

**Response to Public Comments
on the Protocol for Notification
and Work Group Functions for
Evaluating Potential and Active
Air Pollutant Watch List
(APWL) Areas**

February 2012

Background

The Texas Commission on Environmental Quality (TCEQ) accepted public comments on the Protocol for Notification and Work Group Functions for Evaluating Potential and Active Air Pollutant Watch List (APWL) Areas (protocol). The TCEQ accepted comments on the draft protocol from November 23, 2010, to January 24, 2011.

Commenters

The TCEQ received comment letters from Texas Chemical Council (TCC), TPC Group (TPC), the Texas City La Marque Air Monitoring Network (TCLM), and Air Alliance Houston/Environmental Defense Fund (AAH).

Responses to Comments

Comment 1

AAH requested that the TCEQ strengthen the APWL program by adopting the protocol into rule, expressing concern that the failure to adopt the APWL protocol as a rule will reduce the effectiveness of the program. AAH further stated that, without a legislative or rulemaking action, the APWL serves only as a weak substitute for any meaningful action that may help remediate APWL areas. AAH provided a detailed example of testimony given by an industry organization and stated that the TCEQ should conduct formal rulemaking if it wished to implement the APWL process. In addition, AAH commented that an APWL rule would provide the best middle ground for implementation, in that it would be less rigid than a statute, yet firmer than mere agency program or directive. Finally, AAH commented that implanting the APWL as a TCEQ rule with a public participation phase is the only completely transparent means of implementing the program.

Response 1

The TCEQ appreciates AAH's concern that adopting the APWL protocol as a TCEQ rule may be an appropriate "middle ground" for implementation, but makes no changes to the protocol in response to this comment. The TCEQ is establishing the APWL protocol in accordance with House Bill (HB) 1981, passed by the 82nd Texas Legislature in its 2011 Regular Session. HB 1981 requires that that TCEQ establish and maintain an air pollutant watch list that identifies air contaminants and geographic areas where short- or long-term adverse health effects or odors may occur. Moreover, HB 1981 requires the TCEQ to post public notice of and receive comment on changes related to the addition or removal of an air contaminant or geographic area on the list, as well as the discretion to hold public meetings in an area on the list. The legislature also mandated in HB 1981 that the air pollutant watch list as contemplated not be subject to Texas Government

Code, Subchapter B, Chapter 2001, Administrative Procedure, which in certain circumstances requires the TCEQ to initiate formal rulemaking. The TCEQ is using the final APWL protocol to implement HB 1981 and the APWL process.

Comment 2

AAH commented that the current protocol fails to provide for the possibility of remediation efforts for untraditional APWL areas, such as those that may exist as a result of oil and gas operations or other activities where operations may not be permitted through the same mechanisms as would a typical facility.

Response 2

The purpose of the APWL is to address areas of the state with elevated ambient concentrations of air toxics. In order to accomplish the goals of the APWL, the TCEQ uses monitoring data to determine whether areas are listed on the APWL. The permit mechanisms used to authorize facilities would not restrict the TCEQ's ability to identify an APWL area and address concentrations above levels of concern. To date, the TCEQ has not identified an oil and gas exploration area to be listed on the APWL, based on current monitoring information. The TCEQ makes no changes to the protocol in response to this comment.

Comment 3

AAH commented that the protocol offers no distinction regarding APWL areas that exceed Air Monitoring Comparison Values (AMCVs) versus those that exceed concentrations of individual pollutants for which an enforceable standard exists. For example, hydrogen sulfide is a pollutant for which the state has adopted state standards that are legally enforceable health-based limits. AAH asked if the agency intends to handle APWL pollutants such as hydrogen sulfide differently from pollutants for which there is only an AMCV. AAH also commented that the APWL should codify the standards and/or guidelines to which it will compare ambient levels for possible initiation of APWL designation.

Response 3

In response to this comment, the TCEQ revised the background section of the protocol to specify that the TCEQ will establish APWL areas where ambient monitoring indicates persistent concentrations above state standards or AMCVs. The TCEQ will identify areas of concern, in accordance with the protocol, by comparing monitored concentrations to ambient air toxic standards, where available; otherwise, the TCEQ will compare monitored concentrations to the AMCVs established by the TCEQ's Toxicology Division (TD). The TCEQ has established state ambient air standards for two air toxics: sulfur dioxide and hydrogen sulfide. Because these standards exist, the TCEQ has not established AMCVs for these two air toxics. The TCEQ will use AMCVs to evaluate monitored concentrations of all other air toxics. The TD establishes and maintains AMCVs through its "[Guidelines to Develop Effects Screening Levels, Reference Values, and Unit Risk Factors](#)" (RG 442). The TCEQ makes no changes to codify its AMCVs into

the APWL protocol in response to this comment. More information about [AMCVs](#) is available on the TCEQ Web site.

Comment 4

AAH commented that administrative penalties in APWL areas should be increased.

Response 4

The TCEQ makes no changes to the protocol in response to this comment, as the draft protocol addressed penalties in APWL areas. Appendix 3, *Functional Roles in Work Groups*, specifies that the Enforcement Division will use discretion to assess appropriate penalties to discourage releases of APWL pollutants and to ensure that owners and operators achieve compliance for violations in a timely manner.

Comment 5

AAH commented that the mission of the APWL program lacks robustness and that mitigating health risks inherent to living within an APWL area is not reflected within the current mission of the program.

Response 5

The TCEQ did not revise the protocol to specifically tailor the mission statement to residents that live within an APWL area because APWL boundaries are generally established to encompass companies that are encouraged to reduce emissions (i.e., those that may be contributing to elevated ambient concentrations), not to delineate or identify neighborhoods that are impacted by elevated concentrations.

Comment 6

TPC recommended that the intention of the work process outlined in the vision and mission section of the APWL protocol be clarified. Specifically, TPC commented that the section should include the identification of contributing emissions sources in actual or potential APWL areas that would drive timely and effective emissions reductions and that the TCEQ manage the overall process with appropriate stakeholder input from both within and outside the agency. These efforts would then achieve the end objective of reducing ambient air concentrations of pollutants of concern to levels below thresholds of concern. TPC further commented that greater specificity and clarity on those points can serve as the overall guiding focus for the agency for those inevitable situations where the guidance may need to be modified to address unique aspects of a given actual or potential APWL area. TCLM commented that the program vision statement specify that information is both shared with and received from internal and external customers, emphasizing the need for enhanced communication with stakeholders in the specific wording of the vision statement. AAH suggested a revision to the mission statement to state, "To reduce levels of air toxics in APWL areas as expeditiously as practical to ensure healthy air quality for all residents within such areas by providing mechanisms for TCEQ program involvement into site-specific APWL decisions, including

communication to internal and external stakeholders and determination of strategic actions in pursuit of air quality improvements.”

Response 6

The TCEQ revised the mission statement in response to these comments to more clearly state the objectives to reduce ambient air toxic concentrations below the applicable levels of concern in APWL areas as quickly as possible, to identify potential contributing sources in specific APWL areas, to develop strategic actions to obtain timely and effective emission reductions from identified contributing sources, and to provide mechanisms for involving TCEQ programs and stakeholders in the APWL process. The protocol was proposed with the vision of improving air quality to reduce ambient levels of the pollutants of concern. The revisions clarify that the ultimate goal of the APWL is to reduce ambient concentrations of air toxics to levels that are no longer of potential concern, while focusing on the need for internal TCEQ and external stakeholder involvement.

The TCEQ developed the protocol to provide a clear structure for listing and delisting procedures and also provide the flexibility to address unique situations associated with individual APWL areas. The TCEQ will follow the protocol to every extent possible.

Comment 7

AAH commented that the APWL Coordinator and staff from the TCEQ Regional Office should hold an annual meeting within each APWL area to communicate the past year’s toxic levels, explain initiatives undertaken in the past year to reduce those levels, and explain upcoming initiatives to continue to reduce toxic levels. AAH stated that it is vital for the TCEQ to meet citizens in their local areas in order to explain, interact, and take questions and concerns from the public. AAH further stated that annual meetings would help improve awareness of the local community, would allow the community to provide useful insights, and would provide incentive for TCEQ staff to maintain their commitment to reducing levels of toxic pollutants over multi-year campaigns.

Response 7

The TCEQ agrees that public meetings are beneficial. Given resource constraints, the TCEQ cannot commit to holding a mandatory public meeting each year in each APWL area at this time. The APWL Coordinator will plan public meetings, giving appropriate consideration to the level of activity in each requisite APWL area. The TCEQ makes no changes to the protocol in response to this comment.

Comment 8

AAH expressed its concern regarding the statement that all necessary revisions to the APWL protocol or Work Group functions are approved by all affected Directors on page 5 of the draft protocol, because it seems to indicate that the protocol may be subject to significant change without the opportunity for the public to provide comment on such changes.

Response 8

Page 5 of the protocol states that the TCEQ will provide an opportunity for public comment on any significant changes to the protocol; therefore, in response to this comment, the TCEQ has deleted the statement identified by the commenter.

Comment 9

AAH commented that the protocol should explicitly state the need to secure additional help from authorities outside of the state when the APWL is located on or near an internal or external border.

Response 9

The TCEQ revised the protocol in response to this comment by clarifying the section entitled, “APWL Work Groups,” stating that the Intergovernmental Relations Division (IGR) will coordinate issues relating to the U.S. and Mexico border. Additionally, the TCEQ revised Appendix 2, *Program-Specific Procedures*, to clarify that the APWL Coordinator will assess the need to secure additional help for areas located near an international or state border.

Comment 10

AAH commented that the responsibilities of the Work Groups should include a public health component for areas that have been subject to increased risk from the hazards of exposure to air pollutants, such as notification and involvement of state, county, and local public health departments and school districts, for awareness and possible coordinated deployment of any relevant assets.

Response 10

The TCEQ will engage stakeholders and inform them of potential health concerns by developing and implementing the Communications Plan for each APWL area. In response to this comment, the TCEQ revised the *Communications Plan Guidelines*, now in Appendix 6. The guidelines now more clearly state the TCEQ’s goals to communicate any potential health concern, the monitoring information used to make such determination, how the APWL is used to reduce ambient concentrations below a level of potential concern, and to receive input from stakeholders. This revised Communications Plan provides the APWL Coordinator with the framework for stakeholder notification and participation. The APWL Coordinator and Work Group will determine which stakeholders should be notified for each individual APWL action.

Comment 11

TPC expressed concern that, while significant detail in the document ensures a high level of transparency, it could also result in situations where a strict application of the protocol would disregard the unique needs of certain areas. TPC is concerned about the need to conform activities to the written process regardless of impact on the speed or effectiveness of actual emissions reductions towards the end objective of bringing air

pollutant concentrations to below acceptable threshold levels. TPC recommended that the TCEQ remove excessive detail that may not fit all situations or reword the protocol to give latitude to the agency to adjust the protocol to fit special situations as necessary. TPC also recommended that the TCEQ add a paragraph at the beginning or the end of the protocol stating that the uniqueness of any given situation may dictate that steps may be added, deleted, or modified as appropriate to facilitate achieving timely and effective emissions reductions.

Response 11

The TCEQ is clarifying that the TCEQ will follow the guidance on the steps in the protocol and will assess each situation to facilitate achieving timely and effective emissions reductions in the portion of the protocol entitled, “Vision and Mission of the APWL.”

Comment 12

TCLM commented that the word “delisted” be added to the language in the portion of the introduction entitled, “Background,” thus specifying that the protocol elaborates on the APWL process, including how areas become listed and delisted.

Response 12

The TCEQ is changing the protocol in response to this comment, as the protocol outlines all processes involved in the APWL from initial observations of ambient monitoring data to delisting of an APWL area.

Comment 13

TPC expressed its support of the yearly internal TCEQ evaluation of the APWL protocol and its effectiveness and recommended that input from the regulated community and other external stakeholders be accepted during this evaluation. TPC further noted that the regulated community, in particular, may have suggestions from its viewpoint close to the process that can enhance the overall effectiveness of the protocol.

Response 13

The TCEQ is revising the background portion of the protocol to encourage members of the regulated community or other stakeholders to submit suggestions for improving the APWL protocol at any time in the future by emailing the APWL Coordinator. Comments from external entities could result in a TCEQ evaluation of the process. The introduction of the protocol expresses that the APWL is an evolving process, and the TCEQ highly encourages entities to provide feedback based on their experiences. The APWL Coordinator will continue to meet with TCEQ staff on a regular basis to evaluate the APWL protocol. As specified in the introduction of the protocol, the TCEQ will accept public comment on any significant changes to the protocol, allowing an opportunity for external entities to participate in the process.

Comment 14

Several commenters suggested that the potential sources in proposed APWL areas should be brought into the APWL process at the earliest time possible prior to an area's listing on the APWL to allow the sources the opportunity to address the elevated concentrations before an area is listed on the APWL. TCC commented that the potential sources within proposed APWL areas should be brought into the process at the earliest possible time. TCLM commented that the TCEQ should engage the affected regulated community early in the process to reduce the measured concentration of a pollutant of concern and that industry should be provided information as early as possible in the process in order to understand the data and put together a solution. TCLM further noted that the regulated community plays a key role in identifying and implementing strategies that could achieve reductions prior to listing. TCC pointed out that, if the overall goal is to identify the problems and resolve them as soon as possible, the potential sources within the areas of concern should be notified as soon as the TD observes elevated monitored concentrations of a pollutant. TCC goes on to comment that alerting and engaging the sources that there is a possible concern during the preliminary evaluation of a potential APWL area could ultimately lead to the creation of fewer APWL areas. Further, TCC specifically commented that the TCEQ should canvass for as much validated monitoring data as possible, even data that is not TCEQ-sponsored, to help develop boundaries and strategies in the overall process to list or delist an APWL area.

TCC also specifically requested clarification of who is contacted during the initial investigation in the APWL process. Similarly, TCC commented that it disagrees with the approach outlined in Step J, which appears to specify that first notification to companies occurs prior to the implementation of short-term strategies. TCLM commented that Step J be revised to require the TCEQ to identify external stakeholders affected by the potential APWL listing of a pollutant of concern, communicate the findings of the boundary evaluation to the regulated community, and establish an internal/external work group to identify and implement short-term strategies that could achieve reductions prior to an APWL listing.

TPC also expressed concern that the draft protocol seemed to exclude involving the actual or potential sources of the pollutant of concern until several steps into the process and that this delay in involvement results in unnecessary delay in identifying emissions reduction strategies and ultimately delaying the timing for actual reductions. TPC urged the TCEQ to involve sources as soon as they can possibly be identified. TPC further pointed out that the sources of emissions, many times, will have the best ideas on how to reduce emissions and will be in the best position to identify specific actions to undertake in a timely manner. TPC also provided an example in which TPC and other companies worked with the TCEQ to expeditiously enter into voluntary emission reduction agreements and successfully reduce 1,3-butadiene in Milby Park.

AAH asked at what point during the process are facilities notified. AAH recommended that industry groups, such as the East Harris County Manufacturers Association (EHCMA) and any relevant chambers of commerce, be notified as well as individual facilities.

Response 14

The TCEQ agrees that early stakeholder involvement is beneficial to the APWL process and revised Step B in the protocol—the second step in the process—to indicate that it may contact individual companies or other external stakeholders during the initial investigation. Although the TCEQ may not specifically canvass for industry-sponsored monitoring data, affected industries would have the opportunity to share pertinent information for the TCEQ's consideration. The TCEQ also revised Step C to clarify that it will document the information from external entities that are contacted during the initial investigation.

The TCEQ is not revising the protocol to require the formation of an internal/external work group to identify and implement short-term strategies prior to an APWL listing, as this process would be time consuming, is not short-term, and could delay the listing of an APWL area. If companies have additional information regarding short-term strategies that was not available during the initial investigation, they may provide the information during the public comment period. The TCEQ will evaluate all information before listing an area on the APWL.

The TCEQ will also notify all stakeholders identified in the Communications Plan at the beginning of the public comment period. Stakeholders would include industry groups, such as EHCMA, individual facilities, and any other group or individual identified by the Work Group.

Comment 15

TCC commented that it is important that the protocol does not preclude the efforts of local communities to formulate their own groups to accomplish the same goal of identifying and reducing pollutants of concern. TCC commented further that the efforts of individual industries should not be precluded.

Response 15

The TCEQ encourages the efforts of local groups and individual industries to make emission reductions. The protocol is not meant to be the only mechanism by which to reduce emissions in listed APWL areas. The protocol serves to enable the TCEQ to better collaborate with local groups and individual industries to address APWL concerns. The TCEQ makes no changes to the protocol in response.

Comment 16

TCC commented that it is unclear how the draft protocol will impact existing APWL areas.

Response 16

The TCEQ agrees that some procedures for existing areas were unclear and revised Step H and Appendix 5, *APWL Boundary Guidance Document*, to indicate that the APWL Coordinator will form Work Groups for existing APWL areas undergoing a boundary reevaluation and that Steps I, K, and M apply to such reevaluations. The TCEQ also

revised the title of the second page of the flowchart, starting with Step N, to clarify that these procedures apply to both new listings and boundary reevaluations.

The TCEQ also revised Step H to indicate that the APWL Coordinator will form a Work Group if an existing APWL area has achieved an appropriate amount of emission reductions and that Steps I and U apply. If the Work Group determines that the area should be removed, the APWL Coordinator will follow the Procedure for APWL Delistings, beginning with Step V in the protocol's flowchart.

Comment 17

TCC suggested that the protocol discuss the difference between effect screening levels (ESLs) and AMCVs.

Response 17

In response to this comment, the TCEQ revises the draft protocol to include a link to the TCEQ's Web site that defines the two screening values. In general, ESLs are used in predicting the impact of modeled air concentrations, and AMCVs are used for evaluating monitored air concentrations. One is based on the *estimated* impact of emissions (ESLs), and the other is based on *actual* monitored ambient air concentrations (AMCVs).

Comment 18

TCC commented that the TCEQ send the TD's and Chief Engineer's final determinations of the initial investigation (regarding whether an area should be added to the APWL) to the potential sources that were contacted during the investigation. AAH commented that the data investigation summary document should be available to the public.

Response 18

The TCEQ makes no changes in response to these comments and does not plan to provide each initial investigation summary to the public or companies that were contacted. Summaries of initial investigations will be developed to facilitate the initial communications regarding an APWL area among TCEQ staff. Additionally, the APWL Coordinator will maintain the summaries for historical tracking purposes. The APWL Coordinator is not, however, precluded from maintaining informal communication with external stakeholders. Further, external stakeholders may contact the APWL Coordinator for information at any time.

The TCEQ does provide other information on its Web site to inform the public and affected stakeholders. The TCEQ provides information to the public regarding elevated ambient air concentrations in its toxicological [health effects evaluations](#), which are posted on the TCEQ public Web site. Further, the TCEQ will publish on its Web site the boundary supplemental documentation for any area that the TCEQ proposes to add to the APWL, which will include more comprehensive information than the preliminary data investigation summary/determination document.

The TCEQ revised some of the language in Steps C, E, F, and G relating to the data investigation summary/determination document, to reduce redundancy, to specify that the documents are developed and maintained by the APWL Coordinator, and to specify that the APWL Coordinator will store the information in a database that the APWL Coordinator will maintain.

Comment 19

AAH asked whether the data investigation summary document mentioned in Step C contained the modeling data used to define the APWL and its boundaries and, if not, where and when this information is presented.

Response 19

The TCEQ uses monitoring data, which contains the actual concentrations recorded at a specific point in time, not predicted modeled concentrations, to determine which areas should be listed on the APWL. The TCEQ then compares monitored ambient concentrations to health- and odor-based AMCVs or state standards to determine if the ambient concentrations are at a level of potential concern. The TCEQ documents the information regarding elevated ambient concentrations in the data investigation summary/determination. The TCEQ makes no changes to the protocol in response to this comment.

Comment 20

TCC commented that the protocol should clarify whether short-term strategies to reduce ambient concentration of pollutants of concern are voluntary or mandatory for potential sources.

Response 20

The TCEQ makes no changes in response to this comment. Short-term strategies may include various actions. Some may be voluntary, such as permit alterations and emission reduction agreements; some may be mandatory, such as enforcement actions resulting from focused field investigations. The TCEQ will work cooperatively with affected industries that agree to voluntary measures to decrease emissions. If affected sources of pollutants of concern do not achieve emission reductions, the TCEQ will propose to include the area on the APWL.

Comment 21

TCC and TCLM commented that the TCEQ should consider whether elevated concentrations of pollutants are due to short-term emissions peaks related to maintenance or upsets prior to mandating emission reductions from all permit holders in an area.

Response 21

Upset and maintenance events are one of the many pieces of information that the TCEQ reviews when making an APWL determination. It is critical for industries to submit accurate and complete emissions events, maintenance, deviation, and compliance certification reports, as it will enable the TCEQ to make a more complete evaluation.

Comment 22

AAH requested clarification regarding Step D. Specifically, AAH asked what the trigger for action is and what the definition of a potential health concern is.

Response 22

The TCEQ revised Step A to specify that a preliminary evaluation is triggered when the TD observes persistent and/or frequent, monitored concentrations above an ambient air toxic standard or AMCV collected during a mobile monitoring event or at a stationary monitoring site. The TCEQ makes no changes to Step D. The TD must evaluate each individual set of circumstances to determine in Step D if the concentrations indicate a potential health concern.

Comment 23

AAH commented that it is unclear how Step F is derived and that action should be taken in every circumstance in which a potential health concern is identified (as noted in Step D).

Response 23

The TCEQ revised Step F to indicate that the Chief Engineer will be presented data relating to concentrations that may indicate a potential health concern. The purpose of Step F is to include the Chief Engineer in the decision making for APWL listings. This allows the Chief Engineer the opportunity to direct staff to collect more information or take other actions prior to the listing of a new APWL area.

Comment 24

TCC suggests deleting the one-month deadline in Step J for the short-term emission reduction strategy or revising the deadline to three to six months. TCC further commented that a one-month deadline is not enough time to determine in Step K whether the strategies are effective. TCC noted that some short-term strategies may involve changing operating or maintenance procedures, which can be done in a relatively short time, but that a three- to six-month minimum deadline would allow ample time to determine whether the short-term strategies have been effective. TCC commented that longer time would be needed for those cases that require a capital project to reduce emissions. TPC also expressed concern about the time allotted in Steps J and K for emissions reductions to take effect and for their effect to be measured. TPC further commented that the timing for effective emissions reductions should be considered on a case-by-case basis. TPC gave an example in which TPC made capital

investments in Milby Park and that capital investments could have a long lead time. TPC also provided an example involving the installation of an FTIR fence line monitoring system. TPC expressed that it learned from the systems over time and that it took hold gradually with continuously enhanced effectiveness over four years, during which time TPC entered into a corrective action agreement to address unintended outcomes of the fence line system before ultimately achieving its goal that was outlined in the agreement. TCLM commented that the timeframes be used as guidance; however, a decision to list a pollutant on the APWL should not be finalized without proper information and time. TCLM further commented that if the proper review has not been conducted by any group and the designated time frame has or will elapse, that does not constitute a need to arbitrarily place a pollutant on the APWL.

Response 24

The TCEQ makes no change in response to these comments. The draft protocol specifies that the appropriate time frames for implementation of short-term strategies will be determined on a case-by-case basis, and the TCEQ acknowledges that some areas may be very complex and challenging. These time frames are a guideline; however, having a goal for completion will ensure that all potentially new areas will be addressed as quickly as possible. Also, having a guideline will provide a uniform target for completion, ensuring consistent implementation of the APWL program for individual potential watch list areas.

The TCEQ acknowledges that some strategies, such as voluntary emission reduction agreements and projects involving a capital expenditure, take time to complete. The TCEQ will evaluate the emission reduction strategies identified and time frames agreed upon with companies, but will also assess whether or not emission reductions have been achieved on an appropriate time table. The TCEQ will take action to reduce emissions as quickly as possible, especially when monitored concentrations indicate a potential for increased health risk.

The TCEQ will also determine if some of the strategies are more of a long-term nature. Listing an area on the APWL would allow the TCEQ to closely monitor an area and encourage emission reductions concurrent with the implementation of long-term strategies to reduce emissions. The TCEQ will not list a new area on the APWL until the TCEQ completes its review and provides an opportunity for public comment. This does not mean that every initial short-term strategy identified to reduce emissions must be implemented prior to initiating the listing process.

Comment 25

AAH commented that Step J lacks clarity and substance with regard to short-term strategies and suggested that specific strategies be outlined and implemented in response to APWL listings, such as increasing the number of air monitors in the area or the frequency of mobile air monitoring investigations, increasing enforcement actions on facilities located in APWL areas (especially when there are state standards for specific pollutants), requiring advanced monitoring techniques (such as the IR camera, fence line monitoring, DIAL, and SOF technologies) as part of the remediation process, and reviewing all citizen complaints in any relevant databases regarding pollution

events in the area. AAH also recommends that the TCEQ communicate with county and local officials regarding recent actions or the lack thereof with respect to facilities within the APWL (such as thorough and timely notifications of pollution events to all authorities).

Response 25

In response to this comment, the TCEQ revised Step B, clarifying that the APWL Coordinator may contact county and local air pollution control agencies to obtain information on potential APWL areas, which is consistent with the current process.

The TCEQ did not revise Step J to include the suggestions for increased TCEQ monitoring efforts, since Step J already directs the APWL Coordinator and Work Group to determine the quality and quantity of additional monitoring in order to assess the cause of the elevated concentrations in a potential APWL area. The TCEQ did, however, revise Step J to provide the option for companies themselves to conduct enhanced monitoring.

The TCEQ did not revise Step J to include increasing enforcement actions because Step J already addresses this strategy.

Comment 26

TCC suggests in Step K that the TCEQ survey potential contributing sources concerning the implementation or planned implementation of emissions reduction projects. TCC commented on Step M that potential contributing sources be provided an opportunity to address any perceived shortfall in the short-term emission reduction strategies before the TCEQ starts the APWL listing process.

Response 26

The TCEQ revises Step J of the protocol and its accompanying footnote to indicate that the TCEQ will identify, notify, and collaborate with the potential sources that would have the greatest immediate impact on air quality. This will allow an opportunity for affected sources to provide input and make it clear that the TCEQ will work with companies on emission reduction projects.

Comment 27

TCC commented that the APWL is not the appropriate avenue for the modification of an existing permit and that a modification should be directed by the full commission, not the executive director. TCC further commented that permitting revisions are not a short-term strategy and should not be considered as such. TCLM also commented that the APWL process should not be the basis for permit re-openings and that re-openings should be directed by the full commission and not simply by the executive director and his staff.

Response 27

The TCEQ developed the list of short-term strategies as a guideline to provide as many avenues as possible for a company to take voluntary action to reduce emissions and avoid an area being listed on the APWL. The TCEQ acknowledges that some of the actions identified may take some time to complete. Step J provides a one-month guideline to implement short-term strategies; however, the TCEQ would strongly consider a longer time period if one or more companies are making significant progress towards implementing a short-term strategy.

The TCEQ disagrees that the APWL process is not an appropriate avenue for the modification of an existing permit. The TCEQ lists areas on the APWL when monitored concentrations of pollutants are above state standards or AMCVs. Should high levels of an air toxic be monitored in a given APWL area over a certain period of time, modifying existing permit limits in the area is an option that would ensure emission reductions are enforceable and are long-term. Not only will the TCEQ have achieved the stated goal of the APWL to reduce air toxics, but it would also provide assurance that an area is not likely to be listed on the APWL in the future. The TCEQ encourages permit modification as a voluntary option for companies.

At a permit holder's request, the executive director has the authority to revise permits to decrease allowable emission rates. Modification of permits may be exercised as either a short-term or long-term goal. Short-term examples include permit alterations. Permit alterations can be issued relatively quickly and are, therefore, an appropriate short-term strategy. Long-term examples include permit amendments, which have many procedural requirements and, as such, are a long-term strategy. In response to this comment, the TCEQ is modifying Step J to specify that that short-term strategies may include air permit alterations. The executive director's staff would not alter or amend a permit without the involvement of the permit holder, and the protocol does not specify that the TCEQ will re-open permits.

Comment 28

TCC expressed its concern about strategies being implemented before the APWL boundaries are finalized and suggested the development of a preliminary boundary.

Response 28

Developing a preliminary boundary is contrary to the goal of making the APWL process transparent and open to the public for comment. The protocol specifies that public notice will be provided before an area is listed on the APWL. Additionally, the opportunity for companies to implement short-term strategies is beneficial because it encourages emission reductions and allows companies that want to avoid an area being listed to take action. The TCEQ makes no changes in response to this comment.

Comment 29

TCC requested more information about the Communications Plan specified in Step J, including the content and target audience. TCLM asked about the content of the Communications Plan and the audience.

Response 29

The Communications Plan is a document to be developed by the APWL Coordinator, with input from the Work Group, to describe the strategy for effectively identifying and notifying all affected stakeholders in an APWL area and recording all communications that occur during the APWL process. The Communications Plan will be used solely by the APWL Coordinator. The TCEQ has changed the Communications Plan guidance, now located in Appendix 6, to more clearly state the purpose of the Communications Plan and also provided a Communications Plan example.

Comment 30

TCLM requested that the TCEQ add an opportunity for interested parties to propose a delisting or listing of certain compounds on the APWL.

Response 30

The TCEQ revised the introductory paragraph to make it clear that suggestions regarding an APWL listing or delisting may be forwarded to the APWL Coordinator at any time.

Comment 31

TCLM commented that public participation is very important; however, the listing and delisting of an APWL area should be driven by scientific and observed data. TCLM further stated that if data shows that a chemical should be delisted, then the agency should take the proper steps to remove the chemical. TCLM further commented that a chemical should not remain on the APWL just because of public comments.

Response 31

The TCEQ makes no changes to the protocol in response to this comment. The TCEQ developed the protocol to revise the APWL based, primarily, on reductions in monitored ambient concentrations; however, the TCEQ must consider all information that is presented during the public comment period.

Comment 32

TCC commented that it is unclear in Step Q which entity makes the final determination on whether to adopt a proposed addition to the APWL and whether there will be a public forum at which the decision is made or announced. TCLM asked if there is an opportunity to appeal the decision by the Chief Engineer and Executive Director to list or delist an APWL area.

Response 32

The TCEQ makes no changes to the protocol in response to these comments. The protocol provides an opportunity for public comment on all proposed APWL revisions. This gives an opportunity for an entity to oppose the action to list or delist an area on the APWL; however, Steps Q and Y specify that the final decision to list or delist an APWL area is made by the Chief Engineer and executive management. Although the Chief Engineer may consult with executive management (such as the TCEQ's Executive Director or Deputy Executive Director) in making the decision, an item for an APWL revision will not be considered at a formal Commission Agenda or Commissioner's Work Session. Instead, the APWL Coordinator will finalize the listing and notify internal and external stakeholders. The protocol provides no opportunity to appeal the decision to list or delist an APWL area. The TCEQ does change the wording in Step Q in the flowchart to be consistent to that of Step Y, as the procedures are the same.

Comment 33

TCC recommended changing the word "industry" in Step P and Step X to the term "potential sources" to include all potential sources that might provide data during the public comment process.

Response 33

The TCEQ changes the word "industry" in Step P and Step X to "potential sources," in response to this comment.

Comment 34

AAH asked what conditions would warrant the situation in which an area could exceed an AMCV but not be listed as an APWL, as is implied by Step R. AAH further commented that any consecutive 12-month exceedance of a long-term AMCV or three exceedances of a short-term AMCV in the course of any consecutive 12 months should warrant the evaluation of the area as an APWL.

Response 34

The TCEQ is not revising the protocol in response to this comment. The Chief Engineer will make the final decision on an APWL listing based on the recommendation from the APWL Coordinator and the Work Group, after the public participation period. The decision will be based on many factors and will be case-specific. Some of the things that may be considered are additional monitoring data submitted for consideration, corrective and voluntary actions taken by companies to reduce emissions, etc. Additional analysis may include evidence supporting either the transitory or persistent nature of the issue. As such, specific criteria will not be identified to determine what is required for the listing process to cease.

Similarly, the TCEQ is not revising the protocol to codify how many exceedances will result in an APWL listing. The APWL process is designed to allow the TCEQ to form Work Groups to develop recommendations with input from the public. The process will

involve many considerations, such as the number of exceedances of an AMCV. This type of information will be considered and scrutinized to determine the appropriate action. Because the APWL process involves the evaluation of ambient air monitoring data and emissions from multiple companies, the evaluation may be complex and will be unique to the circumstances in question. Therefore, it is not appropriate to set a rigid standard in the protocol. Also, listing an area on the APWL may not be the most appropriate avenue to reduce ambient concentrations. For example, if the TCEQ determines that the exceedances are the result of unauthorized emissions from one company, it may be more appropriate to pursue an enforcement action against the company rather than list all companies in the area on the APWL.

Comment 35

TCC commented that the third line of Step T contained a typographical error, mistakenly referring to Item P instead of Item R.

Response 35

The TCEQ is replacing the reference to Step P with a description of the notification procedures in response to this comment.

Comment 36

AAH recommended several changes to enhance Work Group performance and specifically commented that the protocol clarify communication efforts with regard to the notification and the related expectations of facilities that operate within APWL areas.

Response 36

The TCEQ revised Step T of the protocol to specify that the APWL Coordinator will contact each company that is added to an APWL area and explain the expectations for companies located in an APWL.

Comment 37

TCC and TCLM commented that the protocol should address the time period required to demonstrate sustained reductions in the delisting process. TCC commented that it was its understanding that the TCEQ's general policy for an area's delisting was for an area to have two years of documented, sustainable emissions reductions and that the TCEQ should clarify this general policy in the document. TCLM commented that the mobile monitoring data or stationary monitoring data should be the primary information used, when practical, to delist a pollutant from the APWL and that the TCEQ should take steps to remove a pollutant if monitoring data shows continued and sustained readings below the ESL after two successive years. TCLM suggested that two years of documented emission reductions be used as the basis and that the primary data to be used should be monitors for areas with monitors that measure the specific pollutants being evaluated. TCLM commented that Step U be revised to require the APWL Coordinator and Work Group to brief the Chief Engineer and recommend to begin the

delisting process when measured concentrations of a monitored pollutant remain below a level of concern for 24 consecutive months. TCLM commented that, in meetings with the agency, staff indicated that an APWL area must not only be able to document reductions but must be able to justify the reductions as sustainable. AAH commented that there is no description in Step T of the length of time that reductions have to be maintained before the delisting process is initiated and recommended that concentrations remain below the AMCV or standard for three years before the TCEQ initiates the delisting process.

Response 37

The TCEQ makes no changes to the protocol in response to these comments. The TCEQ has not determined that an exact time period for monitored reductions will ensure that an area will remain off the APWL in every instance. Acceptable monitoring data would be required for an area's delisting; however, other factors may be considered, and two years of monitoring data may not be sufficient information to determine that the reductions are maintained. The TCEQ needs to maintain flexibility to evaluate and collect all necessary information prior to delisting an area to ensure that an area will remain off the APWL. The TCEQ must have both monitoring data that demonstrates that ambient concentrations are below levels of concern, and information about what actions companies have taken to reduce emissions to reasonably ensure that ambient concentrations will remain below the applicable AMCV or state standard.

Comment 38

TCC recommended that Step U include a specific time frame for the TD to determine whether monitored concentrations of the pollutant are below a level of concern for the delisting of an APWL area.

Response 38

The TCEQ makes no changes to the protocol in response to this comment. Each APWL area is unique, with different numbers and types of sources, different pollutants with differing levels of toxicity, and different meteorological circumstances. The TCEQ is not able to establish one time frame to allow the TD to conduct a thorough review for every instance and ensure protection of public health.

Comment 39

TCC suggested that the protocol include an option in Step Z to reduce the size of an APWL area, in addition to the full delisting option.

Response 39

The TCEQ agrees that the protocol should more clearly provide an option to reduce the size of an APWL area or change an APWL boundary and revises the protocol in Step X to specify this option. The TCEQ may receive information during the public comment period that may support keeping an area listed, with revisions to the boundary.

Comment 40

TCC commented that the protocol should account for recognizing progress made in an APWL area, even if the progress made does not support or justify full delisting.

Response 40

The TCEQ makes no change to the protocol in response to this comment; however, the TCEQ agrees that companies should be recognized for their efforts in reducing emissions. Because new information would be available on a frequent basis, the APWL annual report and the APWL Web site would be appropriate avenues for recognizing companies for their efforts. The TCEQ intends to use one or both of these mechanisms for keeping the public and interested parties informed of the progress made in APWL areas. Companies are encouraged to inform the APWL Coordinator when they perform actions to reduce emissions.

Comment 41

AAH recommended that the Monitoring Operations Division be required to perform and publish an assessment of a newly designated APWL area in coordination with other necessary areas of the TCEQ, such as the Chief Engineer's Office, Air Permits Division, and TD. AAH further commented that the assessment would serve as a guiding document for the types of monitoring requisite to gain a full understanding of community exposures to toxics in the APWL area and regulatory needs to pursue reductions in the area through enforcement. AAH also commented that the assessment would necessarily include coordination with regular trips by the Mobile Monitoring and Deployment Section.

Response 41

The TCEQ makes no changes to the protocol in response to this comment. The TCEQ organizational structure has changed, and there is no longer a Monitoring Operations Division; however, the APWL protocol requires the APWL Coordinator to consult with all program area experts to evaluate potential APWL areas and inform the public. For example, the APWL Coordinator will work with the agency staff responsible for mobile monitoring to recommend areas for mobile monitoring deployment, and Appendix 2 of the protocol indicates that the Mobile Monitoring and Deployment Section will provide mobile monitoring to APWL areas as resources permit.

The TCEQ currently conducts assessments used to designate APWL areas. The TD conducts health effects evaluations of all network monitoring data and data obtained through mobile monitoring trips. Annual [health effects evaluations](#) of network monitoring data are available on the TCEQ's Web site. Health effects evaluations of mobile monitoring trips are available upon request.

The health effects evaluations are subsequently used by the APWL Coordinator and Work Group to evaluate a potential new APWL area. Steps H and I of the protocol require the APWL Coordinator to form a multidivisional Work Group to evaluate potential new APWL areas and develop the boundary supplemental documentation.

This comprehensive document would consolidate and summarize all information that the Work Group considered in evaluating a potential new APWL area (including the health effects evaluations), and the Work Group will use it as a basis for future APWL efforts.

Comment 42

AAH commented that any monitors or monitoring data used in an initial APWL assessment or in subsequent assessments or actions related to reducing toxics in an APWL area must be fully accessible by the public. AAH further commented that private monitors and data that cannot be shared openly with the public should not be considered.

Response 42

The TCEQ makes no changes to the protocol in response to this comment. Much of the monitoring data is available on the TCEQ public Web site. All monitoring data used in APWL determinations, if not directly available on the Web site, is available upon request. The APWL Coordinator will summarize all monitoring data used for APWL determinations and make the information available for review by the public.

Comment 43

TCC and TPC expressed concern about the portion of the protocol relating to the Work Group functional roles contained in Appendix 3. Specifically, the section pertaining to the Enforcement Division contained instructions for staff to document alleged violations and that alleged violations must satisfy the criteria for initiating an enforcement action before the enforcement case is referred to the Enforcement Division. TCC and TPC commented that the language in the protocol assumes that a violation has occurred, which may not always be the case. TPC provided the Milby Park APWL area as an example, stating that TPC was not in violation, that emissions were due to ongoing permitted emission sources, and that the voluntary emission reduction agreement required TPC to incorporate the achieved emission reductions into its air permit. TCC further recommended amending the language so the assumption is not automatically made that a violation has occurred.

Response 43

The TCEQ agrees with the comment and is revising the language to include a qualifier so that an automatic assumption of a violation is not assumed.

Comment 44

AAH suggested that the options that could be employed by the Air Permits Division in Appendix 3 become mandatory in order to strengthen the TCEQ's ability to secure emission reduction efforts.

Response 44

The TCEQ makes no changes to the protocol in response to this comment. Appendix 3 outlines some options that may be used for companies in an APWL area, such as requiring site-wide modeling for modifications, shortening renewal cycles, and restricting the use of permits by rule. These types of restrictions may not be appropriate for every company located in every APWL area.

Comment 45

AAH commented that the burden should fall on the applicant to show no significant impact from any contaminants of concern before it can receive a permit by rule or standard permit and that such proof include cumulative modeling of the applicant's emissions with known existing emissions within the APWL area.

Response 45

The TCEQ makes no change to the protocol in response to this comment. The TCEQ will not require modeling for permit by rule and standard permit claims in an APWL area. The TCEQ generally requires companies to offset increases with equivalent reductions for case-by-case New Source Review permits, as well as permit by rule and standard permit claims, making cumulative modeling unnecessary.

Comment 46

TCC commented that it is opposed to restricting the use of permits by rule and standard permits if the facility emits contaminants of concern. TCC further commented that a facility should be authorized to utilize permits by rule and standard permits if the facility meets the requirements for the authorization, without regard to whether the facility is located within an APWL area. In regard to the proposal to restrict the use of permits by rule, TCEQ asked what other mechanism exists for a quick review in APWL areas, since there is not a de minimis list. AAH recommended that permits by rule and other special permits be prohibited for facilities located within APWL areas.

Response 46

The TCEQ makes no changes in the protocol in response to these comments. The current practice of the TCEQ's Air Permits Division may include restricting a company's use of permits by rule and standard permits under certain circumstances, such as if the health impacts review conducted during the permit application review indicates that use of a permit by rule or standard permit may cause a health impact concern. The Air Permits Division can implement this restriction for facilities in an APWL area or outside an APWL area. The Texas Health and Safety Code (THSC) § 382.002, Policy and Purpose, requires the TCEQ to safeguard the state's air resources consistent with the protection of public health. Title 30 Texas Administrative Code (TAC) § 106.4(c), Requirements for Permitting by Rule, specifies that emissions authorized under a permit by rule comply with all rules and regulations of the TCEQ and with the intent of the Texas Clean Air Act (TCAA). As such, emissions authorized under a permit by rule must meet the provisions of an individual permit by rule and must also be protective of

public health. Therefore, the TCEQ has the authority to restrict use of permits by rule to ensure protection of public health. A quick permit review may not be appropriate for emission increases in an APWL area.

The TCEQ does not agree that a prohibition of all permits by rule is appropriate for all facilities located in an APWL area. Permits by rule are used to authorize a wide variety of equipment, many of which do not result in an increase to an APWL contaminant. Also, in some instances, permits by rule have historically been used to install emergency or back up equipment, and a permit by rule prohibition could result in the delay of construction for needed safety improvements. As discussed previously, the TCEQ generally requires companies in an APWL area to obtain equivalent reductions of APWL pollutant increases, even when the increases are authorized through a permit by rule.

Comment 47

TCC commented that the TCEQ does not have the authority to shorten the renewal cycle of an air permit without a legislative directive, as specified in Appendix 3. AAH agrees with and fully supports the proposal to shorten permit renewal cycles to five years for facilities within an APWL area that emit contaminants of concern. AAH further commented that, should the TCEQ require a rule change in order to effect such powers within the newly constituted APWL program, those changes be planned for and made to run concurrently with the formal rulemaking for the APWL program, should rulemaking be necessary.

Response 47

The TCEQ is revising the protocol to specify that the renewal cycle of an air permit may be shortened in accordance with the THSC, recognizing that the THSC only allows for a shorter air permit renewal period in certain circumstances. Section 382.055, Review and Renewal of Preconstruction Permit, allows a preconstruction permit for a facility at a nonfederal source, for cause, to contain a provision requiring the permit to be renewed at a period of between five and ten years. Similarly, § 382.0518, Preconstruction Permit, allows the TCEQ to consider an applicant's compliance history in considering the issuance, amendment, or renewal of a permit. For example, the TCEQ may require a more frequent renewal schedule for a poor performer. At this time, the TCEQ does not intend to initiate rulemaking to implement the APWL program or shorten renewal cycles of permits.

Comment 48

TCC commented that it opposes the practice of requiring site-wide modeling for modifications due to the time and expense required by this proposal.

Response 48

The TCEQ makes no changes in response to this comment. The Air Permits Division previously established criteria for which site-wide modeling would be required, as outlined in the modeling effects review applicability (MERA) document and provided a public comment period during the development of the MERA. The MERA document

provides guidance for determining the scope of modeling conducted for all air permit applications, not just those applications for companies located within an APWL area. Depending on the specific details of a particular application, site-wide modeling could be required. Further, Appendix 3 of the protocol indicates that site-wide modeling is a practice that could be employed and does not indicate that site-wide modeling must be employed for every application for companies located within an APWL area.

Comment 49

TCC commented that Appendix 5 of the protocol is not clear as to what triggers a boundary evaluation.

Response 49

The TCEQ revises the protocol's flowchart to specify that the APWL Coordinator may form a Work Group to reevaluate an existing APWL boundary. The APWL Coordinator may initiate a reevaluation if it is warranted by ambient monitoring data, changes to an APWL area, or by other pertinent information that could warrant the reevaluation of a boundary. Persons that would like to forward information for consideration may contact the APWL Coordinator.

Comment 50

TCC commented that boundary guidelines in Appendix 5 be amended to allow for the reduction of an APWL area.

Response 50

The TCEQ revised the protocol to make clear that an APWL boundary adjustment could include expansion of the boundary or reduction of the APWL area.

Comment 51

TPC commented that Milby Park has been regarded by the agency, by citizens, and by elected officials throughout the Houston area as a model for focused emissions reductions and that TPC continues to work towards minimizing 1,3-butadiene emissions even though Milby Park is no longer on the APWL. TPC recommended that TCEQ staff involved in Milby Park review the draft protocol to ensure that the protocol is completely consistent with both the initial and ongoing Milby Park area work processes.

Response 51

The TCEQ provided the final protocol to multiple TCEQ divisions and staff members, including those closely involved in the Milby Park APWL area.

Comment 52

TCLM commented that the reason and intent of notifications for water quality permit actions to the APWL Coordinator is unclear.

Response 52

The TCEQ makes no changes to the protocol in response to this comment. Some water quality permits may relate to APWL contaminants. The notification would allow the APWL Coordinator to identify if further evaluation is warranted for any water quality permits to meet the goals and intent of the APWL.

Comment 53

TCLM requested clarification on the content of the Strategic Action Plan for an APWL area. TCC commented that potential sources within an APWL area should be included in the Strategic Action Plan draft and review process described in Appendix 8 of the draft protocol as early as possible and recommended that potential sources attend the first planning meeting, in particular, because the purpose of the planning meeting is to focus on brainstorming potential strategies for addressing elevated ambient concentrations of the pollutants of concern in APWL areas.

Response 53

The TCEQ makes no changes to the protocol in response to these comments. The Strategic Action Plan is a tool that the APWL Coordinator and the Work Group will use to identify actions to reduce emissions in an APWL area and document progress on those actions. A Strategic Action Plan will be specific to each individual APWL area and the Work Group will develop a Strategic Action Plan based on all information—from the data gathered by the TCEQ in its initial observations through the information provided by stakeholders during the public comment period, including any information requested of or submitted by companies located in the APWL area. Actions to reduce emissions could include a wide range of activities, from increased monitoring to working with a specific company to reduce emissions.