



INFORMAL COMMENTS

DATE: August 12, 2016
TO: Daphne McMurrer and Guy Hoffman – TCEQ Air Quality Planning
FROM: Sage ATC Environmental Consulting, LLC.
RE: Proposed Rules for Area and Mobile Source Credits

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

In general, Sage believes that ERCs are a vital component to the long term economic and environmental prosperity of Texas and that current rules regarding area and mobile source credit generation are sufficient. We respect the TCEQ mandate that to meet federal requirements, ERCs must be surplus, real, quantifiable, permanent, and enforceable. However, if ERC generation is desirable to a growing economy and environmental improvement, we contend that once these elements are met, TCEQ policy should be aimed at aggressively issuing ERC certificates.

Sage proposes that area source ERC applications submitted under the current rules be processed by TCEQ without further delay.

Promoting Industry and Environmental Progress in Texas

Houston and the surrounding area is a global leader in the petrochemical sector. Houston remains one of the most desirable locations for major petrochemical plant development and job creation on a global level due to its extensive infrastructure benefits.

However, environmental permitting uncertainty created by the availability of ERCs is limiting petrochemical expansion and job creation in the Greater Houston ozone non-attainment area requiring emission offsets and ERCs. Major, new industrial expansion, and high-paying jobs, will continue to go to Louisiana and elsewhere globally until TCEQ makes progress toward greater ERC liquidity.

In addition to economic benefits created by industrial expansion, more robust ERC policies would incentivize industry to invest in and develop new control technologies. This will drive innovation and could result in break through control technologies being developed. These voluntary reductions that go beyond any state, federal, or local regulation will improve overall

air quality and help to drive non-attainment areas into compliance with current and future NAAQS. With emissions offsets ratios currently at 1.3 to 1, an additional 30% improvement in the airshed is realized with each ERC transaction.

There is no other program that aligns the goals of economic interests and environmental concerns better than ERCs.

Processing Area Source Applications under Current Rules and SIP Year

Current EBT rules allow for generation of ERCs from Area and Mobile Sources. However, TCEQ has stated that they will not process any area source applications under existing rules. Effectively, this means there are area source applications that have been submitted to TCEQ within the appropriate timeline, which are based on a permanent and enforceable reduction in real emissions that have quantified using verifiable data and accepted methodologies and are surplus to the area source representation in the 2006 SIP attainment demonstration, which TCEQ is failing to process.

Additionally, TCEQ has not offered any guidance or indication as to the status of currently submitted area source ERC applications. In the best case scenario, it would seem that the area source ERCs currently submitted to TCEQ would be grandfathered and processed. However, these ERCs would still be at risk of being devalued or expiring before they can be used due to TCEQ's delay in processing the application. However it now seems TCEQ will deny these applications even though they were submitted in compliance with existing rules.

The 2014 SIP attainment demonstration (AD) is another factor potentially limiting ERC generation. The timeline that TCEQ has provided for the finalization of EBT rules means that it will be improbable that area and mobile source applications will begin to be processed prior to the 2014 SIP AD. Requiring area sources to be processed under the 2014 SIP AD will mean the loss of thousands of tons of potential ERCs from the Oil and Gas sector alone.

The timing for both rulemaking and the 2014 SIP AD, in combination with TCEQ's decision not to process area and mobile sources under the current rules, will result in a de facto determination that no area or mobile sources can be processed under the 2006 SIP year.

Sage proposes that area source applications be processed under the current rules on a "first come, first serve" basis for any applications submitted prior to the 2014 SIP AD.

Allowing companies to claim some of their current ERC potential under the existing rules will allow for an increase in available ERCs in the current market. The ERCs generated from area sources could even be discounted under the proposed strategies that the TCEQ working group is attempting to establish. Any application submitted after the 2014 SIP AD would be still be subject to the new SIP year and the new area source rules.

Proposed Discounts for Area and Mobile Sources

It is important to consider that placing limits on ERC generation beyond the criteria of being real, surplus, quantifiable, permanent, and enforceable may have an adverse impact on both NNSR permitting and industrial expansion. The availability of ERCs must be great enough to offset both the potential emissions created by industrial expansion and the offset ratio of 1.3 to 1. Since the HGB area is already facing a scarcity of ERC availability, this problem could be greatly compounded by discounts being proposed by TCEQ.

We understand TCEQ's preference to use the best available technology and methodology to quantify emissions. However, some of these sites have no requirement to install continuous emissions monitoring systems and do not wish to invest capital to do so voluntarily when alternative methodology is available to accurately quantify these emissions for a much lower cost. The discounts being described here are aimed at discouraging the use of calculation methodologies that have been widely accepted for many years. While it is understandable to make allowance for the uncertainty of using some of these methods, a 30% maximum discount seems unnecessarily severe.

Additionally, the 20% discount for the shutdown of area source sites makes shutting down an O&G production facility unattractive. By discouraging area source shutdowns, TCEQ could reduce incentives for innovation and compound the existing problem of ensuring that wells are properly plugged and abandoned.

Sage proposes using a 5% overall reduction for quality of data concerns to ensure that the reductions from area and mobile sources are quantifiable, permanent, and enforceable; in addition to 5% discount for area source shutdowns to ensure that reductions are real and surplus.

Proposed 5 Year Baseline Period

TCEQ is proposing that ERCs use a 5 year look back period, citing that the emissions will be more representative of activity for recent years. However, NSR uses a 10 year look back for this exact reason. A ten year window allows companies to account for a full business cycle instead of being stuck with the emissions report in the years immediately preceding the project or reduction which may be unusually high or low. This concept is at the heart of NSR policy and EBT rules should be consistent.

Sage applied a 5 year baseline to previously submitted point source applications from O&G sites to determine the impact of this policy. On average, 22% of the pre-discounted ERCs (i.e. the amount of ERCs prior to the application of discounts due to quality of data or area source shutdown) were lost per application for oil and gas production sites. While there were some sites that did not lose any of their ERC value in a 5 year look back, other sites lost as much 84% of pre-discounted ERCs. While this data does come from a limited number of O&G production sites, it is clear that a 5 year baseline period will have a range effects on different sites and will serve as an additional discount to ERC generation that may further discourage ERC generation.

If TCEQ believes that the discounting of area and mobile source credits is necessary to ensure that the reductions meet the criteria for ERC generation, then Sage proposes that these discounts be consistent with NSR policy and not left to the mercy of economic cycles.

Elastic vs. Inelastic Source

TCEQ has previously expressed concerns about processing area source applications for inelastic sources. These are sources such as gas stations and dry cleaners that if shut down could easily be restarted somewhere in the immediate area to meet demand. In addition, these sources are represented in SIP using calculation methodology based on population density, making them very difficult to quantify.

However, oil and gas sites are not based on population density but are calculated using the same methodology that applies to similar point source sites. These sites are also required to submit the data regarding installed control technology or the well plugging report to demonstrate that these sites will not be put back into operation. Since these area source sites meet the criteria of being real, surplus, permanent, quantifiable, and enforceable, and since this is the only criteria that ERC generation eligibility should be judged, these sites should be considered for ERC generation.

Area sources with quantifiable calculation methodology, such as oil and gas sites, should be eligible for ERCs.

ERC Approval vs. Capital Investment Timing

On several applications, TCEQ has denied requests for a completeness determination prior to the ERC generator's investment of capital to implement emission reduction strategies. These applications have taken the strategy of resolving technical and administrative issues first and requesting that the installation of control device or plugging of the well and verification of that action be the final steps taken on an ERC application.

The emission reduction strategy being implemented at these sites are voluntary and in some cases are being done for the sole purpose of generating ERCs. Equipment removal, well plugging and/or potential site reclamation are material capital costs for small O&G companies with irreversible long-term implications; some companies cannot risk cost of emission reduction with no certainty from TCEQ.

While it is perfectly reasonable that TCEQ not issue credits prior to the finalization of the reduction strategy nor conditionally approve applications that do not meet the requirements for ERC generation, TCEQ Air Permits Division has a similar precedent and deems an application "technically complete" prior to final public notice. The TCEQ EBT group could similarly state all technical review has been completed, and giving a completeness determination of a known ERC amount as a good faith effort to encourage the installation of control devices closure of these wells.

Sage is proposing that TCEQ offer a completeness determination to companies whose ERC applications are technically and administratively complete pending the installation of a control device or the plugging of a well.

Sage understands that these are complex issues that will affect public policy as well as economic and environmental interests for many years to come. We appreciate the effort that TCEQ has put into addressing these issues and working toward a solution. We also appreciate the opportunity to submit these comments and would welcome the opportunity for further discussion.