative 3-year block of data, as generally required to determine compliance with the standard. Within these 3 years, 8-hour

area-wide maxima ranged from 76 to 92 ppb and the percent attributed to upwind regions ranged from **73%** to **96%** (UT 2007 pg. 7-85). In fact, *“With background concentrations ranging from 65 ppb to 75 ppb on most high ozone days, even relatively small contributions of ozone formed from local source emissions in the Austin Area would result in an exceedance of the 8-hour NAAQS of 0.080 ppm.”* (Ibid) Therefore, Williamson County’s compliance with any ozone standard is a function of upwind areas, such as the Houston-Galveston-Brazoria nonattainment area or the Midwestern US, attaining the standard first. In fact, EPA would better serve the public by developing a phased or holistic approach of addressing regional and/or existing nonattainment areas first in order to attain the current (75 ppb) ozone NAAQS. Then, and only then, should EPA even consider mandating a more stringent standard.

- We would encourage EPA not to designate any area or county as nonattainment unless it has 3 complete year’s worth of quality assured EPA-acceptable ozone monitoring data for that area or county. Such areas should be initially designated either attainment or unclassifiable/no data. For that matter, EPA should defer all designations and SIP calls until after 3 years worth of monitoring data have been collected for potential nonattainment areas in the US. This would begin with the first ozone season following promulgation of any new standard. This approach would be somewhat parallel to EPA’s decision in the case of the PM2.5 standard, whereby designation did not occur until the nationwide PM2.5 monitoring network had 3 years of data.
- Because of the somewhat ubiquitous nature of ozone, the best solution would be implementation of federal rules, such as new vehicle and engine standards, without concomitant nonattainment designations for local areas, since local areas have very few measures they can implement vis a vis what EPA can mandate. That is, given the fact that local and state governments have picked most, if not all, of the “low-hanging fruit”, the balance of what is needed to meet more stringent standards must come from EPA on a broad national level. The 1990 FCAA’s construct of designated nonattainment areas with mandatory federal requirements, including nonattainment NSR permitting is archaic and merely serves to punish areas, including those without federal reference method (FRM)-based ozone monitors.

Secondary Ozone NAAQS

- The eastern half of Williamson County is a rural, predominantly agricultural area. We do not believe that there exists evidence that ozone concentrations, even at the current level of the standard, are adversely affecting vegetation or crop yields (primarily cotton, milo sorghum, hay grasses, and corn) in the county. (Baltensperger 2010) With that said, the level of the secondary standard should still be maintained at the level of the primary standard, rather than switch to W126. We would also note that precursor biogenic volatile organic compound (VOC) emissions from these row crops, while not zero, are substantially less than that attributable to oaks. (Estes 2010)

- According to Annex AX9 of EPA's 2006 Air Quality Criteria Document (AQCD), *"Specifically, there do not appear to be any comprehensive, ecological studies underway that attempt to measure changes in ecosystem outputs under alternative O₃ or other air pollutant levels. Thus, in the near term, ecosystem services can only be discussed in qualitative terms"* (EPA 2006). Therefore, we question whether is enough compelling evidence within the AQCD to justify a secondary standard that differs from the primary standard.

Williamson County, Texas thanks EPA for this opportunity to provide comment and is available to respond to any follow-up questions that the agency may have of us.

Respectfully submitted,

Dan A. Gattis, County Judge

References

UT 2007. *Conceptual Model of Large-Scale Weather Features, Local Meteorological Conditions, and Long-Range Transport Patterns on High Ozone Days for the Austin Area*, July 26, 2007. University of Texas at Austin; McGaughey, Gary; Durrenberger, Cyril; Allen, David; McDonald-Buller, Elena.

FR 2010. Federal Register, Vol. 75, No. 11, Tuesday January 19, 2010. Pp. 2938 – 3052. Environmental Protection Agency, 40 CFR Parts 50 and 58 [EPA-HQ-OAR-2005-0172; FRL-9102-1] RIN 2060-AP98. *National Ambient Air Quality Standards for Ozone; Proposed Rule.*

EPA June 2009. *Early Action Compact for Ground-Level Ozone: A Case Study*, EPA-456/R-09-001, June 2009. US Environmental Protection Agency, Office of Air Quality Planning and Standards, Outreach and Information Division.

TCEQ 2004. *Revisions to the State Implementation Plan for the Control of Ozone Air Pollution, Austin Area Early Action Compact, Ozone State Implementation Plan Revision*, November 17, 2004. Texas Commission on Environmental Quality.

TCEQ 2010a. *TCEQ Chief Toxicologist Dr. Michael Honeycutt Provides Comment on EPA Proposed Ozone Standard*. February 2, 2010. Texas Commission on Environmental Quality.

EPA 2006. *Air Quality Criteria for Ozone and Related Photochemical Oxidants, Volumes I, II, and III*, EPA-600/R-05-004. February 2006. US Environmental Protection Agency, Office of Research and Development, National Center for Environmental Assessment-RTP Office.

Estes 2010. Personal communication with Mark Estes of TCEQ Air Modeling and Data Analysis Section.

Adams 2007. *PUBLIC COMMENT TO CASAC OZONE REVIEW PANEL TELECONFERENCE MARCH 5, 2007* William C. Adams Professor Emeritus Exercise Biology Program University of California Davis, CA.

Baltensperger 2010. Personal communication with Dr. David Baltensperger, Department Head, Texas A&M University Department of Soil and Crop Sciences.