

Issues and Recommended Action Plan
Regulatory and Statutory Options
Texas Mobile Source Summit
Austin, Texas, November 3-4, 2005

Regulatory and Statutory Issues for consideration by the discussion group participants included: Delayed SIP Credit, Bundled measures, Bureaucratic Barriers, Interstate and International Transport, Conformity, Mass Transit.

Topic: Delayed SIP Credit Benefit

As an incentive, could credit be allowed for delayed SIP measures?

Examples where such incentive could benefit is land use planning, mass transit reductions, emission reductions from efficiency improvements, especially transportation or off road sources.

Regulatory and Statutory options to address issues:

1. EPA flexibility;
2. Bundling of measures to allow some shortfalls in one area;
3. Modeling assumptions may need to be modified for some new approaches, especially land use planning and development;
4. Use current guidance such as the Texas Transportation Control Measure (TCM) substitution rule; and
5. Voluntary “Bump-up” to give greater time to attain.

Recommendations

TCEQ will led a workgroup starting in January that will explore the need for Regulatory and Statutory changes.

TCEQ led workgroup will actively engage stakeholders, especially citizen groups.

Topic: Bundled Measures

Bundled Measures - the policy was released by EPA on August 18, 2005.

Allows for voluntary, non-regulatory reductions.

Provides flexibility to drop or reduce some measures without SIP revision.

Flexibility of 9% voluntary measures in a SIP.

Regulatory and Statutory options to address:

1. Which measures can be quantified and included in the 9% cap? For example, can energy efficiency measures be included?
2. The Policy on 3% cap on mobile measures and 6% on stationary sources. Is this appropriate for Texas?
3. Caution expressed on bundled measures may result in reduced focus and action.

Recommendation

TCEQ and EPA to evaluate and decide on implementation and Regulatory and Statutory needs.

Topic: Bureaucratic Barriers

Concerns expressed that barriers may exist in several areas:

1. Cannot do local ordinance measures in unincorporated areas.
2. Airports - Federal Aviation Administration restrictions on use of money.
3. Federal preemption is an issue. Need for more voluntary but enforceable agreements.
4. Municipal contracts

Regulatory and Statutory options to address:

- Multi-agency consultation on preempted sources.
- Strategy for obtaining benefits from preempted sources rather than focus on what can't be done.
- Get offset emissions for non-regulatory measures.
- Encourage pollution prevention.

Recommendations:

- Develop list of options - working with group of sources such as Port Association and airports - on use of MOUs, recognition programs, or other appropriate venues;
- Explore funding options for best practices; and
- Explore granting legislative authority to implement control strategies even in attainment areas.

The recommendation was for this option to be explored by the Texas Clean Air Working Group since it involves legislative authority needed for expanded use of ordinances, control strategies and funding.

Topic: Interstate and International Transport

Issue raised is whether credits for emission reductions due to transport.

Regulatory and Statutory options to address:

In Texas, the following emission reductions outside the nonattainment area should be investigated for SIP credit since 1) TERP funds are not limited to one area, 2) Fuels such as Texas LED (TxLED) could be provided to a wider area as well as other States and Mexico, 3) Transportation corridors include trucking such as grocery store distribution networks between urban nonattainment and near nonattainment areas and control strategies could reduce transport.

Recommendation:

Get with industry groups to find ways to remove barriers. Doug Deason, attending for Exxon Mobile, was tasked as the lead due to fuel component.

Topic: Transportation Conformity

Issue is the expanded use of Congestion Mitigation and Air Quality (CMAQ) funds for non-road projects and the impact on transportation conformity determinations.

The expanded use is authorized in the recent federal Transportation Bill (SAFETEA-LU).

Regulatory and Statutory option to address:

The Federal Highway Administration (FHWA) and Environmental Protection Agency (EPA) will be developing guidance regarding the impact on conformity. In the past, CMAQ funds could not be used for non-road projects and use of CMAQ funds has been very beneficial to providing on-road benefits to ensure conformity.

Recommendation

Follow and fast track FHWA and EPA interpretation of CMAQ fund use. Texas Mobile Source Working Group (TWG) will serve as the lead for tracking and providing input to this process.

Topic: Mass Transit

Regulatory and Statutory Issue: A stronger connection is needed between land use planning, community development and mass transit.

Regulatory and Statutory options to address.

Some areas expressed 1) Service options limited in many areas except in inner city, 2) Lack of park and rides, 3) No High Occupancy Vehicle (HOV) lanes that buses could use.

Recommendations

Take away downtown parking convenience

Develop target for commute/transit/trip reduction and communicate with local areas. Urban nonattainment and near nonattainment areas learn from successful experiences of each other.