



U.S. DEPARTMENT OF TRANSPORTATION

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March 24, 2015

Refer to: HPP-TX

Transportation Conformity and December 23, 2014 D.C Circuit Court of Appeals Vacated Judgment

Lt. Gen Joe Weber (U.S.M.C. Ret.)
Executive Director
Texas Department of Transportation
125 E. 11th Street
Austin, TX 78701-2483

Dear General Weber:

This letter outlines our determination of the impact of the December 2014 judgment by the Court of Appeals for the District of Columbia Circuit. In their decision, the Court vacated the Environmental Protection Agency (EPA) partial revocation of the 1997 8-hour ozone standard (1997 standard) for transportation conformity purposes and implementation of the 2008 8-hour ozone standard (2008 standard). As a result of the Court's decision, transportation conformity for the 1997 standard now applies in areas previously designated non-attainment or maintenance in accordance with the 1997 standard.

It is important to note that on February 13, 2015, the EPA signed a Final Rule to implement the 2008 standard and fully revoke the 1997 standard. The Final Rule was published in the *Federal Register* on March 6, 2015 with an effective date of April 6, 2015. Once the EPA Final Rule becomes effective, transportation conformity for the 1997 standard will not be required.

The Court decision impacts the Dallas-Fort Worth (DFW), Houston-Galveston-Brazoria (HGB), and the Beaumont-Port Arthur (BPA) areas. Under both the 1997 and 2008 standards, DFW and HGB are designated as non-attainment. Both areas currently have existing conformity determinations addressing the 2008 standard. Based upon our review of these transportation conformity determinations, we believe that they adequately address the 1997 standard, as the motor vehicle emissions budgets (MVEB) and analysis years utilized in the transportation conformity determinations also address the 1997 standard requirements, as noted in the enclosed summary. Consequently, we do not anticipate any immediate impact to the DFW or HGB areas as a result of the Court decision.

Under the 2008 standard, the BPA (Hardin, Jefferson and Orange Counties) area was not designated non-attainment; hence, it was not required to address transportation conformity for the adoption of the current Metropolitan Transportation Plan (MTP) or Transportation Improvement Program (TIP).

Since the BPA area is designated maintenance under the 1997 standard and there is no conformity determination addressing the 1997 standard, we are unable to take the following actions for projects not considered exempt from the requirements of transportation conformity (40 CFR 93.126, 93.127 and 93.128) prior to April 6, 2015: 1) issue project level conformity determinations; 2) authorize federal funding; or 3) approve Statewide TIP revisions.

It is anticipated that final environmental document actions for non-exempt projects in the BPA area should be delayed until the 1997 standard is fully revoked, since a project level conformity determination prior to final environmental document action is required. Based upon our review of the proposed BPA letting lists for April and May 2015, we believe that the impact to Federal project authorizations will be minimal, since the current list does not include any non-exempt projects.

Please note that transportation conformity applies to all regionally significant projects regardless of funding source and as such we are hereby advising the Texas Department of Transportation and the Beaumont-Port Arthur Metropolitan Planning Organization that non-federally funded regionally significant projects should not be authorized prior to full revocation of the 1997 standard.

The rationale outlined in this letter was coordinated with EPA Region 6 and the Federal Transit Administration Region 6. If you have any questions regarding this letter, please feel free to contact Mike Leary at (512) 536-5940 or michael.leary@dot.gov; Jose Campos at (512) 536-5932 or jose.campos@dot.gov; or Barbara Maley at (214) 224-2175 or barbara.maley@dot.gov.

Sincerely,



Achille Alonzi
Division Administrator

Enclosure (1)

cc:

Mark Williams - TxDOT-TPP, James Koch -TxDOT-TPP, Carlos Swonke - TxDOT-ENV,
Eric L. Gleason - TxDOT-PTN, Tucker Ferguson - TxDOT Beaumont District,
Bob Dickinson-South East Texas Regional Planning Commission,
Robert C. Patrick- FTA Region 6, Donald Koski - FTA Region 6, Jeff Riley - EPA Region 6,
Greg Punske - FHWA, Mike Leary- FHWA, Jack Bales - FHWA

Enclosure

Area – Conformity Determination	Motor Vehicle Emissions Budgets	Analysis Years
<p>DFW: Mobility 2035 – 2013 Update Transportation Conformity Determination; July 19, 2013</p>	<p>DFW Reasonable Further Progress (RFP) State Implementation Plan (SIP) MVEBs addressing the 1997 8-hour ozone standard (February 1, 2013, <i>Federal Register</i>, pp. 7429-7430)</p> <p>2012: Nitrogen Oxides (NO_x) - 195.39 tons/day; Volatile Organic Compounds (VOC) – 82.20 tons/day</p>	<p>2013¹, 2018², 2028 and 2035</p> <p>¹ DFW area’s attainment date as a “serious” non-attainment area in accordance with the 1997 8-hour ozone standard</p> <p>² DFW area’s attainment year as a “moderate” non-attainment area in accordance with the 2008 standard</p>
<p>HGB: 2035 Regional Transportation Plan – Update, Phase 3 Amendments Transportation Conformity Determination; July 19, 2013</p>	<p>HGB RFP SIP MVEBs addressing the 1997 8-hour ozone standard (January 25, 2011, <i>Federal Register</i>, pp. 4342-4343)</p> <p>2011: NO_x – 135.74 tons/day; VOC 75.17 tons/day</p> <p>2014: NO_x – 95.26 tons/day; VOC 61.84 tons/day</p> <p>2017: NO_x – 67.95 tons/day; VOC 53.23 tons/day</p> <p>2018: NO_x – 60.92 tons/day; VOC 51.35 tons/day⁵</p> <p>HGB Attainment Demonstration (AD) SIP MVEBs addressing the 1997 8-hour ozone standard (January 25, 2011, <i>Federal Register</i>, pp 4342-4343)</p> <p>2018: NO_x – 49.22 tons/day; VOC 45.97 tons/day</p> <p>⁵ The 2018 AD SIP MVEBs were utilized for transportation conformity purposes as they are lower than the RFP SIP MVEBs</p>	<p>2011, 2014, 2015³, 2017 and 2018⁴, 2025 and 2035</p> <p>³ HGB area’s attainment year as a “marginal” non-attainment area in accordance with the 2008 8-hour ozone standard</p> <p>⁴ HGB area’s attainment date as a “severe” non-attainment area in accordance with the 1997 8-hour ozone standard</p>