# Comments by the Texas commission on environmental quality regarding United STates Department of Interior Bureau of Ocean Energy Management; Air Quality Control, Reporting, and compliance; proposed rule; docket id no. BOEM-2013-0081; Identification Number 1010-AD82

## I. Summary of Proposed Rule

On April 5, 2016, the Bureau of Ocean Energy Management (BOEM) proposed a rule to amend and replace regulations in 30 Code of Federal Regulations Part 550 regarding air quality control, reporting, and compliance with respect to oil, gas, and sulfur operations on the Outer Continental Shelf (OCS) of the United States in the Central and Western Gulf of Mexico and the area offshore of the North Slope Borough of the State of Alaska. The existing rules are part of the BOEM’s approval process for offshore oil and gas exploration and development plans, right-of-use and easement, pipeline rights-of-way, and lease term pipeline applications. Part of the BOEM’s approval process evaluates impacts to states with regard to the National Ambient Air Quality Standards (NAAQS). In addition to updating the requirements for operations in the OCS for assessing impacts on states, the proposal would allow sources in the OCS to use emission credits for offsetting purposes, similar to permitting for New Source Review purposes. The BOEM is proposing to allow the emission credits to be generated from offshore or onshore sources.

## II. Comments

#### *1. The BOEM should withdraw the proposed rule until it has completed the appropriate studies to determine whether the revised regulations are necessary.*

The BOEM has not completed the necessary studies to determine whether sources in the OCS actually have an air quality impact on states with regard to the current NAAQS. The studies the BOEM intends to use for establishing emission exemption thresholds (EET) may inform many aspects of the proposed rule or even call into question whether the proposed rule revisions are actually needed. Such information is necessary for affected lessees and operators, potentially impacted states, and other interested parties to adequately comment on the BOEM’s proposal. The BOEM should withdraw the proposed rule until all studies are completed in order to justify its proposed actions.

#### *2. The BOEM should have involved affected state environmental agencies more before proposing the rule.*

While the TCEQ appreciates the BOEM’s outreach efforts regarding the related studies being conducted associated with the proposal, the TCEQ is not aware of any outreach efforts to states by the BOEM regarding the specific details of the proposed rule. Executive Order 12866 states that “before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation (including, specifically, State, local, and tribal officials).” (Executive Order 12866, October 4, 1993, Section 6, subsection (a)(1)). The BOEM acknowledges that the proposed rule is subject to Executive Order 12866 (81 FR 19792), but the BOEM does not provide any indication in the executive order analysis of specific discussions with states on the details of the proposed rule before proposal other than a vague statement that “informal consultations have and will continue to take place with other federal and State agencies.” (81 FR 19794). Furthermore, the BOEM claims that proposed rule would not adversely affect in a material way state, local, or tribal governments. However, such a claim is unfounded if the BOEM did not actually contact state governments to discuss the key aspects of the proposed rule. As is evidenced by the TCEQ’s comments discussed below, certain aspects of the proposed rule may have an impact on TCEQ programs such as the agency’s Emission Banking and Trading Program. While the BOEM does state that it intends to review the proposed rule with affected states (81 FR 19786), further outreach to states regarding the proposed rule itself should have been conducted prior to proposal.

#### *3. The BOEM has not provided sufficient detail to allow for meaningful comment regarding the proposal to allow sources in the OCS to use emission credits generated from onshore sources. The provisions regarding the use of emission credits from onshore sources should be withdrawn and reproposed after the BOEM has conducted outreach with states that implement emission banking and trading program and taken into consideration the United States Environmental Protection Agency (EPA) guidance for such programs.*

While the Texas Commission on Environmental Quality (TCEQ) has provided some specific comments (TCEQ Comments No. 3 – 6) regarding the BOEM’s proposal to allow sources in the OCS to use emission credits generated from onshore sources, the BOEM has not provided sufficient detail on this proposed option for states and other parties to provide meaningful comment. The TCEQ cannot determine the level of overlap or possible conflicts with the existing state emission banking and trading program based on the limited information provided by the BOEM. There are numerous aspects of emission banking and trading programs that the BOEM does not appear to have considered, in particular with regard to state emission banking and trading programs. Does the BOEM intend to create and operate a new credit trading program or rely on existing programs? If the BOEM intends to establish a new federal trading program for these credits, how does the BOEM intend to address potential conflicts with existing state programs? If the BOEM intends to rely on existing state trading programs, how does it intend to address issues such as the credit being traded outside of that program’s authority or that existing state rules may not allow such trades? Has the BOEM considered the potential impact to states in terms of additional resources that might be needed to process an increase in project applications? Additionally, the EPA has issued guidance for emission banking and trading programs titled *Improving Air Quality with Economic Incentive Programs* (EPA452/R-01-001, January 2001). While the TCEQ maintains the BOEM should generally withdraw the proposal until completing its planned studies, if the BOEM decides to proceed with adopting the proposed rule then the TCEQ requests the BOEM withdraw the proposed provisions regarding the generation of emission credits from onshore sources until it has conducted a thorough review of the EPA’s guidance on economic incentive programs. Furthermore, the BOEM should conduct outreach with states that have their own emission banking and trading programs. States with experience implementing such programs can provide the BOEM with insight into factors that could need special consideration once the states have a clearer concept of the emission credits program the BOEM is considering.

#### 4. The BOEM does not appear to have considered potential conflicts or issues with existing state-run emission credit programs.

While the TCEQ requests the BOEM withdraw the proposed provisions regarding generating credits from onshore sources, if the BOEM decides to adopt those provision then the TCEQ requests the BOEM indicate if the proposed rules are intended to allow affected sources to use emission reductions that are not certified as emission credits under a SIP-approved state program. If so, states will need a way to verify if an emission reduction was used for compliance with the BOEM’s proposed rules to ensure that those same emission reductions are not relied on as part of any other state or federal rule. For example, states will need a way to verify if an emission reduction was used for compliance with the proposed rules so that same emission reduction is not also used to generate emission credits under a state program. Although it is possible that the notification requirements included in the proposed rules will be sufficient for states to know and track the emission reductions relied on for compliance with the BOEM’s proposed rule, this is not clear in the proposal. The TCEQ requests that the BOEM indicate what information regarding those emission reductions will be available to the states and describe the process the states could use to request information on any emission reductions that have been relied on for compliance with the proposed rules. Such information is crucial to ensure that emission reductions are appropriately accounted for during the SIP planning, state banking and trading, and permitting processes.

#### 5. The TCEQ requests that the BOEM clarify the proposed rules in §550.309(e)(1) regarding the location where emission reductions for credits must occur and whether the use of such credits requires approval by the applicable state authority.

In the summary of key changes (81 FR 19742), the BOEM indicates that under the proposed rule, any reduction in emissions that is accomplished within the same EPA air quality control region (AQCR) would be an acceptable emissions credit. The BOEM goes on to state that if a facility associated with a proposed plan were required to reduce its emissions, such a reduction could be generated from any other source within the relevant AQCR. However, this description does not seem consistent with the proposed §550.309(e)(1) requirement that the emission credits must come from emission sources “that affect the air quality of the same AQCR.” The TCEQ requests the BOEM clarify whether the emission reduction used for compliance with the proposed rules must occur within the boundaries of the affected AQCR or if the emission source may be located in any area that affects the air quality of the same AQCR.

If the proposed BOEM rules would allow the emission source to be located in any area that affects the air quality of the same AQCR, the TCEQ requests the BOEM clarify if such inter-area use must be approved by the state in accordance with the applicable state requirements. Under the rules in 30 Texas Administrative Code §101.302(f), an emission credit must be used in the nonattainment area in which it is generated unless the user has obtained prior written approval of the TCEQ and the EPA; and (1) a demonstration has been made and approved by the executive director and the EPA to show that the emission reductions achieved in another county or state provide an improvement to the air quality in the county of use; or (2) the emission credit was generated in a nonattainment area that has an equal or higher nonattainment classification than the nonattainment area of use, and a demonstration has been made and approved by the TCEQ and the EPA to show that the emissions from the nonattainment area where the emission credit is generated contribute to a violation of the NAAQS in the nonattainment area of use. Under the rules in §101.372(f)(7), a discrete emission credit must be used in the nonattainment area in which it is generated unless a demonstration has been made and approved by the TCEQ and the EPA, to show that the emission reductions achieved in the other county, state, or nation improve the air quality in the county where the credit is being used. The TCEQ requests the BOEM indicate if the analysis and approval process required by these rules is necessary for a source to use emission reduction credits (ERC) or discrete emission reduction credits (DERC) for compliance with the proposed BEOM rules.

Additionally, if the BOEM is contemplating relying on existing state programs for these emission credits, the BOEM should consider that sources in an applicable AQCR area may not be capable of generating credits in the form necessary for compliance with the proposed requirements. For example, under TCEQ emission banking and trading rules ERCs may only be generated in nonattainment areas. If there is no nonattainment area in the affected AQCR area then there is no mechanism under TCEQ’s rules to allow the generation of ERCs. While generation of DERCs is possible in attainment counties, DERCs are credits in fixed amounts in tons and not tons per year. This is another example that the BOEM has not given sufficient consideration to many aspects of emission banking and trading programs before proposing to allow the use of emission credits from onshore sources.

#### 6. The TCEQ requests that the BOEM clarify the proposed rules in §550.309(e)(2) regarding inter-pollutant use of emission credits.

The proposed §550.309(e)(2) states that for a precursor pollutant, any emission credits proposed by an affected source must provide a net air quality benefit for that criteria pollutant for which the pollutant is a precursor. The TCEQ requests the BOEM clarify if an emission credit for nitrogen oxides (NOX) or volatile organic compounds (VOC) may be used to meet the requirements for the other ozone precursor. If so, the TCEQ requests the BOEM clarify if that type of inter-pollutant use must be approved by the state in accordance with the applicable state requirements.

The rules in §101.302(a)(1) and §101.372(a)(1) state that an ERC or DERC generated from the reduction of one pollutant or precursor may not be used to meet the requirements for another pollutant or precursor, except as provided in §101.306 and §101.376. However, an exception is provided under §101.306(d) and §101.376(g), that states with prior approval from the TCEQ and the EPA, a NOX or VOC DERC may be used to meet the Nonattainment New Source Review offset requirements for the other ozone precursor if photochemical modeling demonstrates that overall air quality and the regulatory design value in the nonattainment area of use will not be adversely affected by the substitution. The TCEQ requests the BOEM indicate if the analysis and approval process required by these rules is necessary for a source to use ERCs or DERCs for compliance with the proposed BOEM rules.

#### *7. The BOEM should clarify why the use of offsets by a facility in the OCS might necessitate a state implementation plan (SIP) revision. Additionally, the BOEM should remove the provision requiring entities to notify the state of the need for a SIP revision and only require them to notify the state of their intent to use offsets as well as the location of the source from which the emission credits were generated.*

The proposed rule requires entities seeking to use emission credits to notify the appropriate state with jurisdiction over the applicable air quality control region of their proposal to acquire emission offsets and, if necessary, the need to revise its SIP (§550.309(e)(6), 81 FR 19813). While the TCEQ appreciates the BOEM requiring entities to notify states of their intent to use offsets, the proposal does not explain why a state would need to revise its SIP in such a situation. The TCEQ is not aware of any need to revise its SIP simply because a facility in the OCS elects to use offsets in lieu of installing controls. However, if the BOEM is contemplating certain situations where a SIP revision might be necessary then it should provide those examples. Furthermore, the entities seeking such offsets are unlikely to know whether a SIP would need to be revised and would likely have to contact the state to get such a determination. The BOEM should remove the provision requiring entities to notify the state of a need to revise the SIP and only require notification to the state of the intent to use offsets. Ultimately, the decision of whether a SIP revision is necessary falls to the appropriate state agency or the EPA, not the companies seeking to use offsets or the BOEM. Additionally, the state should also be notified of the location of the source from which the emission credits were generated to help inform the state’s evaluation of any impact to its SIP.

#### *8. The TCEQ supports the use of photochemical models to quantify impacts from facilities in the OCS but encourages the BOEM to work with states in developing the requirements for using photochemical modeling.*

The TCEQ supports the use of photochemical modeling and field studies to establish the EETs that would be used to screen out *de minimis* OCS facilities. Further, the TCEQ supports the use of photochemical and/or dispersion modeling, where applicable, to quantify the impacts of individual planned OCS facilities on the air quality of Texas if they exceed the EETs. Per the proposal, several details regarding the use of photochemical modeling will be provided later upon the expected completion in 2020 of the scientific studies that are currently under way to re-evaluate the EETs. On these ongoing scientific studies and on the development of the EETs, the TCEQ encourages the BOEM to solicit and incorporate feedback from states because inadequate information is provided in the proposal.

#### 9. The BOEM’s proposed deadline of 2020 for implementing the new EETs does not help areas with attainment dates prior to the deadline.

In the proposed rule, the BOEM notes that the current EETs need to be updated to account for new and revised air quality standards established by the EPA (81 FR 19740). However, the BOEM states that the new EETs may not be implemented until 2020 because air quality studies are still being completed. This proposed timeline does not provide areas with attainment dates prior to 2020 the ability to consider the impact of the rule in demonstrating attainment.

#### 10. The BOEM should continue to evaluate air quality impacts at the shoreline rather than the state seaward boundary.

Historically, the BOEM evaluated air quality impacts at the shoreline rather than at the state seaward boundary (SSB). In the proposed rule, the BOEM seeks to change this practice and start evaluating impacts at the SSB (81 FR 19738). In order to accurately evaluate air quality impacts at the SSB, the BOEM needs to have sufficient information on the background concentrations of the relevant pollutants along the SSB. Typically, background concentrations are obtained through monitors; however, as the BOEM expressly admits, there are no monitors currently in place along the SSB. In addition, it is appropriate to consider NAAQS compliance and therefore impact at the shoreline and inland where public exposure and protection is the primary focus. For example, it is unreasonable to consider NAAQS impact of a source on an annual particulate matter or even eight-hour ozone NAAQS when such duration is highly uncommon or inappropriate in OCS waters.

#### 11. The BOEM should consider how the proposed rule impacts the Regional Haze obligations of states.

The Federal Clean Air Act sets forth requirements to remedy and prevent visibility impairments caused by air emissions in Class I areas. To accomplish this goal, states must establish emission reduction strategies and goals consistent with the Regional Haze regulations promulgated by the EPA. In the proposed rule, the BOEM discusses the potential impacts that air emissions from OCS sources might have on Class I areas (81 FR 19733); however, the BOEM does not discuss how these regulations might impact the obligations states have to address Regional Haze. The BOEM should clarify that the proposed rule would meet the obligations states have to address Regional Haze when determining how to address air emissions from OCS sources that might impact Class I areas if that is the intent of the rules.

#### 12. Transport obligations should be addressed when setting the EETs.

The BOEM is proposing to conduct studies to determine whether the current EETs need to be revised in order to ensure that exploration plans with emissions below the EETs have a *de minimis* impact on the air quality of a state. (81 FR 19730-32). Although the BOEM proposes to consider several issues in the studies, the BOEM does not propose to consider whether emissions that would otherwise be *de minimis* are also insignificant for transport purposes. Thus, the TCEQ recommends that the BOEM clearly state that any emissions from the OCS sources are not the responsibility of the states nor will states be held responsible for any OCS transport obligations. Additionally, the BOEM should consult with the EPA to ensure that any revised EETs adequately meet transport obligations.