

My comments focus on the adequacy of Emission Banking and Trading (EBT) existing rules and the request for comments on area sources.

Background:

I am a resident of the State of Texas, born and raised here. I have an ownership interest in manufacturing facilities in the Houston-Galveston-Brazoria Ozone Non-attainment Area (HGB NA) that meet the existing eligibility requirements of the EBT rules. The quality of these manufacturing assets, and/or the stakeholders with ownership in these assets, can benefit from participation in the EBT. As outlined in my comments, many residents of Texas can benefit from the current EBT program.

Publicly available information provided to me by TCEQ staff shows that TCEQ 2006 Emissions Inventory for “point sources” per 30 TAC §101.10 reported 43,400 tons in 2006; the 2012 Emissions Inventory reported 12,100 tons. Texas continues to make excellent improvements in air quality based on the good collaboration of the TCEQ, regulated Texas industry and many air quality professionals. This EBT rule consideration has a potentially significant impact on the current and future residents of Texas, and could impede environmental improvement and inhibit potential economic development in Texas.

Potential Rule Impact:

Importantly, the local and global environment can benefit from not changing the eligibility requirements of the existing and approved EBT rule, and not restricting the current flexibility of the existing EBT rules. Locally, the HGB NA area could obtain a significant reduction in VOC and NO<sub>x</sub> air emissions (the pre-cursors to ground-level, ambient air ozone formation) by allowing area source participation in ERC reductions. ERCs from area sources could create an emission reduction before the time of ERC generation from “small” emission sources that are currently uncontrolled or surplus to existing emission standards; these ERC emissions are traded as “offsets” to companies that are required to utilize the Lowest Achievable Emission Rate (LAER) control technologies as part of industrial expansion or modification.

The Texas shale gas reserves are massive; our existing infrastructure, skilled labor (from chemical executives to operators), and fair regulatory framework enables the development of this resource. Our Texas natural resources will be consumed in Texas, exported to foreign countries as LNG, and/or exported to Louisiana or elsewhere as ethylene through existing and new pipeline infrastructure. When Texas natural gas resources get exported, they can be processed in downstream manufacturing in foreign countries in less environmentally controlled and less efficient industries in Texas, and the global environment suffers; additionally and importantly, the skilled manufacturing jobs and ancillary service sector jobs in the downstream chemical sectors are likewise exported. The export of Texas natural resources to Louisiana or otherwise from the competitively-advantaged Greater Houston area is inefficient (environmentally and economically) and further incentivizes the LNG export of our resources.

New and existing large manufacturing facilities will last for several future generations, and will have a long-lasting economic impact on local communities and long-lasting environmental impact on the global community. The TCEQ and Texas have demonstrated world-leading capability to manage the environmental impacts, and Texas has demonstrated its leading ability to provide great jobs and opportunities for its existing citizens and its growing population.

Under U.S. Clean Air Act laws and Texas Clean Air Act laws, major modifications and new major sources in the ozone non-attainment areas are required to install and operate LAER control technologies. The TCEQ is the largest state environmental agency and adept at overseeing compliance with environmental laws. In my opinion, the TCEQ should work with stakeholders to help the downstream chemical development of Texas natural resources occur here in Texas.

### EBT Rules

The existing TCEQ rules in Title 30 of the Texas Administrative Code (TAC), §101.302(b), “Emission Banking and Trading, General Provisions, Eligible Generator Categories”, specifically indicate that area sources are eligible for ERCs participation. These existing rules are fully approved by the TCEQ and EPA. The TCEQ should not limit the eligibility of sources in Texas to participate in this program.

Irrespective, the TCEQ has expressed concerns about issuing ERCs to “area sources,” and has denied ERCs to specific area sources citing that the emissions were not reported in the SIP (according to the Emissions Inventory rules in 30 TAC §101.10). The TCEQ rules in 30 TAC §101.10 do not require reporting for sources with emissions less than 10 tons per year.

Additionally, in the SIP development process, the TCEQ takes the responsibility to calculate area source emissions, make representations of these area sources emissions for all area sources in the HGB NA, and report these emissions to the EPA. The EPA reviewed and approved these estimates in the 2006 SIP. The TCEQ did not contact or provide a notification or opportunity for area source participation in the SIP representation and reporting of their emissions. Other states use emission source “potential-to-emit” emissions in the calculation of emissions for reporting in the SIP. Many area sources have TCEQ New Source Review (NSR) permits or Permits-by-Rule (PBRs) that represent “potential-to-emit” emissions; area source represent their emissions in these permits. Many area sources made representation of their emissions to the TCEQ. The TCEQ did not appear to use these representations in the SIP, and did not appear to provide notification to these area sources. The TCEQ has existing mechanisms to make emission reductions legally enforceable and permanent in permits and PBRs.

Importantly, many area source can meet the other the criteria in 30 TAC §101.302 and 303 for issuing an ERC. The area sources that cannot meet these other criteria should not be able to participate in the ERC program. The area sources that can meet these other criteria should be allowed to participate in the ERC program, based on their ability to demonstrate these criteria are met. The TCEQ should make these determinations on a case-by-case basis, based on the merits

of each application. The TCEQ could publish guidance on their determinations from case-by-case reviews to guide future applications and the efficient use of resources.

Furthermore, the TCEQ has requested comment on the concept of “surplus to the SIP”. The TCEQ rules in 30 TAC 101, Subchapter H, Division 1 do not define the term “surplus to the SIP” in 30 TAC 101.300, “Definitions”. The terms “surplus” is defined and means, “An emission reduction that is not otherwise required of a facility or mobile source by any local, state, or federal law, regulation, or agreed order and has not been otherwise relied upon in the state implementation plan”. This term, as used in the EBT rules, appears to be specific to an individual facility or source, and not a group or category of sources. The TCEQ should clarify its request for public comment on the basis of this term, “surplus to the SIP,” the definition of this term, and relevancy to the existing TCEQ EBT area source rules.

Thank you for your consideration of these comments.

Sincerely,

Scott C. Muller