

RESPONSE TO COMMENTS RECEIVED REGARDING THE EL PASO NATURAL EVENTS ACTION PLAN (NEAP)

The Texas Commission on Environmental Quality (commission or TCEQ) conducted a public hearing on the proposed El Paso County Area Natural Events Action Plan (NEAP) in El Paso on December 11, 2006, at the TCEQ El Paso Regional Office, 401 E. Franklin Ave., Suite 560, El Paso. During the comment period, which closed at 5:00 p.m., December 18, 2006, written and/or oral comments were received from the United States Environmental Protection Agency (EPA) Region 6, EPA El Paso Border Liaison Office, El Paso Electric Company (EPE), and three individuals.

COMMENTS AND RESPONSES

LAW AND POLICY

The EPA stated that TCEQ does not have to wait until the NEAP is approved to begin the process of flagging data. The TCEQ can flag data and begin documentation for submittal to EPA now.

The commission appreciates the guidance, and is beginning the process to flag data and prepare appropriate documentation for known dates of natural events.

The EPA commented that the final Natural Events Rule is expected to be published in the *Federal Register* on or shortly after March 1, 2007. It will keep the TCEQ informed of progress with the Rule.

The commission appreciates this information.

The EPA commented that the El Paso NEAP relies heavily on existing ordinances and rules to demonstrate that anthropogenic sources of dust will be addressed by best available control measures (BACM). EPA requested background information on the adoption and effectiveness of the existing ordinances and rules, and the reasons TCEQ feels that new ordinances and rules are not necessary. EPA also suggests that TCEQ recognize the leadership role and regulatory work associated with the PM₁₀ SIP that the City of El Paso has undertaken in the past.

The commission made changes to the NEAP in Section 2.4 to address the comments. Existing local ordinances and the TCEQ rules in the El Paso area have been effective in improving air quality in the El Paso area. The commission continues to work closely with the area to ensure that local ordinances, TCEQ rules, and local programs continue to be adequate and effective, and that they are periodically reevaluated.

The EPE commented that it supports the TCEQ's good efforts to identify PM events beyond regulatory control and adequately address the issues.

The commission appreciates the support from the EPE regarding the El Paso NEAP.

The EPE commented that the Federal Clean Air Act (FCAA) did not classify El Paso as nonattainment, rather TCEQ with EPA's approval made the classifications based on available data.

The commission appreciates the comment. The NEAP has been changed to clearly state that EPA's action was done pursuant to the requirements of the FCAA § 107 (40 USC § 7407). The EPA is authorized to promulgate designations after consultation with the states, and retains the discretion to make the appropriate classifications of nonattainment areas.

The EPE commented that the reference in Section 1.2 of the NEAP to Section 319 of the FCAA is incorrect.

The commission disagrees that the reference to FCAA § 319 is incorrect. Section 319(b) (42 U.S.C. Sec. 7619) describes requirements for the content of a rulemaking to be promulgated by EPA that will embody the Natural Events Policy. Both sections 188(f) (42 U.S.C. Sec. 7513(f)) and 319 address issues surrounding the treatment of air quality data and exceptional events. No changes have been made to the NEAP in response to this comment.

The EPE commented that in the first sentence following Figure 1-1, the phrase 'at one time' should be inserted after 'designated' for clarification that the area is now no longer designated as nonattainment for all three pollutants.

The commission has made no changes to the document based on this comment because the same paragraph contains information that the area has been designated as attainment for the eight-hour ozone standard. In addition, although a redesignation request for carbon monoxide was submitted to EPA, the nonattainment designation remains until EPA takes action on the submittal.

PUBLIC OUTREACH AND INVOLVEMENT

The EPA suggested that TCEQ clarify Section 2.3 "Minimizing the Public's Exposure" to make clear the roles that local entities have with regard to educating the public on understanding the health hazards of wind blown dust and how they can avoid it.

The commission made changes to the NEAP in response to this comment. These changes include specifying in Section 2.3 that the local entities, namely El Paso City-County Health and Environmental District (EPCCHED) and the City of El Paso, are implementing aggressive public education and outreach programs.

The EPA El Paso Border Office Director commented that the air shed should work together to deal with environmental problems for the entire air shed. The EPA Director acknowledged that the NEAP contains a section discussing public involvement and review, that includes the Joint Advisory Committee (JAC). JAC is a mechanism to foster involvement in the air shed shared by two countries and three states, and consists of members from both sides of the border. The commenter mentioned that the NEAP states that JAC was involved in the NEAP development, and mentions specifically the JAC meeting of September 14, 2006. He commented that if there is no comment from neighboring states and Mexico, comments from JAC should be accepted as speaking on behalf of the air shed population.

The commission concurs with the comment.

The EPE commented that the last sentence of the first paragraph of Section 1.1 should be deleted.

The intent of the sentence is to highlight the fact that historical and current interdependency between communities in the El Paso region is important. The commission has not made a change to the document based on the comment.

An individual commented that the NEAP fails to consider the “diverse impacts” on the community by choosing to “promote public outreach and education programs,” and voiced concerns that these methods will not ensure the protection of public welfare.

The commission disagrees with this comment. The TCEQ developed the NEAP following guidance specified in the EPA National Events Policy (NEP) May 30, 1996, document. The NEP policy emphasizes a need for public outreach and education. Sections 2.2 and 2.3 of the NEAP details expected methods to ensure the protection of the public by educating them about long term and short term effects of exposure to high levels of PM, actions to take to minimize exposure and outreach to inform the public when those conditions are about to occur. The Commission has made no changes to the document in response to this comment.

An individual commented that the NEAP “does not appear to include community input from other states or other countries which share the same local air basin” and therefore, the plan “continues to deny people [the] due process that this comment period should provide.” He commented that particulate emissions go beyond political and geographical boundaries, and that he failed to see New Mexico and Mexico represented. Dust events from unpaved roads in Mexico affect people on both sides of the border. The solution has to incorporate people from the entire community to develop a regional plan that affect and control emissions. Another individual noted the importance of obtaining input from other states and Mexico, possibly through the JAC.

The commission appreciates this comment. The NEAP was developed in conjunction with stakeholders, which included local entities and JAC members. JAC members include people in the state of New Mexico and country of Mexico. They were included in public hearing notice distribution list. The Commission has made no changes to the document in response to this comment.

PM EVENTS AND CONTROLS

The EPE requested clarification of the statement in section 2.1.4.3 that anthropogenic haze is principally comprised of entrained soil.

The commission has made changes based on this comment. The discussion in Section 2.1.4.3 has been expanded to explain that there are various sources for haze. While PM₁₀ sources may be primarily soil based, PM_{2.5} sources may be primarily combustion sources.

EPE commented that Tables 2-2 and 2-3 should reflect the new PM_{2.5} standard of 35 µg/m³

The commission appreciates this comment. A note has been added to Tables 2-2 and 2-3 to reflect the new standard. Also Table 1-1: *National Ambient Air Quality Standards for Particulate Matter (PM)* in the NEAP document specifies that the PM_{2.5} 24-hour NAAQS standard was 65 µg/m³ and has been changed to 35 µg/m³ as of December 18, 2006.

The EPE commented that the NEAP strongly indicates that even severe natural events do not cause exceedances of the PM_{2.5} indicator most reliably tied to public health.

The commission disagrees with this comment. Even though the PM_{2.5} concentrations during the identified dust storms are below the 24 hour NAAQS, they may contribute to elevated annual averages. In 2003, there were four violations of the 24 hour PM_{2.5} NAAQS on dust storm days. Dust storm frequencies and intensities vary significantly between years. It is possible that in some future year a dust storm will exceed the 24 hour PM_{2.5} NAAQS.

An individual expressed concerns that the TCEQ has failed to control dust events from industry, such as mining, smelting, landfills, electric companies, concrete batch plants, brick companies, steel refineries, quarries and rail yards that adversely effect local communities.

The commission appreciates the comments but wishes to clarify that the NEAP is a plan for managing exceedances from natural events such as dust storms. The public is encouraged to report possible permit violations, including inadequate dust control at permitted facilities, to the TCEQ El Paso Regional Office at 915-834-4949. The public may submit complaints by calling toll free 1-888-777-3186, by emailing complaint@tceq.state.tx.us, or by submitting a complaint online at the TCEQ web site, www.tceq.state.tx.us. The Commission has made no changes to the document in response to this comment.

An individual commented that the NEAP should consider future impacts of proposed projects in the El Paso area, as well as in Mexico.

The commission appreciates the comment. Air quality permits for future facilities in El Paso area will have provisions for best available control measures (BACM) level controls. In addition, future facilities will need to comply with local ordinances. The JAC, whose members include the neighboring states and Mexico, is expected to continue its work in Mexico. The Commission has made no changes to the document in response to this comment.

Three individuals expressed concerns regarding issues that focus on the El Paso ASARCO site and its request for a permit renewal.

The commission acknowledges the concerns regarding the El Paso ASARCO site. However, permitting issues are beyond the issues being addressed in the El Paso NEAP. The Commission has made no changes to the document in response to this comment.

An individual commented on their concern regarding wind currents that occur in his neighborhood that is sandwiched between Rio Grande and downtown El Paso with the ASARCO site west of the neighborhood. The individual stated that fine slag from the refinery creates a lot of PM, and winds blow the fine slag particles every where. The individual commented that anything that does clearly define a prescribed course of remediation for ASARCO is not adequately addressing the issues in the El Paso area.

The commission acknowledges public concerns regarding the El Paso ASARCO site. However, ASARCO permit and remediation issues are beyond the scope of the natural event policy issues being addressed in the El Paso NEAP. The public is encouraged to report possible permit violations, including inadequate dust control at permitted facilities, to the TCEQ El Paso Regional Office at 915-834-4949. The public may submit complaints by calling toll free 1-888-777-3186, by emailing complaint@tceq.state.tx.us, or by submitting a

complaint online at the TCEQ web site, www.tceq.state.tx.us. The Commission has made no changes to the document in response to this comment.

MISCELLANEOUS

The EPA commented that the NEAP is not a state implementation plan (SIP) revision and need not be submitted as a formal SIP revision by the TCEQ. EPA suggested that a letter from Chairman White to Regional Administrator Greene transmitting the final package would be sufficient.

The commission appreciates the comment, and will submit the final NEAP to the EPA following the above directive.

EPA commented that an action by EPA in the *Federal Register* is not necessary for EPA acceptance of the NEAP.

The commission concurs with the comment.

The EPE commented that the third sentence of the Executive Summary should state ‘modeling shows El Paso would meet the NAAQS.’ and not ‘modeling shows El Paso could meet the NAAQS.’

The commission has updated the NEAP document accordingly.

The EPE commented that JAC should be Joint Advisory Committee and not Joint Action Committee.

The commission concurs and has updated the NEAP document accordingly.

The EPE commented about the inaccurate shading of the nonattainment areas for PM and CO on Figure 2-1 and Figure 2-2.

The commission concurs and made changes to Figures 2-1 and 2-2 in the document in response to this comment.

An individual commented that the TCEQ and the EPCCHED “continue to provide misleading information to the public.” In particular, the commenter noted that an English language pamphlet defined PM₁₀ incorrectly.

The commission appreciates this comment. The TCEQ is working with the EPCCHED in developing a new brochure.

