



## MEMORANDUM

To: **Mayor and City Council**

Through: Douglas G. Faseler, City Manager

From: Andy Quittner, City Attorney *AQ*

Date: March 30, 2016

Re: AACOG Air Committee update and Resolution approving comments to TCEQ with respect to the 2015 NAAQS ozone attainment designation

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A couple of years ago the Mayor and Council appointed me to serve on the Air Technical and Air Advisory Committees sponsored by the Alamo Area Council of Governments. Since then, the Air Technical committee elected me as their chair, so I am now an ex-officio member of the Air Executive Committee. As a short recap the Air Technical committee (made up primarily of persons with scientific backgrounds) looks at technical aspects of air pollution, particularly pollution that leads to ozone formation, and the methods for controlling such pollution. That committee suggests action items for the Air Advisory Committee – which is represented by both governmental entities and businesses all of whom have a stake in air quality. The Air Advisory committee makes recommendations to the Air Executive Committee. Elected officials from the San Antonio-New Braunfels MSA make up the Air Executive Committee. That Committee, on behalf of the MSA, takes final action on submitted recommendations and also files comments with governmental agencies, and takes other action related to clean air.

The Clean Air Act mandates that the EPA review National Ambient Air Quality Standards (NAAQS) on a regular basis. Some of the standards, of which the ozone standard is one, are controversial and spend a lot of time tied up in federal court. A case in California resulted in a Federal judge ordering the EPA to adopt new NAAQS for ozone by October 2015. The EPA followed the mandate and adopted the 2015 NAAQS which drop the ozone standard (measured as the 4<sup>th</sup> highest 8 hour average) from 75 ppm to 70 ppm. This will result in the addition of a number of areas being designated nonattainment.

A nonattainment designation will hurt economic development because certain companies will need to show that they do not add to ozone precursors before they can move into a nonattainment area. Some existing businesses, such as CMC and concrete

plants, may need consider adding new and additional pollution control measures to keep their emission permits. Road projects will likely require additional environmental analysis (increasing the cost for construction). Certain Federally funded contracts may require that successful bidders use equipment that meets stricter standards, effectively shutting out smaller contractors from the bidding process, and increasing costs.

With regard to the 2015 ozone NAAQS, states must submit an implementation plan to the EPA by October 1. Failure to submit a plan will result in the EPA forcing its own plan on the state, which is a means to make submission mandatory. In the Texas plan TCEQ is recommending that Bexar County (most of which is the City of San Antonio) be added to the nonattainment list. San Antonio is having difficulty meeting the current (2008 NAAQS) standard – in spite of taking efforts to improve air quality. In depth modelling indicates that it will be very difficult for San Antonio to meet the 2015 NAAQS – unless there is a substantial decrease in the production of ozone in other – non-Texas (and some Texas) areas. Modelling shows that about 68% of the ozone on high ozone days is transported into the area from elsewhere.

The problem with TCEQ designating Bexar County as Nonattainment is that in all likelihood the EPA will, upon final rulemaking, designate the entire San Antonio-New Braunfels MSA as Nonattainment. That would include all of Guadalupe County. Such a designation would hinder economic development within Seguin and would increase the cost of doing business (especially road construction).

The Air Executive Committee has commented on the TCEQ proposal, requesting that they change the recommendation for “Nonattainment” designation and, at least, wait until 2016 readings are in. The Resolution before Council adopts the Air Committee comments, and further requests, based on the monitor at the Outdoor Learning Center, that TCEQ designate Guadalupe County as “Attainment.” The Resolution also requests that TCEQ maintain the operation of the OLC monitor (as it appears that in 2016 it is not being used).