

Response to Comments Received Regarding the El Paso 8-Hour Ozone Maintenance Plan State Implementation Plan (SIP) Revision

The commission received comments from the following persons and entities: The Honorable Eliot Shapleigh/State Senator (District 29); The Honorable Norma Chavez/State Representative (District 76); The Honorable John Cook/Mayor of El Paso; U.S. Environmental Protection Agency (EPA); Texas Transportation Institute (TTI); El Paso City-County Health and Environmental District; El Paso Metropolitan Planning Organization/El Paso Transportation Policy Board; Bracewell and Giuliani, LLP (on behalf of El Paso Electric Company); Guadalupe Ibarra; Bob Geyer; Ninon Schalk; and eight inspection station owners: Manuel F. Carrasco, representing Manny's Inspection; Norman Chavez, representing NCN Texaco; Jorge Ortez, Jr., representing Master Lube; John Provencio, representing Provencio Tune-Up; Andy Payan, representing Payan's Tourist Service; Robert Rodela, Jr., representing Rodela Service; Juan J. Jimenez, Jr., representing Jay's Automotive; and Elia Moreno, representing Moreno's Texaco.

General Comments

Senator Eliot Shapleigh, Representative Norma Chavez, and Mayor of El Paso John Cook expressed support for the ozone maintenance plan. They noted that El Paso has monitored attainment of the 8-hour ozone NAAQS since 1997 and the previous 1-hour ozone NAAQS since 2001. They also noted that attainment status will provide numerous economic development opportunities for the El Paso, tri-state, and binational regions.

The commission appreciates the support expressed by Senator Shapleigh, Representative Chavez, and Mayor Cook. The commission agrees that attainment status will provide important economic development opportunities for the El Paso area.

Senator Shapleigh, Representative Chavez, and Mayor Cook commented that a number of control strategies have been responsible for bringing El Paso into attainment for ozone: vehicle inspection and maintenance, low Reid Vapor Pressure gasoline, Stage I and II vapor recovery requirements for gasoline handling facilities, and permitting requirements.

The commission agrees that these programs have all played a role in bringing El Paso County into attainment with the ozone NAAQS. Because the commission wishes to ensure that El Paso County continues to maintain its attainment of the ozone NAAQS, the commission will keep all current SIP control measures in place. Nonattainment New Source Review (NNSR) permitting requirements will no longer apply. However a Prevention of Significant Deterioration permit may be required for new or modified major sources of VOC.

In response to these comments, the commission has added a new section 4.7 to the SIP narrative to note that the Stage 1 and 2 vapor recovery program (and other control measures) in the maintenance plan will continue in force in El Paso County.

Representative Norma Chavez commented that reaching attainment status for ozone will allow the El Paso area to recruit clean industries to El Paso.

The commission agrees with Representative Chavez' comment. Many cities around the country

have been able to use their attainment status as a drawing point for businesses.

Representative Chavez commented that El Paso is an example to Texas and the nation that well implemented clean air strategies allow nonattainment communities to achieve attainment of air quality standards.

The commission agrees with the comment by Representative Chavez. El Paso is the first ozone nonattainment area in Texas to reach attainment and the first area in the country to achieve redesignation to attainment for two different pollutants. The citizens of El Paso can rightly be proud of their achievement.

Representative Chavez commented that El Paso's sister city Juarez, Mexico, and the citizens of El Paso County deserve praise for working with local, state, and federal officials in the U.S. and Mexico to develop air quality strategies that have significantly improved air quality for all people in the tri-state and binational region.

The commission agrees with Representative Chavez' comment. Cooperation between the area's three states and two nation-states has resulted in significantly cleaner air and was instrumental in El Paso coming into attainment with not one, but two federal air quality standards.

Representative Chavez commented that the TCEQ had provided insufficient notification to vehicle Inspection and Maintenance (I/M) Program station owners of public hearings for this proposed SIP revision and separate proposed changes to the El Paso I/M program. Representative Chavez stated that she has sent letters to the Department of Public Safety (DPS) and TCEQ and has received correspondence from Mr. Glenn Shankle, Executive Director of the TCEQ. Representative Chavez commented that station owners have the right to be notified in a timely manner. Representative Chavez and Elia Moreno remarked that notification of the hearings should have been provided by the Texas DPS to inspection stations via electronic transmission through their computerized diagnostic systems.

In preparing for public hearings the commission takes a number of actions to notify the public. Public comment is solicited through procedures that comply with both the Texas Administrative Procedure Act and federal rules regarding public comment. In preparation for public hearings held on this proposed SIP revision, the commission mailed notices to state representatives, state senators, county judges, mayors, local transportation and environmental officials, and councils of government across the state of Texas. Additionally, the public, including station owners, was notified through notices published in the *Texas Register* and local newspapers in accordance with legal requirements. Similarly, proper notice was provided of recent changes in the I/M rules and SIP. Providing adequate notification of meetings and hearings is important to the commission. The commission appreciates the request for additional notification and will take it under advisement.

Representative Chavez commented that public policy for clean air should be driven not by vendors but by clean air strategies. She further commented that the state requirement for the I/M program and the choice of station owners to participate in the program should be considered.

The commission considers the comments and concerns of all interests when formulating public policy. In a separate I/M program SIP revision, the commission recently chose to continue the El Paso I/M program as a primary active control measure to ensure continued attainment of the CO and ozone NAAQS. That decision was based in part on input from emissions testing equipment

manufacturers and vendors. They provided information that showed that, due to obsolescence, most of the equipment analyzers in use in El Paso for I/M program two-speed idle (TSI) testing no longer can be effectively serviced. These analyzers are unlikely to continue to operate properly due to lack of internal replacement components and may not meet the state's minimum specifications required to provide critical vehicle inspection information to the state information management system. These manufacturers notified the commission last year that, due to the age of many analyzers in El Paso, maintenance for those analyzers would end in January 2006.

The EPA requires all vehicle I/M programs to upgrade and implement on-board diagnostic (OBD) testing to complement the collateral requirement imposed on vehicle manufacturers in recent years to install OBD components in motor vehicles. As a result of EPA requirements and in response to improved technology, manufacturers of vehicle emissions testing equipment are producing only equipment capable of both TSI and OBD testing. These manufacturers have little economic incentive to continue to provide parts and service for TSI equipment that is for all practical purposes obsolete.

The commission balanced the requirement to upgrade the I/M program to include OBD testing against the cost to station owners and to the public. The commission considered the demonstrated improvement in air quality in El Paso and the need to remain vigilant to protect that improvement from potential decline. The commission also weighed the advantages to the public and to the protection of air quality of upgrading to better emissions testing technology. The commission's decision to require the upgrading and continuation of the I/M program in El Paso as an integral part of its air quality control strategies comports with the public interest in clean air and the practical need to continue a proven program in order to maintain attainment of the NAAQS. The commission's decision was driven by the consideration of many factors and interests.

A citizen with environmental concerns commented that the piles of slag at the ASARCO site cause air pollution in the area.

The commission appreciates hearing about citizen concerns on environmental issues. However, ASARCO site issues are outside the scope of this SIP revision. Individuals are encouraged to report concerns about nuisance issues or suspected noncompliance with the terms of any permit or other environmental regulation by contacting TCEQ, toll-free, at 1-888-777-3186, or by sending an email to complaint@tceq.state.tx.us. Alternatively, citizens may visit the TCEQ website at www.tceq.state.tx.us and click on the link "Make an Environmental Complaint" to use the online form.

Station owners provided oral and written testimony during the comment period. Six inspection station owners commented in support of TCEQ's request to EPA to redesignate El Paso County from nonattainment to attainment status (Jimenez, Rodela, Provencio, Chavez, Ortez, Payan). The station owners commended the commission's and the public's cooperation in the success of the I/M program in helping to improve the air quality in El Paso.

The commission appreciates the support for the vehicle emissions testing program and concurs that cooperation between all the partners has been key to the success of the program in El Paso. The commission looks forward to continued collaboration.

The El Paso Metropolitan Planning Organization (MPO)/Transportation Policy Board provided written

testimony during the comment period. The Board supports TCEQ's request to redesignate El Paso County from nonattainment to attainment status and supports the proposed amendments.

The MPO thanked TCEQ for its efforts to work with local, state and federal governments to improve the air quality in the region. The Board commended the commission's success in helping to improve the air quality in El Paso, which the group anticipates will not only improve the quality of life in the El Paso area but will also improve economic opportunities.

The commission appreciates the support of the El Paso Transportation Policy Board and the MPO and concurs that cooperation between all the partners has been a key component of the success of the program in El Paso. The commission agrees that air quality affects not only human health but also sustainable economic health.

The El Paso City-County Health and Environmental District acknowledged its work and the work of TCEQ over many years in the enduring effort to improve the air quality in the region. The District is "very pleased to announce" to its citizens that the air they have been breathing for the past 6 years is now in compliance with the National Ambient Air Quality Standards (NAAQS) for CO and ozone. The District supports TCEQ's request to EPA to redesignate El Paso County from nonattainment to attainment status and supports the proposed amendments.

The commission appreciates the collaboration of the Health and Environmental District, the City of El Paso, and El Paso County and concurs that clean air has been a long term goal that must not be taken for granted. Clean air will be beneficial not only to the citizens of the El Paso region, but also to the business community. The commission looks forward to continued collaboration.

Permitting Comments

Bracewell and Giuliani, LLP, on behalf of El Paso Electric Company, commented that existing TCEQ rules could be read to continue to require some level of nonattainment new source review (NNSR) despite the redesignation. The commentor stated that the TCEQ may need to clean up some provisions of Chapter 116 to accommodate the redesignations for the El Paso area. 30 TAC §116.12(11), Table 1, footnote 3 states that "As specified in § 116.150 of this title, for El Paso County, the NNSR rules apply to sources of VOC, but not to sources of NOx." El Paso Electric Company commented that this language is unclear with respect to the future applicability of NNSR in El Paso County.

On June 15, 2005, Chapter 116 was revised by the commission to reference 40 CFR §81.344 for all Texas nonattainment area designations. The referenced citation (§116.12(11), Table I, footnote 3) was not revised because the footnote and the applicable 1-hour designation would apply if pending litigation overturned the 8-hour standard. Additional revisions to chapter 116 have been proposed for NSR reform. Section 116.12 is entitled "Nonattainment Review Definitions" and §116.150 is entitled "New Major Source or Major Modification in Ozone Nonattainment Areas." In addition, the text in both sections clearly limits their applicability to nonattainment areas.

Bracewell and Giuliani, LLP, on behalf of El Paso Electric Company, commented that the TCEQ may need to confirm that innovative emission trading programs, in particular the Juarez brick kiln conversion program, are not affected by the redesignation. El Paso Electric Company further stated that the Texas Legislature recently adopted Senate Bill 784, which would provide for approval of international trades based on a demonstration of net air quality benefit instead of attainment status. The commentor requested

TCEQ implement rulemaking to reflect the provisions of SB 784 and clarify whether the redesignation affects currently approved trades or credit allocations in the brick kiln conversion project.

On April 12, 2006, the commission is scheduled to consider a proposal for rule changes based on the recently adopted Senate Bill 784 in an upcoming 30 Texas Administrative Code (TAC) Chapter 101 (General Air Quality Rules) rulemaking (Rule Log No. 2005-054-101-PR). El Paso's redesignation for ozone will not impact the approved substitution of brick kiln reductions for allowances under the Emissions Banking and Trading Allowances (EBTA) program nor will it affect El Paso Electric Company's EBTA allowance allocation. The EBTA program is independent of an area's designation. As a result of reaching attainment status for ozone and carbon monoxide, sources in El Paso County will no longer have the ability to generate and use Emission Reduction Credits for oxides of nitrogen and volatile organic compounds (ozone precursors) or carbon monoxide under 30 TAC Chapter 101, Subchapter H, Division 1 (Emissions Credit Banking and Trading) as this program is only applicable to nonattainment areas. The Discrete Emission Credit Banking and Trading program (Division 4), however, will still be applicable to sources in El Paso County.

General Emissions Inventory (EI) Comments

The U.S. EPA commented that the TCEQ should supply additional detail of how point, area, and nonroad mobile EIs are calculated. They noted that it would be difficult to evaluate the accuracy of the inventories without additional detail on the methodology and data for sources within the point source categories.

The commission has revised Chapter 2 of the SIP narrative to provide additional information requested by the U.S. EPA. As a result of discussions with EPA staff and their desire to have a standardized 2002 base year, point source emissions have been updated to include actual emissions for the 2002 base year and projections that use more recent TIPI/EGAS (predictive tools) growth factors. This more recent data was not available when the SIP revision was proposed. In addition, the commission has provided new appendices containing detailed EI data and has directed EPA to methodological information already available. This additional information should allow the EPA to better assess the accuracy of EIs provided in this SIP revision.

The EPA commented that the narrative description of EIs in the SIP revision contain certain descriptive inaccuracies that should be revised to correctly describe the sources being inventoried.

The commission has worked with U.S. EPA to rectify any misunderstandings that might have existed. The commission has provided U.S. EPA staff with additional copies of EI documentation, previously submitted to the U.S. EPA, that fully describes the various sources and how they were inventoried. Additionally, the commission has revised Chapter 2 of the SIP narrative to provide additional descriptions of how sources were inventoried.

Mobile Source EI Comments

Texas Transportation Institute (TTI) commented that it became aware of important new transportation planning information for El Paso County and provided a revised onroad mobile source EI for the county during the public comment period.

The revised EI is based on revised travel demand modeling recently released by the El Paso Metropolitan Planning Organization (MPO). As part of the federally mandated transportation

conformity process, the El Paso MPO is obligated to keep its metropolitan transportation plan up to date with the latest planning information available. The revised modeling contains updated demographic and traffic data inputs as well as the latest planning assumptions and improvements to the El Paso County road network. This revised information allows transportation planners to more accurately predict traffic flow, motorist use, and transportation needs. With updated planning information, environmental planners can more accurately project mobile source pollutant emissions for typical ozone season days. For each inventory year, the county-wide Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_x) inventory varies by no more than 1.5% from the inventory included at proposal. An analysis of the revised nonattainment area EI indicates that these increases are caused by a corresponding increase in vehicle miles traveled (VMT) inside the nonattainment area.

One reason for this increase in VMT can be traced to changes made in the overall travel demand model. About 50 changes to the transportation networks were made, most in the category of realignment, functional class, number of lanes, or implementation year changes. Other than the Northeast Parkway extension into New Mexico (10 miles), few new projects required adding links to the networks. Each link represents a geographic area with a discrete amount of VOC and NO_x emissions, determined by the VMT for that area. Other new roadway projects added to the model were each less than a mile long. More significant than network changes, however, were demographic changes. Plans for new troop deployments at Fort Bliss increased total future population projections by 15% from the previous metropolitan transportation plan.

The commission has incorporated this new information into this SIP revision. While the El Paso County onroad mobile source EI for VOC and NO_x has increased for 2014, vehicle emissions projections show that El Paso will comfortably maintain its attainment status for ozone. The onroad mobile source EI is expected to experience a significant and steady drop of 51% for VOC and 60% for NO_x between 2002 and 2015.

Contingency Measures

The U.S. EPA commented that its guidance for 8-hour ozone maintenance plan contingency measures states that contingency measures should be adopted and implemented within 24 months of a triggering event such as a monitored violation of the 8-hour ozone NAAQS. The EPA noted that the SIP revision indicates that contingency measures would be proposed and implemented within 18 months after the commission publishes notice in the *Texas Register* of its determination that contingency action is necessary to attain the NAAQS. The EPA commented that it is unclear whether the commission's contingency plan for ozone would result in control measures being implemented within the 24 month period suggested by the EPA.

Because the commission is leaving all SIP control measures in place and enhancing the established I/M program, the proposed maintenance plan is actually more stringent than the current SIP. Consequently, the commission is confident that the proposed maintenance plan for the 8-hour ozone NAAQS adequately establishes that El Paso County will maintain its attainment status. The commission also believes that the proposed contingency measure trigger for El Paso County allows the state to protect El Paso's air quality in a reasonable, responsible manner.

Federal law and rules have long recognized that, because of its location on an international border, El Paso County faces a complex and unique situation. Available data suggests that if a violation of

the 8-hour ozone NAAQS were to occur, the cause would be attributable to emissions emanating from outside the United States. Before the commission could decide on control measures appropriate to the cause of a violation, propose and agree on those measures, prepare a structure for implementation, and implement them, the commission would need to determine the cause of such a violation. Previous experience demonstrates that technical analysis of air quality issues in the El Paso airshed requires significant time and effort. While the commission intends to move expeditiously to address violations of the ozone NAAQS should they occur, El Paso County's unique international airshed makes the guidance to propose and implement control measures within 24 months of a triggering event such as an ozone NAAQS violation impractical.

El Paso was one of very few 1-hour ozone nonattainment areas that were designated attainment for 8-hour ozone while at the time of its 8-hour designation, was actually monitoring attainment of the 1-hour ozone standard. Technology and emissions inventories change over time. Given El Paso's continued compliance with the standard, current scientific information should be used as a basis for rulemaking. The commission can adopt necessary control measures within 18 months of a determination that contingency action is necessary to attain the ozone NAAQS.

The commission has modified language in Section 4.5.2 to clarify that the 18 month time frame for proposal and possible implementation of control measures would start after the commission publishes in the *Texas Register* its determination that contingency action is necessary to attain the ozone NAAQS.

Vehicle Inspection/Maintenance (I/M) Program Comments

Representative Chavez commented that vehicle inspection station owners have contributed greatly to the improvement of air quality and environmental health in El Paso.

The commission agrees that station owners participating in the I/M program, an important control strategy in El Paso, have contributed to improved air quality and public health in the El Paso area. The commission appreciates their efforts.

Representative Chavez commented that station owners are willing to participate in the new I/M program but that many owners need additional time to make business decisions about upgrading to new testing equipment. Representative Chavez asked the commission to delay the effective date of changes to the El Paso County I/M program until January 1, 2007, and proposed rewording sections of the ozone maintenance plan SIP narrative accordingly. Eight inspection station owners also commented in support of extending the implementation date of the new I/M program from May 1, 2006 to January 1, 2007 (Moreno, Jimenez, Rodela, Provencio, Chavez, Ortez, Payan, Carrasco). Seven of these station owners commented that the extension would provide them time to review their financial options and decide whether to continue participating in the I/M program.

The commission took action on changes to the El Paso County I/M program in a separate SIP revision and rule package on October 26, 2005. As part of that action, the commission established January 1, 2007, as the effective date for the new I/M program in El Paso County. The content of the ozone maintenance plan SIP revision reflects the outcome of that decision because the I/M program is one of the active control measures in the ozone maintenance plan. The commission understands that business owners have concerns about the cost of acquiring new testing equipment and has made every effort to consider the concerns of the emissions testing industry. Purchasing

new testing equipment is a business decision, and it is ultimately the responsibility of each individual station owner to determine if the investment is worth the cost.

Representative Chavez commented that moving the effective date of changes to the El Paso County I/M program would not affect the cost of the state inspection and auto emission test to the public.

The commission took action on changes to the El Paso County I/M program in a separate SIP revision and rule package on October 26, 2005. As part of that action, the commission established January 1, 2007, as the effective date for the new I/M program in El Paso County. The commission agrees that delaying the effective date of changes to the El Paso County I/M program will not affect the cost of the state inspection and auto emission test to the public.

The U.S. EPA commented that it supports the I/M program being part of the ongoing SIP for El Paso and part of the maintenance plans.

The commission appreciates the support of the U.S. EPA. The commission believes that the I/M program has been and will continue to be an effective way to improve air quality in El Paso County as an active control measure in the redesignation maintenance plan.

One person expressed disagreement with the extension of the start of the I/M program to January 1, 2007; he prefers that the commission keep the start date of May 1, 2006, in order to improve air quality more quickly.

Because this SIP revision retains the I/M program as an active control measure and the commission has decided the effective date of the I/M program separately, this issue is outside the scope of this SIP revision. However, the commission considered the concerns of the emissions testing industry regarding the purchase of new testing equipment and agreed to a short extension to allow the businesses additional time to make decisions and to otherwise prepare for the change. Emissions testing will continue without interruption and there will be only a relatively short delay in the implementation of a more advanced test method for newer vehicles. Therefore the commission expects a negligible effect on air quality from the short extension that has been approved.

One individual expressed disappointment that El Paso County is not taking advantage of LIRAP, the low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program. He understood the county chose not to participate but hopes TCEQ will encourage the county to participate.

The CO redesignation SIP revision incorporates the vehicle I/M program as an active control measure. The parameters of the I/M program have been decided in a separate SIP revision, so this issue is outside the scope of this SIP revision. LIRAP is an optional component of the I/M program that provides financial assistance to low-income motorists so that they may repair or scrap vehicles unable to pass the required emissions inspection. Each county with an I/M program has the option to administer a LIRAP program. The commission will work with any eligible county wishing to administer such a program.

One person expressed opposition to the I/M program's low mileage waiver. He commented that El Paso has a problem with motorists turning back odometers and expressed concern that allowing a low mileage waiver encourages motorists to "tinker" with their odometers.

The parameters of the I/M program have been decided in a separate SIP revision, so this issue is outside the scope of this SIP revision.

The I/M program's low mileage waiver is available to motorists whose vehicles fail a re-test after having failed the emissions inspection. These vehicles must meet certain criteria, including having been driven less than 5,000 miles since the previous year's emissions inspection and having had at least \$100 spent to bring the vehicle into compliance. The waiver is provided for vehicles that are seldom used and therefore contribute little pollution and that have not mechanically deteriorated. The waiver does not have a significant impact on the I/M program's effectiveness.

Complaints of odometer tampering should be addressed to the Texas Attorney General, at: Office of the Attorney General, Consumer Protection Division, P.O. Box 12548, Austin, Texas, 78711-2548. Citizens may also visit the web site at www.oag.state.tx.us to file complaints online and to print forms in order to file complaints by mail.

A citizen commented in support of the I/M program's low-income time extension but was concerned that the program description did not specify a time limit for the extension.

The parameters of the I/M program have been decided in a separate SIP revision so this issue is outside the scope of this SIP revision.

A low-income time extension is a one-year extension that may be granted to a motorist whose vehicle has failed an emissions inspection and whose income is below the national poverty level. An extension cannot be granted for a second consecutive year. Very few motorists actually apply for a low-income time extension.