Clean Air Act Forum: State, Local, and Federal Cooperation under the Clean Air Act July 31, 2012 and August 2, 2012

Participant Questions

1. ***In your agency's experience implementing the Clean Air Act (CAA), what is working well? What is not working well?***

Working well

The CAA amendments of 1990 expanded the regulatory authority of the Environmental Protection Agency (EPA) in several areas (e.g., additional requirements for air quality research, nonattainment planning, standards for hazardous air pollutants, and specific requirements regarding revisions to national ambient air quality standards and designations), and created new programs (e.g., acid rain, stratospheric ozone depletion and federal operating permits). The nationwide cap on utility emissions of sulfur dioxide (SO_2) implemented through the allowance trading program set a goal of reducing annual SO_2 emissions by 10 million tons, below 1980 emission levels, in two phases (Phase I in 1995 and Phase II in 2000); and a 2 million ton reduction in nitrogen oxides (NO_X) by the year 2000. An EPA report[1], highlighting results from the acid rain program over the 15-year period 1995-2009, noted that acid rain units have reduced annual SO_2 emissions by 67 percent compared with 1980 levels and 64 percent compared with 1990 levels. The 2009 NO_X emissions were 6.1 million tons less than the projected level in 2000 without the acid rain program or more than triple the acid rain program NO_X emission reduction objective. While acid rain deposition has not been eliminated, EPA has reported substantial improvements in air quality, in addition to improvements in surface water quality. EPA reported that the national composite average of SO_2 annual mean ambient concentrations decreased 76 percent between 1980 and 2009. What distinguishes the Acid Rain program from other CAA requirements or regulatory programs are the nation-wide approach for addressing a pollutant and the time provided for industry to develop strategies for compliance.

Additionally, while the tremendous success in overall reductions in air pollution has been generally acknowledged, especially across the six criteria air pollutants, it has been argued that the Act does not allow EPA to consider weighing the cost of achieving further reductions against the questionable aggregated health benefits.[2]

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[1] EPA Report, Acid Rain and Available Related Programs: 2009 Highlights, available at: http://www.epa.gov/airmarkets/progress/ARP09_4.html#keyresultsnox

[2] Cox, L.A. 2011. Reassessing the Human Health Benefits from Cleaner Air. *Risk Analysis* May;32(5):816-29.

From 1999 to 2008 (most current data available from the National Emissions Inventory) Texas reduced NO_X emissions (as an ozone precursor) by 540,698 tons per year (tpy) from large stationary sources. These reductions were more than any other state for large stationary sources during this time period. As a result of these NO_X emissions reductions from large stationary sources, large stationary source NO_X emissions represent only 26% of the state's total anthropogenic NO_X emissions and mobile sources represent 54%.

To further illustrate this point in the Houston-Galveston-Brazoria (HGB) area, NO_X and VOC emissions from large stationary sources has been reduced by 88% (242,839 tpy) and 73% (84,484 tpy) respectively from 1990 to 2010. As a result of these reductions mobile NO_X and VOC emissions now account for 72% and 23% respectively in the HGB area while large stationary sources account for 22% of the NO_X and 15% of the VOC in the area based on 2008 data.

Additionally in the Dallas-Fort Worth (DFW) area, NO_X and VOC emissions from large stationary sources has been reduced by 71% (25,250 tpy) and 25% (28,066 tpy) respectively from 1990 to 2010. As a result of these reductions mobile NO_X and VOC emissions now account for 64% and 36% respectively in the DFW area, and large stationary sources account for 8% of the NO_X and 5% of the VOC in the area based on 2008 data.

While these accomplishments are significant, the Act was not designed with the foresight to handle today's evolving problems. In fact, the Act's biggest impediment to further improvement lies in its rigidity and inability to adjust to the changing landscape of air pollution issues.

Not working well

Problems with the practical implementation of the CAA can largely be grouped into three categories: 1) unbalanced obligations between the states and the federal government, 2) a regulatory scheme that promotes uncertainty, and 3) inability to consider other implications to prioritize air pollution goals or provide for flexible approaches to achieve those goals.

1) Unbalanced Obligations: "SIP Gap"

The Clean Air Act was structured to provide for cooperative federalism; it envisioned "a partnership between the EPA and states for the attainment and maintenance of national air quality goals." [3] The reality is that while the states are held to their part, the development of their State Implementation Plan (SIP), the EPA is not held to its statutory timeline to approve or disapprove any revisions to the SIPs. While the state[4] may be subject to sanctions and/or may have its authority superseded by a Federal Implementation Plan (FIP), when the EPA fails to act on a SIP revision, the only recourse for a state is a court challenge to force action. The real consequence of this

[3] *Natural Res. Def. Council, Inc. v. Browner*, 57 F.3d 1122, 1123 (D.C. Cir. 1995

[4] While other authorities may be responsible for implementing the CAA in other states, in Texas it is the state's responsibility. References to states' obligations can be interpreted to mean the responsible party for implementing the CAA.

uneven partnership is increased implementation time and costs, uncertainty for all stakeholders, overwhelming litigation burden, and delayed benefits for air quality.

A "SIP gap" occurs most frequently when the state has revised its rules and the SIP but EPA fails to act, either by approving or disapproving the revision. While the CAA requires that the EPA act within 18 months, there is no penalty to EPA when they do not act in a timely manner. The result leaves industry subject to both the state's new rule and the EPA- approved previous version of the rule[5].

2) Regulatory Scheme Promotes Uncertainty

The CAA requires the EPA to review and, if appropriate, revise the National Ambient Air Quality Standards (NAAQS or standards) every five years. The process of re-reviewing a standard is no small feat. As described by EPA, it is "a lengthy undertaking" including many phases such as a science policy workshop, the development of an integrated review plan, an integrated science assessment, a risk/exposure assessment, a policy assessment, rulemaking and then, inevitably litigation. The basic elements of the NAAQS (indicator, averaging time, form and level) must be evaluated and considered. Start to finish, the NAAQS review process takes about five years for EPA to complete, not including litigation.[6]

Historically, EPA has had difficulty accomplishing the entire process within five years leading to a litigation-driven review schedule. Even when the NAAQS is set in a "timely" manner, the standard's adoption often leaves more uncertainty. A common complaint of state regulators is the failure of EPA to provide guidance contemporaneously with the promulgation of a new NAAQS or other standard. Often states are left with no choice, given certain implementation deadlines and the consequences of missing these deadlines, but to make the best judgment call on how to proceed. Later when the EPA gets around to providing guidance or rules, they are reluctant to approve or refuse to consider approaches other than those identified in their guidance - under the guise of "national consistency[7]."

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[5] A well-known example of this SIP gap resulted when, in 1994, the TCEQ modified its minor NSR permitting program to develop a flexible permit program to incentivize emission reductions on a plant-wide basis, but EPA failed to act on these revisions for 15 years. Sources operating under their flexible permits issued in accordance with Texas' rules acted in good faith to comply with the state rule by implementing emission reductions they were not otherwise required to implement under the EPA-approved version of the rule. The EPA summarily required all flexible permit holders to transition to a "SIP-approved" permit. As of May 2012, the TCEQ has "de-flexed" 69 flexible permits and 42 permit applications are pending in-house. EPA received commitments from the remaining 9 flexible permit holders to de-flex, but application submittals are still pending. To date, the "de-flex" process has resulted in an incredible waste of time and monetary resources for both permit holders and the TCEQ without any emission reductions or additional controls required to the permits as a result of the process.

[6] Review of the Process for Setting National Ambient Air Quality Standards Prepared by the NAAQS Process Review Workgroup for the Assistant Administrators of the Offices of Air and Radiation and Research and Development U.S. Environmental Protection Agency, March 2006. *See also*, May 21, 2009 Memorandum from EPA Administrator Lisa Jackson to Elizabeth Craig, Acting Assistant Administrator for Air and Radiation and Lek Kadeli, Acting Assistant Administrator for Research and Development.

[7] For example, by June 2013 Texas must submit its SIP for the 1-hour SO2 standard adopted in June 2010. But EPA still has not finalized a SIP implementation rule and only modified SIP guidance in April

While the concept of a five year review may sound reasonable, in practice it has not served as intended. Specifically, when examining the actual scientific literature upon which most standard revisions are considered, the same set of information often just gets re-reviewed. For example, the current fine particulate matter (PM2.5) proposed NAAQS is based on a re-analysis of the same datasets (the Harvard Six Cities study and/or the American Cancer Society Cohort) used to set the 1987, 1997, and 2006 particulate matter (PM) standards.

Five years is a very short period of time in scientific research. Many of these studies follow cohorts of individuals over decades to discern patterns of exposure and risk of adverse health effects. Other studies involve exposure of animal models over long periods of time. Because of the five-year review, EPA is driven to accomplish their technical assessments quickly, providing expedited review times[8] for extremely complex technical information.

Further, as newer sources contemplate construction or expansion, they are faced with tighter standards that make authorization more difficult. Specifically, under a Prevention of Significant Deterioration (PSD) review, the permitting authority is required to assess "increment consumption[9]." Arguably, if the NAAQS continues to be driven lower and existing sources already have "dibs" on the existing increment, one can foresee a scenario where new source construction becomes impermissible, even in the case where an area is attaining the standard and it is only a modeling exercise that makes the permit unapprovable. Adding insult to injury, the CAA sets these increments arbitrarily without a scientific basis[10].

Another challenge of the NAAQS revision results from the prescriptive nature of the CAA. The treatment of ozone nonattainment areas is particularly concerning. First, the 1990 Amendments focused on a one-hour ozone standard and set up a designation scheme for varying degrees of nonattainment ranging from marginal to extreme with associated deadlines for attainment and associated SIP requirements based on explicit air quality values. When a subsequent NAAQS review resulted in EPA changing the one-hour standard to an eight-hour standard, EPA used the statute's explicit one-hour classification schema to create a new 8-hour classification schema that does not

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2012 due to major state and other stakeholder concerns. However, final guidance is still not available, and it appears EPA will move forward with the initial guidance at a later date.

[8] The PM2.5 ISA is nearly 1000 pages and was released for a 60 day public comment period on June 19. This translates to about 45 working days for review due to weekends and holidays. The PM2.5 Health Risk Exposure Assessment is over 600 pages and was released on July 16 for a 60 day public comment period. This translates to about 40 working days for review due to weekends and holidays.

[9] PSD increment describes the allowable incremental change in air quality permissible under a PSD permit. Increment values are determined by three categories of areas, with the most stringent and smallest change being allowed in "Class I" areas that include certain national parks and wilderness areas.

[10] Increment is established as a percentage of the NAAQS. EPA has continued this approach for new standards based on the values in the Clean Air Act. "EPA based the levels of the original NO2 increments for the three area classifications on the percentage-of-NAAQS approach that Congress used to define the increments in the Act for SO2 and PM." Federal Register Vol 70, No. 196 59583

proportionally translate given the 8-hour form of the standard and the statutory requirements associated with each classification[11].

The Act doesn't adequately address transitions for revised standards. In adopting the 8-hour ozone standard, EPA determined that there is no evidence to support a 1-hour ozone standard, but the CAA prohibits EPA from allowing any less stringent control requirements even when a NAAQS standard is appropriately relaxed and no health benefits are lost. Further, the Act punitively establishes a fee under §185 for severe and extreme areas not complying with the 1-hour ozone standard by their attainment date. This fee applies only to stationary sources and is charged against any emissions above 80% of their attainment date baseline emissions. The CAA lays the burden for not attaining solely on major stationary sources, which is largely not the case[12]. Finally, the CAA does not make any provision for excluding new major stationary sources- even though built in compliance with the CAA permitting requirements to offset their new emissions- from the requirement to pay fees under §185, thereby making these newer, cleaner sources subject to a fee for their entire emission rate, not just the amount exceeding 80%.

3) Lack of Risk Management and Prioritization in the Big Picture

Possibly the CAA's greatest failure is its inability to consider other factors and allow for the possibility that there are better choices than the prescriptive choice described in the Act. The Act is inflexible in that it does not allow EPA the authority to adjust the rigid requirements to account for the evolution science and technology in its regulatory focus. The CAA provides no opportunity to consider risk in perspective or to consider regulation in light of other requirements. Neither does it allow for the possibility that regulation addressing an extremely small concentration in the atmosphere under a NAAQS may cause more harm than benefit[13]. These limitations are not aided by EPA's independent implementation of regulations as if each regulation were developed in a vacuum.

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[11] Under the final classifications for one-hour ozone standard, the Beaumont-Port Arthur (BPA) and Dallas-Fort Worth (DFW) areas were classified as serious and the Houston-Galveston-Brazoria (HGB) area was classified as severe. When initial designations for the 1997 eight-hour ozone standard were made in 2004, the BPA area was classified as marginal, while the DFW and HGB areas were classified as moderate. Thus, even though the areas were now required to meet a more stringent standard, their classification and requirements were less stringent.

[12] The Houston-Galveston-Brazoria (HGB) area is the only area in Texas not currently complying with the one-hour ozone NAAQS. Two other areas in California, the South Coast and San Joaquin Valley Air Basins, are also not attaining the one-hour ozone NAAQS. However, for 2008 in the HGB area, large stationary sources make up only 22% and 15% of NO_X and VOC emissions, respectively, whereas mobile sources are responsible for 72% and 23% of NO_X and VOC emissions, respectively. It should be noted that 2008 is the last year for which National Emission Inventory data is currently available. A similar situation exists for both the South Coast and San Joaquin Valley Air Basins. For San Joaquin Valley, in 2008 mobile sources accounted for 83% and 37% of NO_X and VOC emissions, respectively, while stationary sources only made up 14% and 23% of NO_X and VOC emissions. In the South Coast Basin, mobile sources accounted for 90% and 59% of NO_X and VOC emissions, respectively, while stationary sources made up 7% and 17.5% of NO_X and VOC emissions.

[13] Cox, L.A. 2011. Hormesis for Fine Particulate Matter (PM 2.5). *Dose-Response* 10(2): 209–218

The CAA requires that the EPA administrator set the NAAQS at a level requisite to protect the public health, allowing for an adequate margin of safety. The challenge here is that the administrator has interpreted this requirement to preclude the consideration of the possible effects of the level on other aspects that affect human health. For example, if there is an indication that any health effect could occur at any level, one could argue that the NAAQS could be set at zero, i.e., no amount of that pollutant in the air is acceptable. In the event that the administrator set a level at or near zero, the real effect of this standard would likely be that certain sources simply could not operate. Consequences to entire sectors of sources shutting down would be job losses, increased cost of goods, and even infrastructure failure in the event of power plants being affected. An extreme effect could result in inadequate or unreliable power supply.[14] For all practical purposes the administrator appears to have taken some of these possible effects into account in establishing any given standard; however, the Act does not endow this authority.

Additionally, nowhere in the Act is there allowance for providing a flexible schedule or flexible approaches that would allow states or regulated industry to take advantage of multipollutant concepts or even possible trade-offs between pollutants that would allow overcontrol in one pollutant while lesser controls could be authorized where that pollutant is seen as a lesser risk. A multipollutant strategy could be beneficial to all stakeholders; for industry in providing an opportunity to plan for all control expenditures, rather than a regular onslaught of control requirements, for regulators that could target health priorities, and for citizens that ultimately pay for each independent regulatory effort in impacts to jobs and cost of goods.

There is a saying that when your only tool is a hammer everything becomes a nail. This is indeed true in the regulation of greenhouse gases (GHG). Although the CAA did not acknowledge or address the inherent complexities of regulating such ubiquitous compounds, the EPA has been required (by the Supreme Court) to apply this tool (the only one available) to address GHG concerns. While criteria air pollutants have established standards and increments for comparison in permitting, the EPA has elected not to establish a standard for GHGs given their global nature.

GHGs, if regulated at the levels of criteria pollutants, would yield by EPA's own words, an "absurd result" and as an "administrative necessity" EPA developed its Tailoring Rule. While EPA's Tailoring Rule limits the application of GHG permitting to "large" sources (>100,000 tons carbon dioxide equivalent (CO2e) as a new source and 75,000 tons CO2e as a modification), the Act does not provide for this. Indeed, while a SIP can consider the cost of controls in addressing a NAAQS, nowhere does the Act allow for the possibility that the burden on state government (or other air pollution agencies) could allow for modification of a CAA requirement. The Oil and Gas New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP), as currently written, will require the states to regulate thousands of sources

[14] Concerns have been raised on a state and national level that the combination of the Cross State Air Pollution Rule, the Mercury and Air Toxics Rule and the proposed Carbon Pollution Standard effectively has made infeasible the construction of new coal-fired electricity generation units. With decreasing reliability margins in Texas, the prospect of unreliable or unaffordable electricity jeopardizes the health and welfare of citizens on the margin.

that were previously not regulated in this manner and in impractical timeframes, potentially drawing resources from other environmental priorities.

The CAA also fails to sufficiently address the effect of international emissions. Two provisions primarily address international emissions, §179B, International Border Areas, and §319(b), Air Quality Monitoring Data Influenced by Exceptional Events. Section 179B provides that EPA must approve a SIP submitted by a state if it meets all of the applicable requirements and the area can satisfy the Administrator that the SIP would demonstrate attainment and maintenance "but for" the impact of emissions emanating from outside the United States. Section 319(b) allows for the exclusion of air quality monitoring data that was influenced by "exceptional events," which could include air pollution originating outside the United States. Both of these provisions place a strict burden of proof on States that is difficult to meet, given the current limitations in our understanding of the air pollution photochemical chemistry, and the limited air quality monitoring network. Neither adequately provides a way to address the contribution international emissions make to natural background, particularly as standards continue to be set at lower levels approaching natural background. While a state may propose that EPA accept a plan that does not demonstrate attainment because of international emissions, this "but for" provision is still resource intensive and inadequate. Additionally, the CAA does not provide adequate mechanisms to address air pollution that impacts an area primarily from maritime emissions, for which States have little control. For example, Texas has worked diligently with local government, industry, and port authorities to address particulate matter levels that were increasing primarily due to emissions from international shipping, but these emissions do not qualify for treatment as "exceptional events" or "international emissions" since they primarily occur a short distance offshore.

States are given the authority and responsibility of achieving the NAAQS under the Clean Air Act through the current SIP process. While this may have made sense in 1990 when large stationary sources subject to state regulatory authority were the predominant sources of many of the criteria pollutants, it is no longer the case. As a result of the significant reductions in stationary source emissions since 1990, mobile sources are currently the predominant sources of NO_X and VOC emissions, and thus ambient ozone concentrations, in most areas of the country. Mobile sources are generally federally preempted from direct regulation by states. However, in order to meet the increasingly stringent NAAQS, significant mobile source reductions will be required for which states have limited control. While states are responsible for achieving the NAAQS through the SIP process, the authority to achieve the ozone NAAQS arguably now lies with the federal government. The nonalignment between responsibility and authority is a primary issue that needs to be considered in reform of the Clean Air Act.

Ultimately, the CAA does not provide a means for states to determine a prioritization scheme for their air pollution issues. The visibility requirements to address regional haze in Class I areas carry the same obligations in deadlines and content as a SIP revision that would address a pollutant of public health concern. While one might like to imagine that all air quality goals can be achieved simultaneously, the reality of limited resources means that all goals of the Act are simply not achievable as structured. Where states must choose to divert resources, the priority should always be the immediate

protection of public health. The Act does not allow for this diversion when the consequence would be a delay or a failure to comply with another piece of the Act.

2. *Do state and local governments have sufficient autonomy and flexibility to address local conditions and needs?*

No, flexibility is not designed into the structure of the act. In all cases, flexibility is only allowed as long as a source goes beyond the requirements. The Act lacks an ability to weigh different requirements and prioritize. Additionally, rules are constantly in flux and implementation guidance or rule language is not provided when the standard changes[15]. When the states fill in the gap and make their best judgment on how to proceed, the EPA then comes back with something prescriptive that requires rework for the states, wasting limited resources. Fluctuating requirements causes uncertainty not just for regulated entities but also for citizens, who can't know what standards industry must be held to meet.

Even where the Act provides for the state's authority to develop its own strategy, "national consistency" concerns can limit state specific approaches.

3. *Does the current system balance federal, state, and tribal roles to provide timely, accurate permitting for business activities, balancing environmental protection and economic growth?*

The Act requires two distinct types of permits; a preconstruction program and post-construction or operating permit program. The preconstruction program is largely unchanged since its inception in the 1970s. EPA has attempted through the more modern (1990 era) operating permits to supplement or fix preconstruction issues within the operating permit. As the global economy has played a larger and larger role in business decisions, these two permitting programs have become increasingly less responsive to flexible approaches needed for global success. Despite EPA's continued dislike of the flexible permit program[16] in Texas, this model should still be considered in looking for opportunities to provide the ability for industry to respond to market demands quickly, while maintaining compliance with air quality requirements.

An example of how the current system fails to appropriately balance is that EPA does not consistently interpret the applicability timing for revised standards resulting in confusion regarding when regulated entities must comply with revised NAAQS. In some cases, a preconstruction permit under review must immediately be updated to address revised NAAQS. In other cases, permits received before a certain date may proceed

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[15] For example, by June 2013 Texas must submit its SIP for the 1-hour SO2 standard adopted in June 2010. But EPA still has not finalized a SIP implementation rule and only modified SIP guidance in April 2012 due to major state and other stakeholder concerns. However, final guidance is still not available and it appears EPA will move forward with the initial guidance at a later date.

[16] The minor source flexible permit program established emission limits on a site-wide basis with a declining emission cap as control technology was installed on existing equipment. A flexible permit allows an operator more flexibility in managing his operations by staying under an overall emissions cap.

without addressing the NAAQS change. This confusion is exacerbated by the fact that EPA has not provided procedures or modeling and emissions estimating tools for new source review (NSR) permitting in a timely manner. EPA's adoption of several new NAAQS such as SO2, NO2 and PM2.5, coupled with new NSPS, Maximum Achievable Control Technology (MACT) standards, GHG permitting requirements, and other permitting requirements has created an ever changing landscape for permit applicants. Typically a preconstruction review may take as much as a year, depending on complexity and citizen involvement. The preparation of that preconstruction application also requires a time investment from the applicant. When considered in combination, the preconstruction permitting process requires U.S. industry to balance the lead time needed to obtain authorization with the ability to secure financing and other constraints on possible expansion. The overarching concern is that the time required by permitting process may eliminate U.S. industry's ability to respond to global opportunities.

Another example is that EPA has failed to act on any recommendations resulting from the national task force that reviewed EPA's implementation of the Title V Federal Operating Permit Program requirements. This failure to act illustrates the lack of equality between the federal government and states in the current system.

4. Does the CAA support a reasonable and effective mechanism for federal, state, tribal and local cooperation through State Implementation Plans? How could the mechanism be improved?

No. Based on TCEQ experience, both the statutory requirement that NAAQS be reviewed and potentially revised every five years and EPA's failure to act upon state SIP revision submittals within the 18 month statutory timeframe pose significant barriers to reasonable and effective implementation of the CAA.

There is a critical need for policymakers and the EPA to work together to amend the CAA and revise the requirement for NAAQS review every five years. Five years is a very short period of time in scientific research and needs to be lengthened to better match the complex and evolving nature of the underlying science. Many of these studies follow cohorts of individuals over decades to discern patterns of exposure and risk of adverse health effects. Other studies involve exposure of animal models over long periods of time. Therefore, extending the review cycle to 10 or even 15 years would allow for more realistic planning and conducting the type of research that has the greatest bearing on appropriate revision of the NAAQS. The five-year cycle is no longer adequate, and a longer review period would provide a more sufficient timeframe to develop new information and to interpret and integrate it for use in the NAAQS setting process.

The five-year NAAQS review timeframe also places a severe and unnecessary burden on EPA and frustrates state efforts to implement the standard. Once EPA issues a new NAAQS, the five-year timeframe results in EPA having to reinitiate the review process immediately after such issuance. EPA's inability to complete the review within the five-year timeframe then very often results in litigation that distracts the agency from other important issues. From the TCEQ's perspective, the time it takes to implement a new standard (designation, classification, development of a SIP revision and accompanying rules, etc.) means that a revised NAAQS could emerge prior to the existing NAAQS

being fully implemented. An existing standard should be fully implemented prior to a revised standard being imposed. A longer NAAQS review interval is much more realistic from both a scientific and policy basis.

Additionally, EPA's adherence to the 18-month statutory timeframe for acting upon SIP revision submittals is an absolute necessity to provide for effective EPA, state, and local cooperation in implementing the Clean Air Act. As of July 2012, all or parts of approximately 78 TCEQ SIP revisions remain pending EPA Region 6 review. These 78revisions date back to 1993. Of these 78, approximately 54 were submitted more than 18 months ago. The lack of timely action by the EPA regarding new or different requirements creates uncertainty among the regulated community. This is also true for the general public and businesses in regions of the state affected by the SIP revisions that have not received final approval by the EPA. Further, the delay may result in enforcement by EPA against the regulated community for failure to comply with the approved SIP, even though industry is complying with the new TCEQ rules. Implementation of SIP-related programs is based on prior SIP submittals and may be disrupted due to EPA taking delayed negative action on the submittals.

The SIP process could also be made more effective by providing a way for states to avoid burdensome SIP revisions where the state is not responsible for the primary sources that are causing NAAQS violations (e.g. mobile and international sources.) In Texas, the predominant source of nitrogen oxide emissions comes from mobile sources that states are federally preempted from directly regulating.

5. Are cross-state air pollution issues coordinated well under the existing framework?

No. The CAA requires that a SIP address transport of pollution from a state that may contribute to the nonattainment or interfere with the maintenance of an area in another state. When a new standard is promulgated, the state must submit SIP revisions to address transport within three years of *promulgation* while the SIP revision addressing nonattainment areas is due three years after *designation*, meaning that a state is supposed to address its transport a full year before it has even developed control strategies for its own attainment demonstration. For all practical purposes, this means that the transport SIP revision won't incorporate any reductions required to address the state's own areas.

6. Are there other issues, ideas or concerns relating to the role of federalism under the CAA that you would like to discuss?

Section 101(a)(3) of the Clean Air Act specifies "that air pollution prevention (that is, the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source) and air pollution control at its source is the primary responsibility of States and local governments." The States and local governments should have the flexibility to develop their air quality control programs to address the particular issues and priorities under their jurisdictions, especially where the overarching goal of air quality improvement is occurring.

While EPA has a role in addressing federally preempted emission sources, such as mobile sources, and international sources, States and local governments have the primary responsibility to ensure air quality improvements. The CAA assigns complete responsibility for attainment and maintenance of the NAAQS to the states while the federal government retains authority over some sources of air pollution. Shared responsibility for achieving air quality goals would be more appropriate and would foster improve compliance with statutory deadlines.