SAGE
ENVIRONMENTAL CONSULTING

STAKEHOLDER COMMENTS

DATE: **April 4, 2014**

TO: **Mr. Joe Thomas – Texas Commission on Environmental Consulting**

FROM: **Sage Environmental Consulting, L.P.**

RE: **Emissions Banking and Trading Stakeholder Group**

Thank you for the opportunity to provide comments on the changes TCEQ will be considering in a future rulemaking to the current Emission Banking and Trading (EBT) Program. Sage Environmental Consulting, LP (Sage) represents companies who would be affected by these proposed changes, both in the generation and use of ERCs.

In general, Sage believes that the rules are sufficient as currently promulgated and that only one change is needed to the rule.

<u>Remove the 180 day Limit</u>

Sage agrees with TCEQ that the requirement found in Section 101.303(d) that facilities with potential ERCs must submit an EC-1 Form to the agency within 180 days of the implementation of the emission strategy is outdated and should be removed from the rule.

When originally promulgated, the EBT program was voluntary and was not the only mechanism by which companies could generate offsets. Since then, the program has been made mandatory and is currently the only mechanism by which companies can create credits for use as offsets. Having such a strict timeline remain in a mandatory rule--if a company misses the deadline, they cannot create ERCs or otherwise establish those reductions as offsets--is neither logical nor fair. The rules, as it currently exists, has unnecessarily reduced the amount of offsets available for use in the HGB nonattainment area at a time where offsets are greatly needed.

Moreover, the TCEQ has indicated the original rationale behind the 180 day rule--that TCEQ needed to know for SIP planning purposes which reductions might be banked because rules at one time could be developed from concept to adoption in six months-- is outdated and not in alignment with current SIP rulemaking timeframes.

Sage recommends that the TCEQ extend the 180 day deadline to align with 30 TAC 101.309(b)(3), which states that ERCs are valid for 5 years after the date of the reduction. If a source can demonstrate that the emissions reduction satisfy the EBT program requirements i.e. “enforceable, permanent, quantifiable, real, and surplus,” the source should be able to generate and use the credits up until the time that the credits would expire. Moreover, we believe that the TCEQ should make this provision retroactive so as to not penalize companies that inadvertently miss the 180 day deadline prior to any rule change. If an emissions reduction otherwise meets the criteria, it would thus be available for use within five years of generation.

<u>No Rule Changes are Needed for Area Sources</u>

Area sources should remain in the banking rules and no changes are actually needed to address concerns TCEQ may have regarding the generation of ERCs from area sources. Rather, any concerns TCEQ has regarding the suitability of certain area sources to generate ERCs can and should be addressed by case by case determination based on the merits of the application.

1. *TCEQ Has Not Provided Sufficient Information Regarding Its Concerns About Area Sources nor Adequate Time for Interested Persons to Respond*

Area sources remain an important source of ERCs to the regulated community and revenues from the generation of ERCs are important to those area sources who choose to reduce emissions by installing control technologies beyond requirements currently found in the rules.

In the materials previously posted to the TCEQ website for which TCEQ is seeking comment, TCEQ states only that it is considering modifying the rules to address difficulties associated with demonstrating how specific area source emissions are represented in the SIP and how the area source emission reductions are surplus to the SIP. TCEQ also identified removing the ability to generate credits from area source reductions altogether as one option being considered..

However, when reviewing the TCEQ EBT Stakeholder Group Meeting Minutes (only recently posted to the TCEQ website), Sage noticed that, in response to a question regarding why the TCEQ is considering to remove the option to generate credits from area and mobile sources, TCEQ referenced EPA's *Economic Incentive Program* guidance and requested "input from stakeholders on ways to make these types of generation practical under the Economic Incentive Program guidance from U.S. Environmental Protection Agency. If no practical method of generation is possible, these options may be removed from the rules."

This guidance document was not referenced during the Stakeholder Meeting at the Houston-Galveston Area Council or listed in the *Emission Banking and Trading Issues for Consideration in Future Rulemaking* presentation. The EPA guidance is almost 300 pages long. If TCEQ is truly seeking input on these issues from interested stakeholders, we ask that the agency be clear about its concerns and extend the public comment period so that stakeholders have adequate time for review and comment on all issues under consideration.

Moreover, it is unclear why TCEQ is even raising issues about the applicability of this guidance to the generation of area sources and mobile sources at this time. In 2002, TCEQ made changes to the banking rule to address "concerns raised by the EPA regarding the quantification protocols used when measuring baseline emissions for the generation and use of credits." EPA had outlined elements necessary for approval of trading programs that would be used within a SIP in guidance titled "Improving Air Quality with Economic Incentive Plans (EPA 452/R-01-001 dated January 2001)." Thus, the TCEQ has already made changes to conform to this guidance, with the rules being subsequently approved by EPA.

Accordingly, Sage requests that TCEQ provide much more detailed and specific information regarding its concerns about banking emissions from area sources, as well as provide additional time for interested persons to review EPA's *Economic Incentive Program* guidance document and provide comments to the TCEQ on proposing guidelines for generating ERCs at area sources that meet the requirements of the EBT program. As initially stated, we believe this would be better accomplished by issuing clarifying guidance, not rulemaking.

2. *TCEQ Should Consider all Options for Fair Treatment of Area Sources*

The category of "area sources" includes point sources that are excluded from emissions inventory reporting requirements because their emissions are less than 10 tons per year. One of the primary issues for which the agency is seeking comment in this process is how to ensure that specific area source emissions are represented in the SIP and that those emissions are surplus to the SIP. One simple way to address this issue in the future would be to notify area sources of the opportunity to submit emissions inventories and have their emissions expressly considered as part of the SIP planning process. Yet TCEQ recently emailed a notice about the opportunity to make revisions to 2012 emissions inventory submissions that will be used as the base inventory year in the DFW area <u>only</u> to subscribers of the point source emission inventory. Moreover, that notice expressly states that "emissions inventories for DFW-area sites that do NOT meet the reporting requirements of 30 TAC Section 101.10 for calendar year 2012 will not be processed at this time." (emphasis in original). Thus, point sources greater than 10 tpy are being provided with an opportunity to revise their EIs and notified that revisions received after May 14, 2014 will not be captured in the 2012 base year DFW AD SIP inventory, which would impact future credit generation, while sources smaller than 10 tons are not being notified --even by a posting on the TCEQ website--and thus are not being provided with an opportunity to submit emissions inventory information to the agency for use in the SIP planning process.

If an area source seeks to provide EI information to the TCEQ so that those emissions can be expressly included in the inventory used for a SIP demonstration, it should be given the opportunity to do so. Failure to provide, or even allow, such an opportunity in the DFW SIP raises concerns for the fair treatment of area sources to generate ERCs. This seems shortsighted and unfair to smaller sources, especially those that use the same calculation methodologies to determine emissions as larger sources.

3. *TCEQ Should Develop Policies and Protocols Based on Categories of Area Sources*

In the absence of established TCEQ guidance, companies with area source emissions should be allowed to work with the TCEQ on a case by case basis, just like TCEQ works with larger companies, to demonstrate that the source and ERC application can meet the TCEQ rule criteria necessary to generate

ERCs. TCEQ could publish precedence and guidance on its website based on these case-by-case determinations.

4. *TCEQ's TexAER Website Remains "Down for Maintenance "*

TCEQ is soliciting comment on how to address the difficulties associated with demonstrating that specific area source emissions are represented in the SIP. Sage personnel have spent extensive time reviewing and understanding the 2006 Emissions Inventory and SIP submittal package in order to help both clients and the TCEQ address this issue. However, the agency's TexAER website, which contains very pertinent area source EI data, has been down for maintenance for at least the week immediately following the stakeholder meetings and at least this week leading up to the stakeholder comment submittal date. Thus, Sage is unable to independently review area source EI data and provide specific comments on this issue as part of these informal comments. We ask that TCEQ prioritize the maintenance needed to address these issues associated with the website and extend the public comment period once access to the area source EI is restored.

5. *Area Source Emissions may be Overstated in the 2006 Emissions Inventory*

While Sage cannot confirm its belief that area source emissions are overstated in the 2006 EI because the TexAER website has been down, we suggest the TCEQ further study the emission accounting estimation methods used in the 2006 SIP versus the current TCEQ guidance and accepted methodologies. Currently, TCEQ has stated a concern that emission reductions from area sources might be "surplus to the SIP"; an overestimation of the SIP emissions should alleviate this concern. In its request for comments, the TCEQ has not indicated the regulatory definition of surplus to the SIP or adequately defined this term or guidance to provide for informed public comment. Accordingly, Sage requests the public comment period be extended, and that the TCEQ provides additional public clarification on this requirement within the context of the existing TCEQ EBT rules.

To that end, a review of assumptions used in the attainment demonstration SIP regarding a comparison of assumptions made for area source emissions to current information should be helpful in addressing program integrity concerns. For example, the TCEQ assumed a robust growth in area source emissions (22%) from 2006 to 2018 and relied upon that growth in making its attainment demonstration. In 2008-2009 and beyond, the United States experienced a financial crisis and historic economic retraction, reducing manufacturing and emissions from most economic sectors; some of industrial sectors have not recovered and will not recover. Thus, it is certainly possible that area source emissions were not only initially overstated, but that higher growth rates have been projected than have actually occurred. This would mean that concerns about how to demonstrate that reductions are surplus, to the extent required for an individual ERC application, may be possible to address on a macro-level for situations where case-by-case demonstrations are unclear or not sufficiently understood by TCEQ staff.

It also means that, unlike point sources, reductions from area sources that came into existence after 2006 are likely "surplus" given application of the growth factor.

Sage recognizes that these issues are complex and will require staff resources. However, we believe that there are important public policy and economic reasons to expend such resources and thus move towards a solution that will address concerns about program integrity while still allowing area sources to generate emission reduction credits.

We appreciate the opportunity to submit these comments and would welcome the opportunity for further discussion.

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