

Date: Friday, April 4, 2014
To: Texas Commission on Environmental Quality
From: Eric Bierman, Managing Member of GCWA #1 Production Facility
Re: GCWA EBT Stakeholder Group Comments

Dear TCEQ,

Thank you very much for the opportunity to comment on the emission banking and trading issues that TCEQ is considering for future rulemaking. The emission banking and trading program is extremely important to the state as Texas strives to continue its remarkable progress in improving air quality while at the same time providing jobs for its growing population. Our comments will focus on the suggestion that TCEQ may remove the ability for area sources to generate emission reduction credits (ERCs).

In December 1997, the TCEQ adopted emission banking and trading rules with the clear intent of allowing small companies to participate in the ERC program provided their emissions are represented in the State Implementation Plan (SIP) in the aggregate as area source emissions. As documented in the December 19, 1997, issue of the Texas Register (22 TexReg 12521), Exxon suggested that "a definition of 'area source' be added at §101.29(a), in order to include all sources which are eligible to generate and use credits, but which may be disqualified under the rule because they are not required to submit an emissions inventory." TCEQ's response was clear that "area sources," facilities whose emissions are represented in the SIP in the aggregate, are to be eligible to generate ERCs:

The rule is intended to allow banking and trading for all point sources, including those smaller than the 10 ton per year threshold for reporting to the agency emissions inventory. These types of sources are traditionally included in the area source category by reporting and representing their emissions in the aggregate, using population-based or other "surrogate" emission factors. The emissions inventory already includes these smaller point sources, although they are not reported as individual emission points. Therefore, the staff has added language to clarify that for the purpose of this rule, "area source" refers to any source reported or represented in the agency emissions inventory under the area source category.

EPA proposed to approve TCEQ's ERC rules, including the language allowing area sources to generate ERCS, for the State Implementation Plan (SIP) in the 5 October 2005 edition of the Federal Register (70 FR 58146-58154). This proposal and the technical support document clearly indicated that EPA was aware that TCEQ intended to allow area sources to generate ERCs. EPA did not express any concerns with the plan to include area sources in the program, nor did they receive any public comments expressing concern about the proposal. Approval of these rules is EPA's opportunity to provide input to the process and express any concerns. In the 6 September 2006 edition of the Federal Register (71 FR 52698 – 52703), EPA unconditionally adopted the ERC program rules including the language allowing area sources to generate ERCs.

The ability for area sources to generate emission reduction credits is far too valuable an asset to the state of Texas to be eliminated. While some area source categories present policy issues to be resolved,

the existing rules are sufficiently stringent and comprehensive to protect the integrity of the ERC program. TCEQ included *area sources* as an eligible ERC generator category with no additional requirements, implicitly acknowledging that the adopted rules are sufficient to implement the program. On a case by case basis, TCEQ has the opportunity to evaluate the merits of each individual area source application under the currently adopted rules, which require the applicant to demonstrate that the reductions are enforceable, permanent, quantifiable, real, and surplus, among other requirements.

Eliminating area sources from ERC eligibility would be an arbitrary action, because in many cases the only difference between a small point source and an area source is slightly lower emissions. There are many possible reasons for a site to have lower emissions, including voluntary implementation of emission controls, a practice which TCEQ should encourage rather than discourage. Removing the ability for the area source to generate ERCs would simply penalize a site for being smaller.

The primary goal of the ERC program should be to improve air quality while at the same time allowing the Texas economy to grow. While it is possible that some area source emission categories are overstated in the current SIP, it is also possible that some area source emissions are understated. The possibility that past accounting for area source emissions may have been inaccurate is not a good reason for eliminating area sources from ERC eligibility. Accurate emissions information is important for air quality planning and will certainly lead to improved decision-making for future SIPs. TCEQ should view any more accurate information obtained about area sources gained through the ERC program as valuable for planning future SIPs, rather than fearing it will detract from the perceived quality of past SIPs.

Specifically, we believe that emission reductions from area sources found in the oil and gas industry appropriately qualify as ERCs. Our industry has unique features that justify claiming emission reductions as ERCs, including the following:

- Emission reductions from oil and gas production will not shift the emissions elsewhere. The industry's local activity level is driven by each well's underlying geology and potential to produce oil and gas, rather than local market demand. Shutting down one production facility does not require increased production nearby, because both oil and gas are produced, processed, refined, and marketed over a broad geographic area.
- Emissions from each oil and gas source are explicitly represented in the SIP. TCEQ staff calculated the area source emissions inventory for the oil and gas industry based on production rates. If a source had reduced production, the SIP emissions inventory would have been lower as a result. Thus, the industry's emissions from area sources are certainly traceable within the SIP.
- Emission reductions from oil and gas area sources can readily be demonstrated to be "surplus" as required by the ERC rules. "Surplus" is defined at 30 T.A.C. § 101.300(30) as "not otherwise required of a facility or mobile source by any local, state, or federal law, regulation, or agreed order and has not otherwise been relied upon in the state implementation plan." Oil and gas area sources are typically authorized by a permit by rule and are subject to defined emission standards and other controls. Historically, our industry's emissions have not been targeted for attainment demonstration SIP control strategies. Thus, reducing emissions by shutting down a facility or installing a control device not required by existing rules will result in a "surplus" emission reduction that meets the intent of the ERC rules.

We acknowledge that, for many area sources, potential emission reductions may not qualify as ERCs. However, this issue should not prejudice the ability of the oil and gas production and similarly-situated industries to reduce emissions and generate legally defensible ERCs.

In summary, TCEQ should not remove area source eligibility from the ERC program. To do so would eliminate a valuable tool for improving Texas' air quality and promoting a healthy economy. Further, doing so would arbitrarily punish smaller sources for simply having lower emissions. The ability for area sources to generate ERCs is an extremely valuable tool which is already available in TCEQ rules and approved by the EPA. The existing TCEQ rules are sufficient to ensure that area sources comply with the intent of and maintain the integrity of the ERC program. Disallowing area sources from fully participating in the ERC program would discourage smaller companies from voluntarily reducing surplus emissions and thus improving air quality. It would also prevent ERCs from being created from these area sources and thus being able to help facilitate the development of new, environmentally responsible, business opportunities in Texas. Instead of eliminating area sources reductions from consideration, TCEQ should make the necessary policy decisions to fully utilize these valuable resources.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Bierman", with a long, sweeping horizontal line extending to the right.

Eric Bierman

Managing Member of GWCA #1 Production Facility