

**Response to Comments Received Regarding the
Dallas-Fort Worth (DFW) 8-Hour Ozone
5 Percent Increment of Progress (IOP)
State Implementation Plan (SIP) Revision**

The commission received comments from the following entities: Blue Skies Alliance, Collin County, Dallas County, Dallas Sierra Club, Denton County, Downwinders at Risk, Dr. Robert Cluck/Mayor of the City of Arlington, Environmental Defense, Esperanza Peace and Justice Center, Houston Sierra Club, Lone Star Chapter for Sierra Club, Public Citizens' Office, Regional Transportation Council for the North Central Texas Council of Governments, Tarrant County, and the United States Environmental Protection Agency. In addition to these entities, the commission received comments from the Law Office of Marc Chytilo on behalf of Blue Skies Alliance, Downwinders at Risk, Sierra Club, and Public Citizen, collectively referred to herein as "Marc Chytilo." The commission also received comments from the following private citizens: Andrea Adams, Jessica Anacker, Stan Aten, Suzanne Baker, Peter Bell, Penelope Bisbee, Thomas D. Boyle, Deborah Brown, Jim Bush, Tim Campbell, Bryan Carpenter, Donald and Mary Colston, Chester Culley, Dan S. Culver, Lois Day, Tonya Dubro, Margie Haley, David Harper, Ulrick O. Hermann, Marianne Hermann, Dr. Virginia Kennedy, Melanie Kiley, Denise Killingsworth, Sally King, Michelle and Cor Knijnenburg, Lois Lettini, Jerry Lobdill, Anthony Loeppert, Vicki McCandless, Morris Meyer, mizellen, Gary Morse, Carol Nash, John Rath, Robert Rinker, Robert O. Scott, David Sembritzky, Lee Svedeman, Hillary Timmers, Marta Tingdale, AnnMarie Wilson, Dr. Jay Woody, and LeeAnn Young.

PUBLIC HEARINGS and INPUT

Marc Chytilo and multiple individuals stated the public hearings undermined public participation. The hearings were held at times and dates that blocked meaningful public participation. The commission was informed by Marc Chytilo, Blue Skies Alliance, Downwinders at Risk, Dallas Sierra Club, and multiple individuals that the doors to the building where the Arlington hearing was held were locked, preventing some members of the public from attending the public hearing, and that this equated to a failure to provide adequate public notice. Environmental Defense said the commission failed to allow meaningful public input into the drafting of this SIP.

The commission appreciates this comment. The TCEQ staff present at the Arlington hearing were unaware that doors were locked, preventing some participants from entering the hearing room. According to the sign-in sheet, there were at least 28 people present at the public hearing in Arlington. As such, there was no reason to believe that there was any problem with accessibility to the hearing. The TCEQ staff maintains a "checklist" of things to do prior to hearings and checking to make sure the door is not locked has been added to the checklist. This inadvertent mistake does not invalidate the public participation process. The Arlington public hearing was held on January 3, 2005; and written public comment was accepted until 5:00 p.m. on January 6, 2005. In addition, two other public hearings were held - in Austin on January 4, 2005, and Houston on January 5, 2005. The public participation process for this 5 Percent IOP SIP was complete and adequate, and reasonably fulfilled the requirements specified in 40 CFR § 51.102(e).

The commission is committed to full participation by the public in its processes and followed both federal and state requirements for public participation for the Dallas-Fort Worth (DFW) 5 Percent IOP SIP. The commission schedules hearings based on the availability of facilities, court reporters, the appropriate notice requirements, ability to accommodate the number of commenters, and in the case of multiple hearings, the availability of appropriate staff. Notices of the public hearings for the

DFW 5 Percent IOP SIP were published in the Austin American Statesman on November 22, 2004, in the Fort Worth Star-Telegram on November 21, 2004, and in the Houston Chronicle on November 19, 2004. Notice of the public hearings was published in the Texas Register on December 3, 2004 (29 TexReg 11414); and the commission accepted written comments until 5:00 p.m. January 6, 2005.

Furthermore, the commission discussed the choice of a 5 Percent IOP SIP and allowed public comment at the work session held on September 17, 2004, as well as at agenda on November 17, 2004, when the 5 Percent IOP SIP was proposed.

One individual stated at the Arlington public hearing that a hearing is not necessary.

Public hearings are necessary to meet federal and state requirements for reasonable notice.

Marc Chytilo stated the 5 Percent IOP plan contains various references to EPA guidance and rules. The State should provide specific citations, preferably accompanied by an active web link or internet address, to both identify and provide access to relevant documents.

The commission makes as much information available as possible given resource constraints, and general availability of information. Information related to EPA guidance and rules may be located through EPA's general website at: www.epa.gov. The commission appreciates the comment and in the future will work to also have specific references to EPA guidance documents and links within the SIP web page.

Marc Chytilo stated the State should undertake efforts to make its SIP planning process more cohesive and publicly accessible. The splintering of this relatively simple SIP into four separate documents and scattering them on different web pages has compromised public involvement.

All of the information in question is available on the TCEQ website located at: www.tnrc.state.tx.us/oprd/sips. The commission acknowledges the complexity of websites, especially those dealing with such diverse information. In an effort to have all of the pertinent information in the same place, the commission will, in the future, add the SIP proposal and related rules to the DFW SIP page or will provide links to other pages. Where referenced information is publicly available, the commission attempts to provide links to such information when feasible.

HEALTH

Dr. Robert Cluck, Mayor of the City of Arlington, expressed concern with the negative impact the poor air quality has been having on the health of citizens. Blue Skies Alliance, Downwinders at Risk, Lone Star Chapter Sierra Club, Marc Chytilo, and multiple individuals expressed concern about the effects of bad air quality on the health of citizens. Multiple individuals expressed concern about the effects of air pollution and high ozone on health and the health care costs associated with air pollution and high ozone. Multiple individuals expressed concern over the impact of air pollution and high ozone on the health of children. The commission received comment from several individuals that health care costs are skyrocketing, due in part to rising pollution. Lone Star Chapter Sierra Club and several individuals expressed concern over the impacts to public health, as well as the economic impacts from air pollution and high ozone. Several commenters said that the ozone problems are affecting their health. Many individuals expressed concern that children can't go outside to play on high ozone days. One individual at the Arlington public hearing said that she has lived in other areas of the country and even Japan and

Tokyo and never heard of this many children who were sick with respiratory illnesses. Marc Chytilo commented that the State's inaction has increased human suffering, particularly by children, the elderly, and all others sensitive to exposure to air pollution. One individual at the Arlington public hearing stated that her child has always had breathing problems, but since moving into the area in November 2004, her daughter must undergo regular breathing treatments.

The commission agrees that reducing ozone is important. The DFW 5 Percent IOP SIP is expected to improve air quality in the DFW area by reducing ozone and the chemicals that contribute to ozone formation. Significant reductions of VOC and NO_x emissions have already been or will be achieved in the DFW area as a result of control measures previously adopted by the commission including emission limits on electric utility power boilers and cement kilns, an Enhanced Vehicle Inspection/Maintenance Program, and Texas Low Emission Diesel Fuel requirements. Transportation Control Measures, such as signal light improvements and Voluntary Mobile Emission Reductions, such as car pooling are also being implemented in the DFW area. In fact, there has been a downward trend in 1-hour ozone design values in the DFW area in the past few years.

The primary health concerns for ozone are effects to the lungs and overall respiratory system. Examples of effects include respiratory irritation and inflammation, impaired ability of the lungs to function normally, and aggravation of preexisting respiratory diseases such as asthma. These effects are generally associated with short-term exposure to high levels of ozone, levels that have been detected in the DFW area. Health effects from ozone generally resolve quickly once an individual is no longer exposed to high levels. However, in some sensitive individuals, effects may linger and take longer to resolve.

The commission agrees that the unique anatomy, physiology, and behavior of children may render them more sensitive to air pollutants such as ozone. Leading scientific researchers have noted an increased incidence of respiratory diseases such as asthma in the United States, particularly in select populations. The reasons for this increase are not entirely known and are likely due to many factors. The role that air pollution has in potentially causing respiratory disease is unclear. However, it is well known that some air pollutants, including ozone, can aggravate existing respiratory diseases. This reinforces the need to minimize exposure to high ozone levels and to take steps to reduce the levels of chemicals that contribute to ozone formation. A relatively robust scientific literature exists on the health effects of ozone (for a recent review, please see the California Air Resources web site: <http://www.arb.ca.gov/research/aaqs/ozone-rs/ozone-rs.htm>). However, data gaps still exist in our understanding of the health effects of ozone, particularly in regards to sensitive populations, such as children. Finally, the commission agrees that air pollution can potentially have significant affects not only on public health but also on public welfare, including socioeconomic costs. This reinforces the need for emission reductions in the DFW area, such as those identified in the DFW 5 Percent IOP SIP. The 5 Percent IOP SIP is the first step toward achieving attainment of the 8-hour ozone standard.

Multiple commenters referred to a study by Yale University, which says that ozone contributes to increased mortality rates.

A recent study published in the Journal of the American Medical Association (JAMA) (Bell, M.L., et al., 2004, Ozone and Short-term Mortality in 95 US Urban Communities, 1987-2000, JAMA

(292): 2372-2378) concluded that an association exists between an increase in ambient ozone levels and premature mortality based on a study of the largest cities in the United States, including the DFW area. This not the first time that ozone has been suggested to cause premature mortality (for a recent review of ozone toxicity information, please see the United States Environmental Protection Agency's latest Ozone Air Quality Criteria Document located at <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=114523>). The JAMA study is the latest and most comprehensive study to date on the issue of ozone and premature mortality. Despite the strengths of this study, a single study does not represent definitive proof that premature mortality is a potential health concern for the general public exposed to ambient levels of ozone. Scientific consensus has not been reached on what role, if any, ozone plays in premature mortality. Despite this scientific uncertainty, the TCEQ is taking pertinent steps to improve air quality in the DFW area. These steps will assist in attaining the 8-hour ozone standard, which will reduce the likelihood that the general public will experience health effects from ozone, particularly the most severe effects.

One commenter stated that the State has chosen protecting the bottom line instead of protecting the health of its citizens. The State chooses the greater profit over the greater good when creating environmental legislation and the rulemaking that affects our lives.

The commission is charged with by the Texas Legislature with protecting public health and the environmental, taking into consideration economic development of the state. The measures proposed in this Increment of Progress SIP revision are responsible steps towards meeting the State's clean air objectives for the DFW area. The commission takes very seriously its responsibility to protect public health and welfare as it safeguards the state's air quality.

Texas Emission Reduction Plan (TERP)

Blue Skies Alliance, Downwinders at Risk, Dallas Sierra Club, and multiple individual commenters believe the 5 percent plan relies too heavily on TERP reductions.

The commission agrees that the majority of the emission reductions in the 5 Percent IOP SIP are from TERP. However, emission reductions from TERP are quantifiable and enforceable. The Texas Legislature created and funded TERP specifically to obtain emission reductions and improve air quality in the state of Texas. TERP has been in effect and producing NO_x emissions reductions in the DFW area since 2002. As of mid-January 2005, approximately 5.2 tons per day (tpd) are projected to be reduced in 2007 in the DFW area from over 100 TERP projects already in place. Past experience and current inquiries indicate that interest and participation from DFW business and government entities will continue to grow in the upcoming years.

EPA requested that the commission submit all of the regulations covering the TERP program as a SIP revision.

On February 25, 2005, the TCEQ approved the submittal of 30 TAC Chapter 114, Subchapter K, Division 3, Diesel Emission Reduction Incentive Program for On-road and Nonroad Vehicles, part of the TERP adopted by the commission on August 22, 2001, to EPA as a revision to the SIP. These TERP rules have been provided to EPA.

Marc Chytilo stated that TERP emissions reductions are not credible, and should not be eligible for the 5 Percent IOP SIP, since it was previously submitted but not approved.

The commission does not agree. EPA's Economic Incentive Program Guidance provides that incentive programs such as the TERP may be used for SIP credit. The TERP emission reductions are quantifiable and enforceable under state law, as the State may require grant funds to be repaid in situations when contracts are not fully implemented. Section 386.111(d), Texas Health & Safety Code, requires that TERP grants be awarded under a contract that incorporates provisions for recapturing grant money in proportion to any loss of emission reductions. To verify implementation, contracts are audited through records and on-site reviews. In addition, grantees are required to track their use of funded vehicles and equipment and report actual usage and location of use to the commission on a semi-annual basis. The commission followed EPA guidance in proposing TERP for inclusion in the 5 Percent IOP SIP, since TERP is not yet an approved SIP measure for the DFW area.

Marc Chytilo commented that TERP grant guidelines do not provide for the mandatory destruction of repowered and replaced equipment, allowing profiteering based on the sale of high emitting vehicles and equipment to Mexico and adjacent states, and then return to Texas on at least a periodic, if not regular basis. As such, TERP is not achieving the anticipated reductions as this equipment returns to the emissions inventory.

The commission does not agree with the comment. In the case of replacements and repower projects, the preferred option laid out in the grant application forms and the contract is to destroy (i.e., bore a hole in the engine and cut it from the block) the vehicle, equipment, or engine. In some situations it may not be economically feasible for the applicant to do that. If an applicant chooses an alternative disposition arrangement, prior to receiving a reimbursement, the applicant/grantee must inform the commission where and to whom the vehicle or equipment, and/or engine, was sold or otherwise transferred. As part of the contract auditing phase, the commission may contact the new owner to determine where the vehicle or equipment is operating. If it has been returned to Texas, the grantee may be subject to return grant funds to the commission.

THE 5 Percent IOP SIP

Blue Skies Alliance and multiple individuals said the State should increase the percent of reduction from 5 percent to 18 percent. Environmental Defense, Dallas Sierra Club, Lone Star Chapter Sierra Club, Marc Chytilo, Blue Skies Alliance, Downwinders at Risk, Public Citizens' Office, and multiple individuals stated that the State needs more than 5 percent reduction to obtain healthy air for the Metroplex area. Blue Skies Alliance stated that if the State had gone with the clean air plan as it was supposed to have been under the one-hour ozone standards, then the reduction would have been 18 percent. Environmental Defense stated the commission has delayed action and is pursuing a minimalist approach that will ultimately achieve little meaningful progress. Several individuals stated the DFW area needs more significant reductions at a faster pace. The commission received comment from Marc Chytilo that the 5 Percent IOP plan lacks sufficient actual and new emissions reductions to meaningfully improve air quality in the DFW area.

The 5 Percent IOP SIP revision is just the first step towards demonstrating attainment of the 8-hour ozone standard. The commission will develop an 8-hour ozone attainment demonstration for the DFW area, at which time further control measures will be considered, and implemented, as appropriate. The commission does not agree that an 18 percent emission reduction is required at this time.

On April 30, 2004, EPA promulgated its Phase I 8-Hour Implementation Rule. In 40 CFR §

51.905(a)(ii) and subsequent guidance, EPA provided three options for areas that do not have an approved 1-hour ozone attainment plan. The commission has chosen the option to submit a 5 Percent Increment of Progress SIP revision. The commission agrees that a 5 percent reduction will not bring the DFW area into attainment of the 8-hour ozone National Ambient Air Quality Standards (NAAQS). However, this option represents the best path forward for the DFW area at the present time. The commission, in coordination with EPA and local stakeholders, has chosen this option as a technically sound and expeditious approach towards achieving the reductions ultimately needed for attainment of the 8-hour ozone standard.

Any reduction in ozone-forming pollutants is a meaningful step towards attainment. The DFW 5 Percent IOP SIP identifies reductions of 29.1 tons per day of NO_x emissions and 5.2 tons per day of VOC emissions from both existing and new control measures. These reductions total more than the required 5 percent reductions.

Environmental Defense said the 5 Percent SIP should include a clear timetable and work plan to complete the 8-hour ozone attainment plan sooner than required by the EPA and the commission should pursue this work plan on a parallel track with the 5 Percent.

The commission agrees that a timetable and work plan should be developed to complete the 8-hour ozone attainment demonstration. However, this is not required as part of the 5 Percent IOP SIP. Additionally, at this time, the commission does not have all information necessary to develop such a timetable.

Environmental Defense stated the 5 Percent plan should not primarily rely on previously adopted measures which make up nearly 90 percent of the measures that the State would use to satisfy the IOP requirement. Claiming credit for previously adopted measures does not represent forward progress. Marc Chytilo stated that Texas attempts to recycle previous SIP emissions reductions that it had already pledged to clean air as credits for the 5 Percent IOP plan (like TERP).

The DFW 5 Percent IOP SIP follows the EPA rules in 40 CFR § 51.905(a)(ii) and subsequent guidance. Reductions from existing measures in the DFW 5 Percent IOP SIP account for 84.21 percent of the total identified reductions. While these reductions are from previously adopted measures, the commission has never claimed credit for these reductions. Therefore, they are included as part of this 5 Percent IOP SIP. Any reductions achieved in the DFW area are a positive step towards attainment.

It was suggested by Environmental Defense that the commission should aggressively seek out and implement new measures to further improve air quality in the near term, especially those that produce collateral benefits, and suggests rulemakings on the following measures:

- Motor vehicle idling restriction at eligible facilities
- eliminate loopholes for small diesel generators
- heavy duty diesel truck engine software upgrade (chip reflash)

Environmental Defense provided several pages of specific suggestions to consider for the DFW area. These suggestions covered a proposed roadmap, motor vehicle idling restrictions, small diesel generators, and chip reflash.

The commission appreciates the suggestions provided by Environmental Defense. While the DFW IOP SIP revision specifically addresses ozone, the commission is in favor of reductions that have

collateral benefits such as cost-savings, fine particulate matter reductions, and greenhouse gas reductions. The DFW area is currently in attainment for particulate matter and to date, there are no greenhouse gas standards.

As to the specific measures suggested by the commenter, local entities may choose to opt-in to a motor vehicle idling restriction; the commission indicated in the 5 Percent SIP proposal that it intends to evaluate options for rules for diesel generators in the next few months as part of the 8-hour ozone NAAQS attainment demonstration for the DFW nonattainment area; and since there is already a federal consent decree concerning chip reflash technology, enforcement of that consent decree is the appropriate mechanism for achieving emission reductions from chip reflash.

Collin, Denton, Dallas, and Tarrant Counties expressed support of the 5 Percent SIP as submitted as a bridge to the attainment demonstration SIP.

The commission appreciates the support for the DFW 5 Percent Increment of Progress SIP.

Marc Chytilo stated that the State has one choice of the three options offered by EPA - prepare a 1-hour ozone standard attainment demonstration SIP, in accordance with a 12-month SIP call, which was triggered no later than April 30, 2004.

The commission does not agree with the comment. The EPA has not issued a SIP call under FCAA § 110. The DFW nonattainment area does not have an EPA approved 1-hour ozone attainment demonstration SIP, which allows the commission to choose any of the three options provided by Phase I of the 8-hour ozone implementation rule published in the Federal Register on April 30, 2004, as discussed elsewhere in this response.

Environmental Defense and several individuals stated the commission should not include the emissions reductions from the Alcoa consent decree in the 5 Percent plan unless it also considers the emission increases from new, expanded, or proposed sources in the 200 km contributing region, such as the proposed coal fired power plant in Riesel.

The commission disagrees with the comment. The commission followed EPA guidance relating specifically to the 5 Percent IOP SIP, which does not require such an analysis.

Marc Chytilo commented that the State relies upon the Alcoa Agreed Order as an out-of-area NO_x emissions reduction creditable for 5 Percent IOP plan purposes. There is no attempt to quantify the magnitude of the effect on DFW, based on the distance, it could be a fraction of a percent. In this case, the emissions reductions should be discounted to reflect their actual probable effect. Marc Chytilo also stated the State claims that sources in any direction can have an impact on ozone levels in the 9-county DFW area. Therefore, any emissions reductions in the state can qualify for emissions reductions credit in the 5 Percent IOP plan. This oversteps the bounds of narrow exception in EPA's guidance, and as such, is not credible without considerably more analysis.

The commission disagrees that the emissions reductions from the Alcoa consent decree should not be included in the 5 Percent IOP SIP. An analysis was performed consisting of aircraft monitoring, wind rose analyses, and back trajectories from high ozone events. From these analyses, it is reasonable to conclude that reductions in ozone precursor emissions from areas south and south-southeast of the DFW area have a positive impact on air quality in the DFW area. This analysis

complies with EPA’s Guidance on 5 Percent Increment of Progress 40 CFR.905(a)(1)(ii)(B) regarding creditable reductions from outside the nonattainment area.

Marc Chytilo said the 5 Percent IOP plan should include a comparison of the controls and emissions reductions that would be in place had the 1-hour ozone SIP requirements been properly enforced, versus the 5 Percent IOP plan.

The commission disagrees with this assertion because it is not an IOP SIP requirement. The commission will direct and focus its efforts towards an 8-hour attainment demonstration, which will be based on emission inventory data that will include emission reductions resulting from the current 1-hour ozone control strategy.

Marc Chytilo said the 5 Percent IOP plan as submitted fails to meet the criteria established by EPA in the 8-hour ozone standard implementation rule, and as such, should not be approved. Marc Chytilo and Downwinders at Risk said the 5 Percent IOP plan violates anti-backsliding requirements. Marc Chytilo stated EPA’s guidance and/or the State’s interpretation deviates from the regulations, and undermines the effectiveness of the 5 Percent IOP plan to achieve the stated purpose. Marc Chytilo also said Texas has proposed a far more lenient and less effective SIP or interim plan than would have been in place had the 1-hour ozone standard been enforced and existing requirements for severe areas imposed. Marc Chytilo also stated that the State proposed a nominal plan that gives highly preferential treatment to DFW as compared to other 1-hour nonattainment areas. Marc Chytilo argues that the State is out of compliance with various Clean Air Act SIP requirements, and that various requirements are being incorrectly interpreted/applied by EPA. Marc Chytilo and Downwinders at Risk said the 1-hour standard is neither legally permitted nor protective of public health. Marc Chytilo also said the 42 U.S.C. § 7511d Fee rule is plainly an “applicable” and mandatory requirement for the DFW nonattainment area, and cannot be simply erased by EPA’s action. Marc Chytilo further stated that all mandatory control measures for severe areas must be adopted and implemented in DFW as soon as possible.

The commission does not agree with the comment. The commission has complied with all requirements of the Federal Clean Air Act SIP requirements currently effective that relate to the DFW area. The commission appreciates public comment and participation throughout the transition from the 1-hour ozone standard to the 8-hour ozone standard. The 5 Percent IOP SIP is the first step in the process of SIP planning for the 8-hour ozone standard.

The commission proposed the 5 Percent IOP plan in compliance with EPA’s Phase I of the 8-hour ozone implementation rule published in the Federal Register on April 30, 2004. The commission believes this option represents the best path forward for the DFW area at the present time and it is a technically sound and expeditious approach to starting to achieve the reductions ultimately needed to demonstrate attainment of the 8-hour ozone standard. As a result, the commission is shifting its resources to focus on the more stringent 8-hour ozone standard.

DFW is classified as moderate under the 8-hour standard and is not required to adopt controls required for a 1-hour ozone severe area. Phase I of EPA’s 8-hour implementation rule provides for the revocation of the 1-hour ozone NAAQS. This rule also addresses the applicability of 42 U.S.C. § 7511d, which has been challenged by several entities in U.S. federal court. There is no final court decision yet , and the final rule is valid and enforceable under federal law.

Marc Chytilo said that on page 2-9 of the proposed SIP, the State admits that the 5 Percent IOP plan

requirement, under EPA's interpretation, has no real effect for virtually any area, as passive fleet turnover will achieve sufficient emissions reductions, and nothing else need be done.

Some emissions reductions contained in the proposed 5 Percent IOP SIP revision come from existing measures but have never been credited in a SIP. Other reductions identified for this SIP revision are from new measures. Fleet turnover will not, by itself, be sufficient to meet federal air quality standards in the DFW area and the reductions identified in the IOP SIP revision are a step towards meeting federal air quality standards. For a list of reductions identified in the IOP SIP revision, please refer to Table 5-4 in the 5 Percent IOP SIP.

Marc Chytilo stated the 5 Percent IOP plan strategy relies exclusively on emissions reductions from mobile source controls.

The commission disagrees that the DFW 5 Percent IOP SIP relies exclusively on emissions reductions from mobile source controls. Chapter 5 of the DFW 5 Percent IOP SIP, Table 5-4, identifies the sources of reductions used to meet the 5 percent reduction of VOC and NO_x as provided for in the 5 percent option provided by the EPA in 40 CFR § 51.905(a)(ii) and subsequent guidance. These include reductions from lean-burn and rich-burn engines, expanding an existing surface coating rule to the five additional nonattainment counties, lowering the Stage I exemption for the five additional nonattainment counties, portable fuel containers, energy efficiency, and the replacement of two Alcoa boilers.

Marc Chytilo said the 5 Percent IOP plan lacks a RACM analysis and thus is defective. The CAA requires a demonstration of RACM in all plan submittals. 42 U.S.C. § 7502(c)(1).

The commission does not agree with this comment. EPA's interpretation of the FCAA, in requiring 5 Percent IOP SIPs, does not require a RACM analysis, though it is anticipated that a RACM analysis will be required as part of an 8-hour ozone attainment demonstration SIP.

Marc Chytilo stated the emissions reductions required by the 5 Percent IOP plan have no correlation to attainment, or even progress to attainment, and thus cannot set Motor Vehicle Emissions Budgets (MVEBs). Marc Chytilo further stated any MVEB adequacy based on the 5 Percent IOP plan must be determined through Administrative Procedures Act notice and comment rulemaking to allow a more complete development of adequacy issues.

The 5 Percent IOP SIP is not an attainment demonstration for the 8-hour ozone NAAQS. However, the 5 Percent IOP does provide needed emission reductions to continue the improvement of air quality in North Central Texas as an attainment demonstration is developed. Based upon the EPA guidance for implementing the 8-hour ozone standard, the 5 Percent IOP SIP establishes a set of control strategies to meet interim emission reduction requirements and establishes MVEBs, similar to the 1-hour ozone Rate-of-Progress SIPs and MVEBs.

In August 2004, EPA issued the following document, *Guidance on 5 Percent Increment of Progress 40 CFR.905(a)(1)(ii)(B)*. Page six of the document addresses the question raised, "Does the 5 Percent Increment of Progress provide a motor vehicle emissions budget that can be used for conformity purposes?" EPA has addressed the issue:

"...the 5 percent Increment of Progress Plan will establish an 8-hour motor vehicle

emissions budget because the goal of the rule is to provide [reasonable further progress] toward the 8-hour NAAQS. Therefore, States should establish the target level of VOC and NO_x emissions that can be allowed in the area to meet the 5 percent increment of progress requirement. From that target level of emissions, an on-road motor emissions budget should be established provided with the SIP revision. This budget will apply under the conformity regulations for purposes of the 8-hour standard once EPA finds it adequate and 8-hour conformity applies in the area.”

The commission has followed EPA guidance regarding MVEBs. It is the commission’s understanding that EPA will follow its adequacy review process in reviewing the MVEBs. The legal sufficiency of EPA’s adequacy process is a matter for EPA consideration.

Marc Chytilo, Blue Skies Alliance, Downwinders at Risk, Public Citizens’ Office, Dallas Sierra Club, and multiple individuals requested that the State’s plan include a mid-course review, since the State had previously committed to such a process.

The commission does not agree with the comment. A mid-course review is not appropriate for a 5 Percent IOP SIP, due to the short time frame for achieving emission reductions. Additionally, the previous mid-course review commitment related to the 1-hour ozone standard. The commission is following EPA guidance relating to the 8-hour ozone standard, which provides for 5 Percent IOP SIPs as a transition mechanism for areas like the DFW area.

Blue Skies Alliance, Lone Star Chapter Sierra Club, Dallas Sierra Club, and multiple commenters said the state’s plan should include prevention and reduction of new sources of pollution such as the power plant proposed for the Waco area.

The commission already requires that new sources meet all applicable state and federal New Source Review (NSR) rules before obtaining a permit. Air quality permit applications are evaluated to determine whether standards outlined in the Texas Clean Air Act (TCAA) and applicable state and federal rules and regulations are met. As part of the permit evaluation process, the permit reviewer identifies all sources of air contaminants at the proposed facility, assures that the facility will be using the best available control technology (BACT) applicable for the sources and types of contaminants emitted, and determines that no adverse effects to public health, general welfare, or physical property are expected to result from a facility’s proposed emissions.

Through the SIP program, the commission will continue to evaluate emission reductions needed to demonstrate attainment of the 8-hour ozone standard, and how to achieve these reductions in order to attain the 8-hour ozone NAAQS.

As a routine part of the air quality modeling supporting attainment, the modeling domain accounts for sources within the eastern half of Texas and continues as far north as Ohio and as far east as Georgia. This is accomplished by using the P.S.C.I. database, permits that have been issued but without reported emissions inventory, and growth factors.

Blue Skies Alliance and multiple individuals stated the reductions achieved by some political subdivisions reducing their energy use by following new energy efficient building codes should be counted in this SIP. Blue Skies Alliance, Downwinders at Risk, Public Citizens’ Office, Dallas Sierra Club, and multiple commenters said several cities and counties have passed resolutions to reduce

emissions. Those promises should also be part of this plan. One commenter said the DFW area has offered to double the efficiency of the energy efficiency code. The building inspectors have come up with three different ways that they would recommend to the cities to accomplish this. By not including that recommendation in this SIP, the State eliminates a tool that would double the effectiveness of the energy efficiency codes. These potential reductions would double each year.

Energy efficiency measures are a critical part of the commission's plan for clean air. The primary benefit of energy efficiency is its ability to decrease the demand for electrical generation, which provides for greater reliability, with the secondary benefit being emission reductions. When combined, various efficiency measures have the potential to add up to significant energy savings as well as emission reductions, thereby contributing to the overall goal of clean air in Texas.

Furthermore, the commission, with support from the EPA, has managed a contract for the development of the Texas Energy and Emissions Reduction Calculator (Ecalc). The goal is to provide Texans with an accurate, easy-to-use tool for calculating the emission reduction credits attributable to energy efficiency and renewable energy projects in residential and commercial buildings. The database and applications developed and used by the Ecalc system were used to calculate NO_x reductions and are enforceable and permanent based on SB5, which mandates the statewide adoption of the International Residential Code (IRC) and the International Energy Conservation Code (IECC) for residential, commercial, and industrial buildings. The commission plans to continue developing a system with tools that will help assess the impact of energy efficiency and renewable energy projects on air quality in Texas. This work may allow the commission to incorporate additional reduction credits in future SIP revisions for energy efficient measures.

The emission reductions identified in this plan, include reductions from energy efficiency and are sufficient to meet the required 5 percent reduction. The commission will identify and consider other sources of reductions for the DFW 8-hour attainment demonstration which may include additional energy efficiency measures.

Several commenters said that by not incorporating the eight or so resolutions enacted by the NCTCOG, the commission does not acknowledge all of the effort and work put into efforts by these entities to reduce emissions and the commission does not take these efforts seriously.

The inclusion of local measures will be a critical component of the attainment demonstration SIP. The emissions reductions from these resolutions, however, have not been quantified and therefore, the commission can not take credit for them in the SIP. The commission will continue to work with the EPA to quantify these emissions reductions to be creditable for SIP purposes. The commission appreciates the efforts of these activities and looks forward to continuing to work with the NCTCOG and other area leaders towards the common goal of better air quality for the DFW area.

Several commenters expressed concern that there has been a tendency on the part of the agency to continue to issue pollution permits to major sources, including new sources, even though it means an increase in NO_x and ozone levels. Public Citizens' Office stated that the commission can and should, under EPA guidance, establish an offset zone, or buffer zone, around the airshed to assure that whatever progress made in the DFW area isn't automatically eliminated by a new source just outside the airshed adding additional tons to the airshed.

The commission does not agree that offset or buffer zones are appropriate for the DFW

nonattainment area as part of the 5 Percent IOP SIP. As discussed elsewhere in this response, the new source review (NSR) permitting program, which is required statewide, does provide for a preconstruction review of all new sources of air pollution, including control technology requirements. NSR permitting rules apply to the nonattainment area, which require offset emission reductions from existing sources and the use of controls that meet requirements for new sources.

One commenter stated the commission should use the statutory authority granted by SB7 to require additional reductions in power plant emission in order to meet NAAQS. Another commenter stated that without reductions from the power plants, DFW will not reach attainment by the year 2010.

The commission anticipates that analyses conducted for the 8-hour ozone attainment demonstration SIP will provide information regarding the necessity and appropriateness of further reductions from power plants.

Environmental Defense urges the commission to pay particular attention to and support projects underway in the DFW area to test innovative measures to reduce transportation-related emissions and increase energy efficiency as these measures hold promise as future emission control measures. If these measures were widely implemented throughout the region as part of a SIP, the reductions could be significant.

The commission agrees with this statement and intends to evaluate these measures for inclusion in future SIPs regarding attainment of the 8-hour ozone NAAQS. Furthermore, the commission has a New Technology and Research Development (NTRD) section which provides funding for projects designed to achieve emissions reductions that would be SIP creditable.

One individual stated the state should mandate better air quality. Another individual said not to wait until the last minute to come up with plans. Another commenter stated that we need to have more efficient policies in place, intelligent policies.

The Federal Clean Air Act directs states to develop SIPs for areas not meeting the NAAQS. The commission has followed EPA guidance to meet specific deadlines and milestones. The DFW 5 Percent IOP is a first step towards meeting the NAAQS for the 8-hour ozone standard in the DFW area. The commission is committed to improving air quality in Texas in an efficient and intelligent manner.

Marc Chytilo said that DFW is evading mandatory and necessary ROP emissions reductions that it would otherwise be required to implement had the region been reclassified as required by law. Marc Chytilo further stated the 1999 ROP included several control measures that have faced challenges in implementation and their current implementation status must be examined and reported upon to ensure that the minimal ROP requirements are met.

To date, in all Texas nonattainment areas, the demonstration of attainment of the 1-hour NAAQS has required more emissions reductions than the required ROP reductions. Many of the controls used to demonstrate 1-hour attainment in 2007 have or will have been implemented between 1999 and 2007, providing continuing progress toward the 1-hour NAAQS, even if particular ROP calculations were not required. Additionally, some controls in the DFW area are stringent programs that the area voluntarily implemented such as Federal RFG and the Vehicle Inspection and Maintenance program in several 1-hour ozone attainment counties, prior to 8-hour ozone

designations.

Marc Chytilo stated the 1999 ROP included several control measures that have faced challenges in implementation and their current implementation status must be examined and reported upon to ensure that the minimal ROP requirements are met.

The commission does not agree with the comment. All of the required control measures for the 1999 ROP have been implemented. The DFW area has not been reclassified to severe under the 1-hour ozone standard. There are no legally required additional ROP requirements for the 1-hour ozone standard. The contingency measures identified in the 1999 ROP have not been triggered. However, as part of the Federal Motor Vehicle Control Program (FMVCP), Tier II requirements began in 2004, and RFG Phase II began in 2000, and are requirements in the DFW area.

Marc Chytilo stated the State should anticipate the need to prepare a post-1999 1-hour 18 percent ROP plan and commence work on such ROP plan immediately. Even if the 1-hour obligation is vacated, an 8-hour ROP plan demonstrating 3 percent annual emissions reductions from 2004 to 2010 will be required under a plain reading of the Clean Air Act.

The commission does not agree with this comment. The EPA has mandated the revocation of the 1-hour ozone standard in June 2005. At that time, requirements associated with the 1-hour ozone standard will no longer be applicable. The commission intends to continue SIP development for the DFW nonattainment area with an 8-hour ozone attainment demonstration, in accordance with the EPA rule regarding 8-hour ozone implementation.

The commission received comment that the state overestimates reductions based on portable fuel containers.

This rulemaking and revisions to the SIP will reduce emissions of VOCs throughout Texas by regulating the type of portable fuel containers that can be manufactured or imported for sale in Texas on or after December 31, 2005. According to the most conservative estimates by the TCEQ, the reduction in spills and evaporation will reduce emissions from portable fuel containers by 45 percent. The TCEQ estimates that the reductions statewide will amount to at least 10.4 tpd.

Blue Skies Alliance, Downwinders at Risk, Public Citizens' Office, Dallas Sierra Club, and multiple commenters stated the plan overlooks obvious industrial emissions adversely affecting DFW air.

The DFW 5 Percent IOP SIP does not overlook industrial emissions. These emissions are accounted for in the emissions inventory for the DFW 9-county area. The SIP revision is designed to provide for a 5 percent increment of progress from the area's 2002 emissions baseline that are in addition to federal measures and state measures already approved by EPA and to achieve those reductions by June 15, 2007. As the state develops the photochemical modeling to support the attainment demonstration SIP revision, industrial emissions from the entire modeling domain, including the eastern half of the state will be accounted for and appropriate strategies may be identified as necessary following scientific analysis to determine their impact on the area's ability to attain the standard by 2010.

Furthermore, ozone precursors in the DFW area are primarily driven by emissions from onroad mobile sources and area sources.

Many commenters said the plan underestimates future industrial and mobile emissions. The State underestimates future increases in pollution caused by industry and growth.

In August 2004, EPA issued the following document, *Guidance on 5 Percent Increment of Progress 40 CFR.905(a)(1)(ii)(B)*. Page four of the document addresses the issue you raise, “How is growth in emissions addressed?” Following is an excerpt from the guidance that sets forth the requirements for a 5 Percent IOP:

...States should be sure that projected target level inventory calculated...is at least 5 percent less than the 2002 inventory (or the appropriate percentage of NO_x and VOC if a combination of pollutants is used), that is, the 2007 projected inventory is no greater than 95 percent of the 2002 inventory.

The 5 Percent IOP follows the guidance set forth in the August 2004, document from EPA. Furthermore, the commission uses sophisticated methodologies for growth as explained in the SIP proposal. For example, information from an Electric Reliability Council of Texas (ERCOT) report of projected electricity use estimates were employed to grow electric generating units (EGUs). Also, for non-electric generating units (NEGUs), factors derived from the Texas Industrial Production Index (TIPI) were used, which is more current. If TIPI 2-digit SIC factors were unavailable, Economic Growth Analysis System (EGAS) 4.0 growth factors were used. This combination of resources provide for the most accurate estimates for industry growth.

Furthermore, Appendix B of the 5 Percent IOP SIP clearly indicates that growth for onroad mobile sources have been accounted for. The predicted Vehicle Miles Traveled (VMT) for 2007 is clearly much larger than the VMT for 2002.

Public Citizens’ Office, Dallas Sierra Club, and multiple commenters stated the commission overlooks the pending permit application for the proposed power plant located near Waco.

While the commission may not explicitly include emissions from pending applications, several accepted methodologies and information for growth of electric generating units (EGUs) were used. When permits are granted, those emissions are included in analysis and photochemical modeling. In addition, electric generation capacity growth in Texas has come primarily from new, cleaner, more efficient EGUs, typically natural gas fired combined cycle plants.

The commission also uses information provided by the ERCOT report of projected electricity use estimates that in Texas, demand will be 75 percent of capacity in 2007 (Reference: ERCOT, The Texas Connection report, “Report on Existing and Potential Electric System Constraints and Needs Within the ERCOT Region,” October 1, 2003). To account for growth in EGU emissions, the commission added to the 2007 future case EI, 75 percent of the permit allowable emissions from EGUs that were not in the 2002 base case, but that had received new source review permits prior to April 2004. This approach is more realistic and reasonable because it does not account for the decrease in emissions from less efficient existing EGUs that the new generation will displace. Also, this approach assumes that all newly-permitted EGUs will ultimately be built and operated. This approach is more realistic and reasonable than assuming that all new EGUs will be operating at 100 percent of their permitted allowables while existing EGUs are operating at 2002 levels.

The EPA commented that for the Alcoa, Milam County NO_x reductions, the commission should clarify

that the reductions claimed are in excess of those required by the enforcement action resulting from the consent decree.

The emission reductions claimed in this 5 Percent IOP SIP are not in excess of the those required by the federal consent decree. The commission understands that these emission reductions are creditable. The EPA “Guidance on 5 percent increment of progress” dated August 2004 that “any measures that are not part of the EPA approved SIP prior to June 5, 2004 are creditable.” The emissions reductions that will result from the consent decree have not been previously included in the DFW SIP and therefore are creditable.

Environmental Defense, Marc Chytilo, and Downwinders at Risk stated the emissions estimates needed to be adjusted to account for growth. Several commenters stated that the plan underestimates future pollution. Marc Chytilo and several individuals stated there is evidence that the DFW emissions inventory is in fact growing, and thus that the ROP emissions reductions requirements are not being met. Marc Chytilo stated EPA’s National Emissions Inventory indicates that the DFW region remains substantially out of compliance with past ROP requirements, and thus the 2002 baseline for the 5 Percent IOP plan is inaccurate.

Base Year and Future Year emissions inventories (EIs) were developed for the DFW SIP. The Future Year EI was developed using methodologies approved by EPA and reflects those emission sources that have grown. The required reductions to meet attainment will be taken from the grown Future year EI and not the Base Year EI. Therefore an attainment demonstration will incorporate estimated growth of emissions.

The 5 Percent IOP follows the guidance set forth in the August 2004, document from EPA. Furthermore, the commission uses sophisticated methodologies for growth as explained in the SIP proposal. For example, information from an Electric Reliability Council of Texas (ERCOT) report of projected electricity use estimates were employed to grow electric generating units (EGUs). Also, for non-electric generating units (NEGUs), factors derived from the Texas Industrial Production Index (TIPI) were used, which is more current. If TIPI 2-digit SIC factors were unavailable, Economic Growth Analysis System (EGAS) 4.0 growth factors were used. This combination of resources provide for the most accurate estimates for industry growth.

Currently, there is no 2002 ROP requirement for DFW. The 2002 5 Percent IOP SIP baseline inventory was developed consistent with all EPA requirements. The commission did submit updates to the 2002 NEI in accordance with the requirements of the federal Consolidated Emissions Reporting Rule (CERR). The TCEQ develops inventories for use in attainment and ROP SIPs consistent with EPA guidance on inventory development. The comment does not provide specific evidence that the NEI indicates that the DFW area is out of compliance with past ROP commitments.

Marc Chytilo stated the FCAA required immediate implementation of all contingency measures upon failure of an area to make reasonable further progress or attain. Implementation of the DFW contingency measures will affect the 2002 baseline, and may not be credited toward the 5 Percent IOP.

The 5 Percent IOP SIP was developed and is being submitted to EPA to satisfy requirements of the 8-hour ozone NAAQS rule. The 2002 5 Percent IOP SIP baseline inventory was developed consistent with EPA guidance on implementing the 8-hour ozone NAAQS rule. Any 1-hour ozone

contingency measures that were implemented prior to 2002 were included in the inventory development. Controls that were already part of an adopted SIP were not included in the calculation of the 5 percent reductions.

Marc Chytilo said the emissions inventory is not properly presented for inclusion into the SIP. The State's procedures have failed to ensure public participation or provide adequate opportunities to participate in review of the emissions inventory. 40 C.F.R. § 51.102(e). 40 C.F.R. § 51.102(g)(2)(I) & (ii).

The commission does not agree with this comment. The emissions inventory was included with the proposed 5 Percent IOP plan, and available for public review and comment. The commission held public hearings on January 3, 2005, in Arlington, on January 4, 2005, in Austin, and on January 5, 2005, in Houston to receive public comment.

CEMENT KILNS

Blue Skies Alliance, Downwinders at Risk, Public Citizens' Office, and multiple individuals said that the commission consistently fails to address the pollution problems coming from the Midlothian cement kiln plants.

The commission disagrees that it has failed to address cement kilns. The emissions associated with these facilities are accounted for in the emissions inventory portion of the DFW 5 Percent IOP; and there is an existing EPA approved state control measure that addresses required emission reductions from cement kilns.

Several commenters said that if the request by the cement kilns in Ellis County to increase their NO_x and VOC emissions are granted, it will completely erase any reduction realized by the Alcoa shutdown. Multiple individuals asked the state to make specific resolutions regarding the Midlothian cement kilns. Multiple commenters ask the commission to enforce stricter emission requirements for the cement plants in Midlothian. One commenter suggested the commission needs to aggressively pursue actions such as mandates for emissions reductions from industrial sources, especially Ellis County cement kilns.

The commission addresses increases in emissions during the SIP development process. The commission uses sophisticated methodologies for growth as explained in the SIP proposal. For example, information from an Electric Reliability Council of Texas (ERCOT) report of projected electricity use estimates were employed to grow electric generating units (EGUs). Also, for non-electric generating units (NEGUs), factors derived from the Texas Industrial Production Index (TIPI) were used, which is more current. If TIPI 2-digit SIC factors were unavailable, Economic Growth Analysis System (EGAS) 4.0 growth factors were used. This combination of resources provide for the most accurate estimates for industry growth.

For attainment demonstration SIP revisions, photochemical modeling analysis is utilized to determine whether reductions from specific source categories will affect predicted ozone formation in a nonattainment area. Permitted growth in future case modeling, will be included as part of the 8-hour ozone attainment demonstration. Also, as part of development of an 8-hour ozone attainment demonstration, the TCEQ will evaluate control strategies that are appropriate and necessary.

GENERAL

One commenter wrote “And for God’s sake do something about the airborne mercury emissions.”

The commission has no evidence that mercury emissions are problematic in the DFW area. As of 2004, no surface water segments are impaired for mercury in the immediate DFW area and mercury emissions reported by major sources in the 9-county DFW area total 0.3659 tpy. The DFW 5 Percent IOP SIP revision addresses ozone, not other hazardous air pollutants such as mercury, which is beyond the scope of the 5 Percent IOP SIP.

The commission received a suggestion from one individual to reference a book written by Amory Lovins, Winning the Oil Endgame for other measures that can be taken. The commenter also suggests commission staff attend one of the author’s speaking events in Dallas and/or Houston.

The commission appreciates the suggestion to review the work of Amory Lovins as a possible source for some solutions to the DFW area air quality challenges. Amory Lovins suggests that the transition beyond oil will be led by business and will be innovation-driven without mandates. The commission supports and encourages any measures taken by local businesses and other entities that will contribute to the improvement of air quality in the DFW area. Additionally, the 2010 attainment date makes it highly unlikely that significant amounts of alternative fuel will be available.

One commenter strongly encourages the State to mandate a biodiesel blend of 20 percent in every gallon of diesel sold in the state of Texas. This alone will reduce NO_x emissions by 24,000 tons per year.

The use of biodiesel in compression-ignition engines is known to increase NO_x emissions by at least 10 percent for B100 and by up to 2 percent with B20 blends. This increase in NO_x emissions is acknowledged by the EPA, CARB, and the National Biodiesel Board. In fact, because of the known increase in NO_x emissions, the Engine Manufacturers Association (EMA) does not recommend the use of B100 or biodiesel blends as a means to improve air quality in ozone nonattainment areas. Furthermore, the commission has information that in some cases the use of biodiesel can void manufacturer warranties. The commission disagrees that mandating biodiesel at this time would be beneficial for air quality in the DFW nonattainment area.

Esperanza Peace and Justice Center asks the State not to allow a PGA golf course to be built over the aquifer in San Antonio.

This SIP submittal is dedicated to the air quality in the DFW area and does not address water quality in San Antonio. This comment is beyond the scope of this 5 Percent IOP SIP revision.

One commenter asks the State to address the air quality of Big Bend National Park.

The commission appreciates the comment, and notes that the emissions reductions achieved by the DFW 5 Percent IOP SIP revision may help improve the air quality in Texas generally, in addition to improving air quality in the DFW nonattainment area. EPA’s regional haze rule is designed to enhance and protect visibility at large national parks and wilderness areas; and is expected to become final in the Spring/Summer of 2005. The final rule is expected to require states to submit SIPs to address regional haze. The TCEQ will follow EPA’s guidance and develop and submit a regional haze SIP to EPA if required.

One commenter referenced a report issued by the United States Environmental Protection Agency identifies the regions where the pollution that blows into Big Bend is formed. This report suggests that Texas sources are significant contributors to the Big Bend's haze. The commenter suggests that pollution cuts from Texas' coal-fired power plants should be required as a first step.

The commission disagrees. The Big Bend Regional Aerosol and Visibility Observational Study (BRAVO) final report stated that on the days with the 20 percent worst days for visibility, sulfate particulates were responsible for over half of visibility impairment. The percentage of sulfate particulates attributed to the Texas source region was half of the sulfate particulates attributed to the eastern United States sources (11 percent vs. 22 percent). The Texas contribution was smaller than anticipated when the BRAVO study began. The models used in the BRAVO study frequently over-predicted sulfates to as much as double the observed concentrations, and performance standards for particulate models are not yet established. Given the uncertainty in present model predictions, the extent to which sulfate emissions need to be reduced is also uncertain, and progress towards a comprehensive solution should involve all contributing source regions.

One commenter asks the commission to develop a longer-term action plan that addresses both U.S. and Mexico sources. This plan should include increased use of renewable energy and a requirement that only the most advanced coal combustion technology be used for any new coal-fired plants in the State. One commenter stated the State should have bilateral discussions with Mexico to reduce the pollution from major SO₂ sources in Northeast Mexico as well as the impact of the annual agricultural fires set to clear field each Spring.

The commission appreciates this comment, and continues to participate in federal-level efforts, such as the Clean Air Interstate Rule (CAIR) rule, to help improve the air quality in the United States. In addition, the commission maintains an active role in inventory development with Northern Mexico. The commission agrees that cooperation between Texas and its neighbors will play a critical role in improving air quality in Texas, especially as transport issues continue to be studied and understood. The emissions reductions achieved by the DFW 5 Percent IOP SIP may help improve the air quality statewide, as well as improving air quality in the DFW nonattainment area.

Environmental Defense stated the commission should work with the Governor's office to urge EPA to immediately finalize the adoption of the proposed Clean Air Interstate Rule, which, when implemented, will result in lower background ozone levels entering the DFW nonattainment area.

The commission submitted comments to EPA in support of the CAIR rule during the comment period. The CAIR rule was finalized by the EPA on March 10, 2005, and became effective upon its signing.

MOBILE SOURCES/TRANSPORTATION/MVEB

The Regional Transportation Council for the North Central Texas Council of Governments commented on the importance of establishing the MVEBs for North Central Texas, and receiving EPA's adequacy determination of the MVEBs by June 1, 2005.

The commission recognizes the import of the timing in this matter. In order to avoid a conformity lapse, the TCEQ requested parallel processing for the MVEBs contained in the 5 Percent IOP SIP revision in a January 28, 2005, letter to the EPA. The commission received a letter from the EPA on this matter on February 8, 2005. The letter states:

“On January 20, 2005, the EPA posted the availability of the Motor Vehicle Emission Budgets (MVEBs) from the proposed DFW 5% Increment-of-Progress SIP on our [the EPA’s] agency’s website. This is necessary per the budget adequacy review process. The 30-day public comment period is scheduled to close on February 22, 2005. We will review any comments received and will be prepared to take action on the adequacy of these MVEBs in parallel with TCEQ adoption of the SIP.”

The commission received comment that little has been done to address mobile sources (other than emissions testing) and industrial sources.

The commission disagrees with this statement. TERP is projected to achieve 22.2 tons of NO_x reductions per day, a significant portion of the required reductions in the 5 Percent IOP control program. Additional on-road strategies in place in the North Central Texas but not credited in the 5 Percent IOP list of control measures include: vehicle inspection and maintenance program, Federal Reformulated Gasoline, Texas Low Emission Diesel, Federal Motor Vehicle Control Program (Tier 1, Tier 2/Low sulfur, Federal heavy duty engine and vehicle standards, and Federal Low Emission Diesel), the AirCheck Texas Repair and Replacement Assistance Program, Clean Vehicle/Loaner Program, Freeway Incident management Training Program, Expanded Thoroughfare Assessment Program, bottleneck improvements, School Bus Program, Clean Vehicle Purchase Incentives, and Public Education Program, to name a few.

In addition, the Regional Transportation Council (RTC) has set aside \$10 million for regional air quality programs in North Central Texas. Currently, half of the \$10 million has been earmarked to develop innovative air quality solutions. Once re-authorization of the transportation bill is signed by the President, an estimated \$300 million would flow to the region through Congestion Mitigation/Air Quality funds, providing additional reduction measures.

Furthermore, other mobile source controls are already in place in the area, including the following Transportation Control Measures and Voluntary Mobile Emission Reduction Measures: 777 locations with intersection improvements; 833 miles of bicycle-pedestrian facilities; 103 miles of High-Occupancy-Vehicle lanes; 117 miles of rail; 28 locations with grade separations; 7,800 Park-and-Ride spaces; 270 vehicles in vanpool programs; a regional Intelligent Transportation System; 2,800 vehicles in the Clean Vehicle program; a regional sustainable development program; a regional employer trip-reduction program; 2,500 vehicles per year repaired or retired; and a regional public education-Ozone Fare Reduction program. In addition to these measures, the area has identified measures that can be implemented should any of these measures discontinue.

One commenter said the commission needs to increase emphasis on light rail commuter services instead of building toll roads. Another commenter stated that there is inadequate mass transit. One individual suggests that the commission invest in alternative forms of transportation, and renewable energy, to cut pollution and reduce the amount of time citizens spend sitting in traffic, adding to the pollution problem.

The commission is responsible for calculating the emissions that will be produced by the vehicle activity on the current and projected transportation systems and assuring that the future emission levels will allow the state to demonstrate compliance with the Clean Air Act requirements. The commission, as the State’s environmental agency, defers to the Texas Department of

Transportation (TxDOT) for all transportation planning activities. TxDOT works closely with metropolitan planning organizations (MPO) to develop regional transportation plans. The North Central Texas Council of Governments (NCTCOG), as the MPO works closely with Dallas Area Rapid Transit (DART), Denton County Transportation Authority (DCTA), and the Fort Worth Transportation Authority (FWTA) to provide planning and implementation of passenger rail services throughout the region.

The NCTCOG and its Regional Transportation Council (RTC), in partnership with DART, Denton County Transportation Authority (DCTA), and the FWTA completed work on a comprehensive Regional Rail corridor Study (RRCS) in August 2004. The Study, which began in May 2002, focused on nine passenger rail corridors throughout the DFW Metropolitan Area, as identified in the Mobility 2025: The Metropolitan Transportation Plan, 2004 Update.

The information outlined from this study was presented at the Regional Transit Summit in August, 2004. Nearly 300 elected and appointed officials unanimously embraced a statement of principles for seamless public transit in North Central Texas, complete with a local financing plan and governance structure. Their unanimous approval included a \$3.5 billion, 260-mile regional rail blueprint that will require an increase in the sales tax by half a percentage point. Over the course of the study, hundreds of local leaders met more than 70 times to discuss how to create seamless public transit for Dallas, Collin, Denton, Ellis, Johnson, and Tarrant Counties. The regional leaders participating in the Summit endorsed the conclusions and recommendations of the Regional Transit Initiative (RTI) process by adopting a statement of principles.

The Statement of Principles calls for a new Regional Rail Authority, funded through additional sales tax capacity and allowing for a region-wide local option election. The next steps leading to implementation of regional rail service include further refinement of the details of such a regional rail authority, gathering support for necessary state legislative change, and developing the organizational structure to plan and implement the new Regional Rail Authority system.

One commenter stated the commission needs to force employers to look at car pooling to reduce the number of cars on the roads.

Emission reductions from Transportation Control Measures and the Voluntary Mobile Emission Reduction Measure Program are in place and included in the SIP. Examples of such measures being implemented in the region include: 7,800 Park-and-Ride spaces; 270 vehicles in vanpool programs; and regional employer trip reduction measures.

One commenter suggested the commission limit the amount of new freeways, tollways, and urban sprawl.

Congressional intent clearly indicates that transportation planning in urban areas is the purview of regional Metropolitan Planning Organizations. For example, urban regions must forecast and have a 20-year transportation plan in place, or face consequences. Furthermore, through the Clean Air Act, Congress requires that emissions from such transportation plans must be consistent with the air quality emission limits included in the SIP. This is enforced through the Transportation Conformity regulation. Information on transportation conformity requirements is available at both the EPA and Federal Highway Administration web sites. Information about the transportation conformity process in the DFW area is available at the North Central Texas Council of Governments transportation department.

One commenter is in favor of lowering the maximum speed limit on the interstates to about 50 mph.

The Texas Legislature enacted a law that prohibits the Texas Department of Transportation from setting a speed limit for environmental purposes. The Legislation allows currently posted environmental speed limits to remain in effect. In this regard, the DFW area has in place a 5 mph speed limit reduction for environmental purposes. This limit was allowed to remain in effect, but under state law, no further reduction is allowed for environmental purposes. Current law allows speed limits to be set based on design and safety standards alone.

Marc Chytilo stated State inaction threatens to limit the flexibility of the State and local governments to program and spend transportation dollars.

The commission works with all Texas onroad mobile source stakeholders to assure that air quality planning activities inside Texas are coordinated with transportation planning agencies. Regular and effective coordination with the local Metropolitan Planning Agencies, the Texas Department of Transportation, the Federal Highway Administration and the U.S. EPA Region 6 is conducted to assure that air quality planning and transportation planning schedules are coordinated. In addition to meetings and teleconferences for specific issues on an as needed basis, the TCEQ participates in three onroad mobile source coordination activities: the Technical Work Group (every three months to discuss onroad mobile technical issues, schedules, and methodologies), the SIP Work Group (every month to discuss onroad mobile SIP issues including critical schedule issues), and the Conformity Consultation Committee (as needed to coordinate transportation conformity issues, including critical transportation conformity schedule issues). Since the EPA has classified nine North Central Texas counties as nonattainment for the 8-hour ozone standard, under transportation conformity rules a Transportation Conformity Determination (TCD) is federally required within one year of designation. In order to establish updated MVEBs in time to meet the TCD schedule, the commission selected the 5 Percent Increment of Progress option of the 8-hour Ozone Nonattainment Rule, which will establish MVEBs on a schedule consistent with the transportation conformity schedule. The commission is committed to taking the necessary steps to ensure that programming and implementation of transportation projects continue.

ECONOMIC IMPACTS

The commission received comment that the economy of the Metroplex suffers as a result of bad air. Several commenters expressed concern over the negative economic impacts of bad air.

The commission agrees that the DFW regional economy may be negatively impacted because the area does not meet federal air quality standards for ozone. The commission is working with local and federal partners to protect the health and safety of Texans living in the DFW area, while maintaining the area's economic well being.

One commenter said that productivity is impacted by the lack of air quality.

Section 1.2 of the proposed SIP revisions discusses the health effects of ozone pollution. The EPA issued the 8-hour ozone NAAQS in 1997 based on the latest health science information that indicated that the 1-hour ozone standard was inadequate for protecting public health. Ozone can affect human health at levels lower than the 1-hour ozone standard and over exposure times longer than 1-hour. The 8-hour ozone standard addresses these limitations and will provide improved protection for public health. Steps to improve air quality in the DFW area and ultimately achieving

attainment of the 8-hour ozone standard will reduce the likelihood of all health effects from ozone, thereby maintaining productivity.

Several commenters stated that new businesses and residents are turned off the DFW region because of the smog.

The commission agrees that some businesses and individuals may choose not to locate to an area in violation for federal air quality standards. The proposed SIP revision represents a step towards demonstrating attainment of federal ozone standards for the DFW area.