

**Response to Comments Received Regarding the  
Houston-Galveston-Brazoria Eight-Hour Ozone Nonattainment Area  
State Implementation Plan Revision  
Proposed December 13, 2006  
Adopted May 23, 2007**

The commission conducted public hearings in Houston, January 29, 2007, 2:00 p.m. and 6:00 p.m.; Dallas, January 31, 2007, 7:00 p.m.; Arlington, February 1, 2007, 2:00 p.m.; Midlothian, February 1, 2007, 6:00 p.m.; Longview, February 6, 2007, 2:00 p.m.; and in Austin, February 8, 2007, 2:00 p.m. During the comment period, which closed on February 12, 2007, the commission received comments from the Bayside Terrace Civic Club (BTCC), Citizens League for Environmental Action Now (CLEAN), Eight Hour Ozone State Implementation Plan Coalition (EOSIPC), Endangered Species Media Project (ESMP), Environmental Systems Products (ESP), Galveston Bay Conservation and Preservation Association (GBCPA), Galveston-Houston Association for Smog Prevention (GHASP), Greater Houston Partnership (GHP), Harris County Judge Robert Eckels (Harris County), Harris County Public Health and Environmental Services (HCPHES), Houston Mayor Bill White (City of Houston), Houston Sierra Club (HSC), Houston-Galveston Area Council (HGAC), Industry Professionals for Clean Air (IPCA), Mothers for Clean Air (MfCA), NRG Texas LP (NRG), State Representative Jessica Farrar (District 148), State Representative Ana E. Hernandez (District 143), Superneighborhood #22 (SUPER), Transportation Policy Council (TPC), Texas Department of Transportation (TxDOT), United States Environmental Protection Agency (EPA) and 33 individuals. Comments regarding specific rules were responded to as part of the individual rule preambles and are included in the SIP through the adoption of those rules.

***RESPONSE TO COMMENTS***

**GENERAL**

The CLEAN, EPA, GHASP, Harris County, HCPHES, City of Houston, HSC, IPCA, SUPER, MfCA, State Representative Jessica Farrar, State Representative Ana Hernandez, TPC, TxDOT and eleven individuals commented on the agency's history of failure to attain the standard and/or that this SIP doesn't show attainment of the standard. They also commented that the area should reach attainment as soon as possible.

Harris County, HCPHES, HGAC, City of Houston, and TPC, commented on requesting reclassification.

The CLEAN, HSC, IPCA, MfCA, GHASP, and an individual oppose extending the attainment deadline to 2018. Two individuals do not support extending the deadline in Houston. The HSC commented that the commission should not seek bump-up status and should accept economic sanctions.

The GHASP, HCPHES, HSC, TPC and three individuals also commented on the photochemical modeling presented in the proposal.

The commission is committed to attaining the eight-hour ozone standard in the HGB area as expeditiously as practicable and this SIP revision is the first step in achieving the eight-hour ozone standard in the HGB area.

Because the TCEQ is unable to demonstrate attainment of the eight-hour ozone standard in the HGB area by 2009, the commission removed the proposed photochemical modeling and data analysis documentation from this SIP revision. The TCEQ will continue developing the HGB Eight-Hour Ozone Attainment Demonstration SIP.

As described in the SIP narrative executive summary on pages i - iii, the state is constrained by EPA's eight-hour ozone implementation schedule, the state's inability to regulate on-road and non-road engine standards which represent a large source of emissions, a lack of readily available control measures, and the magnitude of reductions that would be needed to attain the standard by 2009.

This SIP revision contains several strategies that are expected to reduce emissions in the HGB area including revisions to rules in Chapter 114 related to adding marine diesel fuels to the definition of diesel fuel that is subject to the Low Emission Diesel Rule and in Chapter 115 related to under-estimated, unreported, or under-reported volatile organic compounds (VOC) emissions from tank landings, flash emissions, and degassing of storage tanks, transport vessels, and marine vessels with liquid heels. The TCEQ expects that the revisions to the rules in Chapter 115, Storage of Volatile Organic Compounds for the Eight-Hour Ozone Standard rules will improve HGB air quality by removing many tons of VOC from the airshed. The SIP revision also includes a Voluntary Mobile Emission Reduction Program (VMEP) commitment.

#### Chapter 115

HSC recommended the following specific changes to Tables I(a) and II(a) in the VOC rules for storage tanks and degassing: 1) 1.5 psia liquids should be changed to 0.5 psia; 2) all references to 25,000 gallons should be changed to 10,000 gallons; and 3) all references to 40,000 gallons should be changed to 10,000 gallons. Additional recommendations include changing the minimum control efficiencies from 90 to 95 percent, requiring control of VOC flash emissions from degassing storage tanks with a capacity equal to or greater than 10,000 gallons, and requiring control of VOC emissions from degassing storage vessels, transport vessels, and marine vessels in the HGB area by venting to a control device until VOC vapors are reduced to less than the highest definition of a tank leak or 10,000 ppm.

An individual commented that controls on storage tanks are straightforward and overdue.

After reviewing EI data, staff concluded that the emissions from fixed-roof tanks storing materials with vapor pressures between 0.5 and 1.5 pounds per square inch absolute (psia) was insignificant and that lowering the vapor pressure threshold to 0.5 psia would not provide meaningful VOC emission reductions.

Controls for smaller tanks are less cost effective than controls for larger tanks. Furthermore, based on the 2004 EI, emissions from tanks in the HGB area that would be affected by the suggested change to require controls on tanks as small as 10,000 gallons, would be less than 3 tpd. Because tanks with capacities less than 40,000 gallons storing crude oil or condensate are not required to have controls other than submerged fill, the commission is not requiring control of flash emissions from these small tanks.

The focus of the rulemaking is real VOC emission reductions. Although the rule only requires a control efficiency of 90 percent, many of the control devices in use in fact achieve reductions of 95 percent or more. The commission chooses to focus current efforts on other areas with more significant actual VOC emission reduction potential.

Emission reductions that can be achieved by requiring controlled degassing decrease as the size of the tank (and, thus, the amount of vapor space saturated with VOC) decreases. Control of degassing emissions is generally carried out by outside contractors who bring equipment to the site. The minimum charge for bringing in and operating the equipment is generally the same regardless of the size of the tank to be degassed. Thus, the cost effectiveness for controlling degassing emissions for tanks as small as 10,000 gallons is much higher than for larger tanks.

The purpose of the rule regarding control of degassing is to change the method for demonstrating when sufficient degassing had occurred and not to change the required level of degassing. The 34,000 ppmv level is based on requiring degassing control down to an equivalent partial pressure of 0.5 psia. Because no change to this level was proposed, lowering it is beyond the scope of this rulemaking.

#### **VOLUNTARY MOBILE EMISSION REDUCTION PROGRAM**

The HSC commented that in Appendix A, the description of the VMEP Program is inadequate, and lists a number of questions regarding details of the program.

The intention of this appendix is to summarize the VMEP commitments of the local area, and the level of detail provided is adequate to describe the measure and the conservative nature in which reductions were estimated. Additional information about VMEP may be found on the commission website at:

[www.tceq.state.tx.us/implementation/air/sip/vmep.html](http://www.tceq.state.tx.us/implementation/air/sip/vmep.html)

#### **2002 PERIODIC EMISSIONS INVENTORY**

EPA noted that in Section 4.5.4: Emissions Inventory (EI), the 2002 ozone season weekday EI listed in Appendix G of the proposed SIP revision does not correspond with the inventory listed in Tables 2-11 and 2-12 of the RFP SIP. EPA recommended updating the 2002 EI data for both SIPS so that they are consistent.

The 2002 Consolidated Emissions Reporting Rule (CERR) emissions inventory documented as Appendix F of the HGB Eight-Hour Ozone SIP was developed on a different schedule than the 2002 RFP SIP Base Year Emissions Inventory. Emission inventories are developed using the latest information and data. Therefore, a more recently developed inventory will be different than an older inventory for the same area. Additionally, the 2002 CERR three-year cycle inventory is based on an average summer day and the RFP inventory is based on an ozone season day, which is generally warmer and has higher solar radiation than an average summer day. The temperature inputs for the on-road mobile inventory development are different for these two types of inventories and the values for the inventory will, therefore, be different. Also, work performed by contractors that resulted in updates to the 2002 RFP SIP Base Year Emissions Inventory was not in time to update the CERR emissions inventory for the HGB Eight-Hour Ozone SIP. The commission made no changes to the SIP as a result of this comment.

TxDOT questioned whether references to the DFW area in Section 4.5.4 of the HGB area SIP should be changed to HGB.

**As stated in Appendix F: *Texas 2002 Periodic Emissions Inventory for the Houston-Galveston-Brazoria Ozone Nonattainment Area*, as required by 40 Code of Federal Regulations 51.915, the Houston-Galveston-Brazoria 2002 Emissions Inventory was submitted to the EPA as part of the Dallas-Fort Worth Five Percent IOP SIP revision in April 2005. Table G-1 and Table G-2 of the 2002 Periodic Emissions Inventory are resubmitted as part of this HGB SIP submittal to comply with the public comment, public notice, and public hearings requirements. While uncommon, SIP revisions pertaining to the entire state can be part of overall SIP revisions that are area-specific. In the case of the April 2005 DFW IOP SIP revision, the statewide periodic emissions inventory was included in the revision, but in the interest of clarity and to be certain that the public had adequate opportunity to comment, the TCEQ included Appendix F in the proposal and now submits it.**

**REASONABLY AVAILABLE CONTROL TECHNOLOGY (RACT) DEMONSTRATION**

EPA suggested the commission certify that the emission specifications and associated control technologies in rule project number 2006-027-SIP-NR represent RACT or above for ozone pollution control. EPA requested verification that VOC RACT requirements are still being met for the following specific source categories in which the RACT determination was made many years ago: §§115.352 – 359, Fugitive Emission Control in Petroleum Refining and Petrochemical Processes; §§115.552 - 553, 115.555 - 557, and 115.559, Petroleum Dry Cleaning Systems; §§115.112 – 119, Storage of Volatile Organic Compounds; §§115.311 – 319, Process Unit Turnaround and Vacuum-producing Systems in Petroleum Refineries; §§115.131 – 139, Water Separation; and §§115.531 – 539, Pharmaceutical Manufacturing. EPA requested the commission confirm that the RACT submittal accounts for all major VOC and NO<sub>x</sub> sources of affected sectors within the relevant counties.

**The commission appreciates the comment. In the Phase II Implementation Rule published in the *Federal Register* on November 29, 2005, EPA noted in the preamble on page 71655 that current NO<sub>x</sub> and VOC RACT guidance could continue to be used by states in making RACT determinations for the eight-hour ozone standard. Additionally, EPA stated that for areas where major sources or source categories were previously reviewed states should review, and if appropriate, accept the initial RACT analysis as meeting RACT for the eight-hour standard. Absent data indicating that the previous RACT determination was no longer appropriate, states would not need to submit a new RACT determination for those sources. In such cases, EPA indicated states should submit a certification as part of its SIP revision, with appropriate information, that these sources are already subject to SIP-approved requirements that still meet the RACT obligation. The commission has revised the RACT demonstration in the proposed SIP that documents that the emission specifications and associated control technologies represent RACT or above. The source categories in the HGB eight-hour ozone nonattainment area have been reviewed and evaluated to determine appropriate emission specifications, control requirements, and associated control technologies for those source categories. The commission determined that the controls adopted with this rulemaking are available, reasonable, and necessary to help the HGB eight-hour ozone nonattainment area make progress toward attaining the eight-hour ozone NAAQS. Moreover, the requirements in §§115.352 – 359, Fugitive Emission Control in Petroleum Refining and Petrochemical Processes, were beyond RACT when they were adopted in 1994 with a leak definition for valves of 500 ppm instead of 10,000 ppm. The commission regulates dry cleaning facilities under 30 TAC Chapter 337.**

**In addition, the commission has established contingency measures imposing additional control requirements for dry cleaning facilities in §§115.552 - 553, §§115.555 - 557, and §115.559. The level of control for Petroleum Dry Cleaning Systems in 30 TAC Chapters 337 and 115 still represent RACT for this emission source category. Concurrent with this SIP revision, the rules in §§115.112 – 119 for Storage of Volatile Organic Compounds are being revised to address under-reported emissions. Sections 115.311 – 319 for Process Unit Turnaround and Vacuum-producing Systems in Petroleum Refineries, §§115.131 – 139 for Water Separation, and §§115.531 – 539 for Pharmaceutical Manufacturing remain RACT for the HGB area.**

EPA requested the commission identify and provide analysis of VOC and NO<sub>x</sub> emissions from all major sources in the eight-county HGB eight-hour ozone nonattainment area.

**In response to the comment, the commission provided the requested information in Appendix B, Table B-2.**

EPA commented that the term “RACT” meaning reasonably available control technology is used or referred to numerous times throughout Chapter 115; however, RACT is not defined in §115.10. EPA recommended that the commission adopt EPA’s long standing definition of RACT from 44 FR 53761, September 17, 1979, as “the lowest emission limitation that a particular source can meet by applying a control technique that is reasonably available considering technological and economic feasibility.”

**While the commission agrees with EPA’s definition of RACT, it disagrees with EPA’s suggested change. The term RACT is only used in Chapter 115 as a descriptor to distinguish those standards and requirements the commission has adopted for RACT purposes from those adopted for other purposes. The commission decides what is considered to be RACT for a particular source category during the evaluation phase of rulemaking. Including a definition of RACT in §115.10 would neither clarify the rule nor improve enforcement of the RACT requirements of any particular rule requirement. Therefore, the commission declines to make the suggested change.**

EPA commented that on October 5, 2006, the EPA published notice of final determination and availability of control technique guidelines covering lithographic printing materials, flexible packaging printing materials, flat wood paneling coatings, and industrial cleaning solvents. EPA stated that although the current RACT SIP analysis does not need to address these new control technique guidelines the state should consider these new documents in future VOC SIP rule revisions.

**The commission appreciates the comment and may consider the control technique guidelines published for these source categories in future VOC rulemakings.**

#### **WATER HEATER RULE AMENDMENT OFFSETS**

EPA commented that the reductions lost by the water heater rule revision repealing the 10 ng/J standard on residential water heaters may be replaced by excess reductions obtained from minor NO<sub>x</sub> sources under a currently effective rule provided the substitutions have not previously received SIP credit, have not been used in SIP modeling for future dates, and will not interfere with any applicable requirement concerning attainment or the CAA. EPA requested an analysis demonstrating that the identified excess emission reductions obtained in place of the reductions that would have resulted from the water heater rule comply with section 110(l) of the Act, and have not been used or credited elsewhere.

As indicated in Section 4.4 of the HGB SIP revision and in the preamble of the Chapter 117 rule revisions (31 TexReg 10543), reductions associated with 30 TAC Chapter 117, Subchapter D, Division 2 (now Subchapter D, Division 1) only include those sources that were part of the Mass Emission Cap and Trade (MECT) Program. The MECT Program includes an uncontrolled design capacity to emit 10 tpy de minimis exemption threshold. A large number of sources in the HGB area are subject to 30 TAC Chapter 117, Subchapter D, Division 2 but are exempt from the MECT Program. While this rule is included in the current approved Texas SIP, the SIP creditable reductions associated with the rule only include those sources that are subject to the MECT Program. As Table 4-1 of the HGB SIP revision shows, the 333.5 tpd reductions for point source NO<sub>x</sub> controls were credited to the MECT Program. Boilers located at sites that are exempt from the MECT Program in the HGB area would predominately, if not exclusively, be classified as area sources and are not included in the point source inventory. The area source NO<sub>x</sub> reductions credited under the one-hour ozone standard from controls on gas-fired heaters and small boilers is the 0.5 tpd in question from 30 TAC Chapter 117, Subchapter D, Division 1 (now Subchapter E, Division 3). Former Subchapter D, Division 1 applies to boilers, process heaters, and water heaters with a rated capacity up to 2.0 MMBtu/hr. Boilers rated at 2.0 MMBtu/hr or less are exempt from Subchapter D, Division 2; therefore, there is no possibility of potential overlap between the two regulations.

The 0.7 tpd excess emissions estimated from 30 TAC Chapter 117, Subchapter D, Division 2 only include reduction estimates from gas-fired boilers located at sites exempt from the MECT Program. Boilers larger than 400,000 Btu/hr are required to be registered with the Texas Department of Licensing and Registration (TDLR). Some of the information required with this registration includes boiler rating in MMBtu/hr, fuel type, owner, business name, and location. The estimated excess reductions are based on TDLR boiler information by first excluding boilers rated at 2.0 MMBtu/hr and less, and those boilers located at those sources that were known or suspected to be subject to the MECT Program. The majority of remaining boilers were located at sites that would be extremely unlikely to exceed the 10 tpy threshold, e.g., school, hotels, office buildings, dry cleaners, large residential buildings, etc. Conservative estimates of boiler operation as well as business operation were applied to these sources to estimate boiler usage as well as exclude those boilers that would likely qualify for the low fuel usage exemption in the rule. EPA approved AP-42 emission factors were used to estimate uncontrolled NO<sub>x</sub> emission rates and reductions were calculated based on the controlled rate of 0.036 lb/MMBtu in the effective rule.

#### **ENERGY EFFICIENCY**

City of Houston and Harris County suggested that a variety of energy efficiency measures could be implemented that could result in an estimated 5.1 tpd NO<sub>x</sub> reductions locally. An individual asks the TCEQ to encourage solar and wind options for power generation.

The commission encourages local governments to continue to adopt energy efficiency measures and ensure the emission reductions associated with these measures are reported to the State Energy Conservation Office (SECO). SECO provides the commission with an annual report containing this information to better assist with the continued development of Texas' SIP. Choices made regarding power generation sources and methods within Texas are generally outside of the jurisdiction of TCEQ, which has authority only to regulate emissions from generating facilities.

As stated in Section 4.3.1 of the SIP, EE/RE will likely benefit the HGB airshed, but the nature of the electrical grid in a deregulated market and the MECT program in the HGB ozone nonattainment area makes quantifying emission reductions from energy efficiency projects and crediting these emission reductions in the HGB nonattainment area SIP difficult. Additionally, if the TCEQ were able to accurately *estimate* the emission reductions resulting from reduced demand in the HGB area to take numerical credit for the estimated emission reductions, the NO<sub>x</sub> cap would need to be reduced in order to assure overall reductions in NO<sub>x</sub> in the HGB nonattainment area. For these reasons, the TCEQ has included energy efficiency measures in the narrative portion of the SIP as a qualitative measure, rather than a quantitative one.

### *TxLED*

#### LOCOMOTIVES

EPA stated its support for including the Texas Low Emission Diesel for Locally Operated Locomotive Engines initiative in the SIP, as included in Section 4.3.6 of Chapter 4, and looks forward to seeing this measure in future technical work.

**The TCEQ appreciates the support. Locomotive engines that operate and refuel in the counties affected by the current low emission diesel (LED) regulations are required to use LED. The reductions attributed to locomotive engines using LED under the existing regulations will be accounted for in the eight-hour ozone attainment demonstration.**

### *ADDITIONAL CONTROL MEASURES*

#### *GENERAL*

EPA, ESP, GBCPA, GHASP, Harris County, City of Houston, HPCPHES, HSC, MfCA, State Representative Farrar, State Representative Hernandez, TPC, TxDOT, and twelve individuals commented that additional control measures should be included or considered in the SIP.

HSC requests that the TCEQ apply all SIP rules and regulations statewide.

**As part of developing the HGB eight-hour ozone attainment demonstration, the commission will determine the appropriate emission reductions of NO<sub>x</sub> and/or VOC for appropriate source categories. All reasonably available control measures will be considered, as needed, for feasibility as a part of the net process. The application on a statewide basis of the specialized, stringent regulations to which the HGB area is subject would be highly cost-prohibitive for both government and industry and is not necessary because the concentration of sources, the meteorological conditions, and many other factors are unique in the HGB area.**

#### *MOBILE SOURCES*

Harris County and the City of Houston commented that since voluntary engine reflash is already credited in the model, the commission should implement voluntary engine reflash since it would result in real-world reductions of NO<sub>x</sub> concentrations.

**The commission agrees that Low-NO<sub>x</sub> Reflash can help reduce emissions from heavy-duty diesel engines. To help promote this strategy, the TCEQ is currently working to develop a voluntary approach that will increase awareness among heavy-duty diesel fleet operators.**

**To determine the potential scope of any efforts to promote the Low-NO<sub>x</sub> Reflash, the TCEQ is first working to assess how many vehicles currently on the road would qualify for a reflash. Only engines manufactured between 1993 and 1998 would be impacted by the**

**Low-NO<sub>x</sub> Reflash, and one study from the EPA provides evidence that many of these vehicles may no longer be in service.**

**To begin laying the foundation for a voluntary approach to promoting the Low-NO<sub>x</sub> Reflash, the TCEQ is working cooperatively with EPA Region 6 and other states partnering in the Blue Skyways Collaborative. The TCEQ is pursuing this corridor-wide approach in large part because it will offer the opportunity to address emissions from freight transport fleets that are difficult to isolate to a given region or state, while also providing opportunities to cooperate in promoting the Low NO<sub>x</sub> Reflash to delivery fleets, school bus fleets, and other fleets that might operate locally.**

Harris County and the City of Houston recommend that the commission establish a control measure for heavy-duty vehicle idling. This control measure could be established with adoption of California idling control measures which require all 2008 or later model year heavy-duty diesel trucks to be equipped with automatic idling shut-off devices. This control measure could include any combination of enabling existing state no-idling rules by municipalities through Memorandums of Agreements with the commission, and mandating or providing incentives for truck stop electrification. The estimated reduction for this control measure is 1 tpd of NO<sub>x</sub>.

**On April 26, 2006, the commission adopted locally enforceable heavy-duty vehicle idling limitation restrictions that may be enforced by local jurisdictions through a signed memorandum of agreement with the TCEQ. The TCEQ encourages local jurisdictions to enter into an agreement to enforce the restrictions, if they so desire. Further, the commission has invested in truck stop electrification in the HGB area through the TERP program and will continue its assessment of the technology. The commission made no changes to the SIP as a result of this comment.**

Harris County and the City of Houston, with an understanding that State legislation may be required, recommend that the commission establish a control measure that provides additional incentives or mandates for government fleet programs. This control measure could be established by encouraging/mandating rapid turnover to newer cleaner technologies among government fleets via greater incentives and/or the adoption of California Low Emission Vehicle (LEV II) emission standards. The estimated reduction for this control measure is 1.5 tpd NO<sub>x</sub>. HSC and Mothers for Clean Air (MfCA) also commented that TCEQ should implement the California vehicle emission standards.

**The 80th Texas Legislature is considering legislation to revise the Texas Health and Safety Code to establish a low-emission vehicle program that is consistent with Phase II of the California Low-Emission Vehicle Program (Cal LEV II). This legislation would require the commission to adopt and revise rules as necessary to implement the revised statute and maintain consistency with the Cal LEV II program. The TCEQ will proceed as directed by the Legislature on this issue.**

**An analysis of the potential benefits of adopting CAL LEV II regulations was conducted. This analysis estimated that adopting the CAL LEV II emission standards would reduce NO<sub>x</sub> emissions by 0.114 tons per day (tpd) and VOC emissions by 0.115 tpd in the nine-county DFW area in 2010, and reduce NO<sub>x</sub> emissions by 2.046 tpd and VOC emissions by 2.349 tpd in 2018 over Federal Tier 2 emissions standards. The benefits are similar for the eight-county HGB area, with a reduction of 0.473 NO<sub>x</sub> tpd and 0.433 VOC tpd in 2012, and a reduction of 1.787 NO<sub>x</sub> tpd and 1.894 VOC tpd in 2018.**

Harris County and the City of Houston, with an understanding that State legislation may be required, recommend that the commission do the following:

- establish a control measure to fully appropriate Low Income Repair and Assistance Program (LIRAP) revenues to assist with suggested program enhancements,
- make improvements to LIRAP by increasing vehicle replacement incentives,
- make improvements to the vehicle inspection/maintenance (I/M) program by increasing the stringency of the I/M program by requiring vehicles to meet a higher emission standard than that which is currently required. The estimated reduction would be 0.8 tpd NO<sub>x</sub> by 2009 and 0.3 tpd NO<sub>x</sub>,
- make improvements to LIRAP by allocating LIRAP and/or TERP funds to create a revolving loan program to support investments in anti-idling technologies (such as auxiliary power units and truck stop electrification) and/or SmartWay Upgrade Kits (control device/equipment). The estimated reduction would be 0.4 tpd NO<sub>x</sub>.

**The 80<sup>th</sup> Texas Legislature is considering legislation to revise the Texas Health and Safety Code to enhance the Low Income Repair, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) that provides financial assistance to eligible vehicle owners for repair or replacement of older, high-emission vehicles. The commission will proceed as directed by the Legislature on this issue.**

Harris County and the City of Houston recommended that the legislature allocate necessary funding to support and expand the Clean School Bus Program.

**The TCEQ is ready to implement the program at whatever level of funding is provided by the Texas Legislature.**

Harris County and the City of Houston, with an understanding that State legislation may be required, recommend that the commission make improvements to the vehicle inspection/maintenance (I/M) program by increasing its stringency through decreasing the number of waivers given to non-compliant vehicles and increasing LIRAP funding. The estimated reduction is 0.2 tpd NO<sub>x</sub> for a 1 percent waiver rate and 0.3 tpd NO<sub>x</sub> for a 0 percent waiver rate.

**Waivers are authorized by 40 CFR Part 51 and Texas Health and Safety Code 382.203 (c). Statewide, less than 0.5 percent of vehicles that fail the emissions test have been issued waivers in calendar years 2004 through 2006. Texas commitment in the I/M SIP for failing vehicle waivers is not to exceed 3 percent (EPA's default level), so the modeled waiver rate is 3 percent even though the actual waiver rate is 0.5 percent. There would be no real world benefit from changing the modeled waiver rate from 3 percent to 1 percent, but would result in a small (0.2 tpd in 2009) modeled benefit on paper.**

Harris County and the City of Houston, with an understanding that local and state government administrative action may be required, recommend that the commission support adoption of a truck lane restriction program that would limit heavy-duty trucks to certain highway lanes. The estimated reduction is 0.1 tpd NO<sub>x</sub>.

**The commission supports local strategies and initiatives that can be incorporated into the SIP for improving air quality. Truck lane restrictions are within the jurisdiction of the state's Transportation Commission and TxDOT.**

Harris County and the City of Houston, with an understanding that local and state government administrative action may be required, recommend providing additional incentives or mandates for government clean contracting programs by adopting TxDOT “clean contracting” principles, which provide incentives for contractors to use cleaner diesel equipment. Based on the incentives, the estimated reduction is up to 1 tpd NO<sub>x</sub>. They also recommend including Transportation Control Measures (TCMs) in the SIP in the event that the region’s attainment date is extended; TCMs may include portions of the METRO Solutions transit plan and use of congestion pricing on toll roads.

**The commission supports local strategies and initiatives that can be incorporated into the SIP for improving air quality and will include any associated emission reductions in the eight-hour ozone attainment demonstration. This SIP revision reflects such local commitments as transportation control measures and Voluntary Mobile Emission Reduction Program, to date.**

Harris County and the City of Houston urged the commission to amend the SIP to include a control measure to expedite the phase-in period of the 2007 engine standards in the HGB area to 100 percent of engine sales in 2007, ahead of the 2010 timeframe, and take actions to ensure the timely development and adoption of necessary regulations for the inclusion of this control measure in the proposed SIP.

**The federal emission standards for model year 2007 and newer diesel heavy-duty engines and vehicles under 40 CFR Part 86, Subpart A, allow manufacturers to phase-in the introduction of engines meeting the 2007 emissions standards up through the 2009 model year, with full compliance beginning with the 2010 model year. The commission is preempted by federal law under Section 209(a) of the Federal Clean Air Act from adopting regulations for mobile source engines that are already regulated by federal emission standards.**

Harris County and the City of Houston urged the commission to publish and solicit comments on amending the SIP to include a control measure to create a Texas Diesel Testing Center to expedite development and verification of new technologies by amending the New Technology Research and Development (NTRD) Program funding to include creation of a diesel testing center and authorizing funds to go towards this project.

**HB 2481, 79<sup>th</sup> Texas Legislature, in 2005 transferred the administration of the NTRD program from the TCEQ to a non-profit organization based in Houston with the funding for the program to be provided through a contract with the TCEQ. As a result, on January 3, 2006, the agency signed a contract with the Texas Environmental Research Consortium (TERC), a non-profit organization based in Houston, Texas, for administration of the NTRD Program during FY 2006 and FY 2007. The TCEQ contract provides TERC with \$17.6 million in TERP funds to implement the NTRD program for FY 2006-2007. The TERC Board selects grants for possible funding. The TCEQ reviews all grants selected by TERC to verify that the projects meet the statutory requirements. The proposed diesel testing center is not an allowable cost under the statute.**

Environmental System Products (ESP) commented that the commission should consider the addition of low pressure evaporative testing for pre-1995 passenger vehicles as a control strategy. ESP states that California Air Resource Board plans to claim a savings of 14 tpd of VOCs. ESP comments that through extrapolating the real world experience of California to the areas of Texas where vehicle testing is performed more than 5 tpd of VOCs would be saved.

Harris County and the City of Houston, with an understanding that State legislation may be required, recommend that the commission make improvements to the I/M program by adopting rules to mandate the use of evaporative tank testers for the regional I/M program. This will be in use in California in 2007. California estimates VOC reduction of 14 tpd by 2010, and a vendor projects VOC reductions of 2.13 tpd for the HGB region.

**Preliminary MOBILE6.2 modeling indicates VOC reductions in 2009 using an evaporative tester to be an estimated 0.68 tpd in the HGB area and 0.41 tpd of VOC in 2012. With each passing year, 1995 and older vehicles are responsible for a smaller portion of the overall vehicle miles traveled, and the VOC emission reductions also diminish. California's Air Resource Board report dated November 29, 2005, on implementing a low pressure evaporative test indicates it will increase the inspection cost by \$7.50. The increase in the cost per test with a diminishing fleet of 1995 and older vehicles does not make this a cost effective strategy for consideration.**

#### **TEXAS EMISSION REDUCTION PLAN (TERP)**

Harris County and the City of Houston commented regarding the study completed by the Texas Environmental Research Consortium (TERC), indicating that NO<sub>x</sub> reductions of 45-50 tpd may be conservatively achieved from 2008 to 2012 through the Texas Emissions Reduction Plan if it is extended to 2013 by the Texas Legislature. Harris County/City of Houston and GHASP also recommended extending TERP through at least 2013 and enhancing it through full appropriation of TERP revenue.

EPA states that a promising potential additional control is the Governor's initiative to extend TERP beyond 2008. They state that if extended, the program could reduce ozone-forming emissions in HGB by an additional 35 percent over the current program. The EPA also expressed support for the continued implementation of the TERP program and extending the benefits from the program as appropriate pending legislative action. The EPA states that full funding of the program through 2012 would ensure maximum benefits from the program.

**The TCEQ is ready to continue the program beyond 2010 if extended by the legislature. Predicting the effect of extending the TERP funding beyond 2007 is difficult without knowing if funding will be available and if so, at what level.**

GHASP recommends increasing the TERP cost-effectiveness limits.

**The TCEQ agrees with this recommendation. For the latest round of grant funding, the commission increased the cap on non-road projects to \$10,000. Currently, the maximum cost effectiveness limit prescribed by statute is \$13,000 per ton. An increase in this cost effectiveness limit would give the TCEQ greater ability to encourage participation in the program, especially from those emission sectors with projects that do not currently meet the cost effectiveness limits.**

GHASP recommends focusing CMAQ funds on on-road Class 8 Heavy Duty Diesel Vehicles. TERP can then assist by funding clean fuels or provide matching funds.

**The commission agrees that use of CMAQ funds are an important tool in addressing the emissions reduction needs of the HGB area. Joint funding by TERP and CMAQ of projects has been difficult due to the different funding sources, requirements, and timing of the funding. However, the TCEQ agrees that it is important to ensure that the two funding**

**programs can be mutually supportive and work together to result in the maximum amount of emissions reductions.**

GHASP recommends increased participation from the construction equipment category.

**The commission recognizes the need for maximum participation in the TERP program from the construction equipment sector. To encourage greater participation from this sector in the latest TERP application period, the TCEQ raised the cost per ton cap on non-road projects and established preferences in selection for non-road equipment that will be used on public works projects. The commission will continue to assess ways to encourage participation from this sector.**

GHASP's comment on linehaul locomotives asks about an EPA comment that the TCEQ has a project to improve Texas locomotive emissions and its results should be added to the model for the eight-hour SIP. The commenter asks if this project was completed and were the results included in the proposed SIP.

**HARC completed a report called the Texas Railroad Emission Inventory Model (TREIM) and Results. The transmittal memo is dated March 9, 2006. Although the emissions summarized in this report are consistent with the modeled inventory, the report was not specifically considered in the proposed SIP. The results of the locomotive emissions project will be incorporated into the new ozone analysis being developed for future modeling of the HGB area.**

GHASP's comment on Marine Emissions states that the TCEQ should revise TERP to allow funding for emission reduction projects by ocean-going ships with a high frequency of repeat visits to the Houston region.

**The TCEQ agrees that emissions from ocean-going vessels are a source that has yet to be fully addressed in emissions reduction strategies. As noted in the GHASP's comments, on-vessel projects to repower or retrofit engines are difficult, given the transient nature of the vessel traffic and the barriers to ensuring that the funded project would result in long-term emissions reductions in the HGB area. Under current statute, the TERP provisions in Chapter 386 of the Texas Health and Safety Code require that projects funded under the TERP operate at least 75 percent of the time within the eligible areas. The TCEQ will continue to pursue all available alternatives to address the emissions from large vessels.**

GHASP's comment on the Technology Verification Process states that unverified technologies, such as Exhaust Gas Recirculation (EGR) and a Diesel Particulate Filter (DPF) retrofit and selective catalytic reduction (SCR) systems are essential to the success of the TERP. TERP should continue to fund technology, research, development, and deployment projects for other promising near-term NO<sub>x</sub> reduction technologies through HARC's NTRD and/or laboratories.

**The TCEQ agrees that research and development of new emissions reduction technologies are important. The passage of HB 2481, 79<sup>th</sup> Texas Legislature, in 2005 transferred the administration of the NTRD program from the TCEQ to a non-profit organization based in Houston with the funding for the program to be provided through a contract with the TCEQ. As a result, on January 3, 2006, the agency signed a contract with the Texas Environmental Research Consortium (TERC), a non-profit organization based in Houston, Texas, for administration of the NTRD Program during FY06 and FY07. The TCEQ contract provides TERC with \$17.6 million in TERP funds to implement the NTRD**

**program for fiscal years 2006 and 2007. The TERC Board selects grants for possible funding. The TCEQ reviews all grants selected by TERC to verify that the projects meet the statutory requirements. The commission encourages TERC to consider NO<sub>x</sub> emission reduction technologies in upcoming projects.**

MfCA requested that parents from the Houston area be added to the TERP advisory board.

**Members of the TERP Advisory Board are appointed by the Governor, Lieutenant Governor, and the Speaker of the Texas House of Representatives. The Lieutenant Governor has responsibility for appointing a member from the environmental community. All meetings of the TERP Advisory Board are open to the public and MfCA is welcome to attend the Board meetings and express their concerns and opinions to the Board members.**

### **PERMITS AND ENFORCEMENT**

An individual states that polluters should be held accountable. Another individual is concerned with polluters and permits. She asks the TCEQ to enforce collection of fines and standards. The TCEQ has traditionally shifted fine payment deadlines so that big industry never has to pay. An individual expressed concern about pipes carrying waste and waste storage in the Clinton Drive area. An individual requested that the TCEQ implement a better permit tracking system to help ensure that existing air quality laws are being met.

**Permits for construction and operation of facilities that may emit air contaminants must comply with all applicable state and federal requirements including the installation of best available control technology or better the protection of human health and the environment. The TCEQ is required to issue permits to all applicants who meet the applicable legal requirements. Both state and federal law include provisions for criminal liability and a commitment to state enforcement of environmental laws as a required component of the SIP. The public is encouraged to report possible permit violations to the TCEQ Houston regional office at 713-767-3500. The public may submit complaints by calling toll free 1-888-777-3186, by emailing [complaint@tceq.state.tx.us](mailto:complaint@tceq.state.tx.us) or by submitting a complaint online at the TCEQ web site, [www.tceq.state.tx.us](http://www.tceq.state.tx.us). The commission has made no changes to the SIP in response to this comment.**

**Collection of fines is a priority for the agency. Major changes have been made in the last two years to increase enforcement efforts and collect fees and fines due to the agency. The agency's policy is to not process or grant permits and other agency approvals if a company has outstanding fines or fees. The policy defines how fines are calculated and provides the company with options for payment. Detailed information about the policy may be found on the TCEQ web site at [www.tceq.state.tx.us/agency/delin/index.html](http://www.tceq.state.tx.us/agency/delin/index.html). Regardless of the option for payment chosen, total elimination of the penalty is not allowed.**

HSC stated that new types of investigations should be required to ensure compliance with the new rules. HSC considers this to be contradictory to statements in the SIP that indicate, "The state has determined that its fiscal and manpower resources are adequate and will not be adversely affected through the implementation of this plan." HSC requests that the TCEQ hire, train, and fund additional investigators. HSC stated that there is a lack of a penalty policy that deters repeat offenders. Another individual noted that there are not enough investigators currently to monitor and investigate air quality in the region.

Investigation types are regularly modified/added/deleted depending on the priorities and needs of the agency. If TCEQ determines that new SIP compliance investigation typecodes are needed, they will be added to the regions. The State of Texas considers compliance with all federal and state regulatory statutes/rules, including the SIP, a high priority. The State of Texas will, and does allocate resources to the areas that need them most and will continue to do so as priorities and needs dictate. In September 2006, the agency initiated a risk-based strategy for performing investigations of regulated entities (RE). Compliance history, as well as regional knowledge and experience are determining factors in prioritizing sites for investigation. Throughout the year, investigation planning activities are scheduled or modified, depending on the priorities and needs of the agency and the state. As a function of the agency, field investigators conduct regular investigations and records reviews of regulated entities to evaluate compliance with applicable statutes and rules, as well as the terms and conditions of any permit or other authorization for the regulated entity. Regional investigators also conduct investigations in response to complaints received from the public, which may include permit related compliance issues. Any violations of those rules of conditions will be dealt with in accordance with the TCEQ standard operating procedures of the TCEQ Field Operations and Enforcement Divisions.

An individual asks the TCEQ to halt all permitting of coal plants and shut TXU down. Five individuals are opposed to power plants.

The HGB eight-hour ozone attainment demonstration SIP, when developed, will address emissions and controls that are estimated for the future attainment year. Although several facilities are proposed, none of the power plants (except Sandow 5 and JK Spruce 2) have been permitted. Of the facilities proposed, it is impossible to know which facilities will be permitted and constructed, when they will come on line, and what their actual emissions will be. Therefore, it is inappropriate to include proposed facilities in this SIP revision.

TXU has recently indicated its intent to withdraw applications for eight of the eleven proposed facilities pending the resolution of the proposed TXU buy-out. This proposed change in the status of the permit application is another reason why the TCEQ does not factor proposed facilities that have not been permitted into the SIP. It is not within the commission's jurisdiction to regulate utilities other than to ensure that their emissions comply with applicable law and with their permit conditions.

An individual requested that the TCEQ complete a review of previously grandfathered facilities in the HGB area to determine whether or not these facilities have been properly permitted.

The previously grandfathered facilities were required to submit a permit application. Issuance of the permits will be based on a thorough review of the information as represented by the applicant. TCEQ Region office staff conduct investigations to determine compliance with the individual permit and other state and federal regulations as applicable to the type of facility defined by the permit. If the investigation or record review indicates non-compliance or if the investigator finds inconsistencies between the permit authorized operations and the actual operations at the site, the violations will be addressed in accordance with standard operating procedures.

#### **FLARES**

IPCA commented that flares are not properly represented in permitting nor adequately controlled by regulation. An individual expressed specific concerns about flares and does not agree with the

EPA's assessment of flare efficiencies. The commenter states that efficiency may be closer to 65-75 percent rather than 98 percent as the EPA claims.

**The commission disagrees that flares are not properly represented in permitting nor adequately controlled by regulation. Studies dating back to 1983 have consistently shown that properly operated flares achieve VOC destruction efficiencies in excess of 98 percent. The commenter is correct that industrial-scale flares have not been tested under high wind conditions because obtaining accurate concentration readings in those circumstances is too difficult. Adding too much steam to steam-assisted flares could reduce flare efficiency but the commission is not aware of any documentation supporting the assertion that excess steam is widely used in industry. The potential impact of either of these factors on flare efficiency is reduced when the waste gas flow increases.**

**Many factors affect flare efficiency. Studies on EPA's claim of 98 percent efficiency indicate that flares are capable of even higher efficiencies as long as the requirements for input heating value are maintained. The commission is continuing to follow research that would allow direct measurement of flare efficiencies. The Differential Absorption Light Ranging and Direction (DIAL) project planned for this summer may look at the ability of the technology to measure flare efficiency. In the absence of compelling evidence to the contrary, the commission will continue to assume that properly operated flares achieve 98 percent efficiency or better.**

**Furthermore, the TCEQ HRVOC flare monitoring requirements go well beyond those required by any EPA rule, requiring continuous monitoring of heating value and the flow rate of the waste gas stream, the two most important factors influencing flare efficiency.**

#### **AMBIENT MONITORING**

An individual requested ambient monitoring in Fort Bend County.

**The TCEQ is currently monitoring ozone at four sites within one to five miles of Fort Bend County. These sites provide an adequate representation of air quality in Fort Bend County. Currently, there are no federal or state requirements to monitor air quality in Fort Bend County.**

An individual commented that emissions monitoring is important since emissions inventories may be underreported.

**The commission agrees that emissions monitoring is important. As discussed in Chapter 5, Section 5.5, emission inventories can be improved and should accurately reflect actual emissions. The TCEQ intends to improve emission estimates as a part of the eight-hour ozone attainment demonstration. The TCEQ has acknowledged that improvement is still needed in reported emissions and is spending both internal and external resources to address this. The TCEQ has several procedures in place to evaluate the accuracy of industry reported emissions including audits and investigations.**

An individual is concerned that fence line monitoring isn't being done by industry.

**The TCEQ recognizes the need and benefit of expanded air quality monitoring in the Houston area and as such has developed an extensive monitoring network. This includes over 30 TCEQ owned sites with 160 monitors in the HGB area. The TCEQ also receives data from numerous other sites operated by local air quality programs, industry or**

through TCEQ provided Supplemental Environmental Projects. In addition, the TCEQ receives data from over a dozen industry sponsored sites in the HGB area. Some of these sites are fence-line oriented monitors and some are community or area based monitoring sites.

Even though HGB is a heavily monitored area, not every facility, fenceline, or neighborhood is routinely monitored for air quality using our fixed site network. To augment this monitoring network, the TCEQ use mobile monitors around the state to conducted intensive fence line monitoring. If a significant on-going concern is detected by mobile monitoring, TCEQ has responded with follow-up actions and in some cases required additional fixed site monitoring to be conducted.

### **PUBLIC AWARENESS**

Two individuals request that the TCEQ deliver a tough message on TV and radio to get high visibility to: call upon every citizen in Houston to conserve energy at home, to drive less, to trade in gas-guzzlers and use mass transit; to demand more effective mass transit to demand more of businesses by policing violators and encouraging greater social responsibility; and more stringent environmental regulations and/or financial disincentives.

The TCEQ supports outreach programs to raise awareness about air quality and enhance participation among individuals, large and small businesses, government agencies, and other organizations. Depending on the scope of the campaign, print media, radio and television ads, or billboards may be used to publicize important messages about air quality. Various campaigns sponsored in part by the TCEQ in the Houston area are:

**Drive Clean Across Texas** – This campaign raises awareness to change attitudes about air pollution and to inspire changes in driving behavior that will help improve the air in Texas. For more information, please see the following website, [www.DriveCleanAcrossTexas.org](http://www.DriveCleanAcrossTexas.org).

**AirCheck Texas** – This program educates vehicle owners in the Houston-Galveston and Dallas-Fort Worth area that vehicles are required to undergo emissions tests during annual safety inspections. For more information, please see the following website, [www.AirCheckTexas.org](http://www.AirCheckTexas.org).

**Clean Texas** - This program promotes and recognizes enhanced environmental performance achieved by its members. The TCEQ has approved regulatory and non-regulatory incentives for Clean Texas members. All members are offered recognition, technical assistance, and training opportunities. Clean Texas is open to all types of organizations, including industries, businesses, federal facilities, schools, universities, cities, counties, and community organizations. The program offers four levels of participation: Bronze, Silver, Gold, and Platinum. For more information, please see the following website, at [www.cleantexas.org](http://www.cleantexas.org).

**Texas Recycles Day** - Texas Recycles Day is an annual, statewide, public awareness event first launched to encourage Texans to start recycling or to enhance their recycling efforts. Texas Recycles Day served as a model for America Recycles Day, the national event. Held each November 15, Texas Recycles Day is an opportunity to highlight and promote interest in recycling. On this day, thousands of citizens, businesses, civic organizations, and schools will participate in events and educational programs across the state. To join the thousands

**of Texans participating in or sponsoring an event visit the website at [www.tceq.state.tx.us/assistance/events/trd/TRD.html](http://www.tceq.state.tx.us/assistance/events/trd/TRD.html).**

An individual commented that the plan is too confusing for the average citizen to understand. The commenter indicated that there was little information explaining how the goals will be attained and how measurements will be made to determine whether or not those goals had been reached. The commenter further stated that the public and the EPA have been largely excluded from the current SIP process.

**The commission appreciates the comment, and acknowledges that the HGB SIP revision is complex, but has made no changes in response to this comment.**

**Public meetings with interested parties, including local governments, industry, environmental groups, and members of the public were held in October 2006 and in spring 2006 to discuss development of the eight-hour ozone SIP. They included meetings on October 5, 2006, regarding the TxLED marine rule; March 22, 2006, and May 27, 2006, that focused on mobile source (on-road and non-road) control strategy development; March 28, 2006, regarding ports, locomotives, and marine sources; and April 19, 2006, and May 24, 2006, for point and area source control strategy development.**

The commission has complied with the requirements for public hearings and notification under 40 CFR 51.102 and 60.23, Texas Government Code, Subchapter B, Chapter 2001, and under the TCAA, THSC, § 382.017. The commission strives to give all citizens of Texas appropriate prior notification and opportunity to comment, including the ability to submit written comments. Hearing notices for this SIP revision were published in the following newspapers: *Austin American-Statesman*, December 18, 2006; *Beaumont Enterprise*, December 18, 2006; *Fort Worth Star-Telegram*, December 18, 2006; *Houston Chronicle*, December 18, 2006; *Longview News-Journal*, December 18, 2006. The SIP was filed for with the Chief Clerk's Office and posted on the TCEQ's website on November 21, 2006. Listserv subscribers received an email on this date notifying the subscribers that these items were proposals pending before the commission. The public hearing notice was filed with the *Texas Register* on December 15, 2006. On this date, another email was sent to listserv subscribers notifying the public that the commission had taken action on these proposals. The TCEQ also provided a 45 day comment period, longer than the required 30 days. These notices also directed the public to the TCEQ web site, where all SIP revision documents and notices are posted.

**Information regarding the HGB SIP is available on the web at: <http://www.tceq.state.tx.us/implementation/air/sip/hgb.html#>. This site includes an executive summary memo that explains the purpose of the SIP revision.**

The Southeast Texas Photochemical Modeling Committee (SETPMTC) is a TCEQ advisory group organized to assist the agency in addressing technical and scientific issues relating to air quality in the Houston/Galveston/Brazoria (HGB) and Beaumont/Port Arthur (BPA) areas. The SETPMTC includes representatives from industry, county and city government and various environmental groups. The SETPMTC meets in Houston on a regular basis to discuss data and modeling results in a technical framework. Anyone who is interested in these topics may attend this advisory group's meetings and participate in the discussion. The web address for this committee is [http://www.tceq.state.tx.us/implementation/air/airmod/committee/pmtc\\_set.html](http://www.tceq.state.tx.us/implementation/air/airmod/committee/pmtc_set.html).

**In addition, information about the recent TexAQS II study and the work of the Rapid Science Synthesis Team are listed on the TexAQS II web site:**

**[http://www.tceq.state.tx.us/implementation/air/airmod/texaqs-files/TexAQS\\_II.html](http://www.tceq.state.tx.us/implementation/air/airmod/texaqs-files/TexAQS_II.html).**

**On the web site the public can review presentations given by TexAQS II scientists at data analysis workshops and planning meetings. While the information presented there is sometimes in a draft form, interested parties can observe in detail how the field study was planned, how it unfolded over the summer of 2006, and how the data collected during the study are being analyzed to address questions relevant to the SIP.**

**The Regional Planning Air Quality Committee meets the fourth Thursday of the month at the Houston-Galveston Area Council at 1:30 p.m. Appointed by the H-GAC Board of Directors, the Regional Air Quality Planning Committee is composed of staff of local government agencies, citizen groups, and representatives of business and industry. Personnel from the TCEQ are involved as non-voting members, whose main purpose is to provide information and technical assistance to the committee. The purpose of RAQPC is to assist and advise the H-GAC, regional and local governments, transportation organizations, and other agencies on air quality issues. The public is welcome to attend.**

**The EPA is intimately involved in the SIP process. The preparation of SIPs is a federal requirement implemented by EPA. All proposed SIPs are submitted to EPA for review and comment, changes are made accordingly, and adopted SIPs are submitted to EPA for approval.**

HSC, an individual, and MCA expressed disappointment that the Commissioners did not attend the SIP hearings.

**It is not the usual practice of the commissioners to attend public hearings. The commissioners consider and approve each SIP revision before it commences and receive copies of each SIP package, including the record of the public hearings, for review before they consider the matter at agenda. Members of the public are welcome to attend agenda and speak to the commission if they so desire.**

An individual commented that it would be more appropriate for the public meeting to be held on the east side of Houston where the majority of industrial emissions are located.

**The commission makes every effort to hold hearings in locations and at times that are accessible and convenient to the public and is committed to encouraging public participation. These comments will be considered when future public hearings are scheduled.**

#### **SUPPORT FOR TexAQS II**

TxDOT recognized improvements in air quality in the HGB area and supports the research efforts of the TexAQS II study to develop effective strategies to reach ozone attainment.

**The commission appreciates the support for the TexAQS II study.**

#### **INCENTIVES**

An individual commented that the current proposal does not provide industry leadership with incentives to meet the challenge of solving Houston's air pollution problems, and that it was not

rational to expect a business to voluntarily absorb the cost of abating pollution when other businesses are not required to incur this cost. The individual further commented that the CAA was originally conceived to be technology forcing and “designed to force regulated sources to develop pollution control devices that might at the time appear to be economically or technologically infeasible,” citing *Whitman v. American Trucking Assoc., Inc.*, 531 U.S. 457, 492 (2001), quoting *Union Elec. Co. v. EPA*, 427 U.S. 246, 257 (1976).

**While the commission strives to encourage the development of effective and innovative pollution control devices, prescribing technology forcing emission standards in regulations that are neither economically nor technologically feasible is contrary to the TCEQ mission and agency philosophy.**

### **HEALTH EFFECTS**

GBCPA, GHASP, HSC, MfCA, State Representative Farrar, and ten individuals commented that air pollution in the HGB area has negative health effects.

**The commission is committed to attaining the eight-hour ozone standard, which is a health-based standard, as expeditiously as practicable in order to adequately protect public health in accordance with the EPA's Eight-Hour Implementation Rule, EPA guidance, and the FCAA.**

**The primary national ambient air quality standards are those that the EPA determines are necessary, with an adequate margin of safety, to protect the public health, including sensitive members of the population such as children, the elderly, and those with existing lung or cardiovascular conditions. Some air pollutants, including ozone, can aggravate existing respiratory diseases. The primary health concerns for ozone are effects to the lungs and respiratory system. Health effects from ozone generally resolve quickly once an individual is no longer exposed to high levels.**

### **THE ONE-HOUR STANDARD**

An individual asks that the TCEQ not transition from measuring ozone under the one-hour ozone standard to the eight-hour ozone standard.

**EPA received similar comments expressing concern about the protectiveness of the new eight-hour standard during the comment period for the HGB one-hour ozone attainment demonstration SIP (see 71 FR 52680-81, Sept. 6, 2006). EPA responded to them as follows in its approval of SIP revision: “As we noted in the final Phase I Rule, we determined in the 1997 NAAQS rulemaking (69 FR 23951) that we did not need to retain the one-hour standard to protect public health. Thus, in the 1997 NAAQS rulemaking, EPA concluded that the eight-hour standard would replace the one-hour standard. The issue of whether the one-hour standard is needed to protect public health has not been reopened here and indeed, should be considered only in the context of a national rulemaking reviewing the NAAQS.” The commission agrees with EPA that the merits of the eight-hour ozone standard are not open to debate in this context and are outside the scope of state authority.**

**Moreover, the emission control measures contained in the one-hour EPA approved SIP have not been abandoned or relaxed in the HGB area under the eight-hour ozone standard.**

An individual commented that section 181 of the Federal Clean Air Act (FCAA) sets an attainment date of November 2007 for Houston using one-hour ozone design criteria and Houston failed to attain the November 2007 one-hour ozone standard by Section 181's attainment date two

years ago. The individual noted that in determining compliance with the one-hour ozone attainment date only three exceedances are allowed for the three-year period preceding the attainment date. An area violates the one-hour NAAQS if it has more than three exceedances at a monitor over a three-year period. The individual noted that by the middle of the 2005 ozone season the HGB area had already monitored four exceedances of the one-hour ozone standard. Thus, as a matter of law, Houston will fail to attain the one-hour ozone standard by the compliance deadline.

The individual further noted that even though the one-hour standard is codified in section 181 of the Act, the EPA has announced that it will not enforce the Act's consequences for extreme and severe ozone nonattainment areas that fail to make their section 181 one -hour attainment deadlines. Houston failed to meet this November 2007 deadline the same month the eight-hour standard came into effect. The EPA and TCEQ should not have the option of ignoring the clear mandates and explicit text of the CAA.

An individual commented that sanctions are mandatory under section 181(b)(4) of the FCAA. Specific control regimes of increasing strictness are established for each one-hour ozone classification category. Detailed consequences are established for failures to meet clearly established milestones by specific dates. For the areas of severe or extreme ozone pollution, section 185 of the FCAA creates a set of fees to be paid upon failure to attain the section 181 attainment deadlines. Therefore, if none of the measures implemented under section 182 clean up the ozone pollution, those actually responsible for that pollution are required to pay a fee in direct proportion to their actual responsibility. States must incorporate the fee provision of section 185 into their SIPs.

**The one-hour ozone standard was revoked and the HGB area is subject to the eight-hour standard for ozone, and is under a new classification (moderate), so different requirements now apply. EPA's Ozone Implementation Rules specify how nonattainment areas are to transition from the prior standard to the new standard, and EPA has stated its intention to make no further findings regarding the one-hour ozone standard.**

**If the recent opinion from the United States Court of Appeals, D.C. Circuit, *South Coast Air Quality Mgmt. Dist. v. EPA*, concerning EPA's Phase I eight-hour ozone implementation rule is upheld in whole or in part, EPA will likely need to promulgate new rules and guidance to implement that decision including whether the fees required by FCAA section 185(a) would apply to moderate areas that were previously classified as severe for the one-hour standard.**