

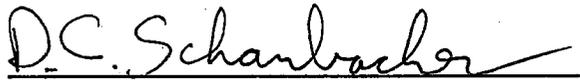
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Adoption of a Revision to the State Implementation Plan

AGENDA REQUESTED: December 10, 2008

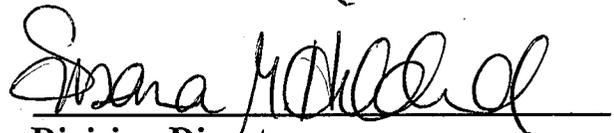
DATE OF REQUEST: November 21, 2008

NAME & NUMBER OF PERSON TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Kerry Howard, 239-0556

CAPTION: Docket No. 2008-1602-SIP. Consideration of the adoption of a Dallas-Fort Worth (DFW) Attainment Demonstration State Implementation Plan (SIP) Revision for the 1997 Eight-Hour Ozone Standard (Discrete Emissions Reduction Credit (DERC) Program). This SIP revision sets a limit on DERC use in the DFW eight-hour ozone nonattainment area consistent with maintaining attainment of the 1997 eight-hour ozone National Ambient Air Quality Standard. (Mary Ann Cook, Terry Salem) (Project No. 2008-016-SIP-NR)



Chief Engineer



Division Director



Agenda Coordinator

Copy to CCC Secretary? NO

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** November 21, 2008
Thru: LaDonna Castañuela, Chief Clerk
Mark R. Vickery, P.G., Executive Director
From: David C. Schanbacher, P.E., Chief Engineer *DCS*
Chief Engineer's Office

Docket No.: 2008-1602-SIP

Subject: Commission adoption of a revision to the State Implementation Plan (SIP) for the Control of Ozone Air Pollution in the Dallas-Fort Worth (DFW) 1997 Eight-Hour Ozone Nonattainment Area

Project No. 2008-016-SIP-NR - Dallas-Fort Worth Attainment Demonstration SIP Revision for the 1997 Eight-Hour Ozone Standard (DERC Program)

Reasons for the SIP package:

The purpose of this SIP revision is to incorporate rulemaking in 30 Texas Administrative Code (TAC) Chapter 101, Subchapter H, Division 4, Discrete Emission Credit Banking and Trading (see Docket No. 2008-0469-RUL, Rule Project No. 2008-011-101-EN), that together with this revision will create and implement an enforceable mechanism for the Texas Commission on Environmental Quality's (TCEQ) executive director to restrict the use of Discrete Emissions Reduction Credits (DERC) in the DFW eight-hour ozone nonattainment area (DFW area). The DERC restrictions will be set at a level consistent with attaining and maintaining the 1997 eight-hour ozone National Ambient Air Quality Standard (NAAQS) in the DFW area.

The emissions inventory estimate for DERCs used for photochemical modeling in development of the May 2007 DFW Attainment Demonstration State Implementation Plan Revision (May 2007 DFW AD SIP Revision) was overly conservative. That emissions inventory estimate assumed that all of the banked DERCs, being 20.4 tons per day (tpd) of nitrogen oxides (NO_x) for the DFW eight-hour ozone nonattainment area would be used (emitted) in 2009. Upon determination that a lower estimate of DERC use was more realistic, an adjustment was made to the DERC inventory estimates, as described in supplemental information provided to the United States Environmental Protection Agency (EPA) in April 2008. Upon concurrence with the inventory adjustment, EPA Region 6 staff informed TCEQ staff that in order to grant its final approval of the May 2007 DFW AD SIP Revision, Texas would need to adopt an enforceable mechanism to limit the use of DERCs in 2009 and in subsequent years consistent with attainment and maintenance of the 1997 eight-hour ozone NAAQS.

The associated DERC rulemaking will amend 30 TAC Chapter 101, Subchapter H, Division 4, to provide the executive director the authority to approve the amount of DERCs available for use in any calendar year consistent with attainment and maintenance of the 1997 eight-hour ozone NAAQS. EPA Region 6 requires the enforceable mechanism limiting DERC use in the DFW area to be in place by the beginning of the 2009 ozone season.

Statutory Authority:

The authority to propose and adopt the SIP revisions is derived from 30 TAC and Texas Health and Safety Code, Texas Clean Air Act (TCAA), § 382.002, which provides that the policy and purpose of the TCAA is to safeguard the state's air resources from pollution; TCAA, § 382.011, which authorizes the commission to

Re: Docket No. 2008-1602-SIP

control the quality of the state's air; § 382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and TCAA, § 382.0173, which authorizes the commission to adopt the SIP and related rule requirements.

Is this SIP revision required by federal rule or state statute? Which ones?

No; however this SIP revision and the enforceable mechanism to limit DERC use in the DFW area is a condition for EPA final approval of the May 2007 DFW AD SIP Revision.

Are there any legal deadlines by which this SIP revision must be proposed, adopted, or effective?

Yes. To meet the EPA's condition for final approval of the May 2007 DFW AD SIP Revision, the adopted DERC rule revisions and DERC SIP revision must be submitted to the EPA by March 1, 2009.

What issue(s) or problem(s) are we trying to solve?

A possible disapproval of the May 2007 DFW AD SIP Revision that was submitted to the EPA in June 2007 is prevented by providing this SIP revision to the EPA. To obtain EPA final approval, the TCEQ must meet the condition set by the EPA for submittal of the revised DERC rule and SIP revisions by March 1, 2009. These actions will provide enforceable limits for DERCs in the DFW area effective March 1, 2009.

Why is this SIP revision important?

The EPA requires this SIP revision to satisfy the condition for final approval identified by the EPA in its proposed conditional approval (FRL-8690-7, July 14, 2008) of the May 2007 DFW AD SIP Revision. The TCEQ executive director sent a letter to the EPA dated June 13, 2008, committing to recommend proposal of the rule and SIP revisions to implement the enforceable mechanism limiting DERC use in the DFW area.

Other important background or historical information:

The TCEQ-adopted May 2007 DFW AD SIP Revision was submitted to the EPA in June 2007. That SIP revision demonstrates attainment of the 1997 eight-hour ozone standard for the DFW eight-hour ozone nonattainment area by June 15, 2010.

The emissions inventory estimate used for the photochemical modeling of the May 2007 DFW AD SIP Revision was overly conservative in the assumption that all banked DERCs, 20.4 tpd of NO_x for the DFW eight-hour ozone nonattainment area, would be used (emitted) in 2009. Historically, although regulated entities in the DFW eight-hour ozone nonattainment area have submitted their notice of intent to use DERCs, no actual DERC use has occurred in the area for compliance with state emission specifications.

The EPA began reviewing the May 2007 DFW AD SIP Revision and associated 30 TAC Chapter 117 rule revisions upon submittal. The TCEQ received a letter from the EPA in March 2008 requesting clarification of some aspects of the May 2007 DFW AD SIP Revision. In April 2008, the TCEQ provided supplemental information to the EPA. The EPA then requested the state's commitment to finalize and submit enforceable DERC-limiting SIP and rule revisions. The TCEQ executive director sent a letter to the EPA dated June 13, 2008, committing to recommend proposal of the DERC rule and SIP revisions for commission consideration.

In July 2008, the EPA proposed conditional approval of the May 2007 DFW AD SIP Revision (FRL-8690-7, July 14, 2008), stating that final conditional approval was contingent upon Texas adopting and submitting to the EPA an approvable contingency plan SIP revision for the DFW eight-hour ozone nonattainment area. That contingent requirement is expected to be satisfied with submittal of the DFW AD SIP Contingency Plan SIP Revision for the DFW eight-hour ozone nonattainment area to the EPA by November 15, 2008. The condition for final approval of the May 2007 DFW AD SIP Revision should be met with this DFW AD SIP

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DERC SIP Revision and the accompanying 30 TAC Chapter 101, Subchapter H, Division 4 DERC rule amendments.

Scope of the SIP revision:

This SIP revision incorporates rule revisions into the Texas SIP. Together, this DFW AD SIP DERC Program Revision and the accompanying rules establish an enforceable mechanism for limiting DERC use in the DFW area consistent with attainment and maintenance of the 1997 eight-hour ozone NAAQS.

The scope of the accompanying rulemaking is to amend 30 TAC Chapter 101, Subchapter H, Division 4, Discrete Emission Credit Banking and Trading, to provide the executive director the authority to approve the amount of DERCs available for use in any calendar year consistent with attainment and maintenance of the 1997 eight-hour ozone NAAQS. The adopted rules will require the executive director to perform an annual review of the DFW DERC program using replicable procedures to determine the flow control limit in tons per day and apportion available DERCs for potential use.

• Changes required by federal rule:

None.

• Changes required by state statute:

None.

• Staff recommendations that are not expressly required by federal rule or state statute:

None.

Impact on the regulated community:

• Who will be affected?

Owners and potential users of banked DERCs could be affected.

• Does it create a group of affected persons who were not affected previously? How?

No.

• Will there be a fiscal impact?

There will be no fiscal impact from the SIP revision. There could be fiscal impact on the affected parties from the accompanying rulemaking.

Impact on the public:

• Who will be affected?

No new impact on the general public is expected from this SIP revision.

• Does it create a group of affected persons who were not affected previously? How?

No.

• Will there be a fiscal impact? If so, estimate.

No fiscal impact to the public is anticipated.

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Impact on agency programs:

There could be an impact on Air Quality Division or other agency staff in determining annual DERC limits, in monitoring the use of DERCs, and enforcing the rules.

Stakeholder meetings:

- **Have any stakeholder meetings been held?**

No.

- **With whom?**

N/A

- **What were the general sentiments?**

N/A

- **Were any changes made in response to stakeholder concerns?**

N/A

Policy issues:

- **What policy issues are affected?**

None.

- **Are any policies that are not currently based on rule being made into a rule?**

No.

What are the consequences if this SIP revision if not approved to go forward?

Not submitting this SIP revision and the accompanying rules could lead to the EPA's disapproval of the May 2007 DFW AD SIP Revision.

Public Comment:

Public hearings for the proposed DFW AD SIP Contingency Plan and DERC Program Revisions and the accompanying 30 TAC Chapter 101 rule revisions were held on September 9, 2008, in Dallas and on September 10, 2008, in Arlington. During the August 6, 2008, through September 12, 2008, public comment period, written comments regarding the proposed DERC Program rule revisions were received from the EPA and Luminant Power.

Significant Changes from proposal:

At the agenda for proposal of the DFW AD SIP Contingency Plan and DERC Program Revisions and the accompanying 30 TAC Chapter 101 rulemaking, the commission elected to accelerate the internal review process for only the contingency plan portion of the proposed SIP revision. This was done to expedite submittal of the revised DFW Contingency Plan to the EPA, as needed for its final conditional approval of the May 2007 DFW AD SIP Revision. Because adoption considerations for the two affected proposed SIP revision components were set for separate agenda dates, the revision was divided into two separate SIP revisions for adoption consideration. The DFW AD SIP Contingency Plan Revision, scheduled for commission consideration for adoption on November 5, 2008, was the first of these revisions. The second is this DFW AD SIP DERC Program Revision, scheduled for commission consideration for adoption on December 10, 2008.

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• **Are there alternatives?**
No.

Potentially controversial matters:
None regarding the SIP narrative.

Key points in SIP revision adoption schedule:

- Public hearing dates: September 9 and September 10, 2008, in Dallas and Arlington, Texas.
- Public comment period: August 8, 2008, through September 12, 2008.
- Anticipated adoption date: December 10, 2008.
- Anticipated effective date of DERC rule revisions: March 1, 2009.

Agency contacts:

Mary Ann Cook, DFW SIP Project Manager, 239-6739, Air Quality Division
Terry Salem, Staff Attorney (DFW SIP revisions), 239-0469
Luke Baine, DFW DERC Rule Project Manager, 239-5856, Air Quality Division
Amy Browning, Staff Attorney (DERC rule revisions), 239-0891
Joyce Spencer, Division Rules/SIP Liaison, 239-5017, Air Quality Division
Kim Herndon, SIP Team Lead, 239-1421, Air Quality Division

Attachments

cc: Chief Clerk, 5 copies
Executive Director's Office
David C. Schanbacher, P.E.
Betsy Bird
Daniel Womack
Kevin Patteson
Office of General Counsel
Mary Ann Cook
Joyce Spencer

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** July 18, 2008
Thru: LaDonna Castañuela, Chief Clerk
Mark R. Vickery, P.G., Executive Director
From: David C. Schanbacher, P.E., Chief Engineer *Greg Nuebel*
Chief Engineer's Office *for DCS*

Docket No.: 2008-0926-SIP

Subject: Commission Approval for a Proposed Revision to the State Implementation Plan (SIP) for the Control of Ozone Air Pollution in the Dallas-Fort Worth (DFW) Eight-Hour Ozone Nonattainment Area

Project No. 2008-016-SIP-NR

Reasons for the SIP package:

In June of 2008, the EPA proposed conditional approval of the Dallas-Fort Worth (DFW) Eight-Hour Ozone Attainment Demonstration SIP Revision for the 1997 eight-hour ozone standard (DFW AD SIP). To grant final approval of the DFW AD SIP submitted on June 15, 2007, the U.S. Environmental Protection Agency (EPA) requires that certain conditions be met. The TCEQ can fulfill these conditions through rule and SIP revisions. Along with this proposed SIP revision, a rule change will be proposed to create an enforceable mechanism that allows the executive director to restrict the use of Discrete Emissions Reduction Credits (DERCs) in the DFW eight-hour ozone nonattainment area (DFW area) to a level consistent with the attainment and maintenance of the National Ambient Air Quality Standard (NAAQS). The rule proposal and this SIP proposal will together satisfy the EPA's required implementation of an enforceable mechanism for DERC limitation for the DFW area. This Dallas-Fort Worth Eight-Hour Ozone Attainment Demonstration SIP Revision for the 1997 eight-hour ozone standard (For only the Contingency Measure Plan and Discrete Emissions Reduction Credit (DERC) Program) will also identify measures for a three percent emissions reduction post-2009 contingency plan for the DFW area as required by the EPA.

This SIP package meets the EPA requirements for conditional approval of the DFW AD SIP. This proposed DFW SIP revision:

- Incorporates a rule restricting DERC use in the DFW area;
- Limits DERC use consistent with attainment of the eight-hour ozone standard in the DFW area; and
- Identifies and quantifies measures to meet the EPA's three percent emissions reduction contingency plan requirement for the DFW area. These measures include: federal engine and fuel standards and Chapter 115 VOC rules on Offset Lithographic Printing; De-gassing or Cleaning of Stationary, Marine, and Transport Vessels; and Petroleum Dry Cleaning.

Under what authority are we proposing these changes?

The authority to propose and adopt the SIP is derived from Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.002, which provides that the policy and purpose of the TCAA is to safeguard the state's air resources from pollution; TCAA, §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.0173, which authorizes the commission to adopt SIP and rule requirements relating to this SIP revision.

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Is this SIP revision required by federal rule or state statute? Which ones?

Yes - the Federal Clean Air Act, § 172(c)(9) requires that contingency measures be included in the SIP Revision.

Are there any legal deadlines by which these rules must be proposed, adopted, or effective?

Yes - to meet the requirements established by the EPA for approval of the DFW AD SIP to be finalized, this SIP revision must be submitted to the EPA by March 1, 2009. If TCEQ does not submit this SIP revision to EPA, EPA will not move forward with a final approval of the DFW AD SIP revision.

What issue(s) or problem(s) are we trying to solve?

We are trying to prevent a possible disapproval of the DFW AD SIP revision that was submitted to the EPA in June 2007. To obtain EPA approval of that SIP, we must meet conditions that EPA has identified as requirements for their conditional approval of the DFW AD SIP revision that was submitted to EPA in June 2007. Those conditions are to implement an enforceable mechanism to restrict DERC usage in the DFW area and to revise the contingency plan for the DFW AD SIP to meet the EPA's three percent emission reduction requirement for the DFW area.

• **Why is it important that we do this SIP revision?**

This SIP revision is required in order for the EPA to grant final approval of the DFW AD SIP that was submitted to EPA in June 2007. The EPA requires the DERC rule revision to be effective by March 1, 2009, the DFW contingency plan revised to meet requirements, and a SIP revision incorporating those changes to be submitted by March 1, 2009. The TCEQ executive director sent a letter to the EPA dated June 13, 2008, with a commitment to propose these rule and SIP revisions for the commission's consideration.

• **Other important background or historical information.**

The DFW Eight-Hour Ozone AD SIP was adopted by the TCEQ in May 2007, and submitted to the EPA on June 15, 2007. That SIP revision introduced control strategies for nitrogen oxides (NO_x) and volatile organic compounds (VOC) in the DFW area. The DFW AD SIP revision demonstrates that ozone measurements in the DFW area will be compliant with the National Ambient Air Quality Standards by June 15, 2010. The attainment demonstration is based on photochemical modeling that included new control strategies along with evaluation of additional corroborative evidence. The DFW AD SIP revision relies on a weight of evidence argument and control measures that are not explicitly accounted for in the photochemical modeling. The weight of evidence argument includes analyses of ozone reduction trends and supplementary data to help demonstrate that the DFW nine-county nonattainment area will attain the 1997 eight-hour ozone standard.

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The TCEQ received a letter from the EPA in March 2008, requesting specific supplemental and clarifying information related to the DFW AD SIP. In an April 2008 response, the TCEQ sent a letter to the EPA providing the information requested. Upon review of the DFW AD SIP supplemental information, the EPA requested a commitment from the TCEQ to propose rulemaking restricting DERC use in the DFW nonattainment area. Additionally, the EPA requested a commitment from the TCEQ to propose another DFW SIP revision that will set DERC use limits for the DFW area and identify contingency measures to fulfill a three percent emissions reduction requirement. This proposed SIP revision incorporates the DERC rule revision requested by the EPA, and sets a limit on DERC use for the DFW area consistent with the DFW area attainment of the 1997 eight-hour ozone standard and future standards for which an attainment demonstration is submitted. Furthermore, this proposed SIP revision identifies measures to satisfy the EPA's three percent emissions reduction contingency requirement for the DFW area.

Scope of the SIP revision:

This SIP revision implements an enforceable mechanism for restricting DERC use by incorporating a proposed revision to the 30 Texas Administrative Code Chapter §101, Subchapter H, Division 4, Banking and Trading rule. This SIP revision also corrects the current DFW area eight-hour ozone contingency plan by identifying and quantifying control measure emissions reductions to satisfy the EPA's three percent contingency requirement.

The Motor Vehicle Emissions Budget (MVEB) for NO_x and VOC emissions set in the DFW Eight-Hour Ozone AD SIP Revision is not changed or affected by this supplemental DFW SIP revision.

• **Changes required by federal rule:**

Section § 172(c)(9) of the Federal Clean Air Act requires that a contingency plan providing for the implementation of specific measures to be undertaken if an area fails to attain the national primary ambient air quality standard by the attainment date applicable must be included in the SIP Revision. Such measures shall take effect in any such case without further action by the State or the Administrator.

• **Changes required by state statute:**

None

• **Staff recommendations that are not expressly required by federal rule or state statute:**

None

Impact on the regulated community:

• **Who will be affected?**

All Electric Generating Units within the DFW eight-hour ozone nonattainment area have the potential to voluntarily reduce emissions that can be banked as emission credits. DFW industries that own DERCs or want to utilize DERCs as an alternative compliance mechanism will be affected.

• **Does it create a group of affected persons who were not affected previously? How?**

No.

• **Will there be a fiscal impact? If so, estimate.**

Re: Docket No. 2008-0926-SIP

There could be fiscal impact to regulated entities that own or want to use banked DERCs. Impact would vary depending on market conditions.

Impact on the public:

- **Who will be affected?**
No new impact on the general public is expected from this SIP revision.
- **Does it create a group of affected persons who were not affected previously? How?**
No.
- **Will there be a fiscal impact? If so, estimate.**
No fiscal impact to the public is anticipated.

Impact on agency programs:

- The proposed DFW SIP revision will affect the following agency offices: the Emissions Banking and Trading Program within the Chief Engineer's Office.

Stakeholder meetings:

- **Have any stakeholder meetings been held?**
No. There was insufficient time for large stakeholder meetings, and meetings were not needed to support the rulemaking required by this proposed DFW SIP revision because of the small group of entities that own banked DERCs. However, interested parties were made aware of the rule revision in meetings with TCEQ.
- **With whom?**
Meetings were held with the two current owners of DERCs in the DFW eight-hour ozone nonattainment area.
- **What were the general sentiments?**
One owner of DERCs in the DFW eight-hour ozone nonattainment area expressed concern about how the rule proposal may impact their ability to use DERCs in the future.
- **Were any changes made in response to stakeholder concerns?**
No.

Policy issues:

- **What policy issues are affected?**
Since inception of the program, DERC use in the DFW area has been limited only as to credits contained in the bank. Upon adoption of the DERC rule and this SIP revision, DERC use will be further limited to a level that is consistent with the applicable Attainment Demonstration SIP for the area, effective March 1, 2009. Policies affected are those related to DERC use and those related to determination of DERC limits, such as a new annual review and report requirement.
- **Are any policies that are not currently based on rule being made into a rule?**
No.

Re: Docket No. 2008-0926-SIP

- **What are the consequences if this rulemaking is not approved to go forward?**
Per the EPA, not submitting this SIP revision will lead to disapproval of the DFW AD SIP for the 1997 eight-hour ozone standard. That disapproval could further lead to federal sanctions, a Federal Implementation Plan, or both.
- **Are there alternatives?**
No. The EPA has stated that approval of the DFW SIP submitted to EPA in 2007 will not occur without adoption of the DERC rule and this SIP revision.

Potentially controversial matters:

There is high interest from local governments, the EPA, environmental groups, and the regulated community (DERC generators). The proposed rulemaking to be incorporated into this SIP revision and the SIP limitations on DERC usage for 2009 may invoke comments from industry representatives concerned about reduced program flexibility and/or reduced viability of the DERC market. Future litigation related to this DFW SIP revision is possible.

Key points in proposed rulemaking schedule:

- **Anticipated proposal date:** August 6, 2008
- **Anticipated *Texas Register* publication date:** August 22, 2008
- **Public hearing date (if any):** September 9 and September 10, 2008, to be held in Dallas and Arlington, Texas
- **Public comment period:** Closes September 12, 2008
- **Anticipated adoption date:** December 10, 2008

Agency contacts:

Mary Ann Cook, DFW SIP Project Manager, 239-6739, Air Quality Division
Kathy Singleton, DFW SIP Project Manager, 239-6098, Air Quality Division
Jay Tonne, DERC Rule Project Manager, 239-1453, Air Quality Division
Terry Salem, Staff Attorney, 239-0469

Attachments

cc: Chief Clerk, 5 copies
Executive Director's Office
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Ashley K. Wadick
Daniel Womack
Kevin Patteson
Office of General Counsel
Mary Ann Cook
Kathy Singleton
Joyce Spencer

REVISION TO THE STATE IMPLEMENTATION PLAN
FOR THE CONTROL OF OZONE AIR POLLUTION

DALLAS-FORT WORTH 1997 EIGHT-HOUR OZONE STANDARD
NONATTAINMENT AREA



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
P.O. BOX 13087
AUSTIN, TEXAS 78711-3087

Dallas-Fort Worth Attainment Demonstration SIP Revision for the
1997 Eight-Hour Ozone Standard (Discrete Emissions Reduction Credits (DERC) Program)

PROJECT NO. 2008-016-SIP-NR

Adopted
December 10, 2008

EXECUTIVE SUMMARY

The Dallas-Fort Worth (DFW) Attainment Demonstration (AD) State Implementation Plan (SIP) Revision for the 1997 Eight-Hour Ozone Standard was adopted by the Texas Commission on Environmental Quality (TCEQ) in May 2007 and submitted to the United States Environmental Protection Agency (EPA) in June 2007. The May 2007 DFW AD SIP Revision introduced control strategies for nitrogen oxides (NO_x) and volatile organic compounds (VOC), and it demonstrates attainment of the 1997 eight-hour ozone National Ambient Air Quality Standard (NAAQS) in the nine-county DFW eight-hour ozone nonattainment area (DFW area) by June 15, 2010. The attainment demonstration is based on photochemical modeling that included new control strategies as well as an evaluation of corroborative evidence. The DFW area's attainment also relies on a weight of evidence (WoE) argument and additional control measures that are not explicitly accounted for in the photochemical modeling. The WoE argument includes ozone reduction trends analyses and supplementary data that help to demonstrate that the DFW area will attain the 1997, 0.08 parts per million (ppm) eight-hour ozone standard by the deadline.

In June 2007, the EPA began reviewing the May 2007 DFW AD SIP Revision and the associated 30 TAC Chapter 117 rule revisions. On March 7, 2008, the EPA requested specific clarifications and supplemental information regarding that SIP revision. The TCEQ provided the requested information to the EPA on April 23, 2008.

Upon review of the supplemental information provided by TCEQ, the EPA requested a commitment from the TCEQ to propose rulemaking restricting Discrete Emissions Reduction Credits (DERC) use in the DFW area. Specifically, the EPA requested that the TCEQ implement an enforceable mechanism to limit the use of DERCs in the DFW area so that such use would not interfere with attainment and maintenance of the 1997 eight-hour ozone NAAQS. Additionally, the EPA requested a commitment from the TCEQ to propose a SIP revision setting DERC use limits for the DFW area and identifying contingency measures to fulfill a three percent emissions reduction requirement. In June 2008, the TCEQ informed the EPA of its intention to recommend the SIP revisions and rulemaking required by the EPA.

In July 2008, the EPA proposed conditional approval of the May 2007 DFW AD SIP Revision, providing that final conditional approval was contingent upon the State of Texas adopting and submitting to the EPA an approvable contingency plan SIP revision for the DFW area. The DFW AD SIP Contingency Plan Revision was adopted by the commission on November 5, 2008, and submitted the DFW AD SIP Contingency Plan Revision to the EPA on November 15, 2008. That SIP revision identifies measures to satisfy the EPA's three percent reduction contingency requirement for 2010 for the DFW area, to apply in the event that the DFW area fails to meet the 1997 eight-hour ozone standard by the attainment deadline.

The condition stipulated by the EPA for final approval of the May 2007 DFW AD SIP Revision was that TCEQ adopt and submit rule and SIP revisions to implement an enforceable mechanism to limit the use of DERCs in the DFW area by March 1, 2009. This SIP revision incorporates rulemaking that if adopted will amend 30 Texas Administrative Code (TAC) Chapter 101, Subchapter H, Division 4, Discrete Emission Credit Banking and Trading rules to set a limit on DERC use for the DFW area. The TCEQ intends to submit the DERC rule and SIP revisions to the EPA by December 15, 2008.

The Motor Vehicle Emissions Budget (MVEB) for NO_x and VOC emissions, as set in the May 2007 DFW AD SIP Revision, is not changed or affected by this DFW AD SIP DERC Program Revision.

SECTION V: LEGAL AUTHORITY

A. General

The Texas Commission on Environmental Quality (TCEQ) has the legal authority to implement, maintain, and enforce the National Ambient Air Quality Standards (NAAQS) and to control the quality of the state's air, including maintaining adequate visibility.

The first air pollution control act, known as the Clean Air Act of Texas, was passed by the Texas Legislature in 1965. In 1967, the Clean Air Act of Texas was superseded by a more comprehensive statute, the Texas Clean Air Act (TCAA), found in Article 4477-5, Vernon's Texas Civil Statutes. The legislature amended the TCAA in 1969, 1971, 1973, 1979, 1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, and 2007. In 1989, the TCAA was codified as Chapter 382 of the Texas Health & Safety Code.

Originally, the TCAA stated that the Texas Air Control Board (TACB) is the state air pollution control agency and is principal authority in the state on matters relating to the quality of air resources. In 1991, the legislature abolished the TACB effective September 1, 1993, and its powers, duties, responsibilities, and functions were transferred to the Texas Natural Resource Conservation Commission (TNRCC). With the creation of the TNRCC, the authority over air quality is found in both the Texas Water Code and the TCAA. Specifically, the authority of the TNRCC is found in Chapters 5 and 7. Chapter 5, Subchapters A - F, H - J, and L, include the general provisions, organization, and general powers and duties of the TNRCC, and the responsibilities and authority of the executive director. This chapter also authorizes the TNRCC to implement action when emergency conditions arise, and to conduct hearings. Chapter 7 gives the TNRCC enforcement authority. In 2001, the 77th Texas Legislature continued the existence of the TNRCC until September 1, 2013, and changed the name of the TNRCC to the Texas Commission on Environmental Quality (TCEQ).

The TCAA specifically authorizes the TCEQ to establish the level of quality to be maintained in the state's air and to control the quality of the state's air by preparing and developing a general, comprehensive plan. The TCAA, Subchapters A - D, also authorize the TCEQ to collect information to enable the commission to develop an inventory of emissions; to conduct research and investigations; to enter property and examine records; to prescribe monitoring requirements; to institute enforcement proceedings; to enter into contracts and execute instruments; to formulate rules; to issue orders taking into consideration factors bearing upon health, welfare, social and economic factors, and practicability and reasonableness; to conduct hearings; to establish air quality control regions; to encourage cooperation with citizens' groups and other agencies and political subdivisions of the state as well as with industries and the federal government; and to establish and operate a system of permits for construction or modification of facilities.

Local government authority is found in Subchapter E of the TCAA. Local governments have the same power as the TCEQ to enter property and make inspections. They also may make recommendations to the Commission concerning any action of the TCEQ that affects their territorial jurisdiction, may bring enforcement actions, and may execute cooperative agreements with the TCEQ or other local governments. In addition, a city or town may enact and enforce ordinances for the control and abatement of air pollution not inconsistent with the provisions of the TCAA and the rules or orders of the Commission.

Subchapters G and H of the TCAA authorize the TCEQ to establish vehicle inspection and maintenance programs in certain areas of the state, consistent with the requirements of the federal Clean Air Act; coordinate with federal, state, and local transportation planning agencies to

develop and implement transportation programs and measures necessary to attain and maintain the NAAQS; establish gasoline volatility and low emission diesel standards; and fund and authorize participating counties to implement vehicle repair assistance, retrofit, and accelerated vehicle retirement programs.

B. Applicable Law

The following statutes and rules provide necessary authority to adopt and implement the State Implementation Plan (SIP). The rules listed below have previously been submitted as part of the SIP.

Statutes

All sections of each subchapter are included, unless otherwise noted.

TEXAS HEALTH & SAFETY CODE, Chapter 382	September 1, 2007
TEXAS WATER CODE	September 1, 2007

Chapter 5: Texas Natural Resource Conservation Commission

- Subchapter A: General Provisions
- Subchapter B: Organization of the Texas Natural Resource Conservation Commission
- Subchapter C: Texas Natural Resource Conservation Commission
- Subchapter D: General Powers and Duties of the Commission
- Subchapter E: Administrative Provisions for Commission
- Subchapter F: Executive Director (except §§ 5.225, 5.226, 5.227, 5.2275, 5.231, 5.232, and 5.236)
- Subchapter H: Delegation of Hearings
- Subchapter I: Judicial Review
- Subchapter J: Consolidated Permit Processing
- Subchapter L: Emergency and Temporary Orders (§§ 5.514, 5.5145, and 5.515 only)

Chapter 7: Enforcement

- Subchapter A: General Provisions (§§ 7.001, 7.002, 7.0025, 7.004, and 7.005 only)
- Subchapter B: Corrective Action and Injunctive Relief (§ 7.032 only)
- Subchapter C: Administrative Penalties
- Subchapter D: Civil Penalties (except §7.109)
- Subchapter E: Criminal Offenses and Penalties: §§ 7.177, 7.179-7.183

Rules

All of the following rules are found in 30, Texas Administrative Code, as of the following effective dates:

Chapter 7: Memoranda of Understanding, §§ 7.110 and 7.119	May 2, 2002
Chapter 19: Electronic Reporting	March 1, 2007
Chapter 35: Subchapters A-C, K: Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions	July 20, 2006

Chapter 39: Public Notice, §§ 39.201; 39.401; 39.403(a) and (b)(8)-(10); 39.405(f)(1) and (g); 39.409; 39.411 (a), (b)(1)-(6), and (8)-(10) and (c)(1)-(6) and (d); 39.413(9), (11), (12), and (14); 39.418(a) and (b)(3) and (4); 39.419(a), (b), (d), and (e); 39.420(a), (b) and (c)(3) and (4); 39.423 (a) and (b); 39.601-39.605	March 29, 2006
Chapter 55: Requests for Reconsideration and Contested Case Hearings; Public Comment, §§ 55.1; 55.21(a) - (d), (e)(2), (3), and (12), (f) and (g); 55.101(a), (b), and (c)(6) - (8); 55.103; 55.150; 55.152(a)(1), (2), and (6) and (b); 55.154; 55.156; 55.200; 55.201(a) - (h); 55.203; 55.205; 55.209, and 55.211	July 5, 2006
Chapter 101: General Air Quality Rules	August 16, 2007
Chapter 106: Permits by Rule, Subchapter A	June 30, 2004
Chapter 111: Control of Air Pollution from Visible Emissions and Particulate Matter	July 19, 2006
Chapter 112: Control of Air Pollution from Sulfur Compounds	July 16, 1997
Chapter 113: Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants	December 27, 2007
Chapter 114: Control of Air Pollution from Motor Vehicles	February 21, 2008
Chapter 115: Control of Air Pollution from Volatile Organic Compounds	July 19, 2007
Chapter 116: Permits for New Construction or Modification	January 10, 2008
Chapter 117: Control of Air Pollution by Control of Air Pollution from Nitrogen Compounds	June 14, 2007
Chapter 118: Control of Air Pollution Episodes	March 5, 2000
Chapter 122: § 122.122: Potential to Emit	December 11, 2002
Chapter 122: § 122.215: Minor Permit Revisions	June 3, 2001
Chapter 122: § 122. 216: Applications for Minor Permit Revisions	June 3, 2001
Chapter 122: § 122.217: Procedures for Minor Permit Revisions	December 11, 2002
Chapter 122: § 122.218 Minor Permit Revision Procedures for Permit Revisions Involving the Use of Economic Incentives, Marketable Permits, and Emissions Trading	June 3, 2001

SECTION VI. CONTROL STRATEGY

A. Introduction (No change)

B. Ozone (Revised)

1. *Dallas-Fort Worth*

Chapter 1: Background and Introduction (Revised)

Chapter 2: Photochemical Modeling (No change)

Chapter 3: Corroborative Analysis (Revised)

Chapter 4: Required Control Strategy Elements (Revised)

2. *Houston-Galveston-Brazoria* (No change)

3. *Beaumont-Port Arthur* (No change)

4. *El Paso* (No change)

5. *Regional Strategies* (No change)

6. *Northeast Texas* (No change)

7. *Austin Area* (No change)

8. *San Antonio Area* (No change)

C. Particulate Matter (No change)

D. Carbon Monoxide (No change)

E. Lead (No change)

F. Oxides of Nitrogen (No change)

G. Sulfur Dioxide (No change)

H. Conformity with the National Ambient Air Quality Standards (No change)

I. Site Specific (No change)

J. Mobile Sources Strategies (No change)

K. Clean Air Interstate Rule (No change)

L. Transport (No change)

M. Regional Haze (No change)

LIST OF ACRONYMS

ACT -- Alternative Control Techniques
AD -- Attainment Demonstration
AF -- Air-to-Fuel
APU -- Auxiliary Power Units
ARPDB -- Acid Rain Program Data Base
ATCM -- Airborne Toxic Control Measure
auto-GC -- Automated Gas Chromatograph
BACT -- Best Available Control Technology
BCCA-AG -- Business Coalition for Clean Air-Appeal Group
BMP -- Best Management Practices
BPA -- Beaumont-Port Arthur
Btu/hr -- British Thermal Units per Hour
Btu/scf -- British Thermal Units per Standard Cubic Feet
CAE -- Cetane Additive Enhanced Diesel Fuel
CAIR -- Clean Air Interstate Rule
CAMx -- Comprehensive Air Model with Extensions
CARB -- California Air Resources Board
CBD -- Houston's Central Business District
CFR -- Code of Federal Regulations
CMAQ -- Congestion Mitigation and Air Quality
CO -- Carbon Monoxide
CTG -- Control Technique Guidelines
DECS -- Diesel Emission Control Strategy
DERC -- Discrete Emissions Reduction Credits
DFW -- Dallas-Fort Worth
DFW AD SIP -- DFW Attainment Demonstration SIP Revision
DPM -- Diesel Particulate Matter
DRRP -- Diesel Risk Reduction Program
DV -- Design Value
DVc -- Current Design Value
DVf -- Future Design Value
EAC -- Early Action Compact
EDMS -- Emissions and Dispersion Modeling System
E-GRID-2007 -- Emissions and Generation Resource Integrated Database
EE/RE -- Energy Efficiency/Renewable Energy
EGAS -- Economic Growth Analysis System
EGF -- Electric Generating Facilities
EGU -- Electric Generating Units
EI -- Emissions Inventory
EPA -- United States Environmental Protection Agency
EPS3 -- Emissions Processing System, version 3
ERC -- Emission Reduction Credits
ERCOT -- Electric Reliability Council of Texas
ESAD -- Emission Specification for Attainment Demonstration
ESL -- Energy Systems Laboratory, the Texas A&M University System
F -- Fahrenheit
FAA -- Federal Aviation Administration
FCAA -- Federal Clean Air Act

FCV -- Fuel Cell Vehicle
FGR -- Flue Gas Recirculation
FHWA -- Federal Highway Administration
FR -- Federal Register
FT -- Fischer-Tropsch Diesel Fuel
GIS -- Geographic Information System
GloBEIS -- Global Biosphere Emissions and Interactions System
gpm -- Gallons per Minute
GTM -- Gross Ton Mile
HAP -- Hazardous Air Pollutant
HARC -- Houston Advanced Research Center
HDT -- Heavy-Duty Truck
HECT -- Highly Reactive Volatile Organic Compound Emissions Cap and Trade Program
HGB -- Houston-Galveston-Brazoria
H-GAC -- Houston-Galveston Area Council
HOV -- High Occupancy Vehicle
hp -- Horsepower
HPMS -- Highway Performance Monitoring System
HRVOC -- Highly Reactive Volatile Organic Compound
HSC -- Houston Ship Channel
IC -- Internal Combustion
ICI -- Industrial, Commercial, and Institutional
IECC -- International Energy Conservation Code
I/M -- Inspection and Maintenance
km -- Kilometer
 K_{vs} -- Vertical Exchange Coefficient
LAER -- Lowest Achievable Emission Rate
lb/MMBtu -- Pound per Million British Thermal Units
LDAR -- Leak Detection and Repair
LIDIR -- Light Detection and Ranging
LDEQ -- Louisiana Department of Environmental Quality
LDGV -- Light-Duty Gasoline Vehicle
LDT -- Light-Duty Truck
LDV -- Light-Duty Vehicle
LED -- Low Emission Diesel
LEV -- Low Emission Vehicle
LEV II -- California's Low Emission Vehicle II Program
LIRAP -- Low Income Repair and Assistance Program
LNB -- Low Nitrogen Oxides (NO_x) Burners
LNC -- Low Nitrogen Oxides (NO_x) Combustors
LNG -- Liquefied Natural Gas
LTO -- Landing and Take-Off
MACT -- Maximum Achievable Control Technology
Mcf -- Thousand Cubic Feet
MCR -- Mid-Course Review
MDPV -- Medium-Duty Passenger Vehicle
MECT -- Mass Emissions Cap and Trade Program
MM5 -- Fifth Generation Meteorological Model
MMBtu/hr -- Million British Thermal Units per Hour
MMcf -- Million Cubic Feet
MMS -- Minerals Management Service

MOA -- Memorandum of Agreement
MON -- Miscellaneous Organic National Emission Standards for Hazardous Air Pollutants (NESHAP)
mph -- miles per hour
MVEB -- Motor Vehicle Emissions Budget
MW -- Megawatts
MY -- Model Year
NAAQS -- National Ambient Air Quality Standard
NCTCOG -- North Central Texas Council of Governments
NEGF -- Non-Electric Generating Facility
NEI -- National Emissions Inventory
NESHAP -- National Emission Standards for Hazardous Air Pollutants
ng/J -- Nanogram per Joule
NMIM -- National Mobile Inventory Model
NOAA -- National Oceanic and Atmospheric Administration
Non-EGU -- non-Electric Generating Unit
NO_x -- Nitrogen Oxides
NO_y -- Nitrogen Species
NSCR -- Non-Selective Catalytic Reduction
NTRD -- New Technology Research and Development Program
O₃ -- Ozone
OGV -- Ocean-Going Vessel
PAYD -- Pay As You Drive
PBL -- Planetary Boundary Layer
PEI -- Periodic Emissions Inventory
PERP -- Portable Engine Registration Program
PiG -- Plume-in-Grid
PM -- Particulate Matter
PM_{2.5} -- Particulate Matter 2.5 microns and less
ppb -- Parts Per Billion
ppbC -- Parts Per Billion Carbon
ppbv -- Parts Per Billion by Volume
ppm -- Parts Per Million
PSCF -- Potential Source Contribution Factors
PSDB -- Point Source Database
psia -- Pounds per Square Inch Absolute
PUC -- Public Utility Commission
RACT -- Reasonably Available Control Technology
RACM -- Reasonably Available Control Measure
RFP -- Reasonable Further Progress
RMSE -- Root Mean Square Error
ROP -- Rate-of-Progress
RRF -- Relative Reduction Factor
SB -- Senate Bill
SCAQMD -- South Coast Air Quality Management District
scfm -- Standard Cubic Feet per Minute
SCR -- Selective Catalytic Reduction
SEP -- Supplemental Environmental Programs
SETPMTC -- Southeast Texas Photochemical Modeling Technical Committee
SIC -- Standard Industrial Classification
SIP -- State Implementation Plan

SNCR -- Selective Non-Catalytic Reduction
SOV -- Single Occupancy Vehicle
STP -- Surface Transportation Program
SWCV -- Solid Waste Collection Vehicle
TAC -- Texas Administrative Code
TACB -- Texas Air Control Board
TCAA -- Texas Clean Air Act
TCEQ -- Texas Commission on Environmental Quality (commission)
TCM -- Transportation Control Measure
TDM -- Travel Demand Model
TERP -- Texas Emission Reduction Plan
TexAQS 2000 -- Texas Air Quality Study 2000
TexAQS II -- Texas Air Quality Study 2006
TKE -- Turbulent Kinetic Energy
TNMHC -- Total Non-methane Hydrocarbon
TNRCC -- Texas Natural Resource Conservation Commission
tpd -- tons per day
tpy -- tons per year
TSE -- Truck Stop Electrification
TTI -- Texas Transportation Institute
TUC -- Texas Utility Code
TxDOT -- Texas Department of Transportation
TxLED -- Texas Low Emission Diesel
USC -- United States Code
VMEP -- Voluntary Mobile Source Emissions Reduction Program
VMT -- Vehicle Miles Traveled
VOC -- Volatile Organic Compound
VRU -- Vapor Recovery Unit
ZEB -- Zero Emission Bus
ZEV -- Zero Emissions Vehicle

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Response to Public Comments

CHAPTER 1. BACKGROUND AND INTRODUCTION

1.1. GENERAL

“The History of the Texas State Implementation Plan (SIP),” a comprehensive overview of the SIP revisions submitted to the United States Environmental Protection Agency (EPA) by the State of Texas may be viewed on the Texas Commission on Environmental Quality’s (TCEQ) Web site at: <http://www.tceq.state.tx.us/implementation/air/sip/sipintro.html#History>.

The Dallas-Fort Worth (DFW) Eight-Hour Ozone Attainment Demonstration (AD) SIP Revision for the 1997 Eight-Hour Ozone Standard (May 2007 DFW AD SIP Revision) was adopted by the commission on May 23, 2007, and submitted to the EPA on June 15, 2007, along with the associated adopted 30 Texas Administrative Code (TAC) Chapter 117 nitrogen oxides (NO_x) rules. The May 2007 DFW AD SIP Revision demonstrated attainment of the 1997 eight-hour ozone National Ambient Air Quality Standard (NAAQS) by June 15, 2010, supported by photochemical modeling and weight of evidence (WoE) arguments. The associated 30 TAC Chapter 117 rule revisions, applicable to Major Industrial, Commercial, and Institutional (ICI) Sources, minor sources, electric generating units (EGU), cement kilns, and East Texas combustion sources, were included as control measures in that May 2007 DFW AD SIP Revision. Except for the East Texas combustion rule, which is applicable to specific counties in northeast Texas located outside of the DFW eight-hour ozone nonattainment area (DFW area), the associated 30 TAC Chapter 117 rule revisions apply only within the nine-county DFW area.

NO_x reductions from EGUs, cement kilns, and certain major and minor sources affected by the rule revisions will begin no later than March 2009. Further NO_x reductions that will result from rule revisions on other major and minor sources and on East Texas combustion engines will begin no later than March 2010. The May 2007 DFW AD SIP Revision included local commitments to reduce NO_x emissions by a total of 4.16 tons per day (tpd) by the 2009 attainment year from the North Central Texas Council of Governments (NCTCOG).

In June 2007, the EPA began reviewing the May 2007 DFW AD SIP and the associated 30 Texas Administrative Code (TAC) Chapter 117 rule revisions. The TCEQ received a [letter from the EPA](#) in March 2008 requesting supplemental information related to the May 2007 DFW AD SIP where additional clarification would be helpful for their review. In April 2008, a [TCEQ response letter](#) was sent to the EPA. The correspondence between the agencies is accessible from the links above, which are also available on the TCEQ Web page located at <http://www.tceq.state.tx.us/implementation/air/sip/dfw.html>. The additional information provided included updates regarding Texas Emissions Reduction Plan (TERP); emissions inventories related to airports, Discrete Emissions Reduction Credits (DERC), back-up generators and compressor engines; Green Cement ordinances, contingency measures; and the WoE analysis. The letter from the EPA indicated that further action on its part may require additional DFW SIP revisions and requested a commitment from the TCEQ staff to recommend such actions to the commission. Specifically, the EPA requested that the TCEQ implement an enforceable mechanism to limit the use of DERCs in the DFW area so that such use would not interfere with attainment and maintenance of the 1997 eight-hour ozone NAAQS. Additionally, the EPA requested commitment from the TCEQ to propose DFW SIP revisions setting DERC use limits for the DFW area and identifying contingency measures to fulfill a three percent emissions reduction requirement. In June 2008, the TCEQ informed the EPA of its intention to recommend the SIP revisions and rulemaking required by the EPA.

In July 2008, the EPA proposed a conditional approval of the May 2007 DFW AD SIP Revision, providing that final conditional approval was contingent upon the TCEQ adopting and submitting to the EPA an approvable contingency plan SIP revision for the DFW area. The condition identified for EPA's final approval of the May 2007 DFW AD SIP Revision was that the TCEQ submit approvable DERC rule and SIP revisions limiting DERC use in the DFW area beginning by March 1, 2009.

On August 6, 2008, the TCEQ proposed the DFW AD SIP Revision for the 1997 Eight-Hour Ozone Standard (for only the Contingency Measure Plan and DERC Program). Because EPA Region 6 staff requested expedited submittal of a revised contingency plan, the commission elected to accelerate the internal review process for the contingency plan portion of the proposed DFW AD SIP Contingency Plan and DERC Program Revisions to allow additional time for the EPA to complete review and take final action regarding the May 2007 DFW AD SIP Revision as quickly as possible.

The scheduled time period for taking public comment on the DFW AD SIP Contingency Plan and DERC Program Revisions and 30 TAC Chapter 101 DERC rule revisions proposals was not altered, and the commission elected to proceed as scheduled for the proposed 30 TAC Chapter 101 DERC rulemaking internal review process. Because adoption considerations for the proposed revised contingency plan and 30 TAC Chapter 101 DERC rule revisions were set for separate agenda dates, the proposed SIP revision was divided into two separate revisions for adoption consideration. The DFW AD SIP Contingency Plan Revision adopted by the commission on November 5, 2008, and submitted to the EPA on November 15, 2008, was the first of these two SIP revisions. EPA's contingency plan requirement was satisfied by identifying measures that will be triggered in the event the DFW area fails to meet the June 15, 2010, deadline for attaining the 1997 eight-hour ozone standard.

The condition stipulated by the EPA for approval of the May 2007 DFW AD SIP Revision for TCEQ to adopt and submit rule and SIP revisions to implement an enforceable mechanism to limit the use of DERCs in the DFW area by March 1, 2009, is satisfied with this DFW AD SIP DERC Program Revision. This second SIP revision finalizes the proposed DFW AD SIP Revision for the 1997 Eight-Hour Ozone Standard (for only the Contingency Measure Plan and Discrete Emissions Reduction Credits (DERC) Program).

This revision incorporates the proposed DERC rule revision requested by the EPA and sets a limit on DERC use for the DFW area, as required. The TCEQ intends to submit the DERC rule and SIP revisions to the EPA by December 15, 2008.

The Motor Vehicle Emissions Budget for NO_x and Volatile Organic Compound (VOC) emissions, as set in the May 2007 DFW AD SIP Revision, is not changed or affected by this DFW AD SIP DERC Program Revision.

1.2. HEALTH EFFECTS

(NO CHANGE)

1.3. PUBLIC/STAKEHOLDER PARTICIPATION

The commission held hearings to receive public comments on the DFW AD SIP Revision for the 1997 Eight-Hour Ozone Standard (for only the Contingency Measure Plan and Discrete Emissions Reduction Credits (DERC) Program), and on the 30 TAC Chapter 101 DERC rule revisions, on September 9, 2008, in Dallas, and on September 10, 2008, in Arlington. There were

no comments received at the hearings. During the August 6, 2008, through September 12, 2008, public comment period, no comments were received on the SIP revisions narrative. Comments related to the proposed DERC Program rule amendments were received during the public comment period, from the EPA and Luminant Power (formerly TXU Power). A summary of those comments and the TCEQ responses are provided in the Response to Comments Document attached to this SIP Revision.

1.4. SOCIAL AND ECONOMIC CONSIDERATIONS

For a detailed explanation of the social and economic issues involved with the DERC Program, please refer to the preamble preceding the rule package accompanying this SIP revision.

1.5. FISCAL AND MANPOWER RESOURCES

The state has determined that its fiscal and manpower resources are adequate and will not be adversely affected through the implementation of this plan.

CHAPTER 2. PHOTOCHEMICAL MODELING

(NO CHANGE)

CHAPTER 3. CORROBORATIVE ANALYSIS

3.1. - 3.10

(NO CHANGE)

3.11. Discrete Emissions Reduction Credits (DERC) Emissions Inventory Adjustment

In photochemical modeling exercises conducted for development of the Dallas-Fort Worth (DFW) Eight-Hour Ozone Attainment Demonstration (AD) State Implementation Plan (SIP) Revision for the 1997 Eight-Hour Ozone Standard, or May 2007 DFW AD SIP Revision, 22.0 tons per day (tpd) of nitrogen oxides (NO_x) emissions from the use of banked Emission Reduction Credits (ERC) and Discrete Emissions Reduction Credits (DERC) were predicted in the 2009 future year emissions inventory estimate. After the May 2007 DFW AD SIP was submitted to the United States Environmental Protection Agency (EPA) on June 15, 2007, the 22.0 tpd NO_x emissions projection, which was based on a growth rate of 45 percent for non-Electric Generating Unit (non-EGU) point source emissions for 2009, was determined to be an overly conservative projection. That 2009 future year emissions inventory projection, which was used in the May 2007 DFW AD SIP Revision photochemical modeling, estimated all of the 22.0 tpd of NO_x emissions currently available in the banked ERC and DERC registries would be used in 2009. Out of that 22.0 tpd of NO_x emissions projection from banked credit use in 2009, most (20.4 tpd NO_x) were attributed to DERC usage. Since the DERC program began in 1993, multiple “intent to use” applications have been filed, but no DERCs have been used to date in the DFW eight-hour ozone nonattainment area (DFW area) for compliance with state emission limits for attainment demonstration.

An estimated 3.2 tpd NO_x emissions resulting from DERC use has been determined to be a much more realistic projection for the 2009 future case emissions inventory. Several potential scenarios were contemplated in the Texas Commission on Environmental Quality’s (TCEQ’s) process to update the NO_x emissions projection for DERC usage in the DFW area. Use of a revised 3.2 tpd NO_x emissions estimate from DERC usage results in 17.2 tpd less NO_x in the 2009 future year inventory prediction. This DFW AD SIP DERC Program Revision incorporates the revised 3.2 tpd NO_x emissions estimate for DERC usage.

To estimate the impact of a 17.2 tpd NO_x reduction in the 2009 future case inventory, the TCEQ used response factors from an existing TCEQ sensitivity test that reduced point source NO_x emissions by 15 tpd distributed across the DFW area (4 tons from low level points and 11 tons from elevated point sources). Because the projected emissions from DERC usage were assigned to non-EGU and non-cement kiln point sources distributed across the nine-county area in the May 2007 DFW AD SIP Revision, the 17.2 tpd adjustment to point source NO_x emissions can be used to estimate the results at all monitor sites. Using this technique the TCEQ estimates that removal of 17.2 tpd of NO_x from the projected inventory should reduce ozone concentrations by 0.387 parts per billion (ppb) at the Frisco monitor and by 0.315 ppb at the Denton monitor. An average DFW area monitor reduction of 0.463 ppb ozone is predicted.

CHAPTER 4. REQUIRED CONTROL STRATEGY ELEMENTS

4.1. OVERVIEW OF EXISTING CONTROL MEASURES

(NO CHANGE)

4.2. NO_x AND VOC CONTROL MEASURES

4.2.1. - 4.2.5.

(NO CHANGE)

4.2.6. ADDITIONAL MEASURES

4.2.6.1. - 4.2.6.7.

(NO CHANGE)

4.2.6.8. Discrete Emissions Reduction Credits (DERCs) Flow Control Enforceable Mechanism

The United States Environmental Protection Agency (EPA) informed the Texas Commission on Environmental Quality (TCEQ) that a conditional approval of the Dallas-Fort Worth (DFW) Eight-Hour Ozone Attainment Demonstration (AD) State Implementation Plan (SIP) Revision for the 1997 Eight-Hour Ozone Standard, or May 2007 DFW AD SIP Revision, would require the TCEQ's adoption of an enforceable mechanism to limit the use of DERCs in 2009 and subsequent years consistent with attainment and maintenance of the 1997 eight-hour ozone National Ambient Air Quality Standard (NAAQS).

The 30 Texas Administrative Code (TAC) Chapter 101, Subchapter H, Division 4, Discrete Emission Credit Banking and Trading rule amendments adopted concurrently with this DFW AD SIP Revision for the 1997 Eight-Hour Ozone Standard (DERC Program), also known as the DFW AD SIP DERC Program Revision, includes revisions to 30 Texas Administrative Code (TAC) Chapter 101, §101.376 *Discrete Emission Credit Use* that define a flow-control strategy for DERC usage in the DFW eight-hour ozone nonattainment area (DFW area), as requested by the EPA. The adopted rulemaking revises 30 TAC Chapter 101, Subchapter H, Division 4, *Discrete Emission Credit Banking and Trading* by providing authority to the TCEQ executive director to determine DERC availability for use in any calendar year consistent with that level mandated in the applicable eight-hour ozone attainment demonstration for the DFW area. The addition of §101.376(f) further allows the executive director to apportion allowable DERC usage in the DFW area when the total amount of DERCs requested for use exceeds the DERC use allowable determined by annual review. Newly adopted item §101.379(c) specifies that the executive director shall complete an annual review for each calendar year to determine the DERC availability consistent with the attainment and maintenance of the 1997 NAAQS in the DFW area. Newly adopted §101.379(c)(2)(D) provides for an exception to the calculated flow control limit in the case of an emergency situation, as declared by the Electric Reliability Council of Texas.

Flow Control Limit for 2009

For the 2009 attainment year, the annual flow control limit for DERC use will not interfere with the current demonstration of attainment in the May 2007 DFW AD SIP Revision. This DFW AD SIP DERC Program Revision incorporates the revised 3.2 tpd nitrogen oxides (NO_x) flow control

limit, as reflected in a model-based analysis description provided in the [supplemental information letter](#) provided to the EPA by the TCEQ on April 23, 2008.

The changes related to the use of DERCs within the DFW area that are adopted by this SIP revision and the associated rules will ensure that DERC use will not interfere with attainment and maintenance of the 1997 NAAQS for ozone, as set by the EPA under 42 United States Code, §7409. The DERC flow control enforceable mechanism was developed in accordance with the guidance provided by the EPA in EPA-452/R-01-001, January 2001, *Improving Air Quality with Economic Incentive Programs*, which is accessible from EPA's Web page located at <http://epa.gov/ttncaaa1/t1/memoranda/eipfin.pdf>. Additional information about the proposed DERC limitation rule can be found in the preamble to the 30 TAC Chapter 101 rulemaking (Rule Project No. 2008-011-101-EN).

4.3. - 4.6.

(NO CHANGE)

Response to Comments Received on the proposed revisions to the Discrete Emissions Reduction Credits Program

The commission received comments during the public comment period that were specifically related to the proposed DERC Program rule amendments. Those comments were from Region 6 of the United States Environmental Protection Agency (EPA) and from Luminant Power (formerly TXU Power).

RESPONSE TO COMMENTS:

EPA recommended revising §101.376(a) to ensure that the DFW flow control provisions section only applies to the DFW ozone nonattainment area. The EPA also recommended restructuring the new subsections in §101.376(a) so that the rule clearly states that the emergency provisions will not be used to exceed the flow control limit established in §101.379(c).

The rule has been revised in response to this comment. Section 101.376(a)(6) has been changed to exclusively reference DFW. The commission is not adopting §101.376(a)(5) as proposed and instead adopts new §101.376(a)(5) to ensure that late Intent to Use submittals will be accepted and may only be approved in the case of an emergency or other exigent circumstances and if the use will not exceed the flow control limit or hinder attainment and maintenance of the 1997 eight-hour ozone NAAQS. However, as discussed elsewhere in this preamble, the commission includes new §101.379(c)(2)(D) to clarify that DERCs used as a result of ERCOT-declared emergencies will not be subject to the flow control limit.

EPA commented that the proposed rule language should be revised such that a consistent term for describing the flow control time period is used. Throughout the proposed rule, “control period,” “calendar year,” and “calendar year control period” were used interchangeably.

The rule has been revised in response to this comment. The control period for any DERC use is variable and dependent on the time period requested in each Notice of Intent to Use. The 2009 flow control time period is from March 1, 2009, to December 31, 2009. Thereafter, the flow control time period will be the calendar year. In response to this comment, the commission has revised the rule to reference the broader term “control period” when referring to all nonattainment areas or to the 2009 flow control time period, and “calendar year” or “calendar year control period” when referring to the flow control time period in 2010 and thereafter in the DFW area.

EPA requested clarification that the flow control time period runs from January 1 through December 31. EPA also suggested that the March 1, 2009, date used in §101.376(f)(1)(B) and §101.379(c)(2)(A) should be changed to January 1, 2009, for consistency.

The rule has not been revised in response to this comment. The commission disagrees with the suggested change because the March 1, 2009, date in §101.376(f)(1)(B) and §101.379(c)(2)(A) only refers to the generation and certification of DERCs and not the flow control time period.

EPA is concerned that clusters of requested DERC usage could result in a localized ozone spike, even if the use is within the flow control limit; therefore, §101.376(f)(1)(A) should be revised to account for the location of the requested DERC usage.

The rule has been revised in response to this comment. The commission considers ozone spikes due to clusters of DERC usage to be highly unlikely because of the limited number of DERCs available. However, §101.376(f)(1)(A) is amended with the addition of §101.376(f)(1)(A)(vi) to include location as a factor for consideration in the allocation of approved DERC use. This amendment will allow the executive director to assess whether the potential for geographic clustering will impact attainment and maintenance of the 1997 eight-hour ozone NAAQS.

EPA recommended that “may” should be changed to “will” in new §101.376(f)(1)(A) in order to ensure the methodology is replicable.

The rule has not been revised in response to this comment. Section 101.376(f)(1)(A) does not refer to the replicable procedures that determine the flow control limit, but to the apportionment of DERCs approved for use. The executive director reserves the right to apportion the use of approved DERCs on a case-by case basis with consideration of the relevant technical and economic factors affecting the applicants and the nonattainment area for that particular control period.

EPA requested that §101.376(f)(1)(B) be revised to specify that the Notice of Intent to Use Form must be resubmitted each year under §101.376(d).

The rule has been revised in response to this comment. The commission has removed the phrase “approved for use” from §101.376(f)(1)(B).

EPA commented that the methodology for establishing and increasing the flow control in 2009 and beyond is not replicable. EPA recommended that the flow control limit be calculated as a ton per day limit and not an average over the entire year for 2009 and beyond. EPA also recommended that the methodology for calculating the flow control limit be specified so that it is an approvable and replicable procedure.

The rule has been revised in response to this comment. The rule language now requires the use of the equation in §101.379(c)(2)(A) to calculate the annual flow control limit in tons per day for each calendar year. In addition, §101.379(c) requires the results of the calculation and numerical values of each term for that control period to be available to the EPA and the public in order to allow the calculation of the flow control limit to be replicated. The commission further revises §101.379(c) to specify that the annual review methodology consists of calculating the flow control limit as stated in §101.379(c)(2)(A). The commission also revises §101.379(c)(1) and §101.379(c)(2) to clarify that the flow control limit for 2009 and beyond establishes a daily limit in tons per day where a day is a 24-hour period from midnight to midnight.

EPA requested further explanation of the equation in §101.379(c)(2)(A) used for calculating the flow control limit in 2010 and beyond to define the summation term used in the equation; to define how C_1 and C_2 will be calculated to ensure the flow control calculation is replicable; explain how the inclusion of the (D_1-D_2) term will not interfere with attainment and maintenance of the 1997 eight-hour ozone NAAQS; and further clarify term E.

The rule has been revised in response to this comment. The commission has removed the summation term because it was redundant. The calculation method of surplus reductions using variables C_1 and C_2 is demonstrated in Table 4-4: 2009-2010 Fleet Turnover

***Reductions for Contingency or Surplus* of the DFW Attainment Demonstration SIP Revision for the 1997 Eight-Hour Ozone Standard (Contingency Measures Plan) to address contingency measures for the DFW area. Current values for these terms are based on the 1999 DFW Base Year Emissions Inventory. The commission disagrees with the comment that the D_1 - D_2 term represents growth without restrictions that will interfere with attainment and maintenance of the 1997 eight-hour ozone NAAQS. Any increase in the D_1 term is derived from emissions removed from the airshed and certified as DERCS. Growth in the D_2 term represents DERCS used and limits growth in the flow control limit. In the event that DERCS are generated and not used, the flow control limit will increase but this increase will be directly attributable to the removal of emissions from the airshed. The inclusion of DERCS represented by these variables will not interfere with attainment and maintenance of the 1997 eight-hour ozone NAAQS because DERCS generated on or after March 1, 2009, represent reductions of emissions in the DFW ozone nonattainment area beyond what was modeled for the attainment demonstration. Therefore, attainment and maintenance of the 1997 eight-hour ozone NAAQS is preserved either through a limit on flow control or a growth in new DERCS resulting from an emissions decrease. The “E” term of the equation has been removed in order to prevent the potential for double counting.**

EPA commented that §101.379(c)(2)(B) and (C) appeared to restate the same provision.

The rule has been revised in response to this comment. The commission agrees that these subparagraphs are redundant and has not adopted proposed §101.379(c)(2)(B). Proposed §101.379(C) is re-designated §101.379(c)(2)(B) and states that if the use of the entire DERC bank in the DFW area will not interfere with attainment and maintenance of the 1997 eight-hour ozone NAAQS, a flow control limit is not necessary and the executive director will approve use of the entire bank.

EPA expressed concern that emergency requests may not be considered before flow control is deemed unnecessary. EPA requested clarification of the cut-off date that will be used to determine that flow control is not necessary and suggested revising the emergency provisions in §101.376 to reflect the cut-off date for late submittals of Notice of Intent to Use Forms.

The rule has been revised in response to this comment. With regard to EPA’s concern that emergency requests may not be considered, the commission cannot consider requests that have not been received at the time of the evaluation. Neither can the commission speculate as to the number of DERCS that might be requested on an emergency basis. However, the commission agrees that revisions to §101.376 are necessary to address emergency situations. In response to EPA’s comment, the commission is not adopting §101.376(a)(5) regarding general late submittals of DEC-2 Forms. Additionally, the commission has revised §101.379(c)(2) to provide provisions to address late submittal for emergency situations. Adopted §101.379(c)(2)(C) specifies that if the flow control limit has not been met, any late DEC-2 Forms submitted for emergency purposes will be considered on a case-by-case basis, but the executive director will not approve late DEC-2 Forms that would exceed the flow control limit calculated according to the equation in adopted §101.379(c)(2)(A). In addition, the commission has determined that an exception is necessary to address potential ERCOT-declared emergencies. Therefore, the commission is adopting §101.379(c)(2)(D), which defines and exempts from the flow control limit an ERCOT-declared emergency situation. Without this exemption, a regulated entity could be put into a situation of either non-compliance with TCEQ rules or contributing to electrical grid instability by not responding to an ERCOT emergency notice.

Luminant requested that the annual review described by §101.379(c) be required by an earlier date such that applicants can be notified of the number of DERCs approved for use by October 1. The reason for this recommendation is for advanced operational and budgetary planning purposes.

The rule has been revised in response to this comment. The commission has revised §101.379(c) to move the deadline for completion of the annual review to October 1 in order to provide approved applicants sufficient time for operational and budgetary planning. However, the executive director needs sufficient time to perform the evaluation required by §101.376. Therefore, the commission has changed the submittal date of DEC-2 Forms in §101.376(d)(1)(B)(i) to August 1.

Luminant requested that the rule be revised to allow DEC-2 Forms that are submitted late in the case of an emergency to be faxed or otherwise electronically submitted to the agency, or that the commission indicate in the preamble that it will accept electronic submittal in such a situation.

The rule has not been revised in response to this comment. The commission will accept faxed and other electronically submitted DEC-2 Forms provided the electronic submittal is followed by a hard copy. This is necessary to ensure compliance with 30 TAC Chapter 19, Electronic Reporting.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



ORDER ADOPTING AMENDED RULES AND REVISIONS TO THE STATE IMPLEMENTATION PLAN

Docket Nos. 2008-0469-RUL, 2008-0926-SIP

On December 10, 2008, the Texas Commission on Environmental Quality (Commission), during a public meeting, considered adoption of amended §§ 101.376 and 101.279. The Commission adopts this amendment in Chapter 101, General Air Quality Rules, Subchapter H, Emissions Banking and Trading; and corresponding revisions to the state implementation plan. These amendments create an enforceable mechanism that allows the executive director to restrict the use of Discrete Emissions Reduction Credits (DERCs) in the Dallas-Fort Worth (DFW) eight-hour ozone nonattainment area to a level that is consistent with the attainment and maintenance of the National Ambient Air Quality Standard (NAAQS). The amendments will provide the executive director the authority to approve the amount of DERCs available for use in any calendar year consistent with the level relied upon for the SIP DFW eight-hour ozone nonattainment area. Under Tex. Health & Safety Code Ann. §§ 382.011, 382.012, and 382.023 (Vernon 2001), the Commission has the authority to control the quality of the state's air and to issue orders consistent with the policies and purposes of the Texas Clean Air Act, Chapter 382 of the Tex. Health & Safety Code. The proposed rules were published for comment in the August 22, 2008 issue of the *Texas Register* (33 TexReg 6727).

Pursuant to Tex. Health & Safety Code Ann. § 382.017 (Vernon 2001), Tex. Gov't Code Chapter 2001 (Vernon 2000 & Vernon Supp. 2005), and 40 Code of Federal Regulations § 51.102, and after proper notice, the Commission conducted public hearings to consider the amended rules and revisions to the SIP. Proper notice included prominent advertisement in the areas affected at least 30 days prior to the dates of the hearings. Public hearings for this rulemaking were held on September 9, 2008, in Dallas and on September 10, 2008, in Arlington.

The Commission circulated hearing notices of its intended action to the public, including interested persons, the Regional Administrator of the United States Environmental Protection Agency (EPA), and all applicable local air pollution control agencies. The public was invited to submit data, views, and recommendations on the proposed amended rules and SIP revisions, either orally or in writing, at the hearings or during the comment period. Prior to the scheduled hearings, copies of the proposed amended rules and SIP revisions were available for public inspection at the Commission's central office and on the Commission's Web site.

Data, views, and recommendations of interested persons regarding the proposed amended rules and SIP revisions were submitted to the Commission during the comment period, and were considered by the Commission as reflected in the analysis of testimony incorporated by reference to this Order. The Commission finds that the analysis of testimony includes the names of all interested groups or associations offering comment on the proposed amended rules and the SIP revisions and their position concerning the same.

IT IS THEREFORE ORDERED BY THE COMMISSION that the amended rules and revisions to the SIP incorporated by reference to this Order are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules and the SIP necessary to comply with *Texas Register* requirements and the SIP. The adopted rules and the preamble to the adopted rules and the revisions to the SIP are incorporated by reference in this Order as if set forth at length verbatim in this Order.

IT IS FURTHER ORDERED BY THE COMMISSION that on behalf of the Commission, the Chairman should transmit a copy of this Order, together with the adopted rules and revisions to the SIP, to the Regional Administrator of the EPA as a proposed revision to the Texas SIP pursuant to the Federal Clean Air Act, codified at 42 U.S. Code Ann. §§ 7401 - 7671q, as amended.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Tex. Gov't Code, § 2001.033 (Vernon 2000 & Vernon Supp. 2005).

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

Date issued:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Buddy Garcia, Chairman