TEXAS CHEMICAL COUNCIL
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April 4, 2014

Mr. Joe Thomas
Texas Commission on Environmental Quality
MC-206
P.O. Box 13087
Austin, Texas 78711-3087

***Submitted electronically via e-mail*.**

RE: *TCEQ Emissions Banking & Trading Program Stakeholder Group & Future Rulemaking*

Dear Mr. Thomas:

On behalf of the Texas Chemical Council (TCC), I am writing to provide informal comments with feedback on stakeholder discussions related to issues for consideration in a future rulemaking on the Emission Banking and Trading (EBT) program. These comments will both respond to the presentation made by TCEQ staff, issues raised by other stakeholders during TCEQ-led meetings, and other thoughts by TCC.

TCC is a statewide trade association representing nearly 70 chemical manufacturers with more than 200 Texas facilities. The Texas chemical industry has invested more than $50 billion in physical assets in the state, as well as pays over $1 billion annually in state and local taxes and over $20 billion in federal income taxes. TCC's members provide approximately 70,000 direct jobs and over 400,000 indirect jobs to Texans across the state. TCC member companies manufacture products that improve the quality of life for all Americans and millions of people around the world.

TCC member companies represent a large segment of industry that has been able to utilize this program to the benefit of the state, and therefore our members have unique expertise in understanding how the program has operated in the past and how it can adapt into the future. It is our aim to enhance the usability of the program tools without compromising its effectiveness. TCC appreciates the TCEQ staff's efforts in working on this program and ensuring that in moving forward, stakeholders have the ability to fully vet any potential changes and suggest enhancements.

Using Allowances for Offsets

TCC supports the Agency's suggestion to clarify the ability to use MECT and HECT allowances for the entire offset requirement. The current regulatory language suggests that allowances can only be used to satisfy the one to one portion of the offset requirements. 30 TAC §101.352(e), §101.393(d). However, the relevant guidance document and current practice permit the use of allowances to satisfy the additional 0.3 portion of the offset requirement, so long as those allowances are permanently retired and transferred into the *TCEQ Offset Retirement Account* before the facility commences operation. *See TCEQ Guidance on the Use of Allowances for Nonattainment New Source Review Permit Offset Requirements*, Oct. 2013. This is an appropriate action, as it is currently being utilized, and the clarity provided by incorporating that declaration into the rules would benefit the regulated community.

TCC supports the use of Mass Emissions Cap and Trade (MECT) allowances as offsets for non-MECT sources.

TCC supports limiting possible future devaluation of allowances for the purpose of meeting offset requirements. Allowances used to satisfy offset requirements for *new* facilities should not devalue due to future regulatory changes as this creates uncertainty for projects. New sources are already required to be built to meet the most stringent control standards. If the allowances used in the permitting process are devalued and the new source was built using LAER/BACT controls, then additional reductions are likely not possible to meet a lower cap.

TCC recognizes that this approach could mean that *existing* sources might need to make further reductions to adjust for *newer* sources that have no further emission reduction alternatives. There are existing sources that are not controlled and are meeting the MECT obligation through other means and can be controlled in the next round of NOx reductions. Regardless, leaving the possibility open for any source to be subject to future regulatory changes that result in the devaluation of allowances is too uncertain and unpredictable for projects of such magnitude and that require significant prospective investment.

Using Credits for Offsets

TCEQ has suggested clarifying the requirements for interpollutant and interbasin use of ERCs, MERCs, DERCs, and MDERCs. However, TCC continues to encourage the Agency to develop an equivalency of pollutants by region for specific chemicals of concern with eventual development of conservative standards. These standards could be used as a default in lieu of site specific photochemical modeling to decrease the time, administrative burden, and cost to both the Agency and applicants. Furthermore, TCEQ should consider cases where existing modeling information can be applied to avoid case-by-case modeling for every applicant.

TCC additionally supports allowing companies using DERCs and MDERCs to submit required forms for multiple years. This will result in a reduction of the administrative burden for both the Agency and the regulated community, and TCC members companies foresee no downside to allowing this option.

Generating Credits from MECT and HECT Sources

TCC supports the requirement for allowances to be surrendered at a 1:1 ratio based on historical emissions when generating ERCs from sources in the MECT and HECT programs.

TCC also supports the generation of ERCs from HRVOC emissions from sources in the HECT program if allowances are surrendered at a 1:1 ratio based on historical emissions.

TCC understands these provisions are intended to prevent holders of allowances from selling/retiring both a MECT and/or ERC related to the same transaction potentially resulting in double-accounting. However, some clarity may be needed on the purchasing side for entities buying ERCs who may or may not be subject to applicable MECT/HECT programs.

Generating Credits from Area and Mobile Sources

TCEQ should retain the options to generate credits from area and mobile sources. TCC appreciates the often difficult task of ensuring that such credits are real, surplus, and enforceable, but continuing to allow these types of innovative programs to be available as a potential tool for credit generation is overall beneficial to the region's air quality and may prove useful into the future, especially in the light of the tight credit market as it exists today.

Credit Generation

TCC supports an extension of the 180-day limit to provide more time to submit an application to generate ERCs/MERCs. By comparison, Pennsylvania, another state that utilizes offset trading for ozone, permits submittal of an ERC application to generate ERCs two years after initiating reduction or shutdown. *See* 25 Pa. Code §127.207(2). This is limited by the fact that written notice of the source's deactivation is required within one year. *See id.* This approach is reasonable, and will give both the applicant and the agency sufficient time to finalize the calculation of ERCs generated.

TCC would further like to encourage TCEQ to consider revising the shelf life of ERCs. Currently, regulations only authorize ERCs to be used within 60 months of initial generation. *See* 30 TAC §101.309(b)(3). Pennsylvania currently allows a shelf life of credits for 10 years. 20 Pa. Code §127.206(f). Extending the shelf life of ERCs to a longer period, such as 120 months, would provide more flexibility to ERCs users without resulting in reduced air quality or in limiting the effectiveness of the program.

Furthermore, TCC supports the addition of $PM_{2.5}$ to the list of applicable solutions. This will give Texas the flexibility into the future should any areas be designated nonattainment. Texas submitted to EPA in December 2013 our recommendation that all Texas counties by designated as unclassifiable/attainment. EPA is expected to issue final designations on December 12, 2014. Because this rule timeline is closely related (it is expected to be proposed in October 2014 and adopted in March 2015), it is prudent for TCEQ to move forward with including this ability in the rule structure at this time.

Credit Baseline Emissions

TCC agrees that the baseline emissions cannot exceed the emissions inventory (EI) used in the attainment demonstration SIP and believe that clarity is needed for areas that do not yet have an attainment demonstration SIP or a recently submitted EI.

Credit Reporting

TCC requests that TCEQ clarify that ERCs and MERCs are considered "used" when an air permit application is submitted.

HECT and MECT Applicability

TCC agrees that a mechanism is needed to allow sites to terminate participation in HECT and MECT once those programs are no longer applicable to a given site or operation. Continued submittal of reporting forms to the agency when the programs are no longer applicable would be an unnecessary burden.

TCC appreciates the opportunity to provide input on this future rulemaking and in participating in the stakeholder process. This program is essential to the progress of the state in maintaining our business climate as well as making steps toward a better air quality. TCC looks forward to working with stakeholders and TCEQ staff regarding our suggestions and general remarks.

Thank you for your consideration of these comments. If you have any questions, please do not hesitate to contact me at (512) 646-6403 or landwehr@texaschemistry.org.

Yours respectfully,

Martha K. Landwehr
General Counsel